CHAPTER II
EVALUATION OF THE STATE OF FREEDOM OF EXPRESSION IN THE HEMISPHERE

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 2013. Its objective is to foster 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 year. The Office of the Special Rapporteur has confidence in the will of the OAS Member States to promote resolutely the right to freedom of expression and, to that end, publicizes their best practices, reports some serious problems observed, and offers viable and practical recommendations rooted in the Declaration of Principles.

2. As in previous annual reports, this chapter notes those aspects of the right to freedom of expression that most merit 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 based on information received by the Office of the Special Rapporteur from various States, intergovernmental and non-governmental sources. The Office of the Special Rapporteur takes particular interest in 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 outlets and media workers. In all cases, the information is contrasted and verified. The Office presents only that information which it thinks will help the States identify worrisome problems or tendencies that could eventually cause irreparable effects if not addressed.

3. The information in this report is presented in an orderly and systematic manner that takes note of the advances, setbacks, and challenges regarding various aspects of the exercise of the right to freedom of expression. Thus, this chapter includes progress made in legal, administrative or legislative matters, as well as the most serious problems that arose throughout the year. The latter include murders, threats and attacks against journalists exercising their profession; subsequent findings of disproportionate liability; and progress toward as well as challenges to the right of access to information, among others.

4. The cases selected in each topic serve as examples in relation to the respect and exercise of freedom of expression. Sources are cited in all cases. In some instances, the Office of the Special Rapporteur received information that it could not confirm and such information is not included. Such omissions should be considered in that context. In the majority of cases, the Office of the Special Rapporteur identifies the direct source, citing the address of the corresponding Web site. When the information is not published directly by the source, the report cites the date the Office of the Special Rapporteur received the information in its electronic mailbox. This report does not include information 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 2013 Annual Report, the Office of the Special Rapporteur generally took into account information received until November 1, 2013. Information regarding incidents that occurred after the date the 2013 Annual Report went to press is available in the press.

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 such practice, which are indispensable to the value of future reports.

B. Evaluation of the state of freedom of expression in the Member States

1. Antigua and Barbuda

7. The Office of the Special Rapporteur received information indicating that during an April 15, 2013 meeting with representatives of the International Press Institute (IPI), the Prime Minister of Antigua and Barbuda, Winston Baldwin Spencer, reportedly expressed the government’s willingness to revise the law that establishes criminal penalties for defamation offenses. The Prime Minister also reportedly stated that, “If a journalist is faced with prison for doing his or her job, that undermines freedom of the press.”¹

8. According to the information received by the Office of the Special Rapporteur, Ofer Shaked, the owner and director of the electronic and print media outlet Caribarena, reportedly left the country with his family following repeated death threats. According to the director, the threats were related to the publication in Caribarena of information on investigations into alleged irregular transactions between government employees and a Japanese company. According to accounts, unknown persons reportedly broke into his home on two separate occasions. On another occasion, an unknown individual reportedly told his daughter that her father—a native of Israel—would be sent back to that country in a body bag if he did not stop the reports about the alleged irregularities involving the Japanese company. Additionally, the tires of the journalist’s vehicle were vandalized various times. The information received also indicates that, since July 19, Caribarena’s website has been subject to cyber-attacks that have brought the website down. According to the medium, the attack occurred after the publication of several articles that exposed alleged acts of corruption.² Similarly, the information available indicates that a member of congress reportedly filed a defamation lawsuit against Caribarena and Ofer Shaked, its owner and director, before the Supreme Court of Justice.³

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9. Principle 9 of the IACHR’s 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.”

2. Argentina

A. Progress

10. The Office of the Special Rapporteur was informed that Argentina’s Supreme Court of Justice upheld the conviction of two police officers accused of “illegitimate deprivation of liberty and aggravated threats” against journalist Daniel Malnatti. In 2002, Malnatti was covering a story for the television program CQC, at an event of then-presidential candidate Carlos Menem, when Malnatti was assaulted by the police officers. The journalist was threatened and pushed into an elevator after refusing to leave the place where the event was taking place.

11. On January 3, the Buenos Aires Federal Court reportedly dismissed a lawsuit that the head of the Federal Administration of Public Revenue (AFIP), Ricardo Echegaray, had brought against journalist Luis Majul for “false allegations,” after the journalist alleged he was being persecuted by the tax collection agency.

12. In March, journalist Mariel Fitz Patrick, with the support of the Asociación por los Derechos Civiles (ADC), reportedly filed a writ of amparo (judicial protection of civil rights) against the executive branch to obtain access to contracts between the State and the production company Pensado Para Televisión in the years 2010, 2011 and 2012, after the leadership of the Cabinet of Ministers had denied her access to the information on grounds that she had to demonstrate a legitimate interest. On June 11, the Eleventh Court of Administrative Matters granted the writ of amparo. In the decision, the judge adopts the arguments made by the prosecutor, who indicated that “citizens’ right of access to public information on the activities of the government constitutes a basic requirement of the democratic rule of law, as it involves a fundamental human right, an instrument for citizen participation, an element to guarantee other rights, a mechanism for improving governance, and finally, it constitutes an essential means to establish control over the res publica.” The judgment states that “barring

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exceptions that must be established legislatively and interpreted restrictively: Everyone has the right to request, access, and receive information that the National State possesses or controls. The prosecutor understands that in the said case the provisions of Annex VII of Decree 1172/03 are applicable. The provision “does not require proving any qualified legal interest.” In this sense, the prosecutor understands that “the right in question contains the state's duty to inform the citizenry when it is reasonably required, without having to prove direct interest to obtain the information.” The judgment mentions the ‘conventionality control’ that must be made, pursuant to the Inter-American Court’s doctrine in the Case of Almonacid Arellano et al. v. Chile, and it found that the right of access to public information must be examined in accordance with the body of international human rights law, which carries constitutional status. Particularly, it refers to that established by the IACHR in the Special Study on the Right of Access to Public Information of the Office of Special Rapporteur for Freedom of Expression, in the sense that the information requested “should be provided without the need to prove a direct interest or a personal impairment to obtain it.” The State appealed the judgment and on October 31 the Forth Division Chamber of the Federal Appeals Court of Administrative Matters [Sala IV de la Cámara Nacional de Apelaciones en lo Contencioso Administrativo Federal] ratified the decision.

13. On June 19, the Fifth National Appeals Chamber of the Federal Court of Administrative Matters ordered the Office of the Inspector General of Justice (ICG) to turn over information about companies and corporations connected with a legal case. The Federal Court of Administrative Matters stated that “the principle of disclosure of government acts constitutes one of the pillars of every republican government [...] This right, while not expressly spelled out in the Constitution, has been recognized in case law of the Supreme Court as a social right, one that guarantees to every person—physical or legal, public or private—cognizance of and participation in everything related to political, governmental, and administrative processes.” Likewise, it stated that “no special prerequisite is needed for any person, in any capacity, to be able to request, access and receive information;” no impediment exists, and it is not necessary to establish the existence of a subjective right or legitimate interest to do so.

14. The First, Second, Third, and Fourth Chambers of the National Court of Appeals for Administrative Matters rescinded fines imposed on consulting companies for publishing inflation

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figures that were different from the official ones. The fines had been imposed on various private sector consultants by Argentina’s National Agency of Domestic Trade on grounds that the publication of the studies contained “inaccurate information” under the terms of Law 22.802 the Commercial Loyalty Act.\textsuperscript{18} The decisions\textsuperscript{19} established that the release of the estimates does not constitute “presentations,” “commercial advertising,” or “publicity” (in the sense provided by Article 9 of Law 22.802\textsuperscript{20}), but rather “public and technical informational content.”\textsuperscript{21}

15. On October 8, the Supreme Court of Justice disallowed a special motion for reconsideration filed by the government—the Ministry of Economy and Public Finance—against three of the rulings mentioned in the preceding paragraph.\textsuperscript{22} However, the Office of the Rapporteur notes with concern that there are still criminal complaints in effect against some consulting companies over “alleged complex criminal maneuvers through which the accused consulting companies, in connivance with media outlets and companies providing goods and services, allegedly manipulated data for the purpose of influencing inflation rates.”\textsuperscript{23}

16. In June, the Fourth Chamber of the Federal Court of Administrative Matters ruled in favor of the amparo appeal filed by Artear (Canal 13) and reportedly found that the State should prepare a plan for distribution of government advertising, one that includes all over-air channels in the


\textsuperscript{18} Centro de Información Judicial. May 13, 2013. \textit{La Cámara Nacional en lo Contencioso Administrativo Federal revocó multas a consultoras privadas}.

\textsuperscript{19} While the May 7, 2013, decision by the Fourth Chamber rescinds the fines, the legal arguments are different than in the other decisions. The Fourth Chamber established that the examination of the administrative actions revealed that the administrative act implementing the sanction was affected as to matters of fact, a circumstance that forced it to be disqualified as a valid act. That is the case because the facts constituting the offense of which the consulting company was accused were not established, and it was proved that the company complied with the information requirement imposed by the administrative authority.


“\textbf{ARTICLE 9}— Any type of presentation, advertising, or publicity that, through inaccuracies or concealment, may lead to error, deceit, or confusion with respect to the characteristics or properties, nature, origin, quality, purity, mixture, quantity, usage, price, marketing conditions, or production techniques of personal property, real estate, or services is prohibited.”


city of Buenos Aires and that “faithfully [meets] the guidelines of proportionality and equity established” by the judgment.\textsuperscript{24}

17. The Inter-American Court, in its 98\textsuperscript{th} regular sessions, decided to consider the case of \textit{Kimel v. Argentina}, of May 2, 2008, to be concluded and to archive it. In the Court’s view, Argentina had fulfilled all measures of reparation ordered by the Court: “The State has complied fully with the obligation to annul the criminal conviction imposed on Mr. Kimel and all its consequence.”\textsuperscript{25}

\section*{B. Supreme Court of Justice ruling on the Audiovisual Communication Services Act}

18. On October 10, 2009, Law No. 26,522 was enacted, which regulates “Audiovisual Communication Services throughout the territorial realm of the Argentine Republic.”\textsuperscript{26} In 2010, the Grupo Clarín\textsuperscript{27} filed an unconstitutionality writ [\textit{acción de inconstitucionalidad}] against articles 41, 45, 48 (second paragraph) and 161 of the Law and requested the inapplicability of those provisions with respect to licenses and signals that it held at the time the law was enacted.\textsuperscript{28} On December 14, 2012, National Civil and Commercial Federal Court of First Instance No. 1 rejected the unconstitutionality writ that had been brought.\textsuperscript{29} The Grupo Clarín appealed the first instance judicial decision and the Federal Civil and Commercial Court of Appeals issued a ruling, partially admitting the writ.\textsuperscript{30}

19. The matter was brought before the Supreme Court of Justice, which on October 29, 2013,\textsuperscript{31} issued a ruling. The Supreme Court ruled in favor of the constitutionality of the questioned articles of law and concluded that, in this case, the right to freedom of expression of the Grupo Clarín had not been infringed upon. As grounds for its decision, the Supreme Court took the following arguments into account, among others:

\begin{itemize}
\item[a.] That the right to freedom of expression involves not only the individual right to issue and express thought but also the social right to information with respect to individuals. That in its collective dimension, the right to freedom of expression is a necessary
\end{itemize}


\textsuperscript{27} Writ filed jointly with Arte Radiotelevisivo Argentina S.A, Cablevisión S.A, Multicanal S.A, Radio Mitre S.A and Teledigital Cable S.A.

\textsuperscript{28} Corte Suprema de Justicia de la Nación. \textit{Grupo Clarín SA y otros c/Poder Ejecutivo Nacional y otros/ acción meramente declarativa}. October 29, 2013.

\textsuperscript{29} Juzgado Nacional de Primera Instancia en lo Civil y Comercial Federal N° 1. \textit{Grupo Clarín SA y otros c/Poder Ejecutivo Nacional y otros/ acción meramente declarativa expte. no. 119/2010}. December 14, 2012.


\textsuperscript{31} Corte Suprema de Justicia de la Nación. \textit{Grupo Clarín AS y otros c/Poder Ejecutivo Nacional y otros/ acción meramente declarativa}. October 29, 2013.
instrument to guarantee freedom of information and formation of public opinion, and as such, fundamentally constitutes a precondition of the democratic system. In this sense, it explained that “democratic debate requires greater pluralism and the broadest opportunities for expression by the diverse representative sectors of society. If not, there would not be a true exchange of ideas, which as a direct consequence would generate impoverishment of public debate, affecting collectively made decisions.”

b. That in contrast to what occurs with freedom of expression in its individual dimension, where the regulatory activity of the State is minimal, “the collective dimension requires active protection by the State, meaning its intervention here is more significant.” It affirmed that “the media play a relevant role in the formation of public discourse, which is why the State’s interest in regulation is not in question.” In this framework, it held that the State can decide on the form that it deems appropriate to promote real opportunities for expression by citizens and thereby strengthen public debate. The options that the State would have in order to ensure greater pluralism in the expression of ideas include “the adoption of a priori rules that equitably organize and distribute citizens’ access to the mass media. Pursuant to this, it is up to the State to establish whatever guidelines it deems most appropriate to ensure public debate and the free and universal exchange of ideas. The Office of the Special Rapporteur for Freedom of Expression of the OAS [has indicated that] it favors this type of regulation.” The court indicated that “this type of regulatory policy by the State can apply to any type of licenses, whether or not they use the radio electric spectrum. That is the case, because the basis for the regulation does not lie solely in the limited nature of the spectrum as a public good, but fundamentally in guaranteeing the plurality and diversity of voices that a democratic system requires, including both in the media that use the spectrum and those whose technologies do not use that space.”

c. In the case under study, the Court found that “indirect violation of freedom of expression requires the economic sustainability of the enterprise be affected,” something that must be proven by the group bringing the action. It explained that it involves a different standard from that used by the high court in its ruling in the case of Editorial Río Negro S.A. c/Neuquén, because the law in question does not establish differentiated treatment that requires “starting from a suspicion of illegitimacy of the law, shifting the burden of proof.” According to the Supreme Court, the law “promotes freedom of expression in its collective dimension, establishing equal limits for all license holders.” In examining the evidence provided, the Court concluded that even a drop in profitability does not prove that the plaintiff’s adaptation to the licensing system established by law endanger’s the economic or operational feasibility of the group or its enterprises. Therefore, Grupo Clarín’s right to freedom of expression would not be affected. It indicated, however, that in this case, the group’s property rights are limited.

d. That when what is involved are laws on property issues that restrict rights of that nature, constitutional oversight is not as strict, allowing lawmakers greater discretion. According to the Supreme Court, under this type of constitutional scrutiny, it not the responsibility of courts to review the necessity of the means selected by lawmakers for fulfillment of the ends (strict standard of control). In other words, “it must not examine whether it was indispensable to legislate in this regard, or if there would be other equally suitable alternative means which, at the same time, would have caused less
restriction of the rights involved, in that this would imply entering the realm of exclusive legislative discretion. [...] The choice of the form considered adequate to promote the proposed objectives is a matter left to the lawmakers and outside of the judges’ control. [...] Thus, in this case, the task of the Court is not to decide whether law 26,522 is the best possible solution, but rather to determine whether the means chosen are suitable and proportionate to their objectives.”

e. That in relation to the objectives of the law, the restrictions on the accumulation of licenses imposed by the law (Article 45) “seek as their main objectives to promote freedom of expression as a collective good and to preserve the right to information for all individuals.” That “no greater effort to explain is required in order to conclude that the measures in question are suitable to fulfill the above-mentioned objectives, because the restrictions on the number of licenses and registrations appear to be appropriate or suitable for permitting participation by a larger number of voices [...]. It is evident that limiting the quantity of licenses and registrations for all media operators prevents concentration, thereby permitting greater participation and diversity of opinions.”

Regarding the proportionality of the measure, the Court indicated that “the losses of revenue and profitability to which the experts refer in their reports constitute logical consequences of the reduction of benefits from economies of scale, as an unavoidable result of all business restructuring processes aimed at avoiding or limiting situations of concentration. In the cost-benefit analysis implicit in the judgment of proportionality, the function performed by the media in a democratic society must not be lost sight of. In contrast to other markets, in communications, concentration has social consequences that affect the right to information, an essential right for individual freedoms.” It concluded that “for the reasons cited, the set of objectives that are the purpose of the law and the nature of the rights in play, the restrictions on the plaintiff’s property rights – insofar as they do not endanger their sustainability and only translate into possible losses of profitability – do not appear to be unjustified. That is the case to the extent that such strictly property-based restrictions are not disproportionate with respect to the institutional weight of the law’s objectives.

f. That with special reference to broadcasting services that do not use the radio electric spectrum, it reiterated that “the State has the power to decide whether to regulate the market or leave it to the rules of free competition. It can be argued that the law’s objectives could equally be achieved without the restrictions provided for in Article 45 of the law – precisely because of the unlimited character of the spectrum – but that would imply improper judgment regarding the needs of the measure.”

g. That “everything that has been said about the law and its purpose of achieving plurality and diversity in the mass media would lose its meaning without the existence of transparent public policies in the field of government advertising. The State’s duty to guarantee freedom of expression is undermined if, by means of subsidies, in the distribution of government advertising or any other benefit, the media were to become mere instruments of support for a particular political current or a way to eliminate dissent and the plural debate of ideas. The same thing happens if the public media, instead of giving voice and satisfying the needs for information of all sectors of society, were to become venues at the service of governmental interests.”
That the law’s objectives can also not be ensured if “the agency charged with its application is not a technical and independent body protected against improper interferences, both by the government and other pressure groups. The authority for application must strictly comply with the principles established in the Constitution, in international treaties incorporated into the Constitution and the law itself. Equal treatment must be respected, both in awarding and revoking licenses, without discrimination based on dissident opinions while guaranteeing citizens’ right of access to plural information.”

C. Attacks on and threats against media outlets and journalists

20. The Office of the Special Rapporteur received information on a number of journalists being assaulted while they were covering the news. For example, the Office of the Rapporteur received information indicating that individuals reportedly assaulted journalist Oscar Alfredo Di Vincensi, of the newspaper PerteneSer and the radio station Punto Cero 94.1; photographer Sebastián Granata, of Página 12 newspaper’s ‘Rosario’ supplement; photography student Pablo Lucero, a contributor to FM station Radio Nuevos Horizontes, of the NGO Abriendo Horizontes; press photographers with the media outlets El Ancasti, El Esquiú, and La Unión; journalist Daniel Rodríguez, of the radio station Amir FM; journalists César Mendoza, of the newspaper Norte and Orlando Torres of FM Mercurio; and journalist Sandra Borghi, of Todo Noticias and Canal 13.

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32. He reportedly was sprayed with toxic agrochemicals by the owner and an employee of a fumigation company when he tried to film how a piece of land was being fumigated in violation of a ban on spraying within a 1,000-mile radius of the urban area of Alberti. Agencia Rodolfo Walsh. January 2, 2013. *Alberti. Rociaron con agrotóxico a periodista.* Foro de Periodismo Argentino (FOPEA). January 9, 2013. *Atacan con agrotóxicos a un periodista que registraba una fumigación ilegal.*

33. He reportedly was assaulted and pushed out of a meeting of the Board of Directors of the Argentina Agrarian Federation, which took place in Rosario. Télam. January 10, 2013. *Agregan a un reportero gráfico al intentar cubrir una reunión de la Federación Agraria.* Agencia Periodística de Buenos Aires. January 10, 2013. *Agregan a un fotógrafo cuando cubría una reunión de la Federación Agraria.*

34. He reportedly was assaulted while he was taking photographs in the vicinity of a house in Córdoba where a man accused of child abuse had committed suicide. Foro de Periodismo Argentino (FOPEA). February 7, 2013. *Agregaron a un voluntario de una radio comunitaria en Córdoba.* La Voz. February 7, 2013. *Agregan a voluntario de radio comunitaria.*

35. The photographers were threatened and two of them reportedly assaulted by individuals presumed to be family members of police officials who had been implicated in a case involving the beating of a minor, while they were covering the defendants’ testimony before the Prosecutor’s Office in Rosario. El Ancasti. March 27, 2013. *Amenazan a reporteros gráficos en Fiscalía.* Foro de Periodismo Argentino (FOPEA). March 27, 2013. *Familiares de policías amenazaron a fotógrafos en Catamarca.*

36. He reportedly was attacked, allegedly by sons of an individual being prosecuted for sexual abuse in La Merced, in the province of Salta. The journalist had been reporting on the case on his radio program. Movileros Salta. 11 June 2013. *Periodista nuevamente agredido y patoteadno en La Merced.* El Tribuno. June 11, 2013. *Brutal ataque a un periodista de La Merced.* Foro de Periodismo Argentino (FOPEA). June 17, 2013. *Cuatro casos de agresiones a periodistas en La Rioja, Salta y Ciudad A. de Buenos Aires.*

37. They reportedly were expelled from the headquarters of the municipal workers union as they were trying to cover the closing of the union’s electoral process, of the primary election (PASO) in Saénz Peña, in Chaco province. La Voz del Chaco. July 30, 2013. *Ante el silenciamiento de radio Quebracho y la agresión a periodistas en Saénz Peña.* Sindicato de Prensa de la Provincia del Chaco. July 2013. *Repudio de Prensa por el silenciamiento de radio Quebracho y la agresión a periodistas en Saénz Peña.* Foro de Periodismo Argentino (FOPEA). July 30, 2013. *Hostigan a periodistas durante la cobertura de PASO en una localidad de Chaco.*

38. She reportedly was the target of insults while she was covering news about the health of President Cristina Fernández de Kirchner, at the entrance to the Fundación Favaloro. Someone reportedly came after her with a pair of scissors, but members of the presidential protection service and the Federal Police prevented the attack. Unión de Trabajadores de
21. In the process of covering various protest demonstrations, the following journalists were reportedly assaulted by alleged demonstrators: cameraman José Escudero, of Canal Doce, and freelance photographer Paul Amiune; journalist Dominique Metzger, of Todo Noticias; Marcelo Moniti, of América TV, and journalists from Crónica TV; reporter Maria Belén López del Río and cameraman Santiago Ventura, of the news agency Télam; journalist Cynthia García, from the program ‘678’ on Televisión Pública, and reporters from the program ‘Duro de Domar’ of Canal 9; journalists of Cadena 3, of Canal 10, of Servicios de Radio y Televisión de la Universidad Nacional de Córdoba and of El Doce; journalists Roxana Martínez, of the channel El Doce, and Leonardo Guevara, of the radio station Mitre; and journalist Marcelo Bertona, of the channel Showsport, and Juan Pablo Luna, of the radio station Impacto.

22. In addition, the Office of the Special Rapporteur received information on threats reportedly received by journalists, possibly as a result of their work. For example, journalist Tomás Eliaschev, of the magazine Veintitrés; journalist Adrián Valenzuela, of Radio Vos 90.1 in Salta;


Protestors reportedly pelted them with rocks when they were covering incidents that arose during the local Deliberation Council’s handling of a passenger fare increase for urban transportation, in the city of Córdoba. Día a Día. January 10, 2013. Pasajes violentos para el aumento del boleto; La Voz. January 9, 2013. Incidentes en las afueras del Concejo Deliberante por la suba del boleto; Foro de Periodismo Argentino (FOPEA). January 9, 2013. Otra vez agreden a periodistas en Córdoba durante una manifestación.


They reportedly were attacked while covering a demonstration in the Plaza de Mayo, in Buenos Aires, in the context of protest campaigns. Télam. Agredieron a un periodista de la agencia Télam en la marcha opositora (VIDEO); Agencia Periodística de Buenos Aires. April 18, 2013. Nuevas agresiones a periodistas en la protesta opositora.


They reportedly were attacked, threatened, and kept from doing their work by alleged protesters, during a demonstration of the Unión de Tranviarios Automotor in the city of Córdoba. Todo Noticias. April 30, 2013. Incidentes en Córdoba durante una huelga de choferes; Minuto Uno. May 1, 2013. Serios incidentes en la ciudad de Córdoba durante una huelga; IFEX/Foro de Periodismo Argentino (FOPEA). May 6, 2013. Agresiones a periodistas en Argentina durante marcha.

They reportedly were assaulted and intimidated while they were covering a protest by associations of taxi drivers in the city of Córdoba. A police officer who was there reportedly prevented further attacks. La Voz. July 16, 2013. Agredieron a dos periodistas en la marcha de taxistas; Foro de Periodismo Argentino (FOPEA). July 16, 2013. Agreden a periodistas en Córdoba durante una manifestación.

Marcelo Bertona reportedly was attacked and Juan Pablo Luna had his camera stolen while they were covering a demonstration to protest the current Board of Directors of a sports club, the Instituto Atlético Central Córdoba. Foro de Periodismo Argentino (FOPEA). October 1, 2013. Preocupación por agresiones a periodistas en manifestación de simpatizantes del club Instituto (Córdoba).

photographers Irma Montiel, of the Télam agency, and Manuel Bomheker, of Radio Nacional; journalist Alejandro Frías, of the digital newspaper MDZ Online; journalist Marcelo Pastore, host of a program on RTV Noticias; Tomás Méndez, a journalist with the program ‘ADN’, on Canal 10 of Servicios de Radio y Televisión de la Universidad Nacional de Córdoba; and journalists Andrea Dematey and Javier Torre, of the newspaper Actualidad.

23. According to information received, a number of journalists were assaulted while covering sporting events. For example, during the broadcast of a soccer match, fans of one of the teams reportedly broke the window of the broadcast booth in which journalists from the Televisión Pública program ‘Fútbol para Todos’ were working. On a second occasion, fans of a team reportedly attacked the booth of journalists Darío Alaniz and Sergio Alcaraz, of the ‘Último Recurso’ program on the San Luis station FM Libre. In addition, during a soccer match, a journalist in the broadcast booth reportedly was threatened with a firearm; and a news crew from Radio Panorama was said to have been threatened.

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48 They reportedly were threatened and intimidated by defendants on trial for crimes against humanity committed in a clandestine detention center known as “La Perla,” located in the province of Córdoba. ARGra. April 10, 2013. Represores presos siguen amenazando a reporteros gráficos en Córdoba; La Voz. April 11, 2013. Represores intimidan a dos periodistas; Día a Día. April 10, 2013. Megacausa La Perla: amenazaron a dos reporteros gráficos.

49 He allegedly received threats against him and his family, made by unidentified individuals. In addition, his parents’ house was said to have been stained with red paint. According to reports, the attacks were linked to an article Farías had published about alleged collaborators of Argentina’s military dictatorship. MDZ Online. May 1, 2013. Periodista de MDZ Online fue amenazado; Tiempo Argentino. May 3, 2013. Amenazan a periodista de Mendoza; El Litoral. May 1, 2013. Periodista de MDZ Online fue amenazado.

50 He allegedly received threats against him and his family after airing a report on alleged irregularities linked to a councilwoman’s properties. According to reports, the councilwoman’s husband, along with another person, showed up at the journalist’s home to threaten him. La Voz de Jujuy. June 11, 2013. Escándalo en San Pedro: Periodista denunció amenazas por mostrar propiedades de una concejal en asentamientos; Pregón. June 12, 2013. Periodistas denunciaron “aprietes y amenazas”; Foro de Periodismo Argentino (FOPEA). June 11, 2013. Amenazan a un periodista en San Pedro, Jujuy.

51 Méndez reportedly filed a complaint with the provincial court in Córdoba over a death threat made against him. On his program ‘ADN,’ Méndez reported of an alleged relationship between members of the Córdoba police and drug trafficking. Foro de Periodismo Argentino (FOPEA). October 10, 2013. Preocupación por amenazas recibidas por el periodista cordobés Tomás Méndez; Agencia Periodística de Buenos Aires. October 8, 2013. La Universidad de Córdoba exige protección a periodista amenazado; Unión de Trabajadores de Prensa de Buenos Aires (UTPBA). Preocupación de UTPBA por amenaza de muerte al periodista cordobés Tomás Méndez.


In addition, alleged fans of a soccer team were reported to have attacked the premises of the radio station Sol 91.5 FM while it was broadcasting the sports program ‘La Tercera.’

24. According to information received, a number of media outlets and journalists suffered attacks on their headquarters or had their equipment damaged. On a number of occasions, unidentified individuals reportedly damaged the vehicles of several journalists: Clarín reporter Julio Rodríguez; journalists Raúl and Víctor Cortez, of VideoTa; and journalist Hugo Revol, host of the radio program ‘La Mañana en Compañía’ on Visión FM. In addition, in a number of cases unidentified individuals reportedly attacked facilities and other buildings: at the radio station FM Horizonte, a cable connecting broadcast equipment was reportedly cut, damaging the Internet connection; homemade Molotov cocktails (fuel-filled bottles) were reportedly thrown at the offices of a newspaper distribution company; the Radio Génesis station was reportedly burned down; shots apparently were fired at the headquarters of Cablevisión, part of the Clarín media group; intimidating messages were said to have been painted near the home of journalist Julio Blanck, of the newspaper Clarín and Todo Noticias; a burning tire was apparently thrown through a window at the radio station FM Paraíso 42; a fire reportedly was set at the house from which FM Belgrano 106.9 broadcasts; equipment belonging to

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56 The attackers reportedly threw sound bombs [bombas de estruendo] and drew graffiti on the building while the sports program was being broadcast, allegedly in rejection of the journalists’ opinions. The team’s board of directors reportedly issued a press release repudiating the incidents. Sol 91.5. July 29, 2013. Nuevas agresiones al edificio de SOL 91.5: Ámbito. July 30, 2013. Barras de Unión atacaron una estación de radio; Foro de Periodismo Argentino (FOPEA). July 29, 2013. Hinchas de fútbol atacan una radio en Santa Fe.


58 The journalists’ vehicle reportedly was burned. Salta entre líneas. Tartagal: Nuevo atentado contra la prensa; El Tribuno. March 19, 2013. Quemaron el auto a periodistas en Tartagal; IFEX/Foro de Periodismo Argentino (FOPEA). March 20, 2013. Incendio del automóvil de periodistas argentinos tras informe sobre drogas.


61 The attacks reportedly caused a fire, which destroyed part of the materials for distribution and some equipment at the company’s offices, in Santa Fe province. La Nación. March 21, 2013. Lanzan bombas molotov contra una distribuidora de diarios en Santa Fe; Foro de Periodismo Argentino (FOPEA). March 21, 2013. Atacan con bombas molotov a una distribuidora de diarios en Santa Fe.


Radio Cooperativa AM 770, in Buenos Aires, reportedly was damaged; a homemade bomb was apparently thrown at the home of journalist Luis Fernández, where the radio station FM Libertad operates.

25. Meanwhile, the Office of the Special Rapporteur was informed of new cases in which journalists have been assaulted or detained by individuals presumed to be law enforcement and public officials. According to information received, the director of the National Public Works and Services [Obras y Servicios de Federación] area in the province of Entre Ríos reportedly assaulted journalist René Silva, of the radio station FM Fantástico 104.5; journalist Antonio Da Silva, editor and publisher of the newspaper El Zondino, in El Zonda, San Juan, reportedly received threats from a provincial official; journalist Luis Gasulla was reportedly threatened following publication of his book “El negocio de los Derechos Humanos”; a journalist and a photographer from the newspaper Tiempo Sur were assaulted and insulted by a group of municipal officials presumed to be members of the Union of Municipal Workers and Employees (SOEM); the minister of infrastructure in the province of Buenos Aires reportedly assaulted and threatened journalist Damián Belastegui, a reporter with Agencia Nova; journalist Guillermo Lobo, of the Todo Noticias channel, was reportedly attacked by an alleged customs


68 The journalist reportedly connected the attack with allegations the station had aired about the water problem in Ibarreta, in the province of Formosa. Fundación LED. September 2, 2013. Agresión con bombas incendiarias al domicilio del periodista Luis Fernández en la provincia de Formosa; IFEX/Foro de Periodismo Argentino (FOPEA). September 4, 2013. Atenta con bomba incendiaria contra el domicilio de periodista argentino.

69 The official reportedly burst into the radio studio hurling insults and threats at the journalist while he was on air hosting his program. Foro de Periodismo Argentino (FOPEA). January 9, 2013. Denuncian que un funcionario municipal agredió a un periodista; Uno. January 9, 2013. Denuncian que un funcionario municipal agredió a un periodista de Federación; Análisis Digital. January 10, 2013. Un periodista de Federación fue agredido verbalmente por un funcionario municipal.

70 The incidents reportedly occurred as a result of things the journalist had published that were critical of the way the official was doing his job. Foro de Periodismo Argentino (FOPEA). March 22, 2013. Amenazan a un periodista en El Zonda, San Juan.

71 According to reports, two community leaders allegedly tied to the governor of Chaco burst into the offices of Radio Resistencia 90.3 hurling threats and insults while the journalist was giving an interview on the program ‘Palabras Encontradas,’ hosted by Roberto Espinoza. The next day, Espinoza reportedly was fired from his job. In addition, sales of the book were apparently banned in bookstores in the city, and two individuals with ties to the book reportedly were unable to participate in its presentation because they were threatened upon leaving their homes. La Nación. March 23, 2013. Un periodista fue amenazado en vivo en Chaco; Primero Chaco. Amenazan a periodista por publicar libro sobre el negocio de los derechos humanos; Foro de Periodismo Argentino (FOPEA). March 25, 2013. FOPEA alerta por censura ante despidos de tres periodistas radiales; Knight Center for Journalism in the Americas. March 26, 2013. Argentino journalist receives threats during radio interview; Infobae. March 26, 2013. Amenazas, aprietes y despidos en tiempos “plurales” y “democráticos”.

72 The reporters were trying to cover a regular session of the Deliberation Council [Concejo Deliberante] when the officials reportedly kept them from entering and apparently assaulted them. Tiempo Sur. April 18, 2013. Agrigieron a periodista y fotógrafo de TiempoSur; Foro de Periodismo Argentino (FOPEA). April 18, 2013. Agrigieron a periodista y fotógrafo en Río Gallegos, Santa Cruz.

73 The official apparently was upset by a question the reporter asked, and he allegedly forced him to turn off his recorder. A group of individuals then were said to have taken the reporter to a room in the center, where the minister allegedly insulted and threatened him. The official was said to have apologized later via his Twitter account. La Nación. April 27, 2013. Ministro bonaerense insultó y amenazó a periodista, fue denunciado y pidió perdón; Foro de Periodismo Argentino (FOPEA). April 26, 2013. Un periodista fue agredido por el ministro de Infraestructura bonaerense; Infobrandsen. April 25, 2013. El Ministro Arlía defiende su posición por la discusión con Belastegui.
official; former Secretary of Domestic Commerce Guillermo Moreno, after being upset by a question, reportedly insulted Clarín reporters Silvia Naishhtat, Walter Curia, and Marina Aizen; and Daniel Ortigoza, journalist and owner of FM Imperio, reportedly suffered blows and threats as he was covering the submission of a file in a homicide case in Puerto Esperanza, in the province of Misiones.

26. With respect to the attacks by alleged members of law enforcement, the Office of the Special Rapporteur has received information indicating that journalist Julieta Elgul, of the news program ‘Visión 7’ on Televisión Pública, was injured by two rubber bullets; a TV crew from Canal 26 reportedly was the victim of attacks by individuals presumed to be members of the Metropolitan Police, as were journalists Ezequiel Medone and Juliana Giménez, of the Red Nacional de Medios Alternativos; journalist Santiago Kalinsky, of FM La Cigarr, reportedly was struck by individuals presumed to be officers of the provincial police; journalist Pablo Avila of FM Aires, in Salta had his camera taken from him; a group of journalists was reportedly attacked by alleged officers of the Airport Security Police; including journalist Martín Rojas, of the América TV program ‘Intrusos’, reportedly received a blow to the chest and was detained and taken to an office and kept from leaving. He was released a short time later; Todo Noticias cameraman Osvaldo Berisso and journalist José Hernández and cameramen

74 The official and airport security staff reportedly demanded that the journalist erase what he had filmed and when he refused, they reportedly kept him from leaving. Todo Noticias. April 28, 2013. Así fue la agresión al periodista de TN en Ezeiza (VIDEO); La Razón. April 29, 2013. Demoraron a un periodista de TN por filmar una protesta.


76 Foro de Periodismo Argentino (FOPEA). 14 de septiembre 2013. FOPEA repudia graves agresiones y amenazas del intendente de Puerto Esperanza a periodista misionero; Misiones Cuatro. Gruber dijo que “por algo debe ser” que agredieron al periodista Ortigoza; Página 16. 15 September 2013. Puerto Esperanza: Legisladores repudiaron la agresión al periodista Daniel Ortigoza.


78 The incidents reportedly occurred when they were covering demonstrations by area residents and vendors to protest the enclosure of Parque Centenario, in Caballito, Buenos Aires. Agencia Popular de Noticias. February 4, 2013. Repudio a las agresiones y amenazas a trabajadores de prensa; Veintitrés. January 31, 2013. La estrategia del palo.

79 The incidents reportedly occurred when he was covering demonstrations to protest an increase in municipal taxes. Salta Libre/Asociación de Periodistas de Salta (APES). February 21, 2013. APES repudia la agresión policial al periodista Santiago Kalinsky; La Nación. February 20, 2013. Incidentes y detenidos en la víspera de la fiesta de Salta; Foro de Periodismo Argentino (FOPEA). February 19, 2013. La policía agredió a un periodista en Salta durante una manifestación.

80 The incidents reportedly occurred when he was covering demonstrations to protest an increase in municipal taxes. Salta Libre/Asociación de Periodistas de Salta (APES). February 21, 2013. APES repudia la agresión policial al periodista Santiago Kalinsky; La Nación. February 20, 2013. Incidentes y detenidos en la víspera de la fiesta de Salta; Foro de Periodismo Argentino (FOPEA). February 19, 2013. La policía agredió a un periodista en Salta durante una manifestación.

Gastón Cha and Gabriel Rachiatti, of América TV, reportedly were hit by rubber bullets; and two members of the Red Nacional de Medios Alternativos (RNMA), photographer Esteban Ruffa, of the Agencia de Noticias Redacción (ANRed), and a media worker from the DTL communication group reportedly were injured by individuals presumed to be officers of the metropolitan police. According to the information received, individuals presumed to be members of the Salta provincial police reportedly struck journalist Javier Corbalán of the newspaper El Tribuno in the legs with their shields; clubbed Nuevo Diario photographer Rolando Díaz with a truncheon and tried to take away his cell phone while he was broadcasting live to anchor Daniel Tapia of FM Capital; and attacked journalist Darío Illanes. Individuals presumed to be members of the police reportedly attacked Luis García and Leonardo Petricio of the newspaper Río Negro, and alleged members of the National Gendarmerie reportedly raided the offices of cooperative magazine La Garganta Poderosa without showing a warrant.

27. In a clash between the Metropolitan Police and employees of a mental health hospital (Hospital Interdisciplinario Psicoasistencial José Tiburcio Borda) in Buenos Aires, a number of members of the press were reportedly attacked with rubber bullets, pepper spray, and/or tear gas. They included: cameramen Mario Ricci, Mario Gavilán, Mario Otero, and Rubén Santos, of C5N; cameraman Fabián Alasi, of Crónica TV; photographers José (Pepe) Mateos, of Clarín, Ricardo Pristupluk, of La Nación, and

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82 The incidents reportedly took place when they were covering a protest over the killing of a young woman in the city of Junín, in the province of Buenos Aires. Foro de Periodismo Argentino (FOPEA). March 11, 2013. Graves agresiones a periodistas en Junín, provincia de Buenos Aires; Minuto Uno. March 11, 2013. Tras el crimen de una joven, pueblada y violencia en Junín.


84 The incidents reportedly occurred during the eviction of members of the Tupac Amaru Salta group, who apparently had been occupying the facilities of the Provincial Housing Institute (IPV) in the province of Salta. El Tribuno. Periodistas fueron agredidos en el desalojo de manifestantes (VIDEO); IFEX/Foro de Periodismo Argentino (FOPEA). September 3, 2013. Agresión a periodistas durante desalojo policial en Argentina; Movilizamos Salta. July 25, 2013. Violencia en el IPV durante el desalojo de militantes de Tupac Amaru (VIDEO).

85 The incidents reportedly occurred during the eviction of members of the Tupac Amaru Salta group who apparently were attacking the facilities of the Provincial Housing Institute (IPV) in the province of Salta, El Tribuno. Periodistas fueron agredidos en el desalojo de manifestantes (VIDEO); IFEX/Foro de Periodismo Argentino (FOPEA). September 3, 2013. Atacan a dos fotógrafos durante represión policial en Argentina; Federación Argentina de Trabajadores de Prensa (FATPREN). August 29, 2013. Neuquén: Estado de alerta por ataques a Trabajadores de Prensa.


87 The conflict started when a group of hospital workers tried to prevent the demolition from beginning. Tiempo Argentino. April 27, 2013. La puntería policial no discriminó a periodistas, médicos ni pacientes; Télam. April 26, 2013. Angustia, dolor y desconcierto en el Borda tras brutal represión; La Nación. April 27, 2013. Un brutal enfrentamiento entre militantes de ATE y la Metropolitana dejó 32 heridos.


Pablo Villán, of *Crónica*; cameraman Leonardo Piccone, of *Télam*; journalist Gabriel Eiriz and photographer Daniel Dabové, of *Télam*; cameraman Alberto Samudio and camera assistant Sebastián Vásquez, of *Telefén*; journalist Patricio Tejedor, of *FM La Tribu*; journalist Soledad Larghi, of the channel A24; cameraman Carlos Torres, of *Todo Noticias* and CN23 journalist Paula Avellaneda; documentary filmmaker Nicolás Bartolucci, of the film and photography group *Ojo Obrero*; freelance photographer Pablo Di Maggio; journalist Paula Avellaneda; documentary filmmaker Nicolás Bartolucci, of the film and photography group *Ojo Obrero*; freelance photographer Pablo Di Maggio; freelance photographer Gonzalo Pardo, of the Movimiento Argentino de Fotógrafxs Independientes Autoconvocadxs. In addition, photographer José (Pepe) Mateos of *Clarin*; and camerawoman Belén Revollo, from *En Movimiento TV*, reportedly were detained by individuals presumed to be police officers; and journalist Rodrigo Frasinelli and cameraman Pablo Albornoz, of CN23, alleged that individuals presumed to be police officers had threatened to cut the cable they were using to transmit the TV signal.

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28. After the events, the Trial Court for Criminal and Correctional Matters, No. 30, reportedly summoned the Buenos Aires minister of urban development, the head of the Metropolitan Police, and the commissioner in charge of the Metropolitan Special Operations Agency (DOEM) to give statements during the preliminary inquiry. The three have reportedly been charged with the crimes of abuse of authority, unlawful request of law enforcement assistance, and disobedience of a court order.\(^{102}\)

29. Principle 9 of the IACHR’s 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.”

D. Access to public information, public officials, and public places

30. The Office of the Special Rapporteur notes that an act has not yet been approved in Argentina to guarantee the access to the public information held by the State. However, the Office of the Special Rapporteur was informed that Resolution 538/2013 created, under the scope of the Secretariat of Cabinet and Administrative Coordination of the Staff Office of the Cabinet of Ministers, the program National System of Public Information [Sistema Nacional de Datos Públicos] (SINDAP),\(^{103}\) to implement the initiative Open Government Partnership (OGP).

31. As a result of the SINDAP, the National Portal of Public Information [Portal Nacional de Datos Públicos] was created with the purpose of “facilitating access to the public information, promoting the active transparency of the government, and providing services of excellence.” This portal will host general information held by the State or of any of SINDAP’s participants.\(^{104}\) The information stored in the National Portal of Public Information will be publicized in accordance with the following formalities: “a) Taking measures to facilitate the comprehension and use by the citizenship; b) An open standard format; c) Proven public usefulness; d) All types of information may be provided among their fields, such as econometric data, socio-demographic indicators, aggregated statistical results, geo-referenced information (vector, geo-temporal and multi-dimensional data, maps, raster coverage, event log, warnings and sensor measurements), among others; e) Publishing under open knowledge.”\(^{105}\)

32. The Office of the Rapporteur was informed that on February 28, the La Plata Court of Appeals for Administrative Matters rejected a writ of amparo filed by the Asociación por los Derechos


\(^{104}\) “Art. 5 – The following can become participants to the Program SISTEMA NACIONAL DE DATOS PUBLICOS (SINDAP): public and private organizations, civil-society organizations and information communities that fill in the participation form and are explicitly accepted by the program’s administrators. To this end, the provisions of Article 11 of Act 25,326 on the Protection of Personal Data, and its amendments, must be observed”. Infojus - Sistema Argentino de Informática Jurídica Ministerio de Justicia. Jefatura de Ministros. Resolución Nacional 538/13. July 18, 2013.

which requested that the provincial government be ordered to turn over information about the distribution of the advertising budget from 2010 and 2011. The ADC filed a request for access to information in September 2012. It did so as part of its effort to monitor spending on public advertising by the federal government and the governments of the province and the city of Buenos Aires. The province of Buenos Aires did not grant the request for access to information; thus, the ADC filed a writ of *amparo*, which was admitted by the trial court. However, that decision was overturned by the La Plata Court of Administrative Matters, which found that the ADC did not have a right to that information as it had not proved that it had a legitimate interest in obtaining access to it. The ADC presented a special appeal to the Supreme Court of the province challenging the Chamber’s decision.106

33. 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.”

E. Subsequent liabilities

34. A trial judge in San Vicente, in the province of Misiones, reportedly charged three journalists with incitement to violence, in the context of an investigation into the April 8 eviction of families who were occupying private land in the town of San Pedro, in Misiones. Journalists Martín Sereno, of *FM San Martín*; Ricardo Javier, of *FM Estilo*, and Diego Dos Santos, of *FM San Pedro*—who covered the eviction and reported alleged police violence against the families during the operation—apparently were subpoenaed to testify in the Trial Court of San Vicente as defendants for allegedly instigating violence in the protests held by the evicted families.107

35. On June 13, the Fourth Chamber for Civil, Commercial, and Mining Matters, in the province of La Rioja, reportedly allowed a precautionary measure filed by the minister of infrastructure of La Rioja, and ordered journalists Miguel Galeano and Andrea Laura Alonso and two media outlets—the website *Medios Rioja* and *Radio Rioja 96.9*—to cease publishing or giving opinions in “burlesque” or “aggravating” terms about the official, “arbitrarily intruding” in his private life, or “uttering threats” against him, until the case filed by the official was processed and brought to final resolution.108

36. On August 14, 2013, the Supreme Court of Justice upheld the judgment for damages issued by Chamber D of the National Civil Court of Appeals against a former governor of Santa Cruz,

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Sergio Acevedo, in favor of a federal judge, Rodolfo Aristides Canicoba Corral. The ruling refers to a statement Acevedo made in 2004, when he was governor, in a story published by the newspaper Página 12: “Look how the judiciary reacts to any whiff of reform. We all know what the Urso, the Oyarbides are [...] detestable beings [...] Bonadio, Canicoba Corra [...] They are the judges on the napkin”—and which the plaintiff believed offended his personal dignity and professional honor. The Supreme Court stated that “while criticisms of the exercise of a public function may not be punished, even when they are couched in excessively harsh or irritating terms... that should not lead to impunity for those who, based on their profession and experience, have gone beyond the bounds of the regular exercise of the rights of petition and criticism [...]. In other words, there is no right to insult, to gratuitous and unjustified humiliation [...]. The presence of a bad intention or unworthy motives is not a determining factor; on the contrary, this is about the use of words or expressions that are clearly denigrating and out of line.” In this regard, he stated that the use of the word “detestable” exceeds the limits of the right of criticism and freedom of expression, and offends the dignity and decorum of Judge Canicoba, who he said cannot be required to endure “any affront to his honor without reparation for the harm he has unjustly suffered.”

37. 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.”

38. 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.”

39. The Office of the Special Rapporteur notes that in 2013, polarization between the authorities and some media outlets has continued. Thus, for example, a press release issued on January


by the Office of the President of Argentina, signed by the secretary general of the Office of the President, reportedly criticized the work of the newspaper Clarín and specifically of journalist Silvina Heguy, after an article was published concerning a trip the president made. “Once again, the scribes of Héctor Magnetto use the pages of the newspaper Clarín to construct a reality that only benefits their dark interests,” the press release stated.

The Secretary General of the Office of the President, Oscar Parrilli, issued a press release on August 18 in which he stated: “[t]he media hitman of Magneto [sic] and Clarín, Mr. Jorge Lanata, in his open-TV channel 13, has been promoting for this Sunday a news and media show on the alleged ‘route of the K money’, with information, images and circumstances that are totally false, distorted, and in bad faith.” The same official reportedly referred to journalist Lanata, on several radio stations, as “a little crazy guy” and “nervous.”

At a public hearing on the Situation of the Right to Freedom of Expression in Argentina held on November 1, at the IACHR, the petitioners stated that journalists who take a critical stance toward the administration are exposed to systematic reprisals by State employees or individuals identified with the administration. As reported, these reprisals are expressed through constant “discrediting” and “stigmatization.” The petitioners stated during the hearing and in additional information they provided to the IACHR that through formal press releases issued by the General Secretary of the Presidency of the Nation, using the government’s official Twitter account (@CasaRosadaAr), or using personal accounts of the highest public officials, independent journalists are branded as “hired assassins,” “hate mongers” and “makers of coup d’états,” among other descriptive terms. They affirmed that, as a practical result of such accusations, certain journalists have had their access to public information restricted, because state agencies and officials would not receive them or give them interviews. At the same time, they indicated that these actions have led to the affected journalists receiving constant insults in the street, with such epithets as “murderer,” “coup maker,” “traitor” or “hired assassin” by groups identified as partisans of the governing party. They affirmed that the insults and discrediting have in some cases been followed by physical attacks on the physical integrity of the journalists. In the opinion of the petitioners, “defamation [injuria] and imputation of crimes expressed by the highest authority of a country against several journalists, broadcast by means of official communications, evidently affects the freedom required for the exercise of journalistic work”. Those state actions are far from being able to be viewed as “necessary” restrictions on freedom of expression to avoid certain and provable damage or threat. They state that, on the contrary, the State is

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116 Information sent by the petitioners to the IACHR as part of the the hearing “Situation of the Right to Freedom of Expression in Argentina,” held during the 149 Period of Sessions of the IACHR. Available for consultation at: Archives of the Office of Special Rapporteur for Freedom of Expression.

“in optimum conditions to make use of alternative channels to counteract whatever information it considers erroneous, disseminate the figures that it believes to be correct or question the credibility of the reporters, without the need to resort to the different measures mentioned above.”

42. The State indicated at the above-mentioned hearing that it would not make “observations about the alleged individual situations because doing so during a public hearing of a general nature would be legally inappropriate.” Nonetheless, it said that in accordance with a report produced by the Office of Attorney-General the Treasury [Procuración del Tesoro], “there is no record of cases in which the National State or its agencies are a party of, there is no proceeding whatsoever promoted by the petitioners associated with such possible restrictions on the exercise of the right to freedom of expression.” It also indicated that “in the study made by the Office of the Attorney General of the Nation, the Office of the Public Prosecutor in criminal law, no cases were initiated by the petitioners herein based on the reported restrictions to the exercise of freedom of expression […]”

43. The existence of a context of significant 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 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.

44. 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.”

G. Government advertising

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118 Information sent by the petitioners to the IACHR within the hearing “Situation of the Right to Freedom of Expression in Argentina”, held during the 149 Period of Sessions of the IACHR. Available for consultation at: Archives of the Office of Special Rapporteur for Freedom of Expression.


45. In the framework of the hearing on the “Situation of the Right to Freedom of Expression in Argentina” held on November 1, at the IACHR, the petitioners affirmed that the government was seeking the “economic suffocation” of independent news media through public advertisement. In this regard, they indicated that “the policy of punishments and rewards is carried out by means of dramatic reductions or substantial increases in government advertising contracts, in accordance with whether the media outlet is perceived as hostile or friendly to the government.” As an example, they stated that the printed media with the largest print runs and broadest distribution in the entire country had seen their contracts for advertising by the Executive Branch decrease by more than 90% between 2007 and 2012 and were outdone in gross numbers by newspapers with close ties to the government. In the opinion of the petitioners, these actions do not fulfill “the clear criteria established by the Supreme Court of Justice of the Nation, [...] which has issued pronouncements in categorical terms on the matter, openly objecting to those practices as being in violation of basic constitutional rights.” The petitioners also expressed concern over “partisan political use of government advertising,” not only at the national level but also in the provinces and municipalities. In this regard, the indicated that the data from the General Auditing Office of the Nation suggests that government advertising substantially increases during electoral periods.

46. The petitioners declared that, except for the province of Tierra del Fuego, which has a law on the matter, the National and Provincial Executive Branch does not have the necessary regulations to guarantee that government advertising will be distributed without discretion or arbitrariness and that “public funds will not be used without norms that regulate it [...] or without objective and reasonable criteria.” According to the petitioners, this matter is of the greatest concern because of the large increase in public funds that have been allocated to government advertising between 2003 in 2013, according to data from the General Auditing Office of the Nation.

47. During the above-mentioned hearing, the State maintained that the government does have criteria for the distribution of government advertising and that it complies with rulings in the matter issued by internal courts. The State made a commitment to send complementary information on the subject. However, regarding the trends in government advertisement, it indicated that in 2009 the budget was about 388 million Argentinean pesos (some US$ 57,800,000) and in 2012 the budget was about 796 million Argentinean pesos (some US$ 118,000,000). Nonetheless, it stated that analyzing government advertising in Argentina, without analyzing the trends in private advertising, “gives a biased view” of the true situation of the advertising market. According to information provided by the State, in

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121 Information sent by the petitioners to the IACHR within the hearing “Situation of the Right to Freedom of Expression in Argentina”, held during the 149 Period of Sessions of the IACHR. Available for consultation at: Archives of the Office of Special Rapporteur for Freedom of Expression.

122 Information sent by the petitioners to the IACHR within the hearing “Situation of the Right to Freedom of Expression in Argentina”, held during the 149 Period of Sessions of the IACHR. Available for consultation at: Archives of the Office of Special Rapporteur for Freedom of Expression.


2003, the private advertising budget reached 2.2 billion Argentinean pesos (some US$ 327,000,000) and in 2012 22 billion Argentinean pesos (some US$ 3,281,000,000)\textsuperscript{125}.

48. In March 2013, the national government reportedly stated in court that it had complied with the ruling ordering it to redistribute government advertising.\textsuperscript{126} 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 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 its failure to comply.\textsuperscript{127} The Chamber revoked the fine and gave the State 15 days to present an outline for how it would distribute government 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’”.\textsuperscript{128} As the media have reported, since May 2013 the government has been required to turn in, every two weeks, “the detailed advertising plan it has issued—and the amounts involved—and, where appropriate, the totals that correspond to the exchange established in Decree 1145/08.”\textsuperscript{129}

49. The State did not provide information on existing criteria for the distribution of advertising contracts.

50. 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.” 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


\textsuperscript{129} Perfil. April 28, 2013. \textit{La Justicia quiere saber si se cumple el fallo Perfil}; Foro de Periodismo Argentino (FOPEA). April 28, 2013. \textit{El Gobierno deberá informar si cumple con la distribución de la pauta oficial}.
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.”

H. Newsprint

51. In the framework of the hearing on the Situation of the Right to Freedom of Expression in Argentina held on November 1, at the IACHR, the petitioners affirmed that the company Papel Prensa—the only paper factory in Argentina and the majority of whose shares are held by the daily newspapers Clarín and La Nación—is being “besieged” by State authorities. According to the petitioners, a complaint was filed over alleged crimes against humanity against the current owners of the company, and there are constant threats of intervention or expropriation of the company “voiced by government officials and national legislators.” The petitioners affirmed that “if the government were to take control of Papel Prensa, it would hold a monopoly on the supply of paper for newspapers in Argentina because it would control [both] national production [as well as its] importation.”

52. Regarding this matter, the State indicated during the hearing that in 2011, law 26,736 was enacted, which declares that the “manufacture, sale and distribution of cellulose pulp and paper for newspapers is of public interest.” It affirmed that the law is framed in the “context of legislative work, undertaken to guarantee plurality and democratic access, both regarding information as well as its production,” in that it aims to ensure for “the national industry, regular and reliable manufacture, commercialization and distribution of cellulose pulp for newsprint and paper for newspapers and to guarantee equality of opportunities and access without discrimination to paper supply.”

53. 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 recalls that the law previously mentioned, given its notable importance for the exercise of freedom of expression, must be enforced in keeping with the international standards on the subject.

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I. Other relevant situations

54. The news agency Rodolfo Walsh, a member of the Red Nacional de Medios Alternativos, reportedly complained that a Federal Police intelligence officer infiltrated the organization to spy on it. The agent reportedly had worked as a journalist for the agency since 2002. According to reports, the security minister has opened an administrative inquiry to investigate the official.133

55. In July 2013, workers from TV Pública’s Canal 7, in Buenos Aires, demonstrated on the channel’s premises to demand “an end to the outsourcing of the channel’s programming.” In this regard, they accused political group La Cámpora of “harassment” and “political persecution.” The protests reportedly brought together the leaders of the three unions of Televisión Pública.134

56. According to information reported by a number of Argentine press outlets, former Argentine Domestic Trade Secretary Guillermo Moreno was said to have verbally asked owners of supermarkets and household-appliance companies not to advertise in newspapers and on TV in the city of Buenos Aires. According to the media outlets, the decision was reportedly made as of February 2013, as part of an agreement with the supermarkets so they would freeze prices for 60 days as an anti-inflation measure. The government neither confirmed nor denied these statements.135

57. In the context of the above-mentioned hearing on the “Situation of the Right to Freedom of Expression in Argentina,” the petitioners referred to the information above and affirmed that in 2013 “direct governmental action has been verified with respect to very important companies (supermarket and home appliance chains) so that they would stop purchasing (private) advertising on certain media, under threat of the imposition of diverse sanctions.”136 During the hearing, they stated that in February, the government pressured private supermarket and home appliance companies to “immediately cease publishing private advertising in the newspapers La Nación, Clarín and Perfil.” They added that, according to the “Index of Advertising Censorship in Print Media”, published by a Commission of National Deputies, “from February to September there was a 67% drop in private advertising in those media.”137 For the petitioners, “the withdrawal of this advertising [...] seriously affects the sustainability of [the] media and endangers the sources of employment that they provide; at

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136 Information sent by the petitioners to the IACHR during the hearing “Situation of the Right to Freedom of Expression in Argentina”, held during the 149 Period of Sessions of the IACHR. Available for consultation at: Archives of the Office of Special Rapporteur for Freedom of Expression.

the same time, it implies an evident curtailment of the rights of freedom of thought, information and expression.\textsuperscript{138}

58. 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”. 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”.

3. Bolivia

A. Attacks, detentions and threats against media outlets and journalists

59. On January 10, journalist Arturo Orellana, owner of radio station \textit{El Tiluchi FM 98.5}, in the municipality of Huacaraje, department of Beni, was assaulted by a group of people allegedly linked to one of the groups competing for the office of regional governor.\textsuperscript{139}

60. According to information received, on January 30, various journalists from different media outlets were verbally harassed by representatives of the Federación de Choferes de La Paz, while covering an assembly of that organization.\textsuperscript{140} Also, on February 22, cameraman Harold Machicado, of television channel \textit{Cadena A}, suffered a head injury from a rock thrown while he was covering the dispute involving the drivers union of the city of La Paz. After the accident, the reporter experienced problems with his speech and motor functions, making it necessary for him to be hospitalized, although he finally recovered.\textsuperscript{141}

61. On April 2, journalist Richard Colque, of \textit{Radio Fides}, was assaulted by the director of the state company Vías Bolivia, responsible for administering the tolls, fares, control weight and dimensions on the roads. The public official, along with other officials had been detained by the police for allegedly

\textsuperscript{138} Information sent by the petitioners to the IACHR during the hearing “Situation of the Right to Freedom of Expression in Argentina”, held during the 149 Period of Sessions of the IACHR. Available for consultation at: Archives of the Office of Special Rapporteur for Freedom of Expression.


being in a state of inebriation at the offices of the company. In that context, the director had struck journalist Colque, who with other colleagues was covering the incident.\footnote{Correo del Sur. April 3, 2013. Director de Vías Bolivia detenido por escándalo; La Estrella del Oriente. April 3, 2013. Farra en Vías Bolivia termina con detención de su director; El Nacional. April 2, 2013. Detienen en estado de ebriedad al Director Nacional de Vías Bolivia.}

62. On April 7, two television teams were assaulted during peasant demonstrations that had blocked the road connecting La Paz to Copacabana. The journalists were covering the police efforts to clear the protestors, when some of the apparent demonstrators, using rocks and explosives, assaulted the mobile unit of Cadena A as well as that of television station PAT, inside of which were a journalist, a cameraman and a child. The windows of both mobile units were damaged and the cameraman from PAT suffered a leg wound. The Ministry of Government condemned the attacks in a communiqué and announced that it would request an investigation to punish those responsible.\footnote{El Deber. April 8, 2013. Los campesinos resisten el desbloqueo de Copacabana; Agencia de Noticias de Bolivia (ANB)/Erbol. April 8, 2013. Gobierno confirma la agresión de campesinos a equipos de prensa; Radio Iyambae/El Deber. Los campesinos resisten el desbloqueo de Copacabana; Asociación Nacional de la Prensa (ANP). April 8, 2013. Equipos de Tv sufren ataque con dinamita y piedras; Defensoría del Pueblo. El ejercicio de los Derechos Humanos en el Estado Plurinacional de Bolivia. December 10, 2013. P. 46.}

63. On May 8, journalist Rolando Alarcón was assaulted while covering protests led by the Central Obrera Boliviana (COB) in the city of Oruro, department of Oruro. Some persons, presumed to be protestors, struck Alarcón even though he had identified himself as a journalist. His equipment was also damaged and his credentials stolen.\footnote{Asociación Nacional de la Prensa (ANP). May 13, 2013. Mineros atacan a periodista; La Patria. May 9, 2013. Mineros agredieron a periodistas que cubrian vigilía; El Día/ANF. May 14, 2013. Mineros atacan a un periodista en Oruro; ANF. May 13, 2013. Mineros atacan a periodista en Oruro.}

64. On May 21, community radio station La Voz de las Mayorías 1080 AM, which belongs to the National System of Original People’s Radio Stations [Sistema Nacional de Radios de los Pueblos Originarios] (RPO), was attacked by supposed opponents of the city government of Caranavi, department of La Paz. In the midst of a conflict between two opposing groups, demonstrators invaded the radio station, destroyed, set fire to and stole part of its equipment and threatened journalist Franz Loza, who was at the station at the time of the attack. Journalist Juan Carlos Mazarro, of Radio Televisión of Caranavi, was also attacked, and had his video camera taken away.\footnote{Asociación Nacional de la Prensa (ANP). May 22, 2013. Silencian una radio y amenazan a periodistas; Bolivia TV. May 21, 2013. Colonizadores atacan sede de la Fapcco y destruye la radio “La voz de las mayorías”; Jornadanet/EFE. May 22, 2013. 30 heridos en batalla campal por controlar la Alcaldía de Caranavi; Reporters Without Borders. May 24, 2013. Community radio destroyed in clashes between rival peasant groups; Committee to Protect Journalists (CPJ). May 28, 2013. CPJ condemns ransacking of radio station in Bolivia.}

65. On June 1, unknown individuals burglarized and set fire to the home of journalist Humberto Apaza Orozco, correspondent for the newspaper El Diario and Executive Secretary of the Oruro Press Union, in the city of Oruro.\textsuperscript{147}

66. On June 26, a journalist from the newspaper El Diario of La Paz was the victim of an attempted kidnapping by unknown individuals, in the center of the city of La Paz.\textsuperscript{148} The journalist was accosted by two individuals, who insulted and struck her, and then tried to force her into a vehicle. Thanks to the intervention by a person on the scene, she was able to free herself from the aggressors. As reported, the incident could have been linked to the journalist’s professional work and the media outlet where she works.\textsuperscript{149}

67. On August 14, the mayor of Quillacollo, in the department of Cochabamba assaulted and threatened journalist Wálter Gonzáles. According to what was publicly stated, the attack was because the reporter had photographed the mayor presumably consuming alcohol along with other local officials and authorities, during a religious ceremony. According to the complaint filed, the mayor gave the journalist a hard kick in the back.\textsuperscript{150}

68. On September 16, supposed members of the police force detained journalist Armando Álvarez in San José de Pocitos, department of Tarija, Bolivia. According to information received, the reporter was investigating a person allegedly involved in vote buying on behalf of the governor of the municipality of Salvador Mazza (Argentina). The journalist went to the home of this individual, in the Bolivian locality of San José de Pocitos, to ask questions, but in a few minutes, various members of the police arrived, took the reporter into custody and transported him to the police precinct of San José de Pocitos. An hour later, he was transferred to the building of the Special Force in the Fight against Crime (FELC), in Yacuiba, after which he was but not told why he had been taken into custody.\textsuperscript{151}

69. Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR, adopted 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


\textsuperscript{148} The media outlet where the journalist works stated that due to concerns over her safety, her name would not be disclosed. Eju.tv/El Diario. June 27, 2013. Periodista de EL DIARIO sufre intento de secuestro en pleno centro paceño.


\textsuperscript{151} El Tribuno. September 17, 2013. Un periodista de Tartagal fue detenido en Bolivia por orden de dos punteras de Carlos Villalba; FM Alba. September 18, 2013. Periodista detenido en Bolivia: “ya inicié todos los trámites para aclarar mi situación”.
investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

B. Subsequent liabilities

70. The Office of the Special Rapporteur was informed that on January 30, the acting director general of the National Statistics Institute (INE) of Bolivia announced that the government would take legal actions against people and institutions that express “unproven questioning” of the work of the INE and the results of 2012 Census of Population and Housing. “It is unfortunate that people and institutions unfamiliar with the procedures carried out by the census of population and housing casually express criticisms and unfounded questioning regarding the serious and strictly technical work carried out by the INE for more than 75 years [...] We announce that we will initiate proceedings through the corresponding legal channels pursuant to articles 282, 283, 285 of the Penal Code,”152 said the official at a press conference.153

71. According to information received, a deputy from the Movement for Socialism (MAS) filed a criminal lawsuit against journalists David Lazo, Carmen Torres, Carmen Camacho, Marco Aguilar and Román Brito, of the city of Oruro, for the alleged crimes defamation [calumnia, difamación, injurias] kidnapping, coercion, threats, criminal association, dissemination of offenses, imprisonment and attacks against freedom of work. As reported, the legislator stated in the lawsuit that in the context of a conflict in the city of Oruro over the name of the city’s international airport, he had been damaged by the violation of his “constitutional guarantees of personal immunity” from “the opinions, communications, representations and other acts” by the journalists. According to the deputy, the journalists had quoted him as having said “I am ashamed to be from Oruro”, which he denied having said.154

72. 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

152 Estado Plurinacional de Bolivia. Código Penal. Ley Nº 1768 de 10 de marzo de 1997. Título IX. Delitos contra el honor. Capítulo único: Difamación, calumnia e injuria. “Article 282. (DEFAMATION). Whoever publicly, tendentiously and repeatedly reveals or disseminates a fact, quality or conduct that could affect the reputation of an individual or collective, shall be punished by labouring for one (1) month to one (1) year or a fine of twenty (20) to two hundred forty (240) days. Article 283. (DEFAMATION [CALUMNIA]). Whoever using any means falsely accuses another of the commission of a crime, shall be punished by imprisonment of six (6) months to three (3) years and a fine of one hundred (100) to three hundred (300) days.” “Article 285. (SPREADING OF OFFENSES [PROPALACIÓN DE OFENASAS]). Whoever spreads or reproduces, using any means, the facts referred to in articles 282, 283 and 284, shall be punished as the perpetrator”.


that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.”

C. Stigmatizing declarations

73. The Office of the Special Rapporteur received information about a series of stigmatizing declarations by governmental authorities against the newspaper Página Siete, in particular, accusing it of defending the interests of Chile in the conflict between both countries over territories on the Pacific coast. The newspaper has published investigations revealing alleged cases of corruption and irregularities in the administration, and maintains an independent line that is critical of the government.

74. On August 6, during a ceremony commemorating the independence of Bolivia, President Evo Morales said that “there are Chilean media, newspapers and television in Bolivia that want to politically cause damage, particularly in maritime reintegration.”155 On August 11, the Minister of the Presidency [Ministro de la Presidencia] accused the newspaper Página Siete of being the “spokesperson for the anti-Bolivian political force”. The official has affirmed that the medium “has become the nearly officious and official spokesperson for a Chilean political force that is constantly devaluing, delegitimizing our maritime policy.”156 The next day, the minister for productive development expressed agreement with these statements, affirming that the newspaper “ideologically and politically defends the Chilean posture of defense of the sea against Bolivian rights”.157 On August 15, the vice minister for communications policies criticized the existence of “family and business interests involved in news production” at Página Siete.158

75. At a conference on August 22, the minister of the presidency reiterated his criticisms of that media outlet. On that occasion, in addition to criticizing the newspaper’s alleged posture in favor of Chilean interests, the official criticized an erroneous headline published in the newspaper, that he said was politically motivated. On August 19, Página Siete published an article reporting that four government ministers had been excommunicated by the Catholic Church. The article was based on an interview with the secretary general of the Episcopal Conference of Bolivia, who stated that the officials were not welcome to attend mass or take communion, because they were in favor of decriminalizing abortion. After the publication, the Church denied that the officials had been excommunicated. The newspaper apologized for the erroneous headline and corrected the information. Based on this, the official criticized the medium for publishing a “colossal lie”, and affirmed that the intention was “to generate a conflict between the National Government and the Catholic Church” and between “the Bolivian Catholic people and the National Government.”159 The minister requested that the newspaper

155 UPI. August 6, 2013. Evo Morales acusa a medios de chilenos de perjudicar demanda en La Haya; Univision San Diego/EFE. August 6, 2013. Morales dice que en Bolivia hay medios chilenos que perjudican demanda de mar.


“clarify its role, that it tell the Bolivian people if it is truly going to carry out independent and national work, or that it is going to continue to answer to Chilean interests, from the Chilean ultra-right, and Chilean ultraconservatives [...].” The official added that the “unseemly, malicious, bad faith and lying role of Página Siete can no longer be forgiven because it is already too much, too many lies, too much slander [calumnia], too much defamation flagrantly violating constituent mandates.”

76. In this context, the director and founder of Página Siete, Raúl Peñaranda, decided to resign his post. The decision was announced shortly after the minister’s press conference. Peñaranda decided to resign his position at the newspaper to minimize reprisals and attacks by the government against the media outlet.161 In statements to the media, the journalist explained his decision: “I cannot permit the Government to use that error to attack the newspaper of which I am the founder.” Peñaranda added: “I think that in 30 years of democracy, and I could say, even since the beginning of the newspaper, we have not had such brutality, the persecution of a journalist, as we have experienced in these weeks and months.”162

77. On August 28, during a press conference, president Evo Morales accused certain journalists of being “instruments of the empire and the political class.”163

78. 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.164 The Office of the Special Rapporteur additionally recalls that freedom of expression must be guaranteed not only with respect to the dissemination of ideas and information that are received favorably or considered inoffensive or indifferent but also in cases of speech that is offensive, shocking, unsettling, unpleasant, or disturbing to the State or to any segment of the population.165

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79. 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.”

D. Access to public information

80. The Constitution Commission of the Chamber of Deputies is analyzing a draft version of the Transparency and Access to Public Information Bill, proposed by the Executive Branch. Journalists and press organizations have criticized certain aspects of the bill, particularly article 42, which establishes exceptions for access to public information. In particular, there is concern over the ambiguity of the clauses that enshrine certain exceptions, such as that which refers to information that “endangers the security or defense of the State,” or information whose dissemination “implies imminent risk for the stability of the country, its economy, its resources or the public interest,” or information on “environmental impact studies”, and other information “determined by Law or Supreme Decree.” They have also questioned article 43, which gives the top authorities of the four state organs, the Office of


167 Ministerio de Transparencia Institucional y Lucha contra la Corrupción. Proyecto de Ley de Transparencia y Acceso a la Información Pública.

168 Ministerio de Transparencia Institucional y Lucha contra la Corrupción. Proyecto de Ley de Transparencia y Acceso a la Información Pública. “Article 42.- (Exceptions to access to information).- I. Information shall be accessible to the public, except in the following cases: a) That which endangers the security or defense of the State, whether internal or external; b) That which refers to Strategic Actions regarding natural resources; c) That which refers to people’s health, intimacy or privacy; d) That which endangers people’s lives, integrity and security; e) That which is protected by professional secrecy; f) Secrecy or confidentiality of sources in terms of the press, pursuant to currently-in-effect laws and regulations; g) That which is obtained from taxpayers by the tax authorities pursuant to tax regulations; h) Information whose dissemination implies imminent risk for the stability of the country, its economy, its resources or the public interest. This information shall be restricted for six months, during which time a procedure to classify it as reserved information shall be carried, pursuant to the present law. In case said proceeding is not carried out, the information shall automatically be made accessible to the public; i) Strategic information at the level of commercial competitiveness or knowhow of State companies or those companies in which the State owns the majority of the equity; j) Information about environmental impact studies; k) Information that is in process until it has been concluded; l) Others determined by Law or Supreme Decree. II. The information in subparagraph a) of the previous paragraph shall be restricted for no more than 20 years when it involves information on external security; and for 10 years when it involves information on internal security. Upon expiration of these time limits, the information shall be freely accessible to the public, without additional proceedings or formalities for requesting it other than those established by the present Act. III. The previously indicated exceptions as well as those deriving from the procedure for classification of reserved information, are the only ones that the authorities or agencies stipulated in Article 3 of this Act can use to restrict or deny access to information; nonetheless, in case of doubt, they must always be interpreted in favor of the right of access to information. IV. In accordance with paragraph I numeral 2) of Article 237 of the Constitution, the four state organs of the Plurinational State, the Office of the Attorney General, the Armed Forces and the Bolivian Police, shall be able to classify another type of information as reserved in accordance with article 43 of the present law. V. Information referring to people’s health, intimacy and privacy held by the state and its institutions shall be freely accessible to those persons.”

169 Ministerio de Transparencia Institucional y Lucha contra la Corrupción. Proyecto de Ley de Transparencia y Acceso
the Attorney General, the Armed Forces and the Police, the power to classify another type of information – in addition to what is included in article 42 – as reserved. The Commission of the Chamber of Deputies invited press workers and journalistic organizations to participate in the discussion, and the authorities have publicly declared that the bill will be “enriched” by the contributions of the organizations. Thus, on August, the above-mentioned commission held a public hearing in which various journalistic organizations took part. On October 3, the anticorruption minister announced that the bill would be adjusted at the Third Summit of Transparency Units, a venue that brings together officials from various state agencies to address topics associated with access to information.

81. 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.” Bearing in mind the principle of maximum disclosure, the law must guarantee the effective and broadest possible access to public information, and any exceptions must not become the general rule in practice. Also, the exceptions regime should be interpreted restrictively and all doubts should be resolved in favor of transparency and access.

E. Internet and freedom of expression

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82. On August 13, the website of Página Siete was the target of a cyber attack that led to its crash of its website.\textsuperscript{174}

83. Other relevant situations

The Office of the Special Rapporteur was informed that on February 6, decree 1486 was promulgated, which regulates law Nº 263, the Integral Act against Human Smuggling and Trafficking [Ley Integral Contra la Trata y Tráfico de Personas].\textsuperscript{175} That act, approved on July 31, 2012, establishes in its article 23 that “[t]he media must contribute in the fight against Human Smuggling and Trafficking, and related crimes,” by means of, among other mechanisms, “[c]ampaigns for prevention against Human Smuggling and Trafficking and related crimes.”\textsuperscript{176} At the same time, the decree that regulates the law in its article 9 establishes the obligation of all the media, regardless of their format and scope, to disseminate messages with “educational content with an emphasis on means of prevention against human trafficking and smuggling and related crimes.”\textsuperscript{177} In this regard, the decree provides that the written media outlets that are published daily shall disseminate information of an educational content against human smuggling and trafficking “using half of the back page of section A, once a week”. The radio stations shall disseminate “publicity and messages with educational content with an emphasis on means of prevention, against human smuggling and trafficking and related crimes, twenty (20) minutes per month in the 7:30 to 9:30 time space, and twenty (20) minutes per month in the 20:00 to 22:00 time space”; audiovisual media shall disseminate this type of messages “ten (10) minutes per month in the 7:30 to 9:30 time space, and ten (10) minutes per month in the 20:00 to 22:00 time space;” and audiovisual, written and radio communication media that have a digital version on the Internet (webpage) shall disseminate “permanently and exclusively, using a sector or section on their digital version on the Internet.”

84. In its Article 11, the decree indicates that the content of the preventive material to be disseminated by the media “shall be related to the principles, values and/or contents of Law Nº 263”. At the same time, it establishes that the Ministry of Communications shall be able to forward to the media “publicity campaigns and messages with educational content with an emphasis on means of prevention” to be disseminated by them. Article 12 establishes that the Ministry of Communications shall be able to require the media, for whatever purposes it deems convenient, to produce audio or video recordings or a written copy of the publicity messages issued that it considers relevant. At the same time, Article 14 of the decree establishes that media that fail to comply with the obligations established in the law and in the decree shall incur in administrative infractions, which shall be punished with fines of between 5,000 UFVs (Housing Development Units, some US$ 1,360) and 15,000 UFVs, (some US$ 4,000), which are increased if the media continue to commit infractions.


\textsuperscript{175} Gaceta Oficial del Estado Plurinacional de Bolivia. Decreto Supremo N° 1486, que reglamenta la Ley Nº 263, Integral Contra la Trata y Tráfico de Personas.


\textsuperscript{177} Gaceta Oficial del Estado Plurinacional de Bolivia. Decreto Supremo N° 1486, que reglamenta la Ley Nº 263, Integral Contra la Trata y Tráfico de Personas. February 6, 2013. Art. 9. See also, Asociación Nacional de Periodistas (ANP). February 25, 2013. Gobierno obliga a publicar avisos a medios independientes; La Razón. February 14, 2013. Medios se exponen a multas de hasta Bs 45 mil si no difunden mensajes contra trata y tráfico de personas; El Potosí. February 26, 2013. Ley integral contra Trata y Tráfico obliga a los medios a emitir avisos.
85. This is the second obligation recently applied to all media outlets. In January of 2011, the Law Against Racism and All Forms of Discrimination was regulated with decree 0762, which establishes in article 13 the obligation of all the media to adapt their rules to the “recognition, respect for differences and the promotion of principles, values and rules to eradicate racist concepts and all forms of discrimination.”

86. The Office of the Special Rapporteur considers it a matter of the greatest importance to adopt measures to fight human smuggling and trafficking and all forms of discrimination. In this sense, as this office stated in a letter sent in 2010 to the State of Bolivia, the role of the media, as conduits for information, ideas and opinions, is fundamental in developing narratives that value diversity and reject arbitrary discriminations and racism. At the same time, in previous reports, the Office of the Special Rapporteur has expressed its concern over the spread of racist speech through some media outlets and has condemned messages with racist content that could incite discrimination or violence. Likewise, it valued several dissemination and training measures adopted by the Bolivian authorities aimed at refuting prejudicial speech that stigmatized indigenous communities and their justice systems, recognized by the Constitution of the Plurinational State of Bolivia.

87. Any restriction on freedom of expression in the name of the important objectives mentioned above must meet a series of requirements in the terms of article 13.2 of the American Convention. Effectively, as has been interpreted in inter-American system case law, Article 13.2 of the Convention requires that the following three conditions be met in order for a limitation to freedom of expression to be admissible: (1) the limitation must have been defined in a precise and clear manner by a law, in the formal and material sense; (2) the limitation must serve compelling objectives authorized by the Convention; and (3) the limitation must be necessary in a democratic society to serve the compelling objectives pursued, strictly proportionate to the objective pursued, and appropriate to serve said compelling objective. To determine the strict proportionality of the limitation, it must be determined whether the sacrifice to the right to freedom of expression leads to the satisfaction of the objectives that it seeks.
At the same time, in order for a legal regulation that could affect the media to be adequate, it must address the nature of those media. In that sense, some of the requirements that the law could impose, for example, on media who use electromagnetic frequencies are assigned by the State, could nonetheless turn out to be disproportionate if they are applied to the written press, which does not use the radio electric spectrum. Additionally, the means must take into consideration that the written media have very diverse characteristics, for example in terms of their circulation, print runs and commercial, social or community model.

4. Brazil

A. Progress

89. The Office of the Special Rapporteur takes note of the progress made in the investigation into the murder of journalist Valério Luiz de Oliveira. On February 27, the Office of the Public Prosecutor of Goiás filed a criminal complaint against five suspects for having participated in the journalist’s murder; they included two police officers and a former sports manager. Several hearings were subsequently held in the case at the 2nd Criminal Court [2ª Vara dos Crimes Dolosos] of Goiânia. As of the closing of this report, the case was at the evidentiary stage [fase de instrução]. The journalist worked at Radio Jornal 820 AM and the PUC-TV channel in the city of Goiânia, and was murdered on July 5, 2012. Because of his commentary, he had reportedly received death threats and was banned from entering the facilities of a soccer team from the State of Goiás.

90. On August 6, João Francisco dos Santos, accused of the October 18, 2010 murder of journalist Francisco Gomes de Medeiros in the city of Caicó, in Rio Grande do Norte, was sentenced to 27 years in prison. He was also reportedly ordered to pay R$ 300,000 (some US$ 125,000) to the journalist’s family. The criminal case is still pending against five other individuals, including a lieutenant colonel and a military police officer. Gomes de Medeiros was the news director of Radio Caicó, he
worked for the newspaper *Tribuna do Norte*, and he wrote a personal blog in which he published exposés and his own investigations. Prior to his death, Gomes exposed an alleged vote-buying scheme involving the exchange of drugs for votes, perpetrated by politicians in the community of Caicó during the first round of the general elections in Brazil. Gomes received death threats as a result of that publication.\(^{189}\)

91. On October 24, João Arcanjo Ribeiro was sentenced to 19 years in prison for the September 30, 2002 murder of journalist Domingos Sávio Brandão de Lima Júnior in Cuiabá, Mato Grosso do Sul. Sávio Brandão was a columnist and the owner of *Folha do Estado*, where he published columns about criminal activities, illegal gambling, and corruption in the state of Mato Grosso. Arcanjo Ribeiro was allegedly tied to organized crime in the state and had been convicted in the first instance by a jury court [*Tribunal do Júri*] as the mastermind of the journalist’s murder. Four individuals had already been tried and convicted of the crime. According to reports, Arcanjo Ribeiro plans to appeal the decision.\(^{190}\)

92. In the communication received on May 29, 2013, the Brazilian State reported on the 2012 creation of the Working Group on the Human Rights of Media Professionals in Brazil, comprised by authorities from the federal government and the Office of the Federal Public Prosecutor, and representatives of journalists’ organizations and associations. The functions of this Group include proposing measures for: the establishment of a complaint monitoring system, the improvement of public policies for such monitoring, and guidelines for the security of media professionals in situations of risk arising from the practice of their profession.\(^{191}\) According to the information received, the Working Group held various meetings and activities during 2013, including public hearings in different states of the federation, for purposes of gathering information on the situation of violence against journalists. Meetings of the Working Group were also attended by UNESCO officials, the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, and experts who work on the issue of the protection of journalists in Mexico and Colombia.\(^{192}\)

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\(^{191}\) Communication from the State of Brazil to the IACHR Executive Secretariat and to the Office the Special Rapporteur for Freedom of Expression. No. 129. May 29, 2013.

93. In addition, as examined in Chapter III of this report, in December 2012 the Minister of Human Rights observed that the Working Group would be analyzing the possible creation of a new special protection program for journalists or the expansion of the existing program for the protection of human rights defenders to explicitly include journalists.\(^{193}\) Later, on October 15, 2013, at the Global Investigative Journalism Conference, the Minister of Human Rights presented information about the Working Group’s most recent activities.\(^{194}\)

94. On October 29, 2013, the State provided updated information about the National Program for the Protection of Human Rights Defenders at the hearing on the “Situation of Human Rights Defenders in Brazil” held during the IACHR’s 149th Period of Sessions. The State reported that 404 individuals are currently included in the program. 218 individuals are having their cases managed by a federal technical team in 21 states, and 186 persons are having their cases managed by the program’s state-level teams in six Brazilian states\(^{195}\) that have signed agreements to participate in the program. The State also reported that the state and federal teams were composed of a total of 60 people. According to reports, the protection program has a budget of 13 million reais (some US$ 5,600,000), plus additional resources and logistical support provided by other federal government bodies for the hiring of technical teams, the adoption of protective measures, and the holding of regular meetings, among other things. Finally, the State acknowledged some challenges in the implementation of the program, such as the fight against violence and the threats received by the beneficiaries, the investigation and prosecution of the perpetrators of these crimes, and the need for greater financial support so that the program can provide special services to every state in the country. The State additionally reported on the hiring of three consultants to perform a diagnostic evaluation of the program’s procedures, rules, and methodology, including the performance of the justice systems and the structure of the secretariats of the states of the federation that coordinate the program. According to reports, civil society is also cooperating in the identification of actions for the improvement of the program.\(^{196}\)

95. In addition, in a communication received on May 29, 2013, the State reported that a bill granting the Federal Police the authority to investigate crimes committed “against journalistic activity” is making its way through the National Congress.\(^{197}\) The Office of the Special Rapporteur learned that on April 1, the Media Council [Conselho de Comunicação Social] of the National Congress of Brazil passed a motion in support of the bill.\(^{198}\) According to the Senate website, the motion requests that the law

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195 The States are Bahia, Minas Gerais, Espírito Santo, Pernambuco, Ceará and Rio Grande do Sul.


explicitly include crimes against all persons who practice journalism, including radio broadcasters. The Council’s motion also requests that the bill be treated with priority and celerity in the legislative process.  

96. On August 6, the Second Chamber of the Federal Supreme Court [Supremo Tribunal Federal] (STF) unanimously ruled that the operation of a community radio station without a license did not constitute the offense of “clandestine engagement in telecommunications activity” and that the case must be decided at the administrative level. The case involved a writ of habeas corpus brought by the operator of a community radio station in Santo Antônio do Matupi, in the municipality of Manicoré, state of Amazonas. In its decision, the Supreme Court found that the unlicensed use of the radio spectrum by the community radio station would not have harmed or threatened the security of the media, and therefore should not be sanctioned under criminal law. The Court held, inter alia, that the community nature of the radio station demonstrated the reduced degree of culpability in the conduct, as well as the absence of danger to society in the radio operator’s actions. The Court thus concluded that criminal law was not the appropriate means to handle the case, and reversed the decision of the lower court that initiated the criminal lawsuit against the operator. The Second Chamber of the Federal Supreme Court handed down a similar decision in a case decided on December 18, 2012.

97. On January 22, the judge of the 25th Civil Court of the São Paulo District [25ª Vara Cível da Comarca de São Paulo] ruled in favor of Google in an action filed by the União Nacional de Entidades Islâmicas do Brasil (UNI), seeking non-pecuniary damages and the removal from YouTube of all of the videos of the film “The Innocence of Muslims”. Judge Paulo César Batista dos Santos held that “the content of the video, although of quite dubious taste, and in spite of having been made as a criticism of the Islamic religion, is covered by the right to the free expression of artistic thought and the free flow of ideas.” On September 19, the Court of Justice [Tribunal de Justiça] upheld the lower court’s decision, and added that intermediaries cannot be required to exercise “prior control over the material added by users.”

contemplados em PL que federaliza crimes contra jornalistas.

199 Senado Federal. April 1, 2013. Conselho de Comunicação formaliza apoio à federalização dos crimes contra jornalistas.

200 Presidencia de la República. Ley 9.472 de 1997. Art. 183: “To clandestinely engage in telecommunication activities. Sentence – Two to four years imprisonment, increased by half the term if there were damages to third parties, and a R$10.000,00 (ten thousand reais) fine”.


On April 2, the Constitution and Justice Committee (CCJ) of the House of Representatives passed a bill that allows for the publication of unauthorized biographies. The bill, which must be approved by the Plenary Session of the House of Representatives and then by the Senate, establishes that the “mere absence of authorization does not prevent the disclosure of images, writings, and information for the biography of persons whose personal, artistic, or professional career has a public dimension or is relevant to events that are in the public interest.” As of the closing of this report, the final wording had not yet been approved by the House of Representatives.

B. The Civil Rights Framework for the Internet

During 2013 the Office of the Special Rapporteur followed with interest the discussions in Brazil on Legislative Bill No. 2126/2011, also known as “the Civil Rights Framework for the Internet,” under debate in the National Congress. The bill is the product of an initiative led by the Brazilian Ministry of Justice and the Center for Technology and Society at the Getulio Vargas Foundation that entailed broad public consultation with Brazilian society. The original bill introduced establishes freedom of expression as one of the principles of Internet regulation and contains provisions related, among other things, to the safeguards for intermediaries, net neutrality, and the promotion of Internet access. The Office of the Special Rapporteur considers this initiative significant, since the adoption of a regulatory framework that is clear and respectful of freedom of expression allows for this right to be exercised under conditions of greater transparency, legal certainty, and guarantees of protection. As of the closing of this report, the bill was still being debated in the House of Representatives.

C. Murders

On February 22, journalist Mafaldo Bezerra Goes, the host of a radio program on FM Rio Jaguaribe, was murdered in the city of Jaguaribe, in the state of Ceará. According to the information received, on the morning of Friday the 22nd, as he left his house on his way to the radio station, Bezerra was attacked by two unknown individuals who shot him at least five times. According to reports, the journalist had received several telephone threats in connection with his reporting on crimes in the region.

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101. On May 29, the State of Brazil sent a letter to the Inter-American Commission on Human Rights and to the Office of the Special Rapporteur to provide information on Bezerra’s murder. The State reported that the Office of the National Human Rights Ombudsman [Ouvidoria Nacional de Direitos Humanos] filed a complaint regarding the case with the Special Task Force Group against Organized Crime [Grupo de Atuação Especial de Combate ao Crime Organizado] (GAECO-CE) and the Operational Support Center for the Offices of the Prosecutors for the Citizenship [Centro de Apoio Operacional da Promotorias de Defesa dos Direitos da Cidadania] (CAOP) of the State of Ceará. In addition, as previously mentioned, the State reported on the creation of the “Working Group on the Human Rights of Media Professionals in Brazil” and on the draft bill under debate in the National Congress that grants the Federal Police the authority to investigate crimes committed “against journalistic activity.”

102. On March 8 journalist Rodrigo Neto de Faria, host of the radio program ‘Plantão Policial’ on Rádio Vanguarda, and police reporter for the newspaper Vale do Aço, was murdered in the city of Ipatinga, Minas Gerais. According to the information received, the journalist was attacked by two unknown persons who shot him at least twice. Neto was taken to a hospital, where he died shortly thereafter. According to reports, the journalist had received several threats in connection with his reports on police corruption and crimes committed in the region. In August, the Office of the Public Prosecutor filed a criminal complaint in the Ipatinga Court against two men suspected of taking part in the murder, one of whom was a police officer. The initial hearing in the case was scheduled for December 9, 2013.

103. On April 14, 43-year-old journalist Walgney Carvalho, a freelance photographer who worked with the newspaper Vale do Aço, was murdered. Carvalho was the second reporter from Vale do Aço to be murdered in 2013. According to the information received, on the night of Sunday the 14th, Carvalho was having dinner at a restaurant in the municipality of Coronel Fabriciano, in the state of Minas Gerais, when an unknown individual approached the premises on a motorbike and shot him several times. The journalist covered police beats. The Office of the Public Prosecutor reportedly filed a criminal complaint against an individual as the perpetrator of the journalist’s murder; this same individual was also accused of murdering journalist Neto de Faria. According to reports, the police

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214 Communication from the State of Brazil to the IACHR Executive Secretariat and to the Office the Special Rapporteur for Freedom of Expression. No. 129. May 29, 2013.


104. On June 11, José Roberto Ornelas de Lemos, the administrative director of the newspaper \textit{Hora H} and son of the newspaper’s owner José Lemos, was murdered in the city of Nova Iguaçu, in the state of Rio de Janeiro. According to the information received, on the night of Tuesday, June 11, Ornelas de Lemos was at a bakery when four unknown subjects shot him at least 40 times from a vehicle. According to press reports, the victim had received prior threats that could be related to publications in the newspaper \textit{Hora H}, which circulates in the Baixada Fluminense region and specializes in covering police topics. Ornelas de Lemos was also shot at a prior attack in 2005. Shortly after his murder, the authorities in charge of investigating the case reportedly stated to the press that police were investigating the theory that it could have been related to the activities of the newspaper managed by the victim.\footnote{IACHR. Office of the Special Rapporteur for Freedom of Expression. June 17, 2013. \textit{Press Release R 43/13. Office of the Special Rapporteur Condemns Murder of Media Executive in Brazil}; G1/Agencia EFE. June 12, 2012. Diretor do jornal ‘Hora H’ é assassinado a tiros em Nova Iguaçu; Folha de S. Paulo. June 12, 2013. Diretor de jornal é morto com 44 tiros no Rio; Committee to Protect Journalists (CPJ). June 13, 2013. \textit{Media executive gunned down in Brazil}; O Globo. June 12, 2013. Diretor de jornal assassinado na Baixada já havia sofrido atentado em 2005.}

105. Principle 9 of the IACHR Declaration of Principles on Freedom of Expression, adopted in 2000, 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.”

D. Attacks, arrests, and threats against media outlets and journalists during protests

106. The Office of the Special Rapporteur received information about journalists being attacked and arrested while covering the protests taking place in several cities around the country since June.\footnote{IACHR. June 20, 2013. \textit{Press Release 44/13. IACHR Expresses Concern over Arrests and Attacks on Demonstrators and Journalists During Protests in Brazil}.}

107. According to the information received by the Office of the Special Rapporteur, law enforcement officers allegedly assaulted several journalists during such protests: reporters Félix Lima, Rodrigo Machado, Leandro Machado, Ana Krepp, and photographer Marlene Bergamo, all of the newspaper \textit{Folha de São Paulo}⁠;⁠ reporter Fernando Mellis of the \textit{R7} website;⁠ photographer Filipe
Araújo, of the newspaper *O Estado de São Paulo*; journalist Gisele Brito, of *Rede Brasil Atual*; journalist Vagner Magalhães, of the *Terra* website; journalists Henrique Beirangê and André Américo, both of the newspaper *Metro*; Bruno Ribeiro and Renato Vieira, both of the newspaper *O Estado de São Paulo*; journalist Igor Resende, of *ESPN.com.br*; journalist Vladimir Platonow, of *Agência Brasil*; cameraman Murilo Azevedo, of the *Empresa Brasil de Comunicação* group; photographer Almiro Lopes, of *Correio*; journalist Luiz Paulo Montes, of *UOL*; photographer Yasuyoshi Chiba, of *Agence France-Presse (AFP)*; cameraman Paulo Rubert, of *Rede Record*.

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photographer Ricardo Marques, of the newspaper Metro;\textsuperscript{236} photojournalist Monique Renne and photographers Arthur Paganini and Breno Fortes, all of Correio Braziliense;\textsuperscript{237} photographer André Coelho, of O Globo;\textsuperscript{238} photographers Fábio Braga, of Folha de São Paulo and Ueslei Marcelino, of Reuters;\textsuperscript{239} and reporter Júlio Molica, of GloboNews.\textsuperscript{240}

108. Several journalists were also reported to have been seriously injured by rubber bullets: Fábio Braga and Giuliana Vallone, of Folha de São Paulo;\textsuperscript{241} and Pedro Vedova, of GloboNews.\textsuperscript{242} Photographer Sérgio Silva, of the Futura Press agency, reportedly lost the vision in his left eye after being wounded by a rubber bullet.\textsuperscript{243} In addition, a student named Vitor Araújo, who was broadcasting the demonstrations live on Basta TV, reportedly lost sight in his right eye after being wounded by fragments of a non-lethal bomb.\textsuperscript{244}

\textsuperscript{235} The journalist was struck, kicked, and pepper sprayed. R7 Noticias. August 19, 2013. Protesto na Alerj acaba em confusão e jornalistas são agredidos por PMs; O Dia. August 20, 2013. Jornalistas e advogados registram queixa contra PMs do Choque por agressão; Maranhão News. August 21, 2013. PM do Choque é autuado por agressão contra cinegrafista e abuso de poder durante protesto no Rio.


\textsuperscript{237} Monique Renne and Arthur Paganini were pepper sprayed, and both Paganini and Breno Fortes were pushed. Vmiundo. September 17, 2013. Repórteres, fotógrafos e cinegrafistas viram alvo da PM em Brasília; Correio Braziliense. September 7, 2013. Jornalistas do Correio sofrem agressões da PM durante manifestações; Abraji. September 9, 2013. Policiais e manifestantes agredem 20 jornalistas em protestos do 7 de Setembro.

\textsuperscript{238} The journalist had his back injured by a rubber bullet. Correio Braziliense. September 9, 2013. Após truculência em protesto, ato público vai pedir afastamento de capitão; O Globo. September 7, 2013. Em Brasília, PM e manifestantes em confronto na Esplanada e perto de estádio.


\textsuperscript{240} The journalist was injured by pepper spray. Abraji. September 9, 2013. Policiais e manifestantes agredem 20 jornalistas em protestos do 7 de Setembro; GloboNews. September 7, 2013. Repórter da GloboNews é atingido por gás de pimenta no RJ.


109. According to reports, several journalists were arrested while providing news coverage of the demonstrations: journalist Pedro Ribeiro Nogueira, of Portal Aprendiz; photographer Leandro Machado, of Folha de São Paulo; photographer Leandro Morais, of UOL; journalist Piero Locatelli, of Carta Capital; photographer Fernando Borges, of the Terra website; journalist Francis Juliano, of Bahia Notícias; and journalists Felipe Garcia Peçanha and Felipe Golçalves, of Midia Ninja.

110. According to the information received, numerous journalists were also attacked by individuals presumed to be protesters or unidentified persons: journalist André Naddeo, of the Terra website; journalist Rita Lisauskas, of TV Bandeirantes; journalist Vinicius Segalla, of UOL; photojournalist Tancredo Furtado, of Rondonotícias; journalist Richard, of Rádio Globo AM;}

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251 The journalist was chased and threatened by alleged protesters. Portal Imprensa. June 21, 2013. Fotógrafo é perseguido por manifestantes em RJ; repórter da rádio Globo AM é agredido: O Globo. Agressões a jornalistas no Brasil de 11 de junho a 26 de junho.
journalist Flávio Botelho, of Rádio CBN; Marcelo Carnaval, of the newspaper O Globo; journalists Júlio MOLICA and Antonia Martinho, of GloboNews; journalist Cirilo Júnior of the Terra website, and Band cameraman Sergio Colonese; and journalists Izinha Toscano, of Portal Amazônia, and Camila Henrique, of G1 Amazonas. Individuals presumed to be protesters also were said to have harassed journalist Caco Barcellos, of TV Globo; journalist Camila Pereira, of Portal D24AM; and Marcela Lemos, of CBN. In addition, according to reports, protesters attacked media vehicles and headquarters.

111. On June 18, the Human Rights Defense Council [Conselho de Defesa dos Direitos da Pessoa Humana] (CDDPH) of the Human Rights Secretariat of the Office of the President of the Republic passed a resolution that recommends prohibiting the use of firearms and restricting the use of non-lethal weapons during demonstrations and public events. It would also prohibit the use of weapons

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against children, adolescents, pregnant persons, the elderly, and persons with disabilities. The resolution states that “activities performed by reporters, photographers, and other media professionals are essential to effective respect for the human right to freedom of expression” in those contexts. It indicates that such persons “must enjoy special protection in the practice of their profession; any hindrance of their activities through the use of force prohibited.” The resolution provides for the creation of a Working Group on Regulation of the Use of Force and Non-lethal Weapons [Grupo de Trabalho sobre Regulamentação de Uso da Força e de Armas de Baixa Letalidade], which will conduct studies and monitor the issue.266

112. In October, the Associação Brasileira de Jornalismo Investigativo (Abraji) published a report on all of the attacks against journalists reported during the protests that took place since the month of June in several Brazilian cities. According to the association, 102 journalists were attacked during the coverage of the protests, 77 of them by law enforcement officers.267

113. The Joint Declaration on violence against journalists and media workers in the context of protests, adopted in 2013, indicates that during demonstrations and situations of social unrest, the work of journalists and media workers, as well as the free flow of information, “is essential to keeping the public informed of the events. At the same time, it plays an important role in reporting on the conduct of the State [...] preventing the disproportionate use of force and the abuse of authority.” Accordingly, the authorities must provide journalists with the maximum guarantees in order for them to perform their functions. In this respect, they must ensure that journalists are not arrested, threatened, assaulted, or limited in any manner in their rights as a result of practicing their profession in the context of a public demonstration. The State must not prohibit or criminalize live broadcasts of events, and must abstain from imposing measures that regulate or limit the free circulation of information.269 Journalists must not be called as witnesses before the courts, and the authorities must respect the right to the confidentiality of sources of information. In addition, their work materials and tools must not be destroyed or confiscated.270 The authorities must adopt a public discourse that helps prevent violence against journalists, vigorously condemning assaults, investigating the facts, and punishing the perpetrators, as established in Principle 9 of the IACHR’s Declaration of Principles.271 It is also especially important in these contexts that the authorities have special protocols for protecting the press in

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271 Principle 9 of the IACHR Declaration of Principles: “[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”.
situations of social unrest and educate State security forces on the role of the press in a democratic society.272

E. Other attacks and threats against journalists and the media

114. The Office of the Special Rapporteur received information about several attacks on journalists who were covering news stories. According to reports, alleged state agents attacked photographer Janderson Noble, of the newspaper Folha de Boa Vista.273 In addition, according to reports, unidentified persons assaulted photographer Jean Schwarz, of the newspaper Zero Hora;274 journalist Ruy Sá Chaves, editor-in-chief of the newspaper O Candiru;275 and journalist Alex Manchini, of a local newspaper based in Panambi, Rio Grande do Sul.276

115. The Office of the Special Rapporteur received information about threats received by the following journalists, possibly related to their work as journalists: journalist Rodrigo Lima, political reporter for the newspaper Diário da Região,277 and journalist and blogger Dércio Alcântara.278

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275 The journalist was attacked as he left the offices of the newspaper in the municipality of Itacoatiara, state of Amazonas. Due to his injuries, the journalist had to be admitted to a hospital. The attack was reported to have happened in retaliation for the daily's publications, which frequently denounced alleged cases of corruption and irregularities in the local administration. The mayor of the municipality Itacoatiara asked that the investigations carried out to identify those responsible be prioritized. Rede Tiradentes. April 22, 2013. Após denunciar irregularidades na prefeitura de Itacoatiara, jornalista é agredido no Centro do município; Correio da Amazônia. April 22, 2013. Jornalista Ruy Chaves(Candiru) espancado em Itacoatiara; D24AM. April 22, 2013. Jornalista é agredido quando fechava redação em Itacoatiara; Amazônia na Rede. April 22, 2013. Mamoud pede investigação rigorosa da agressão contra jornalista; Rede Tiradentes. April 23, 2013. Itacoatiara: prefeito nega envolvimento em agressão contra jornalista.

276 The journalist was attacked by a group of five persons allegedly connected to crimes committed in the municipality of Panambi, Rio Grande do Sul, which were reported by the newspaper he worked for. Manchini was approached while he was playing soccer, and had to receive medical care due to the injuries inflicted by his aggressors. Agora Já. April 25, 2013. Jornalista é agredido e diz ter sofrido ameaça de morte em Panambi; Agora Já/YouTube. April 25, 2013. AGORAJA - Jornalista é agredido e diz ter sofrido ameaça de morte em Panambi; R7. April 26, 2013. RS: jornalista é agredido e ameaçado de morte durante partida de futebol.

277 The journalist was threatened by a councilmember [vereador] of the municipality of São José do Rio Preto, State of São Paulo, after classifying the councilmember in his reporting as “a living dead of politics”, and mentioning that he was an official with back taxes. Knight Center for Journalism in the Americas. February 11, 2013. Political reporter threatened at council meeting by politician in Brazil; Diario Web. February 8, 2013. Vereador do PSDB ameaça de morte jornalista do Diário.

278 The journalist was threatened by the former mayor of the municipality of Brejo do Cruz, State of Paraíba. According to the information received, the former official was upset over the criticism on the journalist’s blog of his wife’s administration, the mayor of the municipality of Pombal. Alcântara was in a restaurant when the former official approached him and warned him to stop writing about him or his wife. Radio Opcão 104 FM. April 18, 2013. Ex-prefeito de Brejo do Cruz e atual esposo da prefeita Pollyana ameaça blogueiro em restaurante na capital; Radar Sertanejo. April 19, 2013. Jornalista da PB
116. According to the information received, several media outlets and journalists were the victims of property damage. On different occasions, unknown persons attacked several properties: shots were fired at the residence of the parents of reporter André Almenara, a journalist for the police program ‘Maringá Urgente,’ on *Rede Massa*; the main offices of the community newspaper *Voz da Comunidade* and one of the facilities of the *AfroReggae* group were set on fire; and shots were fired at blogger Angelo Rigon’s house.

117. Principle 9 of the IACHR’s Declaration of Principles on Freedom of Expression, approved in 2000, establishes 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.”

F. Subsequent liability

118. Journalist Daniel José de Lima, publisher of the *Capital Social* web portal, was ordered by the 4th Criminal Court of Santo André [4ª. Vara Criminal – Foro de Santo André] in the state of São Paulo to serve two months and 15 days in prison for the offense of criminal defamation against a well-known businessman. The Court was of the opinion that the journalist’s articles about the businessman’s actions offended his honor, and that this type of defamatory offense *injuria* was not subject to the defense of *exceptio veritatis*. The Court also found that the prison sentence was appropriate because the articles were published on the Internet. The penalty of imprisonment was substituted with a fine equivalent to five times the monthly minimum wage. For its part, the

irá processar ex-prefeito que o ameaçou; Folha do Sertão. April 18, 2013. *Ex-Prefeito de Brejo do Cruz e atual esposo da Prefeita Pollyana, faz tumulto em restaurante na capital;* Blog do Dércio. April 18, 2013. *Barão, marido de Polyana, tenta calar boca de jornalista; Décio vai levar o caso à Justiça.*

279 The residence was attacked by a motorcyclist, who shot at it about 15 times. According to the information received, the journalist had received threats connects to his reports. Abraji. April 8, 2013. *Casa de pais de repórter policial de Maringá é alvo de atentado;* Portal Impresa. April 8, 2013. *Após ameaças, residência dos pais de repórter policial da Rede Massa sofre atentado no PR;* Jornal do Povo. April 9, 2013. *Casa de família de repórter policial é alvo de atentado a tiros.*

280 The fire destroyed all of the outlet’s equipment and materials. The fire started in the early morning hours, and it was unknown whether it was intentional or accidental. The facilities of the group *AfroReggae*, located in the same building, were also considerably damaged by the fire. Rede Globo. July 16, 2013. *Jornal Voz da Comunidade e a pousada do AfroReggae são incendiados;* Jornal do Brasil. July 16, 2013. *Incêndio destrói redação de jornal comunitário e pousada do AfroReggae no Complexo do Alemão;* Terra. July 16, 2013. *RJ: incêndio atinge redação comunitária e pousada do AfroReggae no Alemão.*

281 The journalist’s house, located in Maringá, Paraná, was shot at. Nobody was hurt by the attack. Rigon is the author of a news blog on the political situation in the region, and had received threats related to his work in the past. G1. August 11, 2013. *Casa de jornalista em Maringá é alvo de tiros durante a madrugada;* Sindicato dos Jornalistas Profissionais do Norte do Paraná. August 12, 2013. *Nota de Repúdio;* Abraji. August 13, 2013. *Casa de jornalista é alvo de tiros no Paraná.*


4th Civil Court of São Bernardo do Campo [4ª Vara Cível – Foro de São Bernardo do Campo] dismissed the businessman’s civil action seeking non-pecuniary damages for the publication of the aforementioned articles, finding, *inter alia*, that the businessman was a public figure and that the articles did not deliberately intend to harm his honor.284 According to the information received, on October 31, 2013, the lower court’s decision in the civil case was reversed by the 4th Private Law Chamber [4ª Câmara de Direito Privado] of the São Paulo Court of Justice, which ordered the journalist to pay R$ 30,000 (some US$ 13,000) in non-pecuniary damages.285

119. At the request of the Office of the Attorney General of the National Treasury [Procuradoria da Fazenda Nacional], a judge from the 2nd Electoral District of Macapá ordered the freezing of bank accounts and securities held by journalist Alcineá Cavalcante, who had reportedly been ordered to pay fines of around 2 million reais (some US$ 880,000) for negative remarks made about Senator José Sarney on her blog. The judgment stemmed from an article the journalist published on her blog during the 2006 elections, in which she asked readers to suggest which politician should be given a label with the phrase: “the car that I most resemble is a police van.” The readers had assigned the phrase to Sarney, among other politicians. The coalition of parties supporting Senator Sarney sued the journalist. According to reports, each time the journalist reported on the progress of the case on her blog, she was subject to a new lawsuit.286 According to the information received, on September 16, 2013, the judge of the 2nd Electoral District of Macapá ordered the release of the journalist’s assets that were not subject to attachment, including her pension as a retired teacher.287

120. In a decision dated May 9, 2013, the Federal Supreme Court [Supremo Tribunal Federal] decided to authorize a criminal defamation action [calúnia and difamação] against a federal congressman for content published on his blog in 2010, in which he reported having received a complaint from the employees of the State Water and Sewer Company [Companhia Estadual de Águas e Esgotos] of the state of Rio de Janeiro, regarding fraud in a government procurement process. In the decision, the Supreme Court found that the congressman had stated that the public enterprise was conducting the competitive bidding process under a “scheme” that would favor the plaintiff’s private company, that he had “a bad reputation,” and that the company was one of the five hundred largest debtors of the National Social Security System. It added that the defendant was acting in his capacity as a politician and not a reporter, “and that the picture, from the beginning, did not show an intent to merely inform.” In his dissenting opinion, Justice Joaquim Barbosa argued that some of the facts had already been reported by other media outlets, and that the publication under analysis was meant to criticize the fraud reported in the procurement process, which, while “harsh or abrasive,” would be insufficient to constitute a crime against honor.288


121. On May 28, journalist Luiz Carlos Bordoni was ordered by a judge of the 7th Civil Court of Goiânia [7ª Vara Cível da Comarca de Goiânia], in the state of Goiás, to pay the state governor R$ 200,000 in non-pecuniary damages (some US$ 88,000).\(^{289}\) The judge reportedly also granted an injunction ordering the journalist to withdraw all of the interviews given and all of the statements against the governor contained in his blog. Failure to comply with the injunction would carry the penalty of the suspension of his web page and a daily fine of R$ 500 (some US$ 220).\(^{290}\) The journalist had reported that the governor had committed irregularities in the payment of the 2010 election campaign costs. The judge held that the journalist failed to provide evidence of his accusations against the governor, and had therefore caused him non-pecuniary damages.\(^{291}\) The journalist announced that he would appeal the decision.\(^{292}\)

122. The Office of the Special Rapporteur was informed that on July 4 the Special Criminal Court for the District of Aracaju, state of Sergipe [Juizado Especial Criminal da Comarca de Aracaju/SE] had sentenced journalist José Cristian Góes, the author of a blog on the Infonet web portal, to 7 months and 16 days in prison for the offense of criminal defamation [injúria] against Judge Edson Ulisses de Melo, the deputy chief justice of the Court of Justice for the state of Sergipe.\(^{293}\) The criminal complaint was filed on January 23, 2013 by the Office of the Public Prosecutor for the state of Sergipe\(^{294}\) based on a fiction piece published by the journalist on his blog in May 2012. According to the information received, Góes’s article, entitled “I, the colonel in me”\(^{295}\) [“Eu, o coronel em mim”], and narrated in the first person, was a work of fiction and did not name any names. The Office of the Public Prosecutor alleged that the journalist wrote the piece as a criticism of the governor of the state of Sergipe, who is Judge Melo’s brother-in-law. According to this interpretation, the article makes reference to the judge and offended his honor by calling him a “legal hitman” [“jagunço da lei”].\(^{296}\) In his July 4 decision, the judge found that “[a reading of the story ‘Eu, o coronel em mim’ makes it possible to draw the association between the Governor of the state of Sergipe and his brother-in-law, Judge Edson Ulisses,
who is portrayed as a 'legal hitman.' Even though there was no express reference to the names of the characters, within the social context and the sphere of activity of the parties, especially in the legal community, it is perfectly clear that the text is aimed at the victim.”

The judge added that the case would not amount to a violation of the right to freedom of expression, especially because “it jeopardizes the honor and the image of a public servant in the performance of his duties.” In determining the sentence, the judge increased the penalty by one-third because the defamation was committed against a public servant in the performance of his duties, and he also found the fact that the expression had been disseminated on the Internet to be an aggravating circumstance. Finally, he substituted the prison sentence with community service, to be completed during the time period of the sentence.

On October 22, 2013, in a 2-to-1 decision, the Sergipe Court of Justice upheld the lower court’s decision. In the sole dissenting opinion, the reporting judge argued that the sanctioning of opinions through the crime of defamation was incompatible with the Brazilian Constitution and violated the criminal law principle of *ultima ratio*.

Judge Ulisses de Melo also brought a civil action against the journalist for defamation, which is pending.

During its 149 Period of Sessions, the Inter-American Commission on Human Rights held a hearing on “Freedom of Expression, Disrespect for Authority, and Crimes against Honor in Brazil,” in which it received updated information about Brazil’s legal framework with respect to crimes against honor and desacato provisions. The petitioners provided information on criminal cases reportedly brought against journalists for expressions concerning matters of public interest, and the sentences imposed. For example, information was provided on the case of journalist José Cristian Góes, mentioned in this report (*supra*), who was prosecuted at the request of a judge for criminal defamation (*injúria*) and sentenced to 7 months and 16 days in prison for having published a fictional story. They also reported that the Office of the Public Defender for the state of São Paulo had approved a recommendation for public defense attorneys to argue the incompatibility of desacato offenses with the American Convention before the national courts. For its part, the State indicated that crimes against honor have less offensive potential [*menor potencial ofensivo*] in the current legal framework, and provided information on the process for the amendment of the Brazilian Criminal Code. In this regard, the State asserted that the reform bill would abolish the criminal offense currently defined under the concept of desacato, but would nevertheless increase by up to twofold the penalties for crimes against honor committed against public servants in the performance of their duties. The State also reported that it had asked the Office of the Special Rapporteur for Freedom of Expression of the OAS and the United Nations (UN) Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression for a technical note on the norms concerning crimes against honor in the Criminal Code reform bill.

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301 Tribunal de Justiça do Estado de Sergipe. 7ª Vara Cível da Comarca de Aracaju. *Processo No. 201210701342*.

124. On November 4, 2013, the State forwarded additional information about the case law of the Federal Supreme Court on issues of freedom of expression and crimes against honor.\(^{303}\) The decisions forwarded included the ADPF 130 case, in which the Federal Supreme Court (STF) ruled that the Press Law (No. 5.250/1967) enacted during the military regime was incompatible with the Federal Constitution of 1988. In that decision, the STF acknowledged the intrinsic relationship between freedom of the press and democracy and indicated that legal provisions requiring the media to pay excessive pecuniary compensation can be, in and of itself, a powerful factor in the curtailment of freedom of the press. The Court also found that the State cannot, through any of its bodies, define in advance what journalists may or may not say. Accordingly, the Supreme Court ruled that the Press Law was unconstitutional in its entirety.\(^{304}\) The State also forwarded information on important decisions rendered by the Supreme Court in specific cases. In one of those cases, the STF dismissed a criminal defamation action alleging offense to the honor of a prosecutor [promotora pública] and found that the simple criticism of a public servant is not sufficient to meet the elements of that offense.\(^{305}\) Additionally, in another decision, the Supreme Court overturned a decision ordering a journalist to pay non-pecuniary damages for having criticized a judge. On that occasion, the Supreme Court found that a journalistic report that contains critical opinions of public figures, even if they are harsh or severe, cannot lead to the civil liability of the journalist, because they constitute legitimate expression in a democratic society.\(^{306}\) The Office of the Special Rapporteur is grateful to the State for the information provided, and will take it into account for the respective purposes.

125. On November 4, 2013, the OAS Office of the Special Rapporteur for Freedom of Expression and the United Nations (UN) Special Rapporteur on the Promotion and Protection the Right to Freedom of Opinion and Expression sent the technical note to the State regarding the international parameters for “freedom of expression and crimes against honor” and the “modification of the mechanisms regarding crimes against honor present in the Brazilian Criminal Code reform bill.”\(^{307}\)

126. 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

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\(^{303}\) Communication of the State of Brazil to the IACHR Executive Secretariat and to the Office of the Special Rapporteur for Freedom of Expression. No. 271. October 18, 2013.


that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.” Additionally, principle 11 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.”

127. 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.”

G. Community radio stations

128. At a hearing on the situation of community radio stations in Brazil, held during the 147 Period of Sessions of the Inter-American Commission on Human Rights (IACHR), the Office of the Special Rapporteur received updated information about the difficulties faced by community broadcasters in the country. The organizations that had requested the hearing provided information about existing restrictions within the legal framework that regulates community radio stations in Brazil, the obstacles faced by the operators of such stations in obtaining licenses under nondiscriminatory conditions, and the use of the criminal law to impose liability on persons who operate unlicensed community radio stations. The State indicated that there are several legislative bills on the issue currently making their way through the National Congress that seek to change some of the restrictions in the current legal framework, including the decriminalization of the unlicensed use of the radio spectrum by community radio stations. On November 21, 2013, the State forwarded additional information regarding the criminal provisions applied to the unlicensed operation of community radio stations, the process for the concession of licenses, and the measures taken to strengthen pluralism and small radio operators in the country. The State also reported, among other things, that the National License Issuance Plan for Community Radio Broadcasting Service for 2012 and 2013 would expedite the license-granting processes, and would cover all 1,425 municipalities in the country that still do not have a community radio station. In addition, the State provided information on training events on the operation of community radio broadcasting service and the licensing rules.

129. 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. In this respect, the Office of the Special Rapporteur reiterates that the establishment of criminal penalties

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applicable to commercial or community broadcasters—which may face an infraction for the lack or misuse of a license—is a disproportionate reaction.311

H. Other relevant situations

130. An injunction issued on January 25 by the judge of the 15th Civil Court for the District of Goiânia [15ª Vara Cível e Ambiental da Comarca de Goiânia] in the state of Goiás ordered blogger and journalism student Lenia Soares Santana to remove from her Facebook page, and from any other medium, images that were allegedly offensive to the governor of Goiás. The order also prohibited her from publishing this type of content until the end of the civil lawsuit brought against her by the governor. The Court provided for the assessment of a daily fine in the event that the student failed to obey the order.312

131. On May 22, the 5th Civil Chamber of the Court of Justice for the Federal District and Territories [5ª Turma Cível do Tribunal de Justiça do Distrito Federal e Territórios] granted an injunction [antecipação de tutela] preventing the newspaper O Estado de São Paulo from publishing information declared confidential in relation to the police investigation (known as Operation Boi Barrica) against a businessman—the son of Senator José Sarney—as well as the court proceedings relating to that investigation. The Court indicated that it was not aiming to protect the businessman’s privacy because of his social or political notoriety, but rather because of “the need to guarantee the confidentiality of information as required by due process of law,” since “its disclosure could disturb and hamper the investigation of the facts that may be the basis for the future decision in the criminal action.”313 A provisional remedy barring the publication of such information was granted in July 2009 by Judge Dácio Vieira of the Court of Justice for the Federal District, at the request of the businessman under investigation.314 In December 2009, the Federal Supreme Court dismissed on procedural grounds the newspaper’s appeal challenging the provisional remedy.315 As of the closing of this report, the May 2013 decision of the 5th Civil Chamber of the Court of Justice for the Federal District and Territories granting


the injunction was on appeal in the Superior Court of Justice [Superior Tribunal de Justiça] and the Federal Supreme Court.  

132. On March 6, the 34th Civil Court for the District of São Paulo [34ª Vara Cível da Comarca de São Paulo] issued a provisional remedy prohibiting Ricardo Fraga de Oliveira from speaking out against a real estate project or participating in any other activity near the building construction site, under penalty of a fine of R$ 10,000 (some US$ 4,500) per infraction. He was further prohibited from publishing anything about the matter on the Internet or creating new initiatives via the Internet with the same purpose as his initiative “The Other Side of the Wall – A Group Intervention” [“O Outro Lado do Muro – Intervenção Coletiva”], which he was using to protest the construction of the real estate development. On May 15, the 5th Private Law Chamber [5ª Câmara de Direito Privado] of the São Paulo Court of Justice extended the initial remedy and ordered Fraga de Oliveira to remove all content referring to the project from his Facebook page, under penalty of a daily fine of R$ 1,000 (some US$ 450).  

133. On March 27, during a session of the Human Rights and Minorities Committee of the House of Representatives, Congressman and Evangelical pastor Marco Feliciano, who was also the Chairman of the Committee, ordered Congressional security personnel to detain human rights defender Marcelo Régis, who was attending the session. According to reports, the Committee chairman claimed that Régis had called him a racist, and for that reason he had ordered the police to detain him. The congressman also stated that Régis had committed a crime under the Brazilian Criminal Code—he expressly cited the articles that define criminal defamation [calúnia and difamação]—and that he would have to prove his statements. Régis was then taken to give a statement to the Legislative Police. The detention took place in the context of opposition to the appointment of Congressman Feliciano as Chairman of the Human Rights and Minorities Committee of the House of Representatives because of his alleged negative speech with respect to LGBTI persons and persons of African descent. According

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319 The original áudio states: “Eu vou pedir para que a polícia da casa... Aquele senhor de barba me chamou de racista. Isso é crime pelo código penal. Eu quero que a polícia faça alguma coisa acerca desse desrespeito. Porque ele vai sair preso daqui porque ele me chamou de racista e tem que provar que eu sou racista. Isso é crime, artigo 138, 139 do Código Penal. Se você não contornar você vai sair preso daqui.” TVHDBrazil/YouTube. March 27, 2013. Confusão, Marco Feliciano Decreta Prisão de Manifestante na Câmara. [01:24].  
320 Presidência da República. Código Penal de Brasil. Decreto 2848 de 1940. December 7, 1940. “Art. 138. – To defame someone, falsely attributing them a fact defined as a crime. Sentence – six months to two years of imprisonment and a fine”. “Art. 139. – To defame someone, attributing them a fact that is offensive to their reputation. Sentence – three months to one year of imprisonment and a fine”. The Criminal Code also establishes in article 141 that the sentences for the crimes of defamation [calúnia, difamação, and injúria] will be increased by a third when the crime is committed “against a public official, in relation to their duties”, among others.  
to reports on the House of Representatives website, the office of the Chairman of the Committee would be informed by the police if it was determined that Régis had committed a crime, and that the congressman would have six months to bring a criminal action against him.  

134. Principle 5 of the IACHR’s Declaration of Principles establishes that, “[r]estrictions 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.”

135. 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.”

5. Canada

A. Progress

136. The Office of the Special Rapporteur takes note of the communication issued on March 27 by the Office of the Information Commissioner of Canada to conduct an investigation into the practices of restricting the opportunity for government scientists to talk to the media about their work. The decision stems from a joint request made by the University of Victoria Environmental Law Centre and the organization Democracy Watch, who asked the office to investigate six government departments regarding their policies with respect to scientists’ communications with the press. The Office of the Information Commissioner granted the request to investigate six agencies, and additionally decided to include the Treasury Board Secretariat among the bodies to be investigated, “because of its role in relation to the development and implementation of government policies.” According to reports, on February 17, 2012, Canadian Journalists for Free Expression (CJFE) and five other journalistic and scientific organizations sent an open letter to the Canadian Prime Minister requesting the government federal to implement a policy of transparent and timely communication that allows government scientists to speak freely to the media.

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B. Arrests, assaults, and threats against journalists and the media

137. On February 26, La Presse cameraman and photographer Frédéric Guiro was allegedly assaulted by a Montreal Police Service (SPVM) officer while covering a student demonstration. The information indicates that the Montreal Police opened an investigation into the incident.326

138. On June 2, reporter Alex Consiglio of the Toronto Star was reportedly arrested for taking photographs an officer from GO Transit—the regional public transportation service for the Toronto metropolitan area—who had been injured when he fell onto the train tracks during an incident with a passenger at Union Station. Police officers allegedly told the reporter that he could not take pictures, and ordered him to leave, however, while leaving the station he photographed an injured officer. The reporter was released on the scene after paying a fine of 65 Canadian dollars for trespassing. A spokesperson for Metrolinx, the Ontario government agency that administers GO Transit, explained that journalists were barred from taking pictures at Union Station without prior authorization, although this rule would not apply to the general public.327

139. On June 3, Stéphane Tremblay, a journalist from CIMT TVA, was reportedly assaulted by a municipal employee of St-Jean-de-Dieu, in Québec Province while conducting an interview. The assault apparently occurred after the journalist stated that he was in possession of a confidential document and that he was going to disclose it.328

140. On July 4, Media Co-Op journalist Miles Howe of Halifax was reportedly arrested by the Royal Canadian Mounted Police (RCMP) for allegedly offending a member of the security forces while covering the protests held by Elsipogtog First Nation members against shale gas exploration in New Brunswick. Howe was reportedly taken to a police detention center and held for about five hours, on charges of threats and obstruction of justice. His camera and cell phone were reportedly confiscated during his detention.329

141. Principle 9 of the Declaration of Principles on Freedom of Expression establishes 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.”

C. Freedom of expression and hate speech

142. The Office of the Special Rapporteur takes note of the decision of the Supreme Court of Canada in Saskatchewan (Human Rights Commission) v. Whatcott, which struck down elements of a definition of hate speech that was deemed incompatible with the exercise of the right to freedom of expression. The Court also established clearer guidelines for lower courts to follow when determining whether the speech is protected by the right. The decision examined a provision of the Saskatchewan Human Rights Code which prohibited the publication or display of any representation “that exposes or tends to expose to hatred, ridicules, belittles or otherwise affronts the dignity of any person or class of persons on the basis of a prohibited ground.” Analyzing whether the restriction on freedom of expression was compatible with the Canadian Charter of Rights and Freedoms and taking into account Canada’s international treaty obligations, the Court concluded that the prohibition of speech that “ridicules, belittles or otherwise affronts the dignity” was not rationally connected to the legislative objective of eliminating discrimination. It also clarified the definition of hate speech by instructing courts to evaluate “whether a reasonable person, aware of the context and circumstances, would view the expression as likely to expose a person or persons to detestation and vilification on the basis of a prohibited ground of discrimination.” According to the Court, “[r]epresentations vilifying a person or group will seek to abuse, denigrate or delegitimize them, to render them lawless, dangerous, unworthy or unacceptable in the eyes of the audience. Expression exposing vulnerable groups to detestation and vilification goes far beyond merely discrediting, humiliating or offending the victims.”

143. The Office of the Special Rapporteur notes that the Canadian Human Rights Act was enacted on June 26, 2013, repealing Section 13, which had banned telephone or the Internet messages likely to expose a person or a group to hatred based on a prohibited ground of discrimination. The amendment will take effect on June 26, 2014, leaving this type of expression

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337 Section 13 of the law states: “(1) It is a discriminatory practice for a person or a group of persons acting in concert to communicate telephonically or to cause to be so communicated, repeatedly, in whole or in part by means of the facilities of
punishable under the Canadian Criminal Code’s provisions on the incitement of violence.\textsuperscript{339} The repealed Section 13 had been called into question on the basis that it imposed a disproportionate restriction on individual freedom of expression. According to its critics, criminal law should be the only basis for prosecuting hate speech.\textsuperscript{340}

D. Other relevant situations

144. The municipal authorities of Saint-Julien, Québec, reportedly passed a regulation determining that journalists must provide the municipal authorities with a copy of the records taken during municipal council sessions. The regulation establishes that journalists need not request permission to record the sessions, but that they must turn over an unedited copy of the recording within a period of 10 days, under a penalty of a 500 Canadian dollars minimum fine.\textsuperscript{341}

145. Principle 5 of the IACHR’s Declaration of Principles establishes that, “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.”

146. An officer from the Canadian Department of Justice, Edgar Schmidt, was suspended without pay after complaining before a Federal Court that the Department of Justice had failed to properly comply with its obligation to inform Parliament of legislative bills that could potentially be inconsistent with the Canadian Charter of Rights and Freedoms.\textsuperscript{342} On January 15, after hearing the

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a telecommunication undertaking within the legislative authority of Parliament, any matter that is likely to expose a person or persons to hatred or contempt by reason of the fact that that person or those persons are identifiable on the basis of a prohibited ground of discrimination (2) For greater certainty, subsection (1) applies in respect of a matter that is communicated by means of a computer or a group of interconnected or related computers, including the Internet, or any similar means of communication, but does not apply in respect of a matter that is communicated in whole or in part by means of the facilities of a broadcasting undertaking. (3) For the purposes of this section, no owner or operator of a telecommunication undertaking communicates or causes to be communicated any matter described in subsection (1) by reason only that the facilities of a telecommunication undertaking owned or operated by that person are used by other persons for the transmission of that matter”. Government of Canada. Canadian Human Rights Act. (R.S.C., 1985, c. H-6). Section 13.


arguments of both parties, Federal Court Judge Simon Noël was reportedly very critical of the Department of Justice. According to reports, the judge stated: “The day after the filing of this statement [by Mr. Schmidt], bang: ‘You’re suspended,’ [...] The court doesn’t like that [...] We see that in different countries and we don’t like it [...]. Canada is still a democracy.” In March 2013, the Federal Court ordered the Department of Justice to pay for Edgar Schmidt legal expenses on the grounds that the case involved issues of significant public interest.

147. The Office of the Special Rapporteur was informed that in May a fraud investigator from the federal department Service Canada was suspended without pay after it was discovered that she had leaked information to the press revealing that the federal government was requiring fraud investigators of Service Canada to collect fees of up to 485,000 Canadian dollars per year for fraud in the Employment Insurance service. The government reportedly opened an internal investigation to determine who had leaked the information. The employee admitted her responsibility, and was therefore suspended without pay.

148. The Office of the Special Rapporteur references its Joint Statement issued in 2010 with the United Nations Special Rapporteur on the Promotion and Protection of the Right to 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.”

6. Chile

A. Progress

149. In April of 2013, the special judge of the Court of Appeals of Santiago, Leopoldo Llanos, issued an order for the trial of eight former agents of the National Information Center (CNI), the intelligence agency created in 1977 during the military regime as a replacement for the National Intelligence Directorate (DINA), who are accused of the murder of journalist and political militant Augusto Carmona on December 7, 1977. The investigation of the crime had been dismissed in 1993, in the context of application of an amnesty norm; however the journalist’s relatives had filed a suit in 2003.

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and reactivated the investigation. Judge Llanos characterized the case as a crime against humanity and accused the former agents of being the perpetrators of the murder of Carmona. The journalist had worked at the television channel Canal 9 of the Universidad de Chile and for the magazine Punto Final. He was also a militant of the Revolutionary Left Movement (MIR).  

150. On April 19, the 7th Guarantee Court of Santiago dismissed a complaint filed against attorney Rodrigo Ferrari for the crime of identity theft. The suit was brought by an entrepreneur who accused Ferrari of creating accounts on the Twitter social network using the entrepreneur’s name. In February, the Office of the Attorney General of Chile filed charges against Ferrari for that crime, but the court dismissed the case, in accordance with the thesis put forth by the defense that the Twitter account was not created for the purpose of usurpation but instead involved a satire.  

B. Attacks and threats against media outlets and journalists  

151. On December 19, 2012, the Office of the Special Rapporteur requested information from the State of Chile regarding attacks suffered by various journalists who had reported on the conduct of the State security forces during the military dictatorship. Specifically, the letter requested information on thefts of the vehicle and contents of the home of journalist Mauricio Weibel Barahona, which took place on December 14 and 16; various unusual phone calls received by Carlos Dorat Guerra on December 15; the illegal entry into the home of Javier Rebolledo between December 14 and 16, the robbery of the home of Cristóbal Peña on December 16, and the robbery of journalist Pascale Bonnefoy, which occurred in September of 2012. In the response received on January 25, the Chilean State informed the Office of the Special Rapporteur that it had adopted measures regarding the denounced events. In that sense, it indicated that the corresponding investigations with regard to the thefts committed against journalist Mauricio Weibel Barahona had immediately been opened. The letter stressed that the local prosecutor’s office had verbally ordered a protective measure on behalf of journalist Weibel for a period of 30 days. Finally, the State made a commitment to make every effort to clarify the facts and punish those responsible.  

152. 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

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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 liabilities

153. The Office of the Special Rapporteur notes with satisfaction that on January 23, 2013, the Supreme Court of Chile took up a motion for appeal of a ruling that sentenced the director of the magazine El Periodista, Francisco Martorell Cammarella, for the crime of defamation [injurias graves] in writing and advertising. The ruling arose from a suit filed in 2003 by an entrepreneur against Humberto Contreras Anguita, who was cited in an article linking the entrepreneur with individuals involved in criminal activities, and against Francisco Martorell Cammarella, director of the media outlet that published the information. During nine years of criminal proceedings against him, Martorell Cammarella was prohibited from leaving the country and made to post bail. He was also sentenced in the first and second instance to 61 days of prison, with the benefit of nighttime detention, payment of a fine of 11 monthly tax units and court costs, along with payment of a civil indemnity as compensation for moral damages. In its ruling, the Supreme Court established that article 39 of Law 19,733 punishes as ‘perpetrators’ media directors who have been negligent regarding the “publication or dissemination” of defamatory expressions by a media outlet. In the opinion of the Court, the sentence imposed constituted a “miscarriage of justice” because it applied a criminal classification without establishing the events that could be classified as negligent, an element that would “justify criminal responsibility.” In that sense, the Court upheld the appeal “for having considered as a crime conduct that is not classified as negligent in the contested sentence as required by law,” annulled the sentence and ordered that a substitute sentence be handed down.

154. 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


354 Article 39: “Criminal and civil responsibility for crimes and abuses committed in exercise of the freedoms enshrined in subsection one of number 12 of article 19 of the Political Constitution of the Republic, shall be determined by the regulations of this law and the respective Codes. When the communications media are involved, the perpetrator shall be considered the director or whoever legally replaces him when the publication or dissemination is made, unless he proves that there has been no negligence on his part.” Ley 19.733. Sobre libertades de opinión e información y ejercicio del periodismo. June 4, 2001; República de Chile. Corte Suprema. Segunda Sala. Rol N° 4394-2012. January 23, 2013.

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. Legal Reforms

155. On June 18, the Government submitted a Bill to the Chamber of Deputies that “increases legal protections and benefits applicable to members of the Forces of Order and Security.” The bill proposes, among others, modification of article 417 of the Military Code of Justice, to establish that “gravely insulting a determined member of the Chilean Police (Carabineros) when carrying out their duties, in the awareness of their status, or mistreating or striking them without causing injuries, shall be punished by prison terms in any of the degrees or fines of 4 to 8 monthly tax units.” The presidential message accompanying submission of the bill, when referring to the proposed modification of the above-mentioned article of the Military Code of Justice, states that “while it is true that the laws cannot place a priori restrictions on freedom of expression merely by establishing crimes of contempt, it is also evident that the exercise of said freedom has a democratic basis that depends on the expression of ideas, judgments and opinions about leaders and public institutions; criticisms or speeches that promote social development and improvement of public service. That is different from the mere expression of insults clearly aimed at provoking or offending certain government officials in the performance of their duties, whether due to resistance, disagreement regarding their conduct or mere disdain.”

156. 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.”

E. Impact on the media and seizure of equipment

157. On May 7, the community radio station Emoción was shut down for alleged violation of article 36 B letter a) of the General Telecommunications Law, which sanctions the operation of broadcasting services “without authorization from the corresponding authority.” The director of the
station, José Castillo, denounced that he had been detained overnight and that the station’s equipment had been confiscated.  

158. The Office of the Special Rapporteur views with concern the fact that article 36 B a) of the General Telecommunications Law No. 18,168, which punishes with prison terms the operation or exploitation of freely-received or broadcast telecommunications services without authorization from the corresponding party, continues to be in effect in the Chilean legal system. According to available information, the bill that proposes abolishing the above mentioned article was approved by the Chamber of Deputies on June 4 and is currently in its second constitutional process in the Senate. The bill, which creates the Superintendency of Telecommunications, suspends jail terms for broadcasting without a license, eliminates the character of public action of the crime and maintains the imposition of fines.

159. 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. 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, as indicated in the 2012 Annual Report, “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 or means of transport permits the operation of such services or installations. The punishment shall consist of imprisonment in the minimum or medium degree, a fine of 5 to 500 monthly tax units and confiscation of the equipment and installations [...].”


361 Congreso Nacional de Chile. Ley 18.168. Ley General de Telecomunicaciones. October 2, 1982. “Article 36 B.- The following commit crimes of public action: whoever operates or exploits freely-received or broadcasting telecommunications services or installations without authorization from the corresponding authority, and whoever in their domicile, home, dwelling or means of transport permits the operation of such services or installations. The punishment shall consist of imprisonment in the minimum or medium degree, a fine of 5 to 500 monthly tax units and confiscation of the equipment and installations [...].”


365 Senado de la República de Chile. Proyecto de Ley que crea la Superintendencia de Telecomunicaciones Oficio de ley a Cámara Revisora. June 5, 2013. Available for consultation at: http://www.senado.cl/appsenado/templates/tramitacion/index.php?boletin_ini=8034-15. “Article 48.- The following changes should be made to the General Telecommunications law No.18,168: Articles 20; 31 bis; 36 A; 36 B, letter a); 38; 39 bis [...].” “Article 19.- The following are very serious infractions: [...] c) unauthorized use of the radioelectric spectrum pursuant to legal and regulatory norms by the individuals subject to supervision. [...]” “Article 23.- Very serious infractions shall be punished by a fine of up to 10,000 monthly tax units. [...] when freely-received television broadcasting services are involved, the fine shall be up to 1,000 monthly tax units and, in the case of sound broadcasting services, the fine shall be up to 100 monthly tax units.”
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.”

7. Colombia

A. Progress

160. On March 12, 2013, a prosecutor from the National Unit of Human Rights and International Humanitarian Law [Unidad Nacional de Derechos Humanos y Derecho Internacional Humanitario] of Colombia issued a detention order against seven former employees of the Administrative Security Department [Departamento Administrativo de Seguridad] (DAS) as co-perpetrators of aggravated torture in the case of journalist Claudia Julieta Duque. For the first time, the Office of the Public Prosecutor resorted to international protocols to classify the crime as “aggravated torture in the psychological modality”. In 2003 and 2004, the journalist filed a complaint against former employees of the then Administrative Security Department –abolished in 2011– in the belief that she was the victim of persecutions and threats due to her journalistic work. The Office of the Public Prosecutor concluded that the journalist was the victim of permanent harassment by employees of the DAS, as a result of a journalistic investigation that she carried out into the murder of Colombian journalist Jaime Garzón and in which she had found indications linking State agents to the murder. As has been reported in previous reports by this office, Claudia Julieta Duque has been systematically attacked, intimidated, threatened and terrorized due to her journalistic investigative work. According to information provided by the State in a letter of February 22, 2013, journalist Claudia Julieta Duque is under protection measures. Following the decision by the Office of the Public Prosecutor, the journalist denounced that she continued to be the victim of pressures and suspicious attitudes around her home and family by unknown individuals.

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161. The Office of the Special Rapporteur values the decision by the Office of the Public Prosecutor to classify cases relating to murders and attacks on journalists as crimes against humanity, by considering that such crimes were part of a systematic and generalized attack against the civil population by armed groups in the context of the conflict. The Office of the Special Rapporteur takes note of the decision by the Office of the Attorney General of Colombia, adopted on March 11, to declare the murder of journalist Eustorgio Colmenares Baptista a crime against humanity. The journalist, director of the daily newspaper La Opinión in the city of Cúcuta, department of Norte de Santander, was killed on March 12, 1993 by individuals who shot at him from a truck. Two days later, the ELN guerrilla group took responsibility for the crime.371

162. The Office of the Special Rapporteur was informed that the Supreme Court of Justice acquitted journalist Luis Agustín González, director of the newspaper Cundinamarca Democrática, of a sentence of 18 months imprisonment and the payment of 17.77 minimum wages for the crime of defamation [injurias].372 The journalist was sued for defamation on two counts [injuria and calumnia] by former governor Leonor Serrano de Camargo, who considered that an editorial published in 2008, criticizing her administration as governor and questioning her candidacy for the Senate, had damaged her honor and good name.373 On October 12, 2011, the First Municipal Criminal Court of Fusagasugá [Juzgado Primero Penal Municipal de Fusagasugá] found the journalist guilty on both counts, imposing a sentence of 20 months imprisonment and a fine of 20 minimum wages. After appeal by the defense, on February 29, 2012 the Criminal Chamber of the Superior Court of Cundinamarca partially upheld the sentence and convicted González for the crime of defamation [injuria], even though he was acquitted on one of the counts [calumnia]. The Court sentenced him to 18 months and 18 days of imprisonment and payment of 17.77 minimum wages (some US$ 5,000).374 On April 26, 2012, González submitted a motion before the Supreme Court of Justice. In its sentence of acquittal, the Court, citing jurisprudence of the Inter-American Court of Human Rights (specifically the case of Kimel v. Argentina), stated that “the expressions concerning the suitability of a person to hold public office or referring to actions taken by State officials in the performance of their duties enjoy greater protection, because in a democratic society, public servants are more exposed to scrutiny and criticism by the citizenry”. The court stated that the criticisms made by the journalist required the former governor to show “a greater degree of tolerance, given her status as a former state official and candidate to again acquire that condition”. 375

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163. On February 7, 2013, in the city of Bogotá, the event titled “Journalism: Damage, Memory and Reparation” [“Periodismo: Daño, Memoria y Reparación”], organized by the Center for Historical Memory and the Unit for Integral Attention and Reparation for Victims [Centro de Memoria Histórica y la Unidad para la Atención y Reparación Integral a las Víctimas], was held in the context of the collective reparations program created by Decree 4800 of 2011, which is implemented by the Unit for Integral Attention and Reparation for Victims [Unidad para la Atención y Reparación Integral de las Víctimas]. The event was attended by the President of the Republic, Juan Manuel Santos. According to the Unit, the symbolic act “seeks to publicly recognize journalists who have been victims of the armed conflict”.

164. As stated in the past the “Programme for Prevention and Protection of the rights to life, liberty, integrity and security of individuals, groups and communities” [“Programa de Prevención y Protección de los derechos a la vida, la libertad, la integridad y la seguridad de personas, grupos y comunidades”] unified the former specific protection programs for persons at extraordinary or extreme risk, including journalists. In its communication of February 22, 2013, the Colombian State indicated that, “the National Protection Unit [Unidad Nacional de Protección] 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 unique in the world”.

165. In a communication dated October 22, 2013, the State informed that as of September 2013, the National Protection Unit [Unidad Nacional de Protección] (UNP) provided protection to 93 journalists in 20 departments. Among the beneficiaries, the implemented protective measures included 104 bodyguards; 28 motor vehicles; 19 armored vehicles; 2 motorcycles; 37 bullet-proof vests; 22 mobile communications devices; 14 Avantel communication devices; and approximately 30 million pesos per month in support of relocation and transportation aid. Additionally, the State informed that the National Protection Unit has invested a total sum of 7,750 million Colombian pesos (some US$ 4,100,000) in the protection of journalists and media workers. Finally, the State informed that it “keeps direct contact with civil associations such as the [Fundación] para la Libertad de Prensa (FLIP), on threats under their attention, and that it is a responsibility of the UNP to be in contact with the victims of such threats, and to provide them with a protection road-map.”

377 Unidad para Atención y Reparación Integral de las Víctimas. February 8, 2013. Este 8 de febrero, homenaje a los y las periodistas en su día.
166. On September 11, attorney and journalist Édison Alberto Molina was murdered in the municipality of Puerto Berrío, department of Antioquia. According to the information received, after finishing his radio program, Molina was riding a motorcycle to his home along with his wife when they were intercepted by unknown individuals, who shot him. Molina died on the way to the hospital. His wife was slightly injured. Molina was an attorney and politician, and hosted a program called ‘Consultorio Jurídico’ on the community radio station Puerto Berrío Stereo. On the radio program, Molina received consultations from listeners on legal matters and frequently exposed cases of corruption in the local government. According to reports, on various occasions he had received threats allegedly related to his reporting. The Office of the Attorney General began an investigation into the matter. At the same time, the authorities offered a reward of 20 million Colombian pesos (some US$10,400) to anyone providing information contributing towards the arrest of those responsible.\footnote{IACHR. Office of the Special Rapporteur for Freedom of Expression. September 20, 2013. \textit{Press Release R69/13 Office of the Special Rapporteur Condemns Murder of Lawyer and Radio Host in Colombia}; El Espectador. September 17, 2013. \textit{SIP condena el asesinato del periodista colombiano Édison Alberto Molina}.}

167. On September 28, José Darío Arenas, vendor and collaborator of the daily newspaper \textit{Extra Quindío}, was murdered in the municipality of Cicedonia, department of Valle del Cauca. According to the information received, on the morning of September 28, Arenas was selling copies of the newspaper and announcing its headlines, when he was attacked by unknown individuals, who shot him several times. That day, one of the main stories in \textit{Extra Quindío} reported on alleged irregularities and mistreatments in a local jail, which involved officials from the National Penitentiary and Prison Institute \textit{(Instituto Nacional Penitenciario y Carcelario)}. According to the reports, Arenas collaborated with the journalist who wrote the article, had helped to obtain the testimonies and had taken photographs for the article. After the murder, one of the sources who had provided information for the article received a threatening phone call, in which he was warned that “the first one had [already] fallen”.\footnote{Committee to Protect Journalists (CPJ). October 1, 2013. \textit{Gunmen kill Colombian vendor who collaborated on story}; El Espectador/AFP. October 1, 2013. \textit{SIP condena asesinato de ‘voceador’ de diario en Colombia}; Fundación para la Libertad de Prensa (FLIP). September 29, 2013. \textit{Asesinan a José Darío Arenas, ‘voceador de prensa del diario “EXTRA del Quindío” en Cacedonia –Valle del Cauca}.}

statute of limitations for criminal prosecution expired with respect to the murders of the following journalists: John Félix Tirado Castañeda, murdered in the municipality of Cartago, department of Valle del Cauca on August 5, 1992; José Domingo Cortés Soto, murdered in the city of Valencia on November 15, 1992; Gerardo Didier Gómez, murdered near the city of Cali on February 11, 1993, Carlos Lajud Catalán, murdered in the city of Barranquilla on March 19, 1993; Nelson de la Rosa Toscazo, murdered in Cartagena on August 3, 1993 and Manuel José Martínez Espinosa, murdered on September 28, 1993. The statute of limitations in the case of Danilo Alfonso Baquero Sarmiento, murdered on December 26, 1993, is at risk of expiring.

169. In Colombia, in 1999 a Subunit for the Investigation of the Murder of Journalists [Sub-Unidad de investigación de Asesinatos de Periodistas] was established under the Human Rights Unit of the Office of the Public Prosecutor. At the time, the Office of the Special Rapporteur recognized the efforts of the Colombian authorities in the creation of the subunit as a specific mechanism providing effective protection of the personal integrity of a significant number of Colombian journalists. Later, in its 2005 report Impunity, Self-censorship and Armed Internal Conflict: an Analysis of the State of Freedom of Expression in Colombia, the Office of the Special Rapporteur observed that the subunit lacked prosecutors specifically assigned to the issue of freedom of expression and expressed its concern at the high number of cases of murders and attacks against journalists still pending in the country. However, the Office of the Special Rapporteur reiterated that it “considers the employment of personnel assigned to this area to be of fundamental importance” and urged the State “to provide the Office of the Public Prosecutor with the budgetary resources necessary to investigate crimes of freedom of expression.”

170. In communication dated October 22, 2013, the Colombian State reported that it had implemented strategies for the investigation of cases of threats against journalists (among other vulnerable groups) “as a juridical methodology aimed at guaranteeing the efficiency, effectiveness and optimization of resources and intended to obtain results in criminal investigations.” The State reported

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384 Fundación para la Libertad de Prensa (FLIP). April 19, 2013. Asamblea de la FLIP exige respuesta de la Fiscalía frente a la prescripción de casos de asesinatos a periodistas; Fundación para la Libertad de Prensa (FLIP). March 19, 2013. 19 de marzo, día doloroso para el periodismo: Prescribe asesinato de Carlos Lajud Catalán y se cumplen tres años de impunidad por el crimen de Clodomiro Castillo.


that as of May of 2013, the Human Rights Unit of the Office of the Attorney General of the Republic had followed up on 51 cases of crimes committed against journalists, 37 of which were open. Of these, 19 cases were in their preliminary phase, 15 cases in pretrial examination, and three at trial. The State also reported that 30 convictions had been handed down. Finally, the State indicated that the Analysis and Context Unit of the Office of the Attorney General of the Nation had marked investigations into crimes committed against journalists as a priority. 391

171. The Office of the Special Rapporteur was informed about the investigations of the murder of journalist Guillermo Quiroz, who died on November 27, 2012, in Sincelejo, department of Sucre. 392 According to the information received, Quiroz was covering a demonstration in San Pedro, Sucre, against the Pacific Rubiales company, when individuals presumed to be members of the National Police detained his motorcycle, put him in an official vehicle, and struck and then pushed him out of the moving vehicle. After remaining in intensive care for seven days at a local hospital, the journalist died. Some local police authorities denied the attacks. As of the closing of this report, the investigations remained open. Initially, officers allegedly involved in these events had reportedly been suspended. 393

172. In a December 2, 2013 communication, the State reported that, according to the version of events offered publicly by the Police commander in the department of Sucre, Quiroz had actively taken part in the demonstration and, even though he had his camera, he “was not carrying any type of identification or wearing any uniform to show that he was a Journalist or employee of any media outlet.” According to that public statement, Quiroz was asked for his identification and the papers for the motorcycle he was riding. According to that same statement, the motorcycle was not properly registered, and was therefore retained. The State reported that the police commander had reportedly indicated that, following these events, the journalist assaulted the security officers and was therefore being transported to the Office of the Public Prosecutor of the municipality of Corozal. Under those circumstances, according to the police commander, the journalist allegedly jumped out of the vehicle. According to the State, the matter is being investigated “by the internal oversight office of the National Police.” 394

173. The Office of the Special Rapporteur was informed that on February 12, 2013, a trial against four persons for the murder of the assistant director of the daily newspaper La Patria, José Orlando Sierra (which took place in 2002, in Manizales) was concluded before the Single Specialized
Criminal Court of the Circuit of Pereira [Juzgado Único Penal del Circuito Especializado de Pereira]. Among them was Ferney Tapasco González, accused to be the mastermind behind the murder.\(^{395}\) The trial began on September 17, 2012.\(^{396}\) According to available information, in its final arguments, the Prosecutor requested a “conviction” against the defendants and “that copies be forwarded” to the office of the Attorney General to enable it to continue investigating the participation of other persons also identified by witnesses at the trial as co-perpetrators in the murder of journalist Sierra.\(^{397}\) As of the closing of this report no mastermind has been condemned.\(^{398}\)

\[174.\] 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, detentions and threats against media outlets and journalists

\[175.\] The Office of the Special Rapporteur received information on threats made against journalist Jineth Bedoya\(^{399}\), with the Colombian daily newspaper *El Tiempo*, who in the past was the victim of torture and grave abuses by individuals presumed to be paramilitaries when reporting on arms trafficking in the Modelo Prison in Bogotá. On January 11, one of the journalist’s sources received a message that said: “[t]ell Jineth Bedoya to stop publishing and exposing those things because she knows what can happen to her.”\(^{400}\) Bedoya has been the beneficiary of precautionary measures by the Inter-American Commission on Human Rights (IACHR) since 2000. On February 9, 2012, the Office of the Attorney General announced the entailment of three paramilitaries to the case.\(^{401}\) On September 20,
2012, the Office of the Attorney General declared that the statute of limitations will not apply to the case because it characterized the events as a crime against humanity, in view of the fact that they took place within a systematic and generalized context of violence against journalists.\textsuperscript{402} The journalist is under a protection scheme.

176. On January 26, in the Villa Turbay neighborhood of Medellín, the journalistic teams from Teleantioquia, Telemedellín, RCN Televisión and Caracol TV were covering the funeral of an 18-year-old youth murdered in a bus, when a group of men, without identifying themselves, demanded that the cameraman stop filming and that the journalists leave the scene.\textsuperscript{403} Also, on January 28, a cameraman from the Teleantioquia channel who was filming in the Los Alcázares neighborhood in the city of Medellín, was threatened by an individual who warned him to “leave here unless you want me to ‘whack you’. If you come back here, now you know what will happen to you.”\textsuperscript{404}

177. On February 20, journalists Jeorgi [or Georgi] Alexander Pabón Martínez, a photojournalist for the weekly La Noticia, and Alejandro Cabarcas, a cameraman for RCN Televisión, were attacked and threatened while covering an explosion that took place in an asphalt loading plant.\textsuperscript{405}

178. The Office of the Special Rapporteur was informed that certain journalists were the victims of attacks in the context of the mobilization by coffee farmers in the departments of Huila and Tolima. Thus, for example, certain journalistic organizations denounced that various journalists were affected by teargas grenades thrown by agents of the security forces during the protest.\textsuperscript{406}

179. The Office of the Special Rapporteur received information that indicates that on February 28, journalist and columnist Germán Uribe was beaten, gagged and had his hands and feet bound by unknown individuals who entered his home in the town of Subachoque, department of Cundinamarca. Because of the attack, the journalist decided to stop publishing his opinion columns in the magazine Semana and on the web portal Rebelión and fled his home, as a security measure. His


\textsuperscript{403} Federación Colombiana de Periodistas (FECOLPER). January 30, 2013. APA rechaza intimidaciones de grupos ilegales a periodistas de Medellín y pide garantías a las autoridades locales; Caracol Radio. January 30, 2013. Periodistas denuncian que han recibido amenazas de combos delincuenciales en Medellín.

\textsuperscript{404} Caracol Radio. January 30, 2013. Periodistas denuncian que han recibido amenazas de combos delincuenciales en Medellín; Federación Colombiana de Periodistas (FECOLPER). January 30, 2013. APA rechaza intimidaciones de grupos ilegales a periodistas de Medellín y pide garantías a las autoridades locales.

\textsuperscript{405} Federación Colombiana de Periodistas (FECOLPER). February 21, 2013. Amenazan a reportero gráfico y dos periodistas en Barrancabermeja durante cubrimiento de explosión; Vanguardia. February 21, 2013. Explosión de carrotanque generó pánico en barrio de Barrancabermeja.

columns were characterized as being critical of the administration of former president of Colombia Álvaro Uribe.407

180. The Office of the Special Rapporteur had knowledge that in March, journalist Juan Manuel Escobar, legal editor of the radio station Ondas de Ibagué and correspondent for the El Tiempo television channel in Tolima, was threatened by a person linked to drug trafficking in Colombia. The threats took place after the journalist reported on conflicts linked to control over drug distribution in neighborhoods of the city of Ibagué, department of Tolima.408

181. The Office of the Special Rapporteur was informed that on March 7, journalist Juan David Betancur, director of the newspaper El Panamericano, and a journalist for Radio Litoral and Radio La Ribereña, in Antioquia, received a letter bomb at his home in the city of Dabeiba, department of Antioquia. The package also contained a threatening letter warning him not to continue to report on governmental corruption or on the activities of a former member of the FARC guerrilla group. The journalist has been the target of other attacks due to his work.409

182. The Office of the Special Rapporteur was informed that journalist Yesid Toro Meléndez, editor of the daily newspaper Q’Hubo en Cali, received threats following the reissue of his book “Complot para matar al Diablo”, which forced him to flee the city.410

183. On May 1, two persons fired at the vehicle of the head of investigations of the magazine Semana, Ricardo Calderón, on the road from Ibagué to Bogotá.411 Calderón had looked into alleged irregularities at a Military Detention Center in Tolemaida, where members of the military sentenced for human rights violations enjoyed diverse privileges. Semana has published various articles denouncing these irregularities; the most recent, titled “Tolemaida Tours”, was published on April 13, two weeks prior to the attack on Calderón.412 The attack was denounced by President Santos and other senior government officials, and protective measures have been provided for the journalist while the corresponding investigation is carried out.413 In a communication sent to the IACHR and dated July 10,
2013, the State of Colombia provided information on the measures adopted. The State reported that the National Protection Unit had provided urgent protection measures for the journalist, including “a strict protection scheme”. The State also declared that an investigation into the events was initiated by the 51st Specialized Human Rights Unit of the Office of the Public Prosecutor. 414

184. The Office of the Special Rapporteur was informed that eight journalists received death threats by means of a message signed by the Anti-land Restitution Group [Grupo Anti-restitución de Tierras], distributed on May 6, in Valledupar, department of Cesar. The message said that the journalists had 24 hours to leave the city and warned them that if they continued “sticking their noses” into cases associated with land restitution, they would be the next victims. 415 The threatened journalists were Herlency Gutiérrez, of RCN Radio, Jaime José Daza, of Maravilla Stereo, Damaris Rojas, of Al Día, Renier Asprilla, of El Heraldo, Katia Ospino, of UNO and CM&; Óscar Arzuaga, of Radio Guatapuri, Ubaldo Anaya Flórez, of TV RPT and Martin Mendoza, of Caracol Televisión and El Piñón. All had reported on the subject of land restitution for families who were displaced during the armed conflict. 416 As a result of these events, the police commandant of Cesar reported the issuance of “precise instructions to protection and surveillance units, as well as intelligence units, to determine the origin of the threats and guarantee the security” of the journalists. 417

185. On May 9, a journalistic team from Noticias RCN, consisting of Javier Patiño, Pedro Ruíz, José Goyeneche, Luis Bergaño and Alex Gerchar, was attacked by a group of youths while covering a police operation against individuals presumed to be smugglers, in the locality of Tunjuelito, Bogotá. The assailants set fire to the channel’s vehicle and threw rocks at the journalists. 418 That same day, two journalists from the newspaper Q’hubo, were injured when the vehicle in which they were traveling was attacked by various individuals while they reported on a homicide in Cali. 419

186. On August 15, in Armenia, Quindío, journalist Giovanny Andrés Bejarano, from the daily newspaper Extra, was attacked by an individual presumed to be policeman when he tried to photograph

atentado contra el periodista Ricardo Calderón.


alleged excesses in the use of force by the officer against an individual being frisked at an event held in the Parque Sucre in Armenia. The policeman broke the reporter’s hand when trying to take away his camera.420

187. On August 24, in Neiva, department of Huila, a journalist and a cameraman were attacked by two alleged members of the military forces while covering an operation by the Metropolitan Police of Neiva.421

188. On October 11, unknown individuals broke into the home of columnist Renson Said Sepúlveda. The journalist denounced the event in his column in the daily newspaper La Opinión as an act of intimidation due to his critical opinions on politics, corruption and crime in the region.422

189. On October 28, a press release was circulated in the department of Arauca signed by the “strategic military political command of the eastern war front” of the ELN guerrilla group, accusing the media, and particularly the daily newspaper La Voz del Cinaruco, of being the voice of the military forces. It also insulted the journalists of that media outlet and accused them of making apologies for war and lies. The police commander in Arauca reported that the authorities had taken actions to protect the officials and journalists mentioned in the press release.423

190. The Office of the Special Rapporteur was informed of the existence of a plan to murder journalist Gonzalo Guillén and journalists and analysts Claudia López, León Valencia and Ariel Ávila. As reported on May 13 by the director of the National Protection Unit, a national level security agency that is part of the Ministry of the Interior, that agency had verified the existence of the plan.424 As a result of the threat, the journalists and analysts temporarily left the country.425 The four journalists and analysts had carried out investigations and reports on paramilitarism in Colombia and the armed conflict, and


422 La Opinión. October 18, 2013. Declaración de principios; Fundación para la Libertad de Prensa (FLIP). October 18, 2013. Preocupación por reiterados ataques contra la prensa en Norte de Santander.


regarding alleged links between the governor of La Guajira, Juan Francisco Gómez, and a criminal gang led by drug traffickers and smugglers. On October 12, the governor was arrested in the context of an investigation into his alleged involvement in various homicides.\footnote{Semana. October 12, 2013. \textit{Capturado Francisco 'Kiko' Gómez gobernador de La Guajira.}}

191. In a communication of October 22, 2013, the State of Colombia informed the Office of the Special Rapporteur that Guillén, Ávila and Valencia were part of a protection program by the National Protection Unit (UNP) that provided them with bodyguards, drivers and armored vehicles.\footnote{Communication from the State of Colombia to the IACHR. Official Letter MPC/OEA No.: 1423/2013 to the IACHR, dated October 22, 2013, that refers Note -SGAPDH-13-042535, dated October 18, 2013. Para. 15, 16 and 17.}

192. In a communication dated December 2, 2013, the State reported that “it has publicly acknowledged and regrets the cases in which the assailants [of the journalists] were members of the National Police.” It indicated, for example, in the case of photographer Ana María García\footnote{IACHR. \textit{Annual Report 2012. 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). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. Para. 143.} the police commander of the Metropolitan Police of Bogotá, General Luis Eduardo Martínez, publicly apologized to the journalist on behalf of the institution. General Martínez reportedly stated on that occasion, “[t]his act is not only an affront to all of the country’s women but it is also an affront to the Police as an institution […] It is a discredit to the work of the National Police.”\footnote{Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Official Letter S-GAIID-13-048140, dated December 2, 2013.}


194. 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. Attacks on journalists and media workers in the context of demonstrations

195. On June 20, in Tibú, department of Norte de Santander, a journalistic team from the press office of the Marcha Patriótica movement and a team from \textit{Prensa Rural} were attacked by individuals in dressed as civilians, who according to the reports carried police identification shields, with the aim of not letting themselves be filmed.\footnote{Marcha Patriótica. June 21, 2013. \textit{Catatumbo Resiste \textit{i} Intimidación a periodistas; Las 2 Orillas. July 27, 2013. \textit{Agresión a periodistas en el Catatumbo}; Fundación para la Libertad de Prensa (FLIP). June 24, 2013. \textit{Obstrucciones al trabajo periodístico y agresiones a la prensa durante las protestas en el Catatumbo.}}} Also on June 20 in Tibú, journalist Milton Henao with the Venezuelan channel \textit{Telesur} was attacked by individuals presumed to be agents of the Mobile Anti-
disturbances Squadron [Escuadrón Móvil Antidisturbios] (ESMAD), who tried to prevent him from filming what was happening during the demonstrations.\textsuperscript{432}

196. On June 22, journalists with Prensa Rural, iTV Canal de Independencia and Cine Latina media outlets were detained and photographed by individuals presumed to be members of the police. These events occurred when they were traveling with a human rights verification commission during the farmers’ protests in the region of Catatumbo.\textsuperscript{433}

197. On July 16 in the municipality of Tibú, Norte de Santander, RCN television channel cameraman Richard Gálvez was wounded by the explosion of a device, allegedly thrown by a group of demonstrators during a confrontation with agents of the Security Forces, during the farmers’ protests in the region of Catatumbo.\textsuperscript{434}

198. On July 18, in Tibú, Norte de Santander, alleged members of the Mobile Anti-disturbances Squadron (ESMAD) attacked journalist Verónica Luna, of Prensa Rural and seized her equipment, removed the memory and also physically and verbally assaulted her.\textsuperscript{435}

199. On July 21, journalist Éder Narváez Sierra, who works for alternative media in Caucasia and as Departmental Counselor of Media in Bajo Cauca-Caucasia to the Instituto de Cultura de Antioquia, was attacked by individuals presumed to be members of the ESMAD when covering a miners’ strike in Caucasia, in the Bajo Cauca region of Antioquia. According to the reporter’s complaint, while she was filming supposed abuses committed against a young person, the individuals presumed to be agents beat and insulted her several times and seized and erased the memory of her cellular phone. The journalist, who was wearing a vest identifying her as a member of the press, suffered a head injury and had to be taken to a hospital.\textsuperscript{436}

200. On July 27, journalist Fred Emiro Núñez of the Agencia Prensa Rural was attacked by individuals presumed to be agents of the ESMAD, in the municipality of Tibú, Norte de Santander, and suffered grave wounds to a hand and to the head.\textsuperscript{437}


\textsuperscript{433} Fundación para la Libertad de Prensa (FLIP). June 24, 2013. Obstrucciones al trabajo periodístico y agresiones a la prensa durante las protestas en el Catatumbo.


201. On August 12, a group of journalists from the Bajo Cauca region in the department of Antioquia decided to interrupt their journalistic activities for three days to protest attacks suffered while covering events associated with the miners’ strike. As announced in their video, ten journalists were attacked by protesters and by the security forces when they carried out their journalistic work.\textsuperscript{438}

202. On August 19, in the Bajo Cauca region of the department of Antioquia, seven journalists from the radio station Caucasia Estéreo were threatened by means of text messages, allegedly for not supporting the miners’ strike.\textsuperscript{439}

203. On August 19, in the department of Valle del Cauca, six journalists from the Red de Medios Alternativos Populares (REMAP) were detained and assaulted by individuals presumed to be state security agents while covering the protests. Reporters Lorna Bierman and Milena Ricaurte were beaten and had their video camera, cellular telephone and other belongings taken away. Journalists Camilo García Reyes, Alexander Escobar, Fabián Passos and Steven Ospina were assaulted and detained even after having identified themselves as journalists. According to their complaint, the agents seized their equipment and belongings.\textsuperscript{440}

204. On August 19, in the municipality of Chachagüí, department of Nariño, individuals presumed to be agents of the ESMAD and police officers attacked and detained human rights defender María José Villota and Manuel David Santacruz Ramos, both of whom are members of the press office of the Universidad de Nariño.\textsuperscript{441}

205. On August 19, in the city of Villavicencio, department of Meta, a correspondent for the Red de Medios Alternativos – Agencia Colombiana de Prensa Popular (REMA-ACPP) was threatened and verbally abused by an alleged member of the National Army.\textsuperscript{442}

206. On August 20, in Salamina, department of Caldas, journalist Omar Vera, director of the newspaper El Turbión, was detained by an individual presumed to be a member of the National Police, when photographing alleged attacks against demonstrators by the police. The journalist was forced to enter a police vehicle and ordered to erase his photographs, which the reporter refused to do. The


\textsuperscript{441} Comisión Intereclesial de Justicia y Paz. August 20, 2013. Situación de DDHH transcurridas 12 horas de su inicio, en la jornada del Paro Nacional Agrario; Reporters Without Borders. August 21, 2013. Carta enviada a la Relatoría para la libertad de expresión de la CIDH por la organización Reporteros Sin Fronteras.

\textsuperscript{442} Red de Medios Alternativos – Agencia Colombiana de Prensa Popular (REMA-ACPP). August 19, 2013. 3000 campesinos del oriente colombiano retenidos en la entrada a Villavicencio.
officers also forced journalist Manuel Jiménez, of Proyecto Medios Libres, who was with Vera in his vehicle, to erase his camera’s memory.  

207. On August 20, in the municipality of Cajibío, department of Cauca, Noticias RCN correspondent Carlos Andrés Gómez was attacked by individuals presumed to be protesters, who seized his equipment.

208. On August 29, during protests in the city of Medellín, journalists from the media outlets Blu Radio, EFE, Hora 13, El Colombiano and ADN were attacked by individuals presumed to be agents of the ESMAD and the police. Journalist Byron García, of Blu Radio, was injured by a stun bomb allegedly thrown by agents of the ESMAD.  

445 EFE news agency photographer Luis Eduardo Noriega was struck in the face by an individual presumed to be member of the police in civilian clothes.  

446 Journalist Oscar Montoya, of the news program Hora 13, received a head injury as a result of attacks by alleged members of the police.  

447 Photojournalist Esteban Vanegas, of the daily newspaper El Colombiano, denounced that he had been assaulted by individuals presumed to be members of the Security Forces who had pushed him and thrown rocks at him and tried to take away his camera.  

448 Journalist Víctor Vargas of the daily newspaper ADN was also assaulted.  

209. The Ombudsman’s Office of Medellín [Personería de Medellín] issued a press release expressing its “rejection of the acts of violence that occurred in the city” during the August 29 national strike. In the press release, the Ombudsman “called upon the security forces to respect the right to life, integrity, freedoms and the work of journalists and human rights defenders, in particular the representatives of this agency who carry out monitoring and communication on the ground; and who were seriously affected by certain members of the National Police and the Mobile Anti-Disturbances Squadron (ESMAD)”, and requested that the events be investigated and that relevant disciplinary actions be carried out by the competent authorities.

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20 de August de 2013. Corresponsal de noticias RCN en el Cauca fue agredido por presuntos manifestantes; Periódico Virtual. August 20, 2013. Manifestantes retienen y roban equipos de periodista en el Cauca.


210. Also on August 29, in the city of Bogotá, a journalist and cameraman from Contagio Radio were attacked by individuals presumed to be agents of the ESMAD when covering demonstrations.451

211. The Office of the Special Rapporteur was informed that in October, in the context of the mobilization of indigenous peoples of Colombia “Minga Social Indígena y Popular”, various indigenous communicators had been assaulted while reporting on what was happening during the protests. On October 15, a pamphlet was circulated, presumably written by a paramilitary group, containing death threats against leaders and communicators from the indigenous communities who took part in the mobilizations.452 On October 17, three indigenous journalists, Adolfo Conejo Sánchez, Dora Muñoz and Enrique Quintero, in the department of Cauca, were attacked by individuals presumed to be members of the Mobile Anti-Disturbances Squadron (ESMAD).453 On October 21, community journalist Daniel Maestre Villazón had three portable computers and other equipment where he stored information stolen.454

212. On September 20, 2013, the Office of the Special Rapporteur sent a letter to the State expressing concern over these violent events committed against journalists in the exercise of their work and requesting information on the situations reported and regarding measures taken by the State to guarantee the security of journalists and media workers. On October 22, the State reported on the activities of the National Protection Unit and the Subunit for investigating cases of journalists in the Human Rights Unit of the Office of the Public Prosecutor. It also stated that it placed the greatest importance on journalists being able to carry out their work in a safe environment, and that it has a zero-tolerance policy on crimes committed against journalists.455

213. In a communication dated December 2, 2013, the State reported that “it has publicly acknowledged and regrets the cases [of violence against journalists] in which the assailants were members of the National Police.”456 The State also recalled that journalists are part of the institutional strategy for the Protection of Vulnerable Populations. Nevertheless, it indicated that “difficulties” arise in defending their rights, because in some cases they fail to visibly identify themselves or adopt extraordinary risks.


453 Consejo Regional Indígena del Cauca. October 18, 2013. ESMAD agreden a comunicadores indígenas en el Cauca; Reporters Without Borders. October 22, 2013. Agresiones y tentativas de censura afectan la movilización nacional indígena.


214. The Office of the Special Rapporteur also referred in its letter to attacks against journalists from the Marcha Patriótica movement. Regarding these events, it should be noted that the Office of the Special Rapporteur views with concern accusations against social movements that link them with illegal armed groups and suggest that there are “dubious” interests behind their public demonstrations.

215. The Joint Declaration on violence against journalists and media workers in the context of protests, adopted in 2013, indicates that during demonstrations and situations of social unrest, the work of journalists and media workers, as well as the free flow of information, “is essential to keeping the public informed of the events. At the same time, it plays an important role in reporting on the conduct of the State [...] preventing the disproportionate use of force and the abuse of authority.” Accordingly, the authorities must provide journalists with the maximum guarantees in order for them to perform their functions. In this respect, they must ensure that journalists are not arrested, threatened, assaulted, or limited in any manner in their rights as a result of practicing their profession in the context of a public demonstration. The State must not prohibit or criminalize live broadcasts of events, and must abstain from imposing measures that regulate or limit the free circulation of information. Journalists must not be called as witnesses before the courts, and the authorities must respect the right to the confidentiality of sources of information. In addition, their work materials and tools must not be destroyed or confiscated. The authorities must adopt a public discourse that helps prevent violence against journalists, vigorously condemning assaults, investigating the facts, and punishing the perpetrators, as established in Principle 9 of the IACHR’s Declaration of Principles. It is also especially important in these contexts that the authorities have special protocols for protecting the press in situations of social unrest and educate State security forces on the role of the press in a democratic society.

E. Other relevant situations

216. On January 28, customary circulation of the Colombian daily newspaper El Meridiano of Sucre was impeded in the municipality of Majagual, department of Sucre, allegedly because the manager of the state agency that provides health services in the municipality had purchased all of the copies, to then burn them and in this way avoid their dissemination. That day, El Meridiano reported


460 Principle 9 of the IACHR Declaration of Principles: “[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”.


462 El Meridiano. January 29, 2013. Impiden circulación de EL MERIDIANO; Knight Center for Journalism in the
on the alleged improper use of an ambulance belonging to that agency and included photographs showing how the ambulance driver unloaded construction materials from it.463

217. On September 14, unknown individuals stole equipment and journalistic material from the home of journalist Ferney Meneses, general editor of Agenda Propia, and correspondent for the daily newspaper El Tiempo, in the department of Cauca. The editing of Agenda Propia, a digital medium that carries out journalistic investigations, is carried out in the journalist’s home. The journalists from that media outlet announced that the stolen equipment contained very valuable journalistic information.464

218. 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”.

F. Confidentiality of sources, wiretapping and espionage

219. The Office of the Special Rapporteur was informed that a hidden microphone was found in the editing room of magazine Semana. As explained by the magazine’s director, Alejandro Santos, the device was discovered “accidentally when a light bulb was broken and the suspended ceiling had to be removed.” Intelligence specialists reported that it was a high-technology device activated by remote control and was found to be fully functional.465

220. On June 28, journalist Juan Pablo Barrientos, director of the news program Teleantioquia Noticias, on the public channel Teleantioquia, of the government of Antioquia, resigned his post after discovering that what was said in one of the news program’s editing councils had been clandestinely recorded.466 As he explained in a press release, on June 20, a meeting was called by the manager of the channel, in which it was revealed that a departmental assembly member had come to the channel with a recording in which Barrientos could supposedly be heard talking to the journalistic team from the news program during an editing council meeting. In the recording, Barrientos criticized the work of the Assembly and of government officials. The assembly member presented the management with the recording as proof of Barrientos’ animosity towards certain politicians. Upon discovering the facts, Barrientos submitted his resignation and alleged that the editing councils had


been intercepted and that the recording had been obtained “illegally”. The management of Teleantioquia issued a press release on June 28 stating that it considered it a matter “of utmost seriousness to carry out clandestine recordings in the journalists’ workplace” and characterized the event “as a violation of freedom of the press”. Subsequently, the assembly member stated that he had received the recording from an anonymous source and announced that he would criminally sue the journalist for defamation [injurias and columnias], for having accused him of intercepting the newscast’s editing councils. The governor of Antioquia reported that the case would be presented to the Office of the Public Prosecutor to determine who had “illegally” recorded the editing council.

221. On September 11, the Office of the Attorney General reported by means of a press release that it was carrying out investigations stemming from a denunciation by journalists Ramiro Bejarano Guzmán, columnist of the daily newspaper El Espectador, and Cecilia Orozco Tascón, director of the television news program Noticias Uno and a columnist for El Espectador, relating to supposed illegal monitoring and wiretapping, presumably ordered by the Office of the Comptroller General of the Republic. On March 21, both journalists sent a letter to the president of Colombia, Juan Manuel Santos, and the Attorney General, (a copy of which was also sent to the Office of the Special Rapporteur), in which they expressed their “enormous concern” regarding information received according to which intelligence officers of the National Police seconded to the Office of the Comptroller General of the Republic had received the order to illegally wiretap their telephone communications, investigate bank accounts under their names and compile data on their private lives. The journalists requested that the authorities investigate to determine if the alleged events were real, and if so, to take the necessary measures to reestablish their rights.

222. On October 8, the Criminal Cassation Chamber of the Supreme Court [Sala de Casación Penal de la Corte Suprema] ruled that the statute of limitations had expired with respect to three of the crimes for which the former director of the then Administrative Security Department (DAS), Jorge Noguera Cotes, was to be tried in the context of investigations into telephone wiretapping carried out by the DAS against several journalists, among others. According to information received, the former official will not be tried for the offences of “illegal violation of communications” [“violación ilícita de comunicaciones”], “illegal use of receiving and transmitting equipment” [“utilización ilícita de equipos receptores y transmisores”], nor for the offense of “abuse of authority due to arbitrary and unjust actions, regarding acts committed in the national territory” [“abuso de autoridad por acto arbitrario e
injusto, respecto de los hechos cometidos en el territorio nacional’), because the statute of limitations on these crimes expired on June 25, 2012, before the Office of the Public Prosecutor had presented the indictment. He will be tried for the alleged offences of aggravated criminal conspiracy and abuse of authority due to arbitrary and unjust actions regarding acts committed outside the national territory. Jorge Noguera Cotes is currently serving a 25-year prison term after having been sentenced in September 14, 2011 by the Supreme Court of Justice for “homicide”, “aggravated criminal conspiracy” [“concierto para delinquir agravado”], “destruction, removal or concealment of public document” [“destrucción, supresión u ocultamiento de documento público”] and “revelation of secret matter” [“revelación de asunto sometido a secreto”].

8. Costa Rica

223. The Office of the Special Rapporteur takes note of amendments in 2013 to the Computer Crimes Law. The Law, which amended the Criminal Code, was approved on July 10, 2012, and some of its articles have generated controversy among journalistic organizations that questioned the norm because of the increase in sanctions stemming from access to secret information and the ambiguity of the redaction of Article 288 on espionage, and for enshrining the crime of dissemination of private information without authorization from the owner of the information and without consideration of its public relevance or of the fact that it may have been acquired through an illegal act. The amendment approved in April, 2013 modifies, among other aspects, the criminal definition of espionage, in which it replaces the term “secret policy information” with the term “duly enacted State secrets, related to the internal or external security of the nation, the defense of national sovereignty and foreign relations of Costa Rica.”


475 The reform was enacted by the Executive on April 24, 2013 and entered into force after its publication on April 26, 2013. Asamblea Legislativa de la República de Costa Rica. Reforma de varios artículos y modificación de la Sección VIII, Denominada Delitos Informáticos y Conexos, Del Título VII del Código Penal. Ley N° 9135. April 24, 2013.


477 “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.” Asamblea Legislativa de la República de Costa Rica. Reforma de Varios Artículos y Modificación de la Sección VIII, Denominada Delitos Informáticos y Conexos, Del Título VII del Código Penal. Ley N° 9048. June 7, 2012.


479 “Article 295. – Espionage. The person who procures or improperly obtains duly enacted State secrets, related to the...
In January of 2013, the Trial Court of Goicoechea dismissed a lawsuit for defamation [injurias] against La Nación journalist Vanessa Loaiza, filed by Adrián Chinchilla, brother of the president of Costa Rica, and by entrepreneur Carlos Espinach. The complaint was submitted based on an article published in La Nación on August 15, 2012, in which the journalist reported on alleged declarations by a former minister of Public Works and Transport in relation to the alleged participation of a government advisory group –of which the plaintiffs were members- in the construction of a road480. On August 17, 2012, the journalist rectified the article and clarified that the former minister had not said what had been reported481. The judges of the court ruled to dismiss the suit based on Article 386 of the Code of Criminal Procedure, arguing that “the retraction was made even before the proceedings were initiated, because the journalist concerned, only two days after having published the supposedly defamatory [injuriosa] article, retracted it.”482

9. Cuba483

At the hearing on the “Situation of the right to freedom of expression in Cuba,” held on March 11, 2013 during the Commission’s 147th session, the Commission received reports of multiple explosions at media outlets and journalists being trailed, assaulted and threatened. It also received reports on the criminal penalties given to dissidents and opponents of the Government because of their exercise of freedom of expression, and specifically about the fact that many journalists are in preventive detention. The petitioner organizations highlighted the case of independent journalist Calixto Ramón Martínez Arias, who had reportedly been in preventive detention and awaiting trial since September 16, 2012, for the alleged crime of desacato of the figures of Fidel and Raúl Castro, after he did some investigative reporting on a donation of medications that was deteriorating at the International Airport, and in alleged retaliation for having reported a cholera outbreak in the eastern part of the country. The petitioners also mentioned the case of Sonia Garro, an activist in the Ladies in White [Damas de Blanco] movement and the beneficiary of precautionary measures ordered by the Commission. She reportedly has spent a year in preventive detention, and still no trial date has as yet been set. They also reported about the situation of other journalists and media workers who have been the victims of attacks and arrests for having exercised their freedom of expression. They added that there were currently some 70


481 La Nación. August 17, 2012. Asesores cercanos a presidenta no decidieron sobre trocha. P. 8A.


483 This section corresponds to the section on freedom of expression in Cuba in Chapter IV, Volume I, of the IACHR 2013 Annual Report, assigned to the Office of the Special Rapporteur for Freedom of Expression.
political prisoners in the country, at least half of whom are awaiting trial. Their situation is made all the worse by the terrible prison conditions, the lack of food and the alleged torture of detainees.  

According to the information provided, the existence of a legal framework that runs contrary to international standards on freedom of expression, the concentration of media outlets in the hands of the State, and the constant restriction, suppression, and criminalization of critical speech have perpetuated a climate of intimidation that makes it impossible to freely exercise freedom of expression, and have led to significant self-censorship among dissidents voices. The petitioners pointed out that under Law 88 of 1999, at least twenty-five journalists have been sentenced to prison, some for as long as 20 years. They also observed that the Government heavily polices demonstrations, which are always under surveillance and are allowed according to the impact that might have.

For the petitioner organizations, the small changes that Cuban society has experienced with respect to freedom of expression are due to developments on communications technologies. However, there are significant barriers to internet access, which is not readily available; connection speeds are slow and rates high for the average salary in Cuba. On this last point, they explained that one hour of internet access costs one third the salary of a professional in Cuba, which induces the creation of a parallel market for the internet. They emphasized the fact that Cuba has no privately owned internet service for citizens, who are able to access the internet only at public places, state offices, embassies, foreign or mixed companies, or some local companies, some academic centers or cybercafés, and that such access is off limits to dissidents. According to what was reported, the majority of the media outlets in Cuba are State owned and the few private media outlets that do exist have limited circulations. Most are owned by the Catholic Church or are internet-based media dedicated to discussion outside the island, but not on the island.

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485 Here, the petitioners mentioned, inter alia, Article 53 of the Constitution of Cuba, which recognizes the right of freedom of expression. The petitioners stated that this right is recognized only to the extent that it serves the purposes of socialist society. That article of the Constitution also states that “the press, radio, television, cinema, and other mass media are the property of the State or society and can never be privately owned. This is a means to ensure that they serve the working people and the interests of society exclusively.” They also mentioned Law 88 on Protection of the National Independence and Economy of Cuba of February 16, 1999, allegedly known as the Gag Rule. They contend that this law can be used to sentence citizens to up to 20 years in prison if their actions are deemed to have subverted or attempted to subvert national order. According to the petitioners, simply questioning the supremacy of the Communist party would qualify as subversion. Under the law, any citizen can face punishment if, by whatever means, he or she collaborates with foreign radio or television broadcasters, newspapers, magazines or other media. Government of Cuba. Constitución de la República de Cuba. February 24, 1976; Cuba. Ley No. 88 de Protección de la independencia nacional y la economía de Cuba. February 16, 1999. Available for consultation at: http://ruleoflawandcuba.fsu.edu/law-88.cfm.


228. Finally, the petitioners asked the Commission to urge the State to (i) amend the laws that restrict freedom of expression in Cuba, so that they conform to international standards on the subject; (ii) stop criminalizing citizens who merely want to express, inform and organize themselves peacefully, and to stop the repression targeted at them; (iii) guarantee the conditions necessary for unfettered practice of journalism and allow the existence of media outlets not owned by the State; and (iv) facilitate citizens’ unrestricted access to the internet.\(^{488}\)

229. Subsequently, the IACHR received information indicating that journalist Calixto Ramón Martínez Arias, a correspondent for Centro de Información Hablemos Press, was released on April 9. He had been in the custody of the National Police since September 2012. According to what was reported, no official charges were even filed against the journalist, although he was reportedly accused of the crime of desacato of the figures of Fidel and Raúl Castro. He was never formally tried. During his detention, Martínez Arias went on a hunger strike to protest the terrible conditions in prison and to demand his freedom.\(^ {489}\)

230. During the IACHR’s 149 Period of Sessions, a public hearing was held on October 29, 2013 on the human rights situation of the Ladies in White in Cuba. At the hearing, the petitioners explained that the members of that movement, which emerged in March 2003 after the events known as the “Black Spring”, are the victims of constant attacks, harassment, detentions and “acts of repudiation” by alleged State agents. The petitioners alleged that their situation was unsafe, a problem compounded by the impunity that attended the attacks against them. They also said they were victims of repression that included beatings, arrests, threats or restrictions on their children’s access to school; but it also involved discriminatory mistreatment based on their gender, race, sexual identity and orientation, health and other factors. They focused particularly on the situation of one of their leaders, Sonia Garro, who had been in custody since March 18, 2012, charged of “alleged assault, disturbing the peace, and attempted homicide”. Her co-defendant was her husband, activist Ramón Alejandro Muñoz. The petitioners explained that Garro’s health was poor and that she was reportedly not receiving the proper medical care; she had also reportedly said that she feared for her life inside the prison, where she was afraid to eat the food.\(^ {490}\) Garro had allegedly been severely beaten in two occasions by one of the agents in charge of caring for the inmates inside the prison.\(^ {491}\) Finally, the petitioners reported that


the hearing in the trial against Garro was scheduled for November 1, 2013 and that she could be facing a sentence of 10 years in prison. They asked that the Commission make a statement on the matter and, most especially, that it ask the Cuban Government to ensure that the guarantees of due process would be observed at trial.492

231. On this last point, the IACHR received information indicating that on October 31, the hearing scheduled for November 1 in the trial of Sonia Garro, her husband Ramón Alejandro Muñoz and dissident Eugenio Hernández Hernández, who could be facing 10, 14 and 11 years, respectively, had been postponed. According to what was reported, the court has not given any reason for the postponement and did not set a new trial date.493 The IACHR was also informed of the show of force staged by police agents at José Martí International Airport when the leader of the Ladies in White, Berta Soler, returned to Cuba. She attended the IACHR’s public hearing and was returning to the country to be present for the hearing held in the trial of Sonia Garro. More than a dozen members of the movement were reportedly detained.494

232. The IACHR is troubled by the facts reported and, as it has on other occasions, must point out that in Cuba, there are no guarantees of any kind to ensure exercise of the right to freedom of expression.

A. Detention, attacks and threats against defenders, journalists, members of the opposition and demonstrators

233. In 2013, the IACHR received information concerning multiple short-term arrests, detentions, harassment and threats against journalists, activists, human rights defenders and opponents of the government, all because they had expressed their views and been critical of the government. Some of these incidents also occurred in the context of peaceful demonstrations and protest activities against the national government and were the work of state security forces. Some of the principal cases reported are summarized below.

234. The IACHR received information concerning various acts of harassment and detention of members of the Ladies in White group. According to the information available, the Ladies in White had complained that on Sunday, January 6, 14 of their members had reportedly been detained in various
provinces across the country to prevent them from attending mass. They also reported that on January 18, three Ladies in White had been stopped and assailed by State security agents as they were on their way to church. On January 21, nine members of the Ladies in White movement were reportedly detained by agents of State Security as they were on their way to attend a literary tea at the organization’s headquarters in Havana. They also reported that on January 27, 36 women who are members of the Ladies in White movement were arrested in various parts of the country, in many instances to prevent them from attending religious services. According to reports, on February 13 and 14 some 30 Ladies in White were detained and some were beaten as an event to mark the birthday of a deceased activist and founder of the movement, Laura Pollán, was wrapping up. On February 24, at least 54 members of the Ladies in White were detained as they were leaving a mass held in Havana to commemorate the anniversary of the death of Orlando Zapata Tamayo and four members of the Brothers to the Rescue. On March 18, members of the movement were reportedly beaten in the municipality of Palma Soriano, province of Santiago de Cuba, after participating in a literary tea held to mark the anniversary of the events of March 2003, known as the “Black Spring”. On March 27, 16 Ladies in White were detained, forced to board a bus and taken to two isolated places, where they were held for some five hours. Similarly, on April 7, supposed police agents had detained at least 58 members of the Ladies in White as they were on their way to church in the province of Santiago de Cuba and held them for some three hours. Five Ladies in White were reportedly detained in the Province of


498 Centro de Información Hablemos Press. January 28, 2013. Incremento del hostigamiento y arrestos contra las Damas de Blanco [Harassment and arrests of Ladies in White increasing].

499 M.A.R. por Cuba. February 14, 2013. MAR por Cuba denuncia maltrato a Damas de blanco [MAR por Cuba denounces mistreatment of Ladies in White]; ACI Prensa. February 14, 2013. Cuba: Detienen a Berta Soler junto a treinta Damas de blanco [Cuba: Berta Soler and thirty other Ladies in White detained]; Asociación Damas de Blanco. February 14, 2013. Las Damas de blanco rememoran a su fundadora Laura Pollán [Ladies in White Commemorate Founder Laura Pollán]; Hazte Oir. February 15, 2013. La dictadura cubana acosa y detiene a treinta Damas de blanco [Cuban dictatorship harasses and detains thirty Ladies in White].


502 Centro de Información Hablemos Press. March 27, 2013. Ómnibus del terror y la vileza [An Omnibus of Terror and Villainy]; Voz desde el destierro. March 27, 2013. Cuba: Ómnibus del terror y la vileza contra las Damas de Blanco [Cuba: An Omnibus of Terror and Villainy against the Ladies in White].
Santa Clara, and another five in Holguín.\footnote{Centro de Información Hablemos Press. April 8, 2013. \textit{Detienen a cincuenta Damas de Blanco en Santiago de Cuba} [Fifty Ladies in White Detained in Santiago de Cuba]; Martí Noticias. April 7, 2013. \textit{Detienen a Damas de Blanco} [Ladies in White Detained].} The available information indicates that on April 13, three activists in the group were reportedly detained in the province of Santiago de Cuba by supposed officers with the Revolutionary National Police (PNR) and the State Security Department (DSE), to prevent them from attending mass the following day.\footnote{Centro de Información Hablemos Press. April 17, 2013. \textit{Arrestan a Dama de Blanco en Santiago de Cuba} [Ladies in White Arrested in Santiago de Cuba]; Misceláneas de Cuba. April 18, 2013. \textit{Arrestan a Dama de Blanco en Santiago de Cuba} [They Arrest Ladies in White in Santiago de Cuba].} On April 28, a number of Ladies in White were reportedly beaten and insulted outside and inside a church, as they were attending mass, by persons presumably connected to the government.\footnote{Unión Patriótica de Cuba (UNPACU)/YouTube. 28 de abril de 2013. Publicado por Ana Belkis Ferrer Garcia. \textit{Damas de Blanco en la Iglesia Nuestra Señora del Rosario 284-13} [Ladies in White in the Church of Nuestra Senora del Rosario]; ACI Prensa. April 29, 2013. \textit{VIDEO: Damas de Blanco: Agentes del gobierno cubano los golpean dentro de una iglesia} [VIDEO: Ladies in White: Agents of the Cuban Government Beat Them Inside a Church].} On Sunday, July 14, some twelve Ladies in White were reportedly assailed by alleged security forces after attending mass in the province of Matanzas.\footnote{Marti Noticias. July 14, 2013. \textit{Agregan a Damas de Blanco} [Ladies in White Assailed]; Observatorio Cubano de Derechos Humanos. July 15, 2013. \textit{Acción Urgente contra represión de activistas de UNPACU y Damas de Blanco} [Urgent Action against repression of activists from UNPACU and Ladies in White]; Asociación Damas de Blanco. July 15, 2013. \textit{Detenidos y golpeados activistas y Damas de Blanco en Matanzas} [In Matanzas, activists and Ladies in White detained and beaten].} According to reports from members of the Ladies in White movement and the Cuban Patriotic Union [\textit{Unión Patriótica de Cuba} (UNPACU), on August 17 and 18, 2013, there were some 20 episodes in which members were detained, and multiple acts of harassment committed against them in Santiago de Cuba, Holguín, Havana, Matanzas and Pinar del Río. The available information indicates that nationwide, some 17 Ladies in White were detained on August 18.\footnote{ABC.es/EFE. August 19, 2013. \textit{Nueva oleada represiva contra la disidencia en Cuba} [New wave of repression against dissent in Cuba]; Martí Noticias/EFE. August 19, 2013. \textit{Disidentes denuncian detenciones en Cuba} [Dissidents denounce detentions in Cuba]; Asociación Damas de Blanco. August 18, 2013. \textit{Represión contra Damas de Blanco en Cuba} [Represion against Ladies in White in Cuba].} On September 8, during the celebration of the feast of the Virgen de la Caridad del Cobre, multiple members of the Ladies in White were detained and beaten nationwide, as were other activists and opponents of the government as they returned from Sunday mass. According to what was reported, similar incidents of violence and detentions of members of the movement occurred on September 22.\footnote{Centro de Información Hablemos Press. September 9, 2013. \textit{Damas de Blanco y opositores acompañaron a la Virgen en La Habana} [Ladies in White and opposition members accompanied the Virgin in Havana]; Instituto Cubano por la Libertad de Expresión y Prensa (ICLEP). September 8, 2013. \textit{Prosiguió este 8 de septiembre el hostigamiento contra los damas de blanco y sus acompañantes} [This September 8 the harassment of Ladies in White and those with them continued]; Red Latinoamericana y del Caribe para la Democracia (RedLad). September 2013. \textit{Agrésión contra Guillermo Faríñas y Damas de Blanco en Cuba} [Assault on Guillermo Faríñas and Ladies in White in Cuba]; Pro Cuba Libre. September 23, 2013. \textit{Matanzas: Damas de Blanco denuncian otro domingo de arrestos, golpes y ‘actos de repudio’} [Matanzas: Ladies in White denounce another Sunday of arrests, beatings and “acts of repudiation”]; Asociación Damas de Blanco. September 9, 2013. \textit{Cientos de activistas y Damas de Blanco acuden a las iglesias en el día de la Caridad} [Hundreds of activists and Ladies in White go to Church during the day of the Caridad]; Asociación Damas de Blanco. September 23, 2013. \textit{Matanzas: Damas de Blanco denuncian otro domingo de arrestos, golpes y ‘actos de repudio’} [Killings: Ladies in White denounce another Sunday of arrests, beatings and acts of repudiation].} On Sunday, October 20, several activists were detained in a police operation staged at the end of a religious service at the Church of Santa Rita de Casia in Havana. Among those detained were members of the Ladies in White. That same day, more
than 30 members of the group were said to have been detained in various provinces across the
country.  

235. On January 30, police agents reportedly detained journalists Yusmila Reyna Ferrera and
Hergues Frandín, and searched their residences in La Maya, province of Santiago de Cuba.  

236. On February 5, independent journalist Héctor Julio Cedeño Negrín was allegedly beaten
and arrested as he was taking pictures of inspectors said to have been committing acts of violence. The
journalist was accused of an alleged “assault” against the police officer who detained him and
reportedly spent 12 days in custody, during which time he went on a hunger strike. Following his
release, the journalist said that he was informed that he was still under investigation, under house arrest
and had to check in with a police station periodically.  

237. On February 11, 2013, supposed agents of the National Police searched the homes of
Pedro Luis González Díaz and Bernardo León Martínez in Pinar del Río. The two were activists and
members of the political opposition. The police were looking for copies of the document “The Citizen
Demand for Another Cuba” (“Demanda Ciudadana por otra Cuba”). Both activists were held for several
hours.  

238. Ángel Santiesteban Prats, a writer and author of a blog critical of the government called
“Los hijos que nadie quiso” has reportedly been imprisoned since February 28, 2013, after a Havana
provincial court sentenced him in early 2012 to five years in prison for the supposed crimes of
“trespassing and battery.” On January 28, 2013, the People’s Supreme Court reportedly denied his

509 Misceláneas de Cuba. October 22, 2013. Alrededor de 180 Damas de Blanco desfilaron este domingo en todo el
país [Around 180 Ladies in White marched this Sunday nationwide]; Asociación Damas de Blanco. October 20, 2013. Arrestadas
Damas de blanco y opositores [Ladies in White and members of the opposition arrested].

Cedeño (audio) [The leader and general coordinator of the Oasis program detained]; Martí Noticias. January 31, 2013. Detienen
a periodistas independientes en Santiago de Cuba (audio) [Independent journalists detained in Santiago de Cuba].

511 Centro de Información Hablemos Press. February 8, 2013. Sigue detenido el periodista independiente Héctor Julio
Cedeño (audio) [Independent journalist Héctor Julio Cedeño still in custody]; Martí Noticias. February 9, 2013. Reportero que
captó abusos a cuentapropistas es trasladado al vivac [Reporter who photographed abuses of self-employed workers is moved
to tent]; Cuba Democracy y Vida. February 6, 2013. CUBA: Detenido el periodista Independiente Héctor Julio Cedeño Negrín por
tomar fotografías [Independent journalist Héctor Julio Cedeño Negrín arrested for taking photographs]; Knight Center for
Journalism in the Americas. February 12, 2013. Cuban journalist jailed after photographing inspectors, declares hunger strike;
Martí Noticias. February 18, 2013. Liberan a comunicador de Hablemos Press [Hablemos Press Journalist released]; Net for
Cuba. February 20, 2013. Liberan al periodista independiente cubano Héctor Julio Cedeño Negrín [Cuban independent journalist
Julio Cedeño Negrín released].

512 Martí Noticias. February 18, 2013. Liberan a comunicador de Hablemos Press (audio) [Hablemos Press journalist
released]; Net for Cuba. February 20, 2013. Liberan al periodista independiente cubano Héctor Julio Cedeño Negrín [Cuban
independent journalist Héctor Julio Cedeño Negrín released]; Centro de Información Hablemos Press/YouTube. February 19,
2013. Declaraciones del periodista Héctor Julio Cedeño [Journalist Héctor Julio Cedeño statements].

513 Centro de Información Hablemos Press. February 14, 2013. Registros y detenciones en Pinar del Río en busca de
Demanda ciudadana [Search for ‘Citizen Demand’ lead to household searches and detentions in Pinar del Río]; Comisión de
2013 [Cuba: some acts of political repression in February 2013].

December 8, 2012. Escritor cubano, condenado a cinco años de prisión [Cuban writer sentenced to five years in prison];
appeal and confirmed his conviction. Santiesteban maintained that the charges against him had been trumped up and were politically motivated.\textsuperscript{515}

239. On March 7, human rights defender Yris Pérez Aguilera, president of the Movimiento Femenino por los Derechos Civiles Rosa Parks was reportedly detained and beaten by police during a demonstration. The activist was taken to a hospital unconscious as a result of the beating.\textsuperscript{516}

240. Also in March 2013, journalist Alberto Gil Triai Casales was reportedly held, verbally abused and threatened with death by State Security Force agents as he was on his way to an event organized in the home of a political activist.\textsuperscript{517}

241. On March 14, agents of State Security and the National Police allegedly assaulted members of the opposition political party Movimiento Opositores por una Nueva República, supposedly to prevent them from holding a meeting.\textsuperscript{518}

242. On March 2013, there was a break-in at the home of activist and member of the political opposition Martha Beatriz Roque, by persons supposedly linked to an association of former revolutionary fighters. The assailants reportedly beat up Roque and a number of her friends who were at her home at the time.\textsuperscript{519}


\textsuperscript{516} Diario de Cuba. March 7, 2013. Disidentes: La activista Yris Pérez Aguilera pierde el conocimiento por una fuerte golpiza de la Policía [Dissidents: Activist Yris Pérez Aguilera loses consciousness from heavy police beating]; Directorio Democrático Cubano. March 7, 2013. Cuba: golpean brutalmente a Yris Pérez Aguilera durante marcha en Santa Clara y es hospitalizada [Cuba: Yris Pérez Aguilera brutally beaten during march in Santa Clara and is hospitalized]; M.A.R. por Cuba. March 18, 2013. Desde Cuba: Llamado a campaña de solidaridad con Yris Pérez Aguilera para que se le brinde asistencia médica [From Cuba: Call for campaign of solidarity with Yris Pérez Aguilera to demand that she receive medical care].


\textsuperscript{518} Centro de Información Hablemos Press. March 19, 2013. Violenta represión policial para impedir reunión [Violent police repression to stop meeting]; Blogs de Cuba. March 19, 2013. Violenta represión policial para impedir reunión [Brutal police repression to stop meeting].

243. On March 26, journalists, human rights defenders and members of the political opposition were reportedly detained by police to stop them from attending a meeting of an independent civil society group attended by various opposition militants and activists.\(^{520}\)

244. On April 10, two young members of the Republican Party of Cuba, which opposes the government, were reportedly detained by National Police on accusations of *desacato* and resistance.\(^{521}\)

245. On April 16, agents of State Security and the National Police arrested a number of political activists when they were trying to attend a course on human rights that was to be given in the home of Hugo Damián Prieto Blanco, leader of the group Frente de Línea Dura y Boicot Orlando Zapata. According to what was reported, agents surrounded the house and prevented people from entering.\(^{522}\)

246. On April 13, six activists with the Liberal Party were reportedly detained and beaten by agents of the Revolutionary National Police (PNR) and the Department of State Security (DSE), after circulating pamphlets containing the Universal Declaration of Human Rights.\(^{523}\)

247. Agents from the State Security Department reportedly made death threats against activist and member of the opposition Jorge Luis Santana Reyes, allegedly for organizing political meetings in his home that were critical of the government. According to what was reported, the security forces arrested and interrogated those who were attending an activity held in his home to commemorate the “Black Spring.” Furthermore, on April 21, police agents reported invaded Santana Reyes’ home yet again after a meeting of members of the Red Cubana de Comunicadores Comunitarios. According to reports, Santana Reyes was allegedly held for over 4 hours.\(^{524}\)

248. On May 22, *Centro de Información Hablemos Press* journalist Gerardo Younel Ávila Perdomo was reportedly detained and questioned. According to the photo journalist, he was subjected to pressure and threats, but remained silent. He was reportedly released after 10 hours.\(^{525}\)

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\(^{520}\) Centro de Información Hablemos Press. April 1, 2013. *Detenidos periodistas y opositores que intentaban participar en una reunión* [Journalists and members of opposition who attempt to participate in a meeting detained]; Martí Noticias. March 27, 2013. *Impiden asistencia de opositores a reunión de nuevo proyecto disidente* [Members of opposition prevented from attending meeting of new dissident Project].

\(^{521}\) Centro de Información Hablemos Press. April 17, 2013. *Dos jóvenes Republicanos acusados de Desacato y Resistencia* [Two Republican youths accused of contempt and resistance]; CubaNet. April 12, 2013. *Arrestan a dos jóvenes del Partido Republicano* [Two Republican youth arrested].

\(^{522}\) Centro de Información Hablemos Press. April 18, 2013. *Detenidos activistas ante curso sobre Derechos Humanos* [Activists trying to attend human rights course detained]; Misceláneas de Cuba. April 18, 2013. *Arrestan a activistas que por asistir a curso sobre derechos humanos* [Activists arrested as they attempt to attend human rights course].


\(^{524}\) Centro de Información Hablemos Press. March 27, 2013. *Policías amenazan de muerte a opositor* [Police threaten member of opposition with death]; Misceláneas de Cuba. April 24, 2013. *Detenido por no cooperar* [Detained for not cooperating].

249. On May 30, independent journalist Manuel Guerra Pérez was allegedly detained. According to what the journalist reported, officials interrogated him and threatened him in connection with his journalism, and expressed a particular interest in articles published by Cubanet in which the journalist had criticized the government.  

250. The IACHR received information indicating that on June 1 in the city of Bayamo, members of the group called Pastors for Change had been beaten and detained as they were preaching in a market. According to what was reported, the assailants were in civilian dress. However, they used government vehicles in the operation. Similarly, on August 30, 14 members of the group had been violently repressed to prevent them from participating in a vigil in the city of Bayamo. On September 7, group member Felipe Yulier Espinosa Rodríguez had reportedly denounced that police agents had opened a case file on him for the alleged crime of “pre-criminal social threat”.  

251. On Sunday, September 1, over 70 persons in different provinces across the country were reportedly detained. According to what was reported, during the Sunday activities of the Ladies in White movement, a number of members of the group, together with other members of the opposition, were reportedly arrested by agents of the State.  

252. On September 10, journalist Guillermo Fariñas was detained by individuals presumed to be State agents after participating in a peaceful demonstration of over 200 drivers of horse-drawn carriages protesting a tax hike. According to what was reported, during his detention Fariñas was beaten and mistreated. Some hours later the journalist was set free, but no reason for his detention was given.  

253. Similarly, on September 26 members of the Opposition Movement for a New Republic were detained in Santiago de las Vegas, municipality of Rancho Boyeros, as they were circulating copies of the so-called “Citizen Demand for Another Cuba” (“Demanda Ciudadana por otra Cuba”), an initiative whose objective is to get the State to ratify international human rights covenants.  

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527 Diario de Cuba. June 1, 2013. Detenidos y golpeados ocho miembros de Pastores por el Cambio que predicaban en un mercado de Bayamo [Eight members of Pastors for Change who preached in a Bayamo market detained and beaten]; Centro de Información Hablemos Press. September 3, 2013. Golpean a Pastores por el Cambio en la Plaza de la Patria [Pastors for Change Beaten in Plaza of the Patria]; Centro de Información Hablemos Press. September 9, 2013. Integrante de Pastores por el Cambio golpeados y con un expediente de Peligrosidad Social + Audio y Fotos [Member of Pastors for Change beaten and with investigation for Social Dangerouness Opened + Audio and Photos].  

528 Centro de Información Hablemos Press. September 5, 2013. Más de 70 detenciones arbitrarias en menos de 24 horas [Over 70 arbitrary detentions in less than 24 hours]; Voz desde el destierro. September 5, 2013. Aumenta la represión en Cuba: Más de 70 detenciones arbitrarias en menos de 24 horas [Repression in Cuba on the rise: More than 70 arbitrary detentions in less than 24 hours]; Asociación Damas de Blanco. September 2, 2013. Damas de Blanco se fortalecen, pese a represión [Ladies in White get strengthened, even though repression].  


254. The IACHR was informed that in the month of September, the number of detentions and assaults against members of the opposition and peaceful dissidents in the country rose, particularly in the case of members of the Ladies in White movement and the Patriotic Union of Cuba (UNPACU). In September alone, there were some 700 cases of detentions, and hundreds of cases of assaults, “acts of repudiation” and harassment against dissidents, reportedly by agents of the State.531

255. On October 10, 2013, State agents reportedly arrested Misceláneas de Cuba correspondent Mario Echevarría Driggs, as he was covering a demonstration in front of the National Capitol. Similarly, on October 11, journalists David Águila Montero—director of the Agencia Social de Periodistas Independientes (ASPI)—and William Cácer Díaz—a correspondent for Centro de Información Hablemos Press—were reportedly detained. According to what was reported, the journalists were allegedly released on October 14, together with two other correspondents from Centro de Información Hablemos Press, Denis Noa Martínez and Pablo Morales Marchán, who had been detained on October 13.532

256. The Inter-American Commission is reminded that Principle 9 of the IACHR’s Declaration of Principles states 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.”

257. As the United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and the Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission have stated, the State “has the duty to ensure that journalists and media workers reporting on public demonstrations are not arrested, threatened, assaulted, or limited in any manner in their rights as a result of practicing their profession. Their work materials and tools must not be destroyed or confiscated by the authorities.” Furthermore, “the authorities must not stigmatize or stereotype demonstrators and their demands. They must refrain from making generalizations based on isolated events or the conduct of particular groups.”533

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258. The IACHR is also reminded that “[t]he rights of freedom of assembly and freedom of expression, guaranteed by the American Convention on Human Rights and the International Covenant on Civil and Political Rights, are fundamental, and guaranteeing them is a vital condition to the existence and proper functioning of a democratic society. A State may impose reasonable limitations on demonstrations for purposes of ensuring that they are conducted peacefully, or to disperse those that turn violent, provided that such limits are governed by the principles of legality, necessity, and proportionality. In addition, the breaking-up of a demonstration must be warranted by the duty to protect individuals, and authorities must use the measures that are safest and least harmful to the demonstrators. The use of force at public demonstrations must be an exception, used under strictly necessary circumstances consistent with internationally recognized principles.”

B. Censorship or confiscation of journalistic materials

259. In December 2012, Cuban customs reportedly confiscated a package sent to the organization Taller Libertario Alfredo López [Alfredo López Libertarian Workshop], which contained copies of the Venezuelan newspaper El Libertario. According to what the organization reported, in January Cuban authorities informed it of the Retention and Modification Act and the Confiscation Resolution, documents that allegedly made a record of the censorship measure. They also indicated that the authority’s account of the events, as it appeared in the documents, claimed that in the package “were found 17 newspapers whose content is inimical to the general interests of the nation, whereupon they were confiscated.”

C. Other relevant situations

260. On Monday, April 22, journalist Eliocer Cutiño Rodríguez, a correspondent with the Centro de Información Hablemos Press, was reportedly fired from his job with a State-owned company. On April 19 and 22, journalist José Leonel Silva Guerrero, also a correspondent for Centro de Información Hablemos Press, was summoned to appear before the chief of State Security in Holguín and was threatened with jail. According to the news agency, these were acts of government repression targeting its members.

261. Members of religious organizations complained of having been intimidated by State officials, accused of belonging to “counterrevolutionary” churches and warned of possible reprisals for their religious affiliations.

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537 Centro de Información Hablemos Press. March 18, 2013. Incremento de la represión contra religiosos [Repression against clergy on the rise]; Blogs de Cuba. March 18, 2013. Incremento de la represión contra religiosos [Anti-clerical repression increasing].
262. The IACHR is concerned by the Cuban State’s September 19 response to the recommendations made by the United Nations Human Rights Council as a result of the Universal Periodic Review. In the official document that the Cuban State presented to the Council, it rejected a group of suggested recommendations on the grounds that they were “politically biased and are built on false premises put forward in an attempt to discredit Cuba.” Most of those recommendations had to do with exercise of the right to freedom of expression and the right of association. Among the recommendations that Cuba did not support are the following: “[r]emove restrictions on freedom of expression notably concerning the connection to the Internet”; “[r]econsider all the laws that criminalize or restrict the right to freedom of expression and the right of internet freedom”; and “[l]ift the restrictions that hinder free expression and ensure that human rights defenders and independent journalists are not victims of intimidations or arbitrary prosecutions and detentions”.

263. The Inter-American Commission would again point out that Principle 1 of the IACHR’s Declaration of Principles provides that “[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,” while Principle 5 states that “[r]estrictions 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.” Principle 13, for its part, affirms that “[t]he 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.” Similarly, the State has a duty to adopt the legislative and other measures necessary to ensure a pluralist and diverse media, including laws that prevent public or private monopolies.

264. The Inter-American Commission is recommending to the Cuban State that it review and amend its domestic laws regulating freedom of expression, to bring them in line with international standards on this subject. Accordingly, it is particularly urging the State to adopt adequate measures to prevent violence against journalists, including public censure of any act of aggression and adequate measures to train public officials, especially the police and security forces; to take the measures necessary to prevent violence against journalists covering public demonstrations and against demonstrators, to establish reasonable limits, dictated by the principles of legality, necessity and proportionality, to ensure that the demonstrations are peaceful, as well as to conduct serious, impartial and effective investigations into attacks, threats and acts of intimidation committed against journalists and others working in the media.

265. Similarly, it is recommending the State to promote the repeal of laws that criminalize desacato, no matter what form it takes, since such laws are contrary to inter-American standards and

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restrict public discourse, an essential element to enable democracies to function; to promote amendment of the laws criminalizing defamation to eliminate the use of criminal proceedings to protect honor and reputation when information of interest to the public is disseminated regarding public officials or candidates for public office; to encourage democratic debate through public statements, practices and policies that promote tolerance and respect for all persons as equals and irrespective of their thinking or ideas; to repeal any provision that allows prior censorship by any organ of the State, and any preconditions that may imply censorship of freedom of expression, such as prerequisites as to veracity, timeliness and impartiality in reporting; to refrain from exercising public power to punish or reward media and journalists for their editorial line or coverage of certain news, whether through discriminatory and arbitrary placement of government advertising or other indirect means aimed at blocking the communication and circulation of ideas and opinions; to promote effective laws, policies and practices that allow access to information and equal participation of all sectors of society so that their needs, opinions and interests are taken into account when crafting and adopting decisions; to adopt legislative and other measures necessary to guarantee pluralism, including laws that prevent public or private monopolies; and to adjust the institutional frameworks so as to prevent the possibility that state powers might be used to reward or punish the media, according to their editorial line and instead use them to encourage pluralism and diversity in public discourse.

10. Ecuador

266. On May 6 and June 3, the IACHR received communications in which the illustrious State of Ecuador made several objections, remarks and requests regarding the annual report of the Office of the Special Rapporteur for Freedom of Expression of 2012. The Office of the Special Rapporteur transmitted to the State the information requested on May 17 and December 2.

A. Progress

267. Journalist Juan Alcívar, a reporter from the El Nuevo Sol radio station and correspondent for the newspaper La Hora, was not declared guilty of the offense of “Terrorism Against Public Servants” [Agresión Terrorista a Funcionarios Públicos]. The accusation originated from the fact that the


journalist was present during a visit by President Rafael Correa to the community of La Concordia, on July 19, 2010. During the visit, a tear gas bomb was thrown, in the midst of a confusing incident. Several sources have argued that the journalist was part of the demonstration in order to carry out his professional duties and that the order for arrest is retaliation for reports he has done that are critical of the local public authorities. The Office of the Special Rapporteur notes that the Court convicted other persons of terrorism and sabotage for said events.

268. The National Assembly approved the new Organic Comprehensive Criminal Code [Código Orgánico Integral Penal] which abolished the crime known as desacato and decriminalized defamation that does not constitute the imputation of criminal conduct [injuria no calumniosa], which represents an important progress. Nonetheless, a special concern for the Office of the Rapporteur is the broad and ambiguous wording of some of the crimes that could affect freedom of expression, as well as the increase in some sanctions of the norm that unifies into one single text the Criminal Code, the Criminal Procedures Code, and the Code of Execution of Penalties and Social Rehabilitation, and that could result in restrictions to the freedom of expression, as shall be seen in a subsequent part of the report.

B. Arrests, assaults, and threats against media outlets and journalists

269. On April 18, a prosecutor in the Province of Esmeraldas reportedly confiscated a cell phone that journalist Christian Zurita had used to photograph the detainee at a court hearing. Security personnel then reportedly shoved the journalist out of the courtroom. On May 4, cameraman Jhonson Villao of Ecuavisa and his assistant Fernando Delgado were reportedly detained while filming outside the La Roca Prison in the city of Guayaquil. The reporters were in custody for some three hours before being released by order of the prosecutor on duty.

270. On May 12, journalist Diego Cornejo, director of the Ecuadorian Association of Newspaper Publishers, was threatened by an unknown person while walking through a park in the city of Quito. The assailant reportedly warned him: “The public has you in our sights.”

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547 The crimes established in articles 230, 231 and 232 of the Criminal Code currently in force are not retaken in Parts I and II of the approved Organic Comprehensive Criminal Code [Código Orgánico Integral Penal].


551 La Hora. May 13, 2013. Periodista y director de AEDEP, Diego Cornejo, fue amenazado en Quito; El Diario. May 13,
271. On May 19, cameraman Diego Orellana of Megavisión was reportedly detained by individuals presumed to be police while covering disturbances caused by soccer fans at the end of a game. The officers reportedly failed to return the tape containing the journalistic material he had filmed. On May 20, a team of reporters from the Ecuavisa television station was reportedly assaulted while covering the situation of patients of the Carlos Andrade Marín public hospital in Quito who were waiting to receive medications. While they were filming the events, a group of hospital security guards removed them from the scene violently. In addition, the channel’s reporter, Alex Cevallos, was reportedly struck in the head. A team of journalists from the newspaper La Hora also experienced difficulty in covering the events.

272. On June 6, four journalists were reported to have been detained for some 11 hours at the El Rodeo jail in the city of Portoviejo, where they had been invited to cover a control operation that was scheduled to be carried out at the jail that night. Journalist Dayse Pico and cameraman Roberto Reyes, of Gama TV, reporter Iván Maestre of Ecuavisa, and journalist Rafaela Zambrano, a Police communications advisor, were reportedly detained on the orders of the jail’s warden. The prosecutor on duty ordered that the journalists be held in pretrial detention for having endangered security at the jail. Finally, according to the explanation provided by the Ministry of Justice, Human Rights, and Religion, the Inspector General of the Manabí Police found that there was no basis for the journalists’ detention, and they were released.

273. On July 19, journalist Rafael Cuesta Caputi of the Canal Uno news program reported on his personal Twitter account that he had received a death threat from an unknown person, in the form of a message written on a piece of paper that read: “Keep it up, and you die too.”

274. On August 12, the public newspaper El Telégrafo reported that it had been the victim of persecution by alleged representatives and former representatives of banking institutions, through letters, text and voice messages, and threats of lawsuits, among others. The public paper ran an editorial entitled “Bankers, stop persecuting El Telégrafo!” indicating that the threats “have not stopped ever since—unlike other media that silence the past—El Telégrafo has published reports and investigative pieces on cases involving bank officers, owners, or shareholders.”
275. Others have reportedly received death threats, including: cartoonist Xavier Bonilla, the organization Fundamedios, journalist Martín Pallares, journalist Juan Carlos Calderón, and singer-songwriter Jaime Guevara.

276. 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”.

C. Presidential broadcasts, government interruption of news programs

277. During 2013, the Government of Ecuador maintained the practice of using its legal authority to issue mandatory messages for purposes of disseminating the pro-government opinion in private media outlets. In recent years, the Ecuadorian Government has continually used this type of power, often requiring that the official message be broadcast only on the station on which the information or opinion called into question by the government was originally broadcast. The following are some examples of these mandatory messages:

278. On January 8, a government broadcast reportedly ordered by the National Secretariat of Communications [Secretaría Nacional de Comunicación] (SECOM) interrupted the interview program

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558 Tweet was sent “@FUNDAMEDIOS If you attack Correa, all the money the CIA gives you won’t be enough to buy the coffins” (“@FUNDAMEDIOS Si atentan contra Correa, todo el dinero que les de la CIA no les alcanzará para comprar ataúdes”). Luis Castillo P.’s Twitter account @LCPeurocentro. October 29, 2013 - 4:43 PM; Unión Nacional de Educadores. November 4, 2013. Gobierno hostiga a organizaciones denunciantes ante la CIDH; Ciudadanía Informada. October 31, 2013. Libertad de expresión, el eje de denuncias presentadas ante la CIDH esta semana. Available for consultation at: http://www.ciudadanainformada.com/noticias-politica-ecuador0/noticias-politica-ecuador0/ir_a/ciudadania-informada/article/libertad-de-expresion-el-je-de-denuncias-presentadas-ante-la-cidh-esta-semana.html


560 The results came from the publication of an investigative article that denounced alleged mismanagement of the reinsurance of State enterprises. Fundamedios. October 2, 2013. Periodista es amenazado de muerte tras publicación de investigación; Knight Center for Journalism in the Americas. October 15, 2013. Six days after its launch, new investigative site in Ecuador receives its first death threats; Plan V. September 2, 2013. La guerra de los reaseguros.

561 The hashtag #UnPuñeteParaGuevara was created on Twitter and used to convey insults and criticism of the singer-songwriter. La República. September 7, 2013. Promueven en Twitter golpear a Jaime Guevara; Twitter. Results for #UnPuñeteParaGuevara; Hoy. September 9, 2013. Un polémico hashtag contro Jaime Guevara; “Ecuadorianos como Jaime Guevara dan pena, y si mi presi @MashiRafael, yo también le metería una patada a este patán #UnPuñeteParaGuevara”. Martha Lucía Armijos’ Twitter account @martha_luci. September 7, 2013 - 11:01 AM; “http://youtu.be/MkA_pB3b0_Y #UnPuñeteParaGuevara @MashiRafael @FAlvaradoE y no le caigo a palo y machete a #JaimeGuevara, se lo merece”. Marisol Abad’s Twitter account @MesorAbad. September 7, 2013 - 10:59 AM; “Ven a Guayaquil Jaime Guevara, insignificante patán, para que veas como responde un guayaquilero a una señora así, #UnPuñeteParaGuevara”. Javier López Harb’s Twitter account @JLopezGye. September 7, 2013 - 10:59 AM; “#UnPuñeteParaGuevara mejor dicho le rompería los dientes si me viene a hacer lo mismo... el respeto dónde queda? @Correistas”. Oscar Rubio’s Twitter account @OscarRubio84. September 7, 2013 - 1:34 PM.
‘Los Desayunos 24 Horas’ on the *Teleamazonas* TV channel for eight minutes in order to refute a member of the National Assembly who had, a few days earlier on the program, alleged that the head of the National Finance Corporation (*Corporación Financiera Nacional*) had committed perjury upon taking office because he is a debtor of the State.\(^{562}\) Additionally, on January 29 a mandatory television broadcast reportedly interrupted *Teleamazonas* news programs to defend the Minister of Non-Renewable Natural Resources and discredit the media outlets and their interviewees.\(^{563}\) The mandatory government message broadcast on the *Teleamazonas* interview program “Los Desayunos 24 Horas” was dedicated to refuting information that had apparently been leaked to the media indicating that the minister did not have a professional degree, and about alleged conflicts of interest because members of his family were said to be working at private petroleum companies. The mandatory broadcast claimed that *Teleamazonas* “distorted the truth in order to do harm.”\(^{564}\)

On April 2, a mandatory government broadcast interrupted *Ecuavisa* news to refute information reported by anchorman Alfredo Pinoargote, according to which the Ecuadorian State had agreed to comply with precautionary measures issued by the IACHR. The mandatory broadcast accused Pinoargote of “interpreting his own way, and in a way that suits him, what is happening inside the Inter-American Human Rights System.”\(^{565}\) On April 5, the National Secretariat of Communications (SECOM) reportedly put out an 8-minute mandatory broadcast in which it aimed to demonstrate, as explained by the agency in a statement, “how the different reporters from the channel [*Teleamazonas*]”—Jorge Ortiz, María Josefa Coronel, Carlos Julio Gurumendi, and Guido Acevedo— “have shamelessly lied and provided misinformation on various occasions since the beginning of President Rafael Correa’s administration.”\(^{566}\) The government’s message criticized journalist María Josefa Coronel for having called into question the number of mandatory government broadcasts, and warned that if the media “keep lying, the mandatory government broadcasts will keep coming.”\(^{567}\) The SECOM issued a statement that day entitled “SECOM invites Teleamazonas to avoid lies in their news programs,” in which it explained the purposes of the message it put out, and once again invited “the media, the mercantilist press, and the news companies to let go of their fondness for tarnishing the image of the National Government through distortions that have to be refuted in order for the public to get the truth over the media fiction.”\(^{568}\)

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\(^{568}\) Secretaría Nacional de Comunicación. April 5, 2013. *SECOM invita a Teleamazonas a evitar las mentiras en sus espacios informativos.*
On May 10, the National Secretariat of Communications (SECOM) reportedly aired a mandatory broadcast during a program on Ecuavisa in order to challenge information disseminated by the NGO Fundamedios to the effect that 172 assaults against journalists and the media were reported in Ecuador in 2012. The government message criticized the work of Fundamedios and accused the NGO of receiving funding from USAID, the United States government’s international development agency. Days earlier, on May 8, Fundamedios representative César Ricaurte had taken part in an interview aired on Ecuavisa, in which he reported on the “hostile climate” faced by the country’s journalists from “the government’s highest authorities.”

A mandatory government message was aired during Ecuavisa news programming on June 12, on the orders of the Ministry of Communications (SECOM), to refute information reported by the channel regarding the Executive Branch’s proposed amendments to the Labor Code. The message accused the channel of working “in bad faith” and “distorting” the information “on purpose.” This message had already been transmitted on the program Enlace Ciudadano on June 8. Following its broadcast, the news program’s host Alfonso Espinosa clarified that the government’s message was not “accurate,” and that part of the reporter’s presentation that specified the information had been omitted. The next day, the SECOM reportedly issued a new message to criticize the journalist’s remarks.

On July 1, a mandatory government broadcast over eight minutes long was aired during Ecuavisa news programming, in which the news host, journalist Alfredo Pinoargote, was accused of taking an official document out of context, altering “its original content according to his own interests,” and putting together “paragraphs to distort its content and assemble the sentence he was looking for.” The message reminded the journalist that “the Communications Act […] allows any citizen to reserve the right to bring legal actions for such false cases as this one,” in reference to an interview Pinoargote had conducted days earlier of politician Luis Villacís, who had spoken of the alleged existence of a surveillance system in place to spy on citizens. On August 7, Ecuavisa news was interrupted by a
mandatory message to “explain” assertions “that are not consistent with reality” made by an opposition member of the National Assembly during an interview aired on the news program. On August 1, the National Secretariat of Communications (SECOM) reportedly issued a four-minute mandatory message that aired during the ‘Contacto Directo’ interview program on Ecuavisa, for purposes of clarifying erroneous “remarks and statements” made on the program by an opposition member of the National Assembly.

283. On September 5, 2013, a mandatory government broadcast interrupted ‘Los Desayunos 24 Horas’, an interview program on Teleamazonas, in order to reject the remarks of the program’s host, María Josefa Coronel, and of several other media outlets. The remarks had been related to an order issued by the Ministry of the Environment, which had reportedly imposed various requirements on the media to access the Yasuní National Park.

284. At the hearing on the “Situation of the right to freedom of expression in Ecuador,” held on March 12 during the 147 Period of Sessions of the IACHR, the State maintained that the private media were not harassed in national mandatory government broadcasts, since those national broadcasts “are aired to clarify the distorted, malicious, and even one-sided versions of some media, and above all they are done to guarantee the veracity of information.”

285. 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, 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 life.” Additionally, the principle 5 of the IACHR’s Declaration of Principles states that: “[p]rior

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576 Fundamedios. August 9, 2013. Secom vuelve a imponer una réplica a canal de TV.
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”.

286. 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.582 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.583 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.”584

D. Subsequent liability

287. On April 16, 2013, the Specialized Criminal Chamber of the National Court of Justice handed down a judgment convicting National Assembly member Cléver Jiménez of the Pachakutik political movement, former trade unionist Fernando Villavicencio, and activist Carlos Figueroa, and sentencing them to prison time and the payment of a fine for the offense of defamation against Ecuador’s President Rafael Correa.585 The case began in 2011, when Jiménez, Villavicencio, and Figueroa filed a complaint before the Office of the Public Prosecutor alleging that on September 30, 2010, President Rafael Correa committed alleged crimes against humanity, in light of Articles 7 and 8 of the Rome Statute, as well as other offenses defined in the Ecuadorian Criminal Code. The case was not admitted by the National Court of Justice, which called it “malicious and reckless” for failing to prove the accusations. Subsequently, the President brought a defamation case against the plaintiffs pursuant to Article 494 of the Criminal Code.586 In April of 2013, the National Court of Justice found them guilty of “false accusation of a crime” (“injuria judicial”), and sentenced them to “a term of imprisonment of one and a half years, and a fine of thirty-one dollars […] [and] the suspension of their rights of citizenship for a period of time equal to the prison sentence.”587 Due to mitigating factors in Figueroa’s case, he was sentenced to six months in prison and a fine of eight dollars. The judgment additionally ordered the defendants to publicly apologize to Rafael Correa in print, on television, and on the radio, and to publish


586 Criminal Code of Ecuador. Art. 494. “Those that file a legal accusation [acusación judicial] or complaint [hecho denuncia] that could not be proven in a court of law will be sanctioned with a sentence of three months to three years of imprisonment and a fine of six to thirty-one United States dollars.”

an excerpt of the judgment in four print media outlets. The defendants were further ordered “as financial compensation, to pay Rafael Vicente Correa Delgado a sum equal to his current monthly salary for each month from August 4, 2011, the date on which the malicious and reckless complaint was filed, to the date on which notice of this judgment is given.”\footnote{Corte Nacional de Justicia. Causa 17721-2012-0826. Available for consultation at: http://www.cortenacional.gob.ec/cnj/index.php/consulta-de-causas} As of the closing date of this report, the motion [\textit{recurso de casación}] presented by Jiménez, Villavicencio y Figueroa remained pending.


289. The legislator Pepe Luis Acacho, who at the time was director of the radio station \textit{La Voz de Arutam}, was sentenced due to a number of expressions that, according to the government, led to the circumstances in which the death of teacher Wisuma occurred.\footnote{El Ciudadano/Official YouTube channel. July 20, 2013. Enlace ciudadano No. 331 desde la parroquia Febres Cordero- Guayaquil. [2:56:20]; Presidencia de la República/Official YouTube channel. August 17, 2013. Enlace ciudadano No. 335 – desde Checa, Pichincha. [2:37:00].} However, Acacho affirmed that the expressions matched the voices of different people from the indigenous community that called the radio station and that those who translated the radio recordings for the audience (from the Shuar language into Spanish) were not experts in Shuar accredited by the Judiciary Council and made a poor translation and interpretation of these expressions.\footnote{Hoy. August 14, 2013. \textquote[Los traductores no son peritos shuar]: Ecuadorinmediato. July 23, 2013. Defensa de José Acacho rechaza sentencia y asegura que Bosco Wisuma murió por perdigones de la Policía (Audio).} Similarly, he reportedly casted doubts on the independence of the Judiciary Branch, affirming that “the judges are alternate judges, are \textit{ad hoc} judges, are deputy judges; they are not head judges, and they took office only three months ago, whereas this process dates back to four years ago, with over 3000 pages, and I don’t know if they have read it; they simply obeyed and did not reason about it in order to judge”.\footnote{Ecuadorinmediato. July 23, 2013. Defensa de José Acacho rechaza sentencia y asegura que Bosco Wisuma murió por perdigones de la Policía (Audio).} The defenders of the accused are reported to have affirmed: “[the accusation] is totally illegal, one cannot accuse a person firstly of homicide, then of terrorism, then of sabotage, and at the end accuse him of sabotage, terrorism and homicide”. Regarding
the presumed perpetrators, they indicated that it would be necessary to investigate the police officers
who attempted to restrain the protest in which the teacher Wisuma took part.  

290. The President Correa, in Enlace Ciudadano 335, of August 17, stated that “due to his
[Pepe Acacho’s] irresponsibility, violence was generated and Bosco Wisuma died. [...] Is the penalty
excessive? I may agree with that, but could we talk about a pardon? Previous authorization by Bosco
Wisuma’s family? Granted, let us talk about it, but do not be so coward as to flee your responsibility.”
On September 6, was granted the request for nullity and appeal presented by Pepe Luis Acacho and
Pedro Mashiant to “appear before a High court in order to assert their rights”.  

291. It was reported that on March 3, while they were inside a private building in the
Luluncoto sector of Quito, ten youths were arrested and subsequently prosecuted and held in
detention, accused of crimes against the domestic security of the State (acts of terrorism). According
to the information disclosed at the court hearings held during the criminal case, the ten detainees had
allegedly gathered in order to discuss their participation in the public demonstrations that would take
place in the month of March. Human rights organizations like Amnesty International, Ecumenical
Human Rights Commission (CEDHU), The Project for Social-Environmental Reparation Environmental
Clinic, and the Regional Institute of Human Rights (INREDH), and high profile figures such as

595 Ecuadorinmediato. July 23, 2013. Defensa de José Acacho rechaza sentencia y asegura que Bosco Wisuma murió
por perdigones de la Policía (Audio).

596 El Ciudadano/Official YouTube channel. August 17, 2013. Enlace ciudadano No. 335 – desde Checa, Pichincha

597 Corte Provincial de Justicia de Morona Santiago, Sala Única. September 6, 2013. Causa No. 14111-2012-0278.

598 Ana Cristina Campaña Sandoval, Pablo Andrés Castro Cangas, Héctor Javier Estupiñán Prado, Luis Santiago
Gallegos Valarezo, Cristhiam Royce Gómez Romero, Yesenia [o Jescenia] Abigail Heras Bermeo, Luis Marcelo Merchán
Mosquera, Fadua Elizabeth Tapia Jarrin, Víctor Hugo Vinueza Puente and César Enrique Zambrano Farías.

599 Tercer Tribunal de Garantías Penales de Pichincha. Causa No. 2012-0124. Available for consultation at:
http://www.funcionjudicial-pichincha.gob.ec/index.php/consulta-de-procesos

600 Tercer Tribunal de Garantías Penales de Pichincha. Causa No. 2012-0124. Available for consultation at:
http://www.funcionjudicial-pichincha.gob.ec/index.php/consulta-de-procesos


602 Comisión Ecuménica de Derechos Humanos (CEDHU), Fundación Regional de Asesoría en Derechos Humanos

603 Comisión Ecuménica de Derechos Humanos (CEDHU), Fundación Regional de Asesoría en Derechos Humanos

604 Comisión Ecuménica de Derechos Humanos (CEDHU), Fundación Regional de Asesoría en Derechos Humanos
Baltazar Garzón agreed that in this case the application of terrorism laws could be in violation of human rights.

292. Fadua Elizabeth Tapia Jarrin reportedly obtained an alternative measure instead of preventive arrest, consisting of personal visit after every eight days to the Court in charge of her case. The defendants presented a habeas corpus appeal, and on December 20, 2012, the First Chamber for Labor Affairs, Childhood and Adolescence of the Provincial Court of Justice of Pichincha solved the petitions. The Chamber granted freedom to seven of the ten defendants and refused the appeal to Ana Cristina Campaña Sandoval, Fadua Elizabeth Tapia Jarrin (who enjoyed an alternative measure, instead of arrest) and Yescenia Abigail Heras Bermeo, “as the due motivation did not exist.” Heras Bermeo and Campaña Sandoval presented an appeal to the National Court of Justice, which decided to reject it through a sentence dated January 7, 2013, as there already was a resolution on the same facts by the Chamber of Administrative Disputes of the National Court of Justice dated July 19, 2012. The Third Supervisory Criminal Court of Pichincha handed sentenced the 10 individuals to one year in prison for the offense of “attempted terrorism.” The defendants filed appeals and motions to vacate in June, 2013. Ana Cristina Campaña and Yescenia Abigail Heras Bermeo were freed after serving the full term of their sentences. However, the judge ordered them to appear before the Court weekly until the pending motions were resolved.

293. According to information received, on January 4 the Supervisory Court for Criminal and Traffic Matters of Joya de los Sachas, in the Province of Orellana, convicted the representative of the Sacha Tv Canal 3 television channel, Juana Alexandra Heredia, for the defamation of a public defender. The legal action stemmed from a December 10, 2012 news broadcast reporting that the public official had been arrested for allegedly driving under the influence of alcohol. The public servant argued that the broadcast of the news “brought discredit” upon him, damaged his “good name and reputation” in relation to his position as a public defender, caused him “pain and suffering,” and harmed his “honor and prestige,” and that the statements went against his “moral and professional integrity.” As such, he requested compensation of at least US$ 500,000. After setting a mediation hearing—which the defendant and her legal representative did not attend—the judge sentenced the journalist to fourteen months in prison and a fine of US$ 10.00 (ten dollars). In response to the petition for review of a conviction presented by Mrs. Juana Alexandra Heredia Hidalgo, on August 14 the process was referred to the National Court of Justice of Ecuador.

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294. On May 22, the Minister of the Interior filed a complaint before the acting Prosecutor General against former Army Intelligence chief Mario Pazmiño Silva, for “defamation” [injuria] and “several accusations that constitute other offenses,” as a result of statements made in an interview on Radio Visión, in which Pazmiño Silva had allegedly linked law enforcement authorities to drug trafficking. According to the Minister’s complaint, the former intelligence chief “made serious, unfounded accusations against the State,” and therefore must provide “evidence” to establish who exactly “has direct ties to drug trafficking.” On May 10, on a Radio Visión’s interview Pazmiño claimed that “the corruption has reached immense levels and proportions, to the point where there are authorities within the Armed Forces, the National Police, and the Judiciary who are involved.”

295. Acting National Communications Secretary Patricio Barriga reportedly sent a letter dated 23 January 23, 2013 to the newspaper La Hora, demanding the implementation of “effective mechanisms” to ensure that reader comments “do not violate rights through false accusations or defamatory statements.” The Secretary stated in his letter that “On multiple occasions we have been able to verify offensive publications disguised as ‘citizen’ opinions that have been given space in the print and virtual editions of your newspaper. Those articles and remarks violate the honor and the good names of people, including the Constitutional President of the Republic. [...] The ‘permissiveness’ of La Hora with regard to these types of accusations and repudiations comes with a systemic attitude of rejection toward the current government. This may constitute violations of Article 13(2) (a) and (b) of the American Convention on Human Rights because it fosters hatred. [...] The National Secretariat of Communications, based on subsequent liability, demands the implementation of effective mechanisms to ensure that these comments do not violate rights through false accusations or defamatory statements that contribute nothing to the genuine and free flow of ideas required in a democratic society.”

296. During the March 16 airing of Enlace Ciudadano 313, President Rafael Correa reportedly asked the Minister of Defense to review “the court actions” that could be taken against the television station Ecuavisa after a March 11 news broadcast reported on alleged favoritism in the promotion of three colonels in the Ecuadorian Armed Forces. The president made reference to the “corrupt press,” and said: “They are doing all this to see whether we have a coup and they kill the president.” A video was also released to refute the news reported by Ecuavisa. Later, on March 18, the station aired a public apology to the members of the Armed Forces and their families. On March 30, during Enlace Ciudadano 315, the president reiterated the possibility of taking legal action against Ecuavisa if it did not
also apologize to the Minister of Defense. On April 1, the channel issued a new apology, in which it expressed regret for the “inaccuracy committed independently and without consultation by the former director of Televisión de las 13:00 in Quito, Freddy Barros, and publicly apologizes to the Minister of Defense.”

297. On April 4, the National Secretariat of Communications (SECOM) announced in a press release that the government would be taking legal action against La Hora for “inciting hatred,” based on the publication of photographs of the bodies of murdered Waorani indigenous people. The newspaper had reportedly published the photographs as part of its follow-up coverage of a massacre and the risks faced by the indigenous people. According to the statement released by the SECOM, the dissemination of the images “could have the effect of promoting hatred between two nations [Waorani and Taromenane] of the Ecuadorian State, with consequences that are difficult to predict [...] we will be going to the Office of the Prosecutor to file a complaint in this case and, within the framework of the rule of law and with full adherence to due process, we will demand punishment for those responsible for this crime, as well as justice and reparations for the victims of this cruel, inhuman, and degrading treatment” the Secretariat reported.

298. On May 11, during Enlace Ciudadano 321, President Rafael Correa reportedly announced that he would ask for a meeting with the Prosecutor General to intensify investigations into the violent acts that took place on September 30, 2010, and suggested the investigation of the “parapsychologist” journalists of Teleamazonas who, according to the president, “knew what was going to happen.” “Teleamazonas knew what was going to happen on September 30 [...] It was the first to start broadcasting live. But for that, it must have positioned its microwaves in the early morning hours, before the September 30 uprising began,” stated President Correa.
a video containing part of Teleamazonas’s coverage of the conflict was shown, and the channel was accused of being complicit in the call for the Armed Forces to rise up. The video also showed a tweet posted the day before the events by the channel’s news host, Milton Pérez, in which he said to a colleague: “Pay attention to what might happen in Ecuador, these will be crucial days and it could be very intense.” The president maintained that the tweet proves that Pérez was “anticipating what was going to happen” on September 30.

299. On May 12, National Communications Secretary Fernando Alvarado posted on his personal blog that the agency he heads—the National Secretariat of Communications—“took follow-up actions” based on the “premonitory” message posted by journalist Milton Pérez, “revealing possible dangerous connections between this news medium and political and military factions prepared to carry out a planned coup d’état.” He urged a “thorough investigation” of the media’s role in the events of September 30. On May 13, President Correa announced in Enlace Ciudadano 321 that he had met with the Prosecutor General to discuss the investigation of the Teleamazonas journalists in relation to these events. After the meeting, the prosecutor reported that journalist Milton Pérez would be called to testify in the investigation into the events of September 30.

300. On January 30, in place of the usual cartoon on its editorial page, the newspaper El Universal published a letter from President Rafael Correa and Vice President Jorge Glas, in which they demanded that the newspaper publicly apologize for a cartoon of Xavier Bonilla, known as Bonil. The cartoon had been published on January 21, and in the opinion of the President and Vice President, was “a violation of the historical memory” of Ecuadorians and affected their image. The letter was also sent to the chief justice of the National Electoral Court.

301. Principle 10 of the IACHR’s Declaration of Principles establishes 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.” 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”.

302. 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.”

E. Hearings before the Inter-American Commission on Human Rights

303. The Inter-American Commission and the Office of the Special Rapporteur received information indicating that after the hearing on the “Situation of the Right to Freedom of Expression in Ecuador,” held on March 12 during the 147 Period of Sessions of the IACHR, high-ranking Ecuadorian authorities used offensive terms in the March 16 episode of the program Enlace Ciudadano and in a mandatory government broadcast that aired on March 19 in reference to the individuals and organizations that presented information at the hearing. The government broadcast disparaged the participation of the petitioners in the hearing.

304. Additionally, in Enlace Ciudadano 313 of March 16, President Rafael Correa questioned the standing of Fundamedios to take part in the IACHR hearing: “Who among you voted for Fundamedios? Who feels represented by Fundamedios? Why can Fundamedios go to the Commission to condemn the Ecuadorian State? What competence does it have? How is it representative? But also just think of the insider connections: they fund the Commission and they fund the foundations that are going to the Commission to condemn the States that they dislike them. Because Fundamedios is funded by USAID. These liars are going to say: ‘No, we are funded by the Faro Foundation.’ Yes. [But] the Faro Foundation received millions of dollars from USAID, and they pass it on to Fundamedios, and they think that they are going to fool people with that triangulation. The gringos are very well-informed, they are very savvy. And with all the money they have. They fund the Commission and they fund the foundations that complain to the Commission about the States they don’t like. [...] The first question we have to ask ourselves—because all of this costs the Ecuadorian people money in terms of travel, per diems,

lodging—is: Why do we have to go defend ourselves from the accusations of a foundation? Why? I don’t understand it [...] I can assure you that they won’t even give one of you a visa to go to the U.S. Even less so to go to the Commission. But these gentlemen, like it’s nothing, they go and they take us, a sovereign State, to the defendant’s table.” 633

305. Several state-run media also published articles criticizing the organization and its participation in the IACHR hearing, in which they challenged the organization’s standing to take part in those proceedings, and belittled its work. Some of the headlines were: “Who does Fundamedios represent?”634 and “U.S. indirectly funds Fundamedios.”635

306. In a press release issued on April 5, after the 147 Period Sessions, the Inter-American Commission expressed its “deepest concern over the fact that some of the individuals who appear at IACHR hearings and working meetings have been subject to threats, reprisals and actions to discredit them, on the part of both private individuals and, in some cases, high-level State officials.” The Commission “considers unacceptable any type of action a State might undertake that is motivated by the participation or actions of individuals or organizations before inter-American human rights bodies, in the exercise of their rights under the Convention. The Inter-American Commission [...] reminds the States that Article 63 of the IACHR Rules of Procedure establishes that the States ‘shall grant the necessary guarantees to all the persons who attend a hearing or who in the course of a hearing provide information, testimony or evidence of any type to the Commission,’ and that the States ‘may not prosecute the witnesses or experts, or carry out reprisals against them or their family members because of their statements or expert opinions given before the Commission’”636.

307. The Inter-American Commission and the Office of the Special Rapporteur received information indicating that after the hearing on the “Situation of the Right to Freedom of Expression in Ecuador,” held on October 28 during the 149 Period of Sessions of the IACHR, high-ranking Ecuadorian authorities used offensive terms on the program Enlace Ciudadano and on their Twitter accounts in reference to the individuals and organizations that presented information at the hearing.637

308. On October 28, Communications Secretary Fernando Alvarado reportedly posted the following message on Twitter: “It was about time #Ecuador refuses to participate in charades put on by opportunistic political intriguers under the guise of human rights @CIDHPrensa.”638 On October 29, President Rafael Correa reportedly made reference on his official Twitter account to the presence of the petitioners before the IACHR in the following manner: “...15 organizations ‘denounce’ the Ecuadorian government before the IACHR. Not even the dictatorships had so many ‘denunciations’! The reality: one...”639 “...more ridiculous stunt by the losers of the elections and the international bureaucracy:


634 El Ciudadano. March 17, 2013. ¿A quién representa Fundamedios?.

635 Agencia Pública de Noticias del Ecuador y Suramérica (Andes). March 16, 2013. EE.UU. financia a Fundamedios a través de una triangulación.


637 Presidencia de la República del Ecuador/Official YouTube channel. November 2, 2013. Enlace Ciudadano Nro. 346 desde Chone, Manabí (Con Jorge Glas, Vicepresidente de la República). [02:10:00].

638 Fernando Alvarado’s official Twitter account @FAlvarado. October 28, 2013 - 5:57 PM.

639 Rafael Correa’s official Twitter account @MashiRafael. October 29, 2013 - 3:23 PM.
CORDES (O. Hurtado, funded by Konrad Adenauer)... 640 "...Fundamedios (newspaper owners as well as cheapskates, since they are funded by USAID). By the ‘left’: Ecuarinari (PK), UNE (MPD)... 641 "...Retail merchants (MPD), etc. We are not going to play along with these antics. 642

309. The petitioners reportedly received threats from private individuals through Twitter: "@FUNDAMEDIOS If you commit an outrage against Correa, all the money the CIA gives you won’t be enough to buy the coffins. 643

310. On November 2, Ecuador’s Vice President Jorge Glas reportedly belittled the petitioners during Enlace Ciudadano 346, stating: “It’s fashionable now for some people, even some political intriguers, who used to speak out against the empire, to go and complain about their country to Washington [...] we know that they are political opponents, that they do this in bad faith. They are political actors—some are in political parties, some are disguised as political parties, some are hidden behind non-governmental organizations, NGOs, and also some claim to be journalists." 644

311. In a press release issued on November 8, after the conclusion of the 149 Period of Sessions, the Inter-American Commission expressed its “deepest concern over threats, reprisals, and disparaging acts directed against some individuals who attend IACHR hearings and working meetings, both on the part of individuals and, in some cases, State authorities. Specifically, the IACHR received information indicating that after the two hearings held on Ecuador, high-level Ecuadorian authorities used insulting terms in referring to the individuals and organizations that presented information at the hearing. The Commissioner considers unacceptable any type of reprisal or stigmatization that a State may undertake because of the participation or actions of individuals or organizations before the bodies of the inter-American system, in exercise of their treaty rights. The Commission reminds the States that Article 63 of the IACHR Rules of Procedure establishes that States ‘shall grant the necessary guarantees to all the persons who attend a hearing or who in the course of a hearing provide information, testimony or evidence of any type,’ and that States ‘may not prosecute the witnesses or experts, or carry out reprisals against them or their family members because of their statements or expert opinions given before the Commission.’ 645

F. Stigmatizing statements

312. The Office of the Special Rapporteur has been aware of repeated stigmatizing statements made by President Rafael Correa to journalists and members of the media. For example, on
February 23, during Enlace Ciudadano 310, President Rafael Correa called journalist Andrés Oppenheimer of the U.S. newspaper El Nuevo Herald “fascist,” “corrupt,” and “shameless.” According to the information received, the statements against Oppenheimer were made following the journalist’s publication of an article entitled “Ecuador: 21st Century Dictatorship?” On that same occasion, the President called into question El Universo cartoonist Xavier Bonilla, reportedly saying that there are “hit men armed with pens who disguise themselves as supposed humorists.” Later, on March 11, Bonilla reported that he had received threats through his personal Facebook account.

313. According to information received by the Office of the Special Rapporteur, on January former El Universo newspaper editorialist Emilio Palacio—who at the time was exiled in the United States—reported that he continued to be the victim of persecution by the Ecuadorian Government. Palacio maintained, among other things, that his YouTube account was blocked after he uploaded a documentary entitled “Rafael Correa: portrait of a father of the Homeland.” Palacio also reported that the state-run media had accused him of having received a large sum of money after leaving El Universo. Headlines such as “Bonus to Emilio Palacio shows that he was a ‘puppet’ used to insult President Correa, says jurist,” published on January 23 by the state-run Andes news agency, is one example. Additionally, on December 28, 2012, the newspaper El Ciudadano published an article entitled “Emilio’s Paranoia,” calling him a “[j]udicially tagged loose bird.” Emilio Palacio has been a political asylee in United States since August 17, 2012, after having been sentenced, together with the directors of El Universo, to three years in prison and the payment of a US$ 40 million fine, in a case brought by President Rafael Correa because of a column he found “defamatory” [injuriosa]. In Enlace Ciudadano 345, broadcast on October 26, President Correa reportedly referred to Palacio when he remarked on an article published in the Bloomberg magazine on October 22 about the Chevron case: “imagine the source they cite: ‘Ecuadorian journalist Emilio Palacio asked the obvious question’ [reading of a paragraph from the article] They must be the only people left in the world who pay attention to that


psychopath [...] this is how a sick person like Emilio Palacio lies against his own homeland, and a press with no ethics.”

314. On April 8, the Ministry of Interior issued a statement addressed to the newspaper El Comercio concerning an interview with Latin American School of Social Sciences Professor Freddy Rivera, which was published on March 31 and entitled “The country needs an evaluation of the investment made in security.” According to the Ministry, “[t]he interview published by EL COMERCIO demonstrates, once again, the limitations, the ill intent, and the double standard that this mercantile medium has in its editorial production process.” The Ministry added, “[w]e are no longer surprised by the inadequacy and blindness of certain ‘journalists’ who are part of the network of cynicism and shamelessness we must face on a daily basis, in addition to street crime and organized crime. [...] The newspaper’s ill will and limitations are summed up in its use of misinformed sources, the failure to confirm information, the use of guided and poorly-formulated questions, a clear absence of training on the part of the journalists and editors on the issue, and the imposition of its very particular perspective and business interests.”

315. President Rafael Correa has repeatedly discredited Martín Pallares, in charge of new digital developments at the newspaper El Comercio, calling him “sick,” “dumb,” a “hater,” “unethical”, and “a coward.” For example, on March 2, during Enlace Ciudadano 311, Correa criticized an article published by Pallares, who he called “ineffable,” saying: “this guy is really sick.” On March 9, in Enlace Ciudadano 312, the president referred to the journalist as “dumb,” “a hater,” and “a coward”: “This guy [Pallares] sees me and doesn’t dare say a word, because they’re also cowards. This most foolish of fools— with Emilio Palacio—they show their hatred. They are an extreme, but representative, example of many journalists who are more intelligent—or at least less stupid than these guys—but haters all the same, and they wage a campaign to destroy honor, morals, and the truth, day by day through the newspapers.” During the presidential speech, a video was shown that criticized a tweet posted by the journalist and accused him of having a “pathological disorder.” On April 6, during Enlace Ciudadano 316, the president called the journalist “poor man” and “sick” for having made a remark on Twitter about a trip the president took to the Vatican. “Let’s look at these sick people who act as pseudo-journalists, who try to show how corrupt and evil I am so they can justify their hatred. [...] toward Correa because he has been corrupt, he has been a thief, he has been a torturer, he has been
vulgar [...] This ineffable Mr. Pallares! Poor thing, right? How he hates people,” said Correa. The president’s insults and disparaging remarks toward Pallares were repeated on several occasions during 2012 and 2011, which has exposed the journalist to the risk of potential retaliation by the public. For example, on May 3 and 10, Pallares received threats from unknown persons via Twitter. Minister of Interior José Serrano reportedly stated, also via Twitter, that he had ordered the appropriate investigation into the matter because “it is sufficient for a citizen to be the victim of an act like this, for us to condemn it.” Subsequently, a person who posted a remark on Twitter reportedly apologized to Pallares “please, it was nothing serious, I’m terribly sorry for my stupid mistake, thank you.”

316. On April 13, during Enlace Ciudadano 317, President Correa criticized the organization Fundamedios and its Executive Director, César Ricaurte, after the publication of a column by Ricaurte about the president’s repeated attacks against newspaper journalist Martín Pallares of El Comercio. Correa accused Fundamedios of being funded “to defend the abuses of the trade, of the bad journalists,” and questioned the column published, stating: “now it turns out that I have insulted poor Mr. Martín Pallares of El Comercio because I called him sick and stupid. Surely Mr. Pallares is a poor orphan of the mothers of charity, who has never done anything wrong, who gets an answer back because he is a poor little angel [...] This is a very serious problem, because it shows that these people, Fundamedios and Ricaurte, are paid not to defend freedom of expression, a right of all citizens, [but rather] to defend the abuses of the trade, of the bad journalists.” A video was also released, asserting that: “[Martín Pallares] is the great victim of the virulent and inappropriate language of a president because César Ricaurte says so in his arrogance and in his vanity, because he thinks that because he is a journalist he is above good and evil.”

317. In episode 320 of Enlace Ciudadano, which aired on May 4, President Correa criticized an event organized by the National Journalists’ Union (UNP) to commemorate World Press Freedom Day. Correa stated: “these clowns got together, the usual journalists, of the oligarchy, meddling...
ambassadors, no doubt to complain in secret that there is no freedom of expression in this country [...] and if you see them all together, these clowns, other clowns that act as journalists, and even the ambassadors—because they are surely financing it, just like they finance Fundamedios [...]” On May 6, the UNP issued a statement asking the president either to rectify the insinuation that the event had been funded by an embassy, or to prove that assertion with evidence. In response, SECOM Chief Fernando Alvarado sent a letter to the UNP stating that “it would be interesting for the UNP to provide a transparent account of its finances,” and that he shares “President Correa’s suspicions about the backing of the U.S. Embassy and other powers that be against the Citizen Revolution, whose objective is to cause chaos and confusion among the people under a political scheme of blind and destructive opposition.”

318. On June 1, in Enlace Ciudadano 324, President Correa reportedly warned the content editor of the newspaper Hoy, Roberto Aguilar, not to meddle in his “private life,” in relation to an article the journalist had published in April 2011 in the newspaper Expreso. In presenting the segment called “Bitterness of the Week”, the president stated: “let’s look at the article from the newspaper Hoy, which is owned by the president of the SIP, the Inter-American Press Society. The article by its journalist Roberto Aguilar, a bitter man, went into my kids’ school, and if he does it again—they can say whatever they want to me about freedom of expression—if he meddles in my private life, and this guy is going to have to deal with me.”

319. On August 29, President Rafael Correa had an altercation with singer-songwriter and human rights activist Jaime Guevara, who allegedly made an obscene gesture at the presidential motorcade as it passed by. The president, as on other occasions, ordered the vehicle to stop so he could confront the person who had made the gesture. After an altercation in the street, the president reportedly continued on his way and left the citizen the custody of a police officer, who left the scene some time later. Jaime Guevara alluded to the event on his personal Facebook page. In response, in Enlace Ciudadano 337, the president cited the report of presidential security chief Major Montenegro, stating in reference to Mr. Guevara: “I don’t know which is worse, his singing or his writing, [...] he’s a

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673 For example, in 2011, Marcos Luis Sovenis was detained and attacked for shouting “fascist” as President Correa was traveling through the town of Babahoyo, and the President announced his intention to take legal action against him for desacato. German Ponce was detained for 72 hours for shouting at the presidential motorcade: “why are you welcoming this corrupt son of a b…”. Irma Parra was taken into custody for several hours for having made a gesture that the president considered to be obscene. Parra insisted to the media that she only made a “NO” sign with her hand, to express her opposition to the ballot question called for by the government. IACHR. Annual Report 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). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 157 to 159; El Universo. April 13, 2011. Detenidos por lanzar ofensas al presidente; Radio Sucre. April 14, 2011. Correa ordena detención de dos personas por decirle No a la consulta; Hoy. April 14, 2011. Presos dos acusados de ofender a Correa.

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horrible singer [...] Believe me, this poor man was staggering, he reeked of alcohol, and he had a whole pharmacy on him, because he’s a drug addict [...]. If he has some kind of problem with me, we’ll resolve it next time I see him. You’ll see that if I touch him, it will be ‘Correa assaulted defenseless popular artist.’ That’s it. Poor man, what he needs to do is go to a rehab clinic to detox.”

The official report stated that Jaime Guevara “gave off a strong odor of alcohol and clearly showed signs of being in a highly intoxicated state, namely his empty gaze, his inability to speak, and difficulty in expressing himself and maintaining his balance.”

Moments after the speech, individuals close to Jaime Guevara reportedly disclosed information according to which Guevara has a medical prescription that prevents him from consuming drugs or alcohol. When this information was made public, President Correa referred publicly to the information contained in a police report, saying: “This is a not false report, it is telling the truth; it draws the wrong conclusion.” Moreover, he stated that “it’s not that we have lied, there is an erroneous report, but ‘lie’ means that the truth was deliberately misrepresented, and that is not the case. We thought the guy was intoxicated—he smelled of alcohol, he was incoherent, he was staggering— [...] He gave every indication of [being intoxicated.]”

On September 7, in Enlace Ciudadano No. 338, President Correa announced that he would correct the information, given that, according to the information received, Jaime Guevara had an illness that prevented him from consuming drugs or alcohol. In his presidential speech, after reading the comments made by a friend of Guevara’s on Facebook, the president read the following statement: “While Mr. Jaime Guevara is rude and deceitful; while he might have erroneous, myopic, virulent, and dim-witted leftist political affiliations; while he is a virulent and aggressive anarchist; while he also has an irreversible illness, cysticercosis, which has caused him to have extreme virulence and epileptic attacks for decades, especially when he has outbursts of rage and indignation against people who don’t think the way he does; while those attacks cause him to have an empty gaze, the inability to speak, difficulty expressing himself and maintaining his balance, all of which makes him seem drunk and under the influence of drugs, especially when he reeks of alcohol most likely from the medicines he takes—according to people who know him and according to his own statements, he is not a drunk or a drug addict.”

After the correction, the president stated that: “as long as I am the president, I will not allow any ignoramus to infringe— any resentful, bitter person, to infringe upon the honor of the President of the Republic, and if you don’t want that, comrades, let me react as a citizen [...] [if] some hater, some bitter person comes and makes an obscene gesture at you, who among you wouldn’t take him down with a good punch? [...] If this guy had made an obscene gesture at me, in front of my mother and my

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wife, I would have given him such a kick in the pants, he would have been flat on his back for the rest of the year.”

321. After the president’s speech, the hashtag #UnPuñeteParaGuevara was created on Twitter and used to convey insults and criticism of singer-songwriter Jaime Guevara. For example: “Ecuadorians like Jaime Guevara are pitiful, and yes, my presi @MashiRafael, I would give that clown a kick too #UnPuñeteParaGuevara;” “#UnPuñeteParaGuevara @MashiRafael @FAlvaradoE I’d set on JaimeGuevara with a stick and a machete, he deserves it;” “Come to Guayaquil Jaime Guevara, insignificant slob, so you can see how someone from Guayaquil responds to a gesture like that, #UnPuñeteParaGuevara;” “#UnPuñeteParaGuevara I’d break his teeth if he did that to me… where is the respect? @Correistas.”

322. On September 7, in that same episode No. 338 of Enlace Ciudadano, President Correa criticized an editorial published in the newspaper Hoy. The article was reportedly written by university student Miguel Molina about the social protests against oil drilling in the Yasuní ITT. A video was aired on the president’s program and information, photographs, and communications from the student’s personal Facebook account were shown in order to assert that he had not been present at the scene of the events he described.

323. In Enlace Ciudadano No. 339, broadcast on September 14, President Correa made reference to an interview of indigenous leader Cecilia Velasque conducted by Diego Oquendo of Radio Visión, stating that: “when a radio broadcaster, or a journalist, knows that his interview subject is lying, he has the moral duty to clarify it and say that it is not true. Not here. Here they think that since the other one is the one lying, I’ll keep quiet and it’s no big deal. No—they are accomplices to that lie; they are also liars.”

324. On September 21, during the broadcast of Enlace Ciudadano 340, President Rafael Correa ripped up copies of the newspapers El Comercio, Hoy, and La Hora. He ripped up the copy of El Comercio because of publications about the judgment from Permanent Court of Arbitration of The Hague in the Chevron case. He also criticized articles about the Yasuní-ITT in Hoy and La Hora. Upon
tearing up the copy of Hoy, he stated, “This belongs to the president of the SIP, who doesn’t even comply with the labor laws,” and before ripping up a copy of La Hora, he said, “this is worse than El Universo, which has calmed down quite a bit, especially with the new Communications Act and after I won the case against them two years ago, because they can complain all they want but they learned their lesson [...] the worst of them all is La Hora, this rag—to call it a newspaper is an insult to the real media—and the newspaper Hoy, well, this guy is just filled with hatred.”

325. 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. The Office of the Special Rapporteur additionally recalls that freedom of expression must be guaranteed not only with respect to the dissemination of ideas and information that are received favorably or considered inoffensive or indifferent but also in cases of speech that is offensive, shocking, unsettling, unpleasant, or disturbing to the State or to any segment of the population.

326. 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.”

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G. The Communications Act and its enforcement

327. On June 22, the President of Ecuador signed into law the Communications Act that had been passed by the National Assembly of Ecuador on June 14. In a June 28 press release, the Office of the Special Rapporteur for Freedom of Expression expressed its concern over the onerous restrictions established under that Law. The articles of the Act establish some important principles regarding the exercise of the right to freedom of thought and expression. Nevertheless, in regulating those principles, the law establishes onerous restrictions that render them virtually ineffective. Such restrictions, examined in a letter sent to the State by the Office of the Special Rapporteur, could severely hinder the exercise of the right of freedom of expression and have a serious chilling effect that is incompatible with a democratic society. The Office of the Special Rapporteur, in ten sections, discusses those restrictions: (i) Scope of application of the Act; (ii) Enforcement authority; (iii) Infractions and sanctions regime; (iv) Obligation of the media to have a “media watchdog” elected by the State; (v) Imposition of prior conditions; (vi) Requirement that certain positions be held exclusively by “professional journalists”; (vii) Self-censorship; (viii) Right of correction or reply; (ix) Duty to observe good journalistic practice; and (x) Penalties for the publication of confidential information and the authority to request information from individuals connected to the media.

328. With regard to the scope of application of the act the Office of the Special Rapporteur stated that the Act imposes a significant number of obligations on all media outlets, without regard to their format or size. Under this Act, all persons who avail themselves of any media to express their ideas or opinions are providing a public service. In this sense, understood as a public service, the State assumes exorbitant powers to regulate the exercise of the fundamental right to express oneself freely through any medium that a person chooses. For the enforcement of sanctions and oversight of the obligations set forth in the Act, this measure creates three bodies. For this Office, the lack of clarity regarding the competence of these different bodies could generate a significant level of uncertainty about the extent of their authorities. In particular, the Act creates an administrative entity called the “Office of the Superintendent of Information and Communications,” whose head will be appointed by a collegiate administrative body from a slate of three candidates sent by the President of the Republic. This administrative official is not afforded the minimum institutional guarantees that would enable him or her to operate autonomously and independently of the government. Nevertheless, his or her authorities include oversight of all communication media. The Office of the Superintendent is the body with competence to impose sanctions on any media outlet committing any of the infractions established in the Act or omitting to comply with any of the numerous obligations it establishes. The infractions and

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696 “Art. 71. Shared Responsibilities. Information is a constitutional right and a public good, and the social communications the media provide to society is a public service that must be provided with responsibility and quality, respecting the communication rights established in the Constitution and in international instruments, and contributing to human well-being [buen vivir] [...].”
697 Article 47 creates the Council for the Regulation and Implementation of Information and Communications; Article 54 creates an “Advisory Council”; and Article 55 creates the Office of the Superintendent of Information and Communications.
698 The Superintendent is elected by the Council of Citizen Participation and Societal Control from a slate of three candidates forwarded by the President of the Republic. Article 55 of the Act.
sanctions regime establishes potentially ambiguous and onerous obligations. For example, the Act creates an infraction called “media lynching,” by which any sustained report of corruption that could lead to a loss of the “public credibility” of the public servant involved could be deemed by the competent administrative body to be “media lynching” and constitute grounds for the respective sanctions. The Act also creates the obligation of all media outlets, regardless of their form and content, to draft a code of ethics, the basic content of which is established in the text of the Act itself (Art. 9 and 10).

The Law also creates the obligation of all media outlets to “cover and disseminate matters of public interest” and stipulates that “the deliberate and repeated omission to disseminate matters of public interest is an act of prior censorship” (Art. 18) that will be subject to the corresponding sanctions.

The Office of the Special Rapporteur also stated that Act establishes the requirement that all media outlets must have an “ombudsman of the audiences and readers” (Art. 73). Each medium’s watchdog will be elected in a competitive public process by a State administrative body called the Council of Citizen Participation and Social Control. It is of enormous concern to this Office that the State might require the media to put on their payrolls and in their newsrooms a person chosen through a procedure designed and implemented by the State, whose powers and responsibilities would be set by the State itself and to whom the media might have to provide spaces for the publication of errors and corrections (Art. 73). Moreover, the Act includes other requirements in addition to the ones required under Article 13 of the American Convention in terms of offering protection to the circulation of information. In fact, the Act establishes the requirement that the information that circulates in the media must be “verified, corroborated, accurate, and contextualized,” and it assigns specific obligations to the media in each one of these areas (Art. 22).

The Act establishes that only “professional” journalists and media workers may perform the ongoing journalistic activities of the media, at any level or position. Exceptions are made for those who have specialized or opinion programs and columns and those who perform journalistic activities in the “languages of the indigenous peoples and nations” (Art. 42).

The Act expressly prohibits self-censorship. Nevertheless, it creates very strong incentives for journalists, editors, and media owners to adopt disproportionate self-restrictions as a measure of protection against the uncertain potential of being subject to the penalties established in the Act. For example, although the Act indicates that media executives must respect the independence of their journalists, it makes the media outlet responsible for the dissemination of information of all types of content, which must be “contextualized,” “accurate,” and “verified,” and not violate the human rights, or tarnish the reputation, honor, or good name of individuals, or jeopardize the public security of

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699 “Art. 26.- Media Lynching.- It is prohibited to disseminate information that, directly or through third parties, is produced in a coordinated manner and published repeatedly through one or more communications media with the purpose of harming the reputation or diminishing the public credibility of an individual or legal entity [...]” and “Art. 10.- Ethical standards.- All individuals or legal entities that participate in the communications process shall take account of the following minimum standards, in accordance with the characteristics of the media they utilize to disseminate information and views: [...] 4. Practices of Social Media: [...] j. To abstain from “media lynching” practices, defined as: the dissemination of information that, directly or through third parties, is produced in a coordinated manner and published repeatedly through one or more communications media with the purpose of harming the reputation or diminishing the public credibility of a person or legal entity [...].”

700 That text establishes dozens of obligations that are to be included as “minimum standards” in that code of ethics,” whose enforcement will be monitored by the administrative authorities established in the Act.
the State. This same contradiction arises in connection with the liability of the media for comments published by users.\footnote{In fact, one section establishes the need to respect the freedom of opinion and expression of all persons and another establishes the administrative, civil, and criminal liability of media outlets for the publication of comments of third parties that violate rights enshrined in the Constitution and the law, when in the authorities’ view, the media have failed to adopt sufficient mechanisms to filter them (Article 20).}

332. Regarding the right of correction or reply, the Act does not require that the information published be false. Also, it does establish that public affairs information and information of general interest or that “violates a person’s right to honor or other constitutionally established rights” is information “of public relevance” [that must be published]\footnote{“Article 18.- […] The media have an obligation to cover and disseminate events of public interest. The deliberate and repeated omission to disseminate matters of public interest constitutes an act of prior censorship […].”} (Art. 7). Under Article 24,\footnote{“Article 24.- Right of Reply.- Any person or group that has been directed referred to in the media in a way that harms his rights to dignity, honor, reputation has the right to have the medium disseminate his, her, or its reply free of charge, in the same space, on the same page, and in the same section of a print medium, or on the same radio or television program, within a period not to exceed 72 hours from the time the request is made […].”} it is enough for a person to feel offended by any reference or editorial note for the medium to be required to publish, in the same space, his or her opinion with respect to the matter. The enforcing authority in charge of determining whether there has been a violation that requires the publication of a reply or correction is the Office of the Superintendent of Information and Communication.

333. For the Office of the Special Rapporteur, it is of particular concern that the Act extends the duty of confidentiality with regard to public information that the State has classified not only to private parties but also to the media (Art. 30). Furthermore, this Office is concerned by the overly broad and vague terms that describe the powers of the administrative authority which applies the aforementioned Act to access private information belonging to actors related to the media (Art. 56.3).\footnote{“Article 56. Powers of the Superintendence of Information and Communications. […] 3. To require citizens, institutions and actors involved in communications to provide information about themselves that is necessary to the exercise of its duties. […]”}

334. In this regard, the Office of the Special Rapporteur considers it necessary to reiterate that, as it as expressed in its joint declarations on Wikileaks (2010) and on surveillance programs and their impact on freedom of expression (2013), public authorities and their staff bear sole responsibility for protecting the confidentiality of legitimately classified information under their control. Under no circumstances, journalists, media workers and civil society representatives, who receive and disseminate classified information because they believe it is in the public interest, should not be subject to liability.

335. On a related matter, the Office of the Special Rapporteur is concerned that while the Act establishes the aforementioned restrictions, it also confers on the Office of the Superintendent of Information and Communication the power to “require citizens, institutions and actors related to the communication to provide information about themselves that is necessary to comply with its functions” (Art. 56). The Act does not require judicial intervention or control of any type in relation to this clause. According to the text, those who do not comply with the obligation to send information “about themselves” when requested by the Office of the Superintendent will be subject to the sanctions applicable to the failure to comply with an order of this authority.
This Office of the Special Rapporteur had the opportunity to raise the abovementioned issues with the State in several letters sent over the course of the past three years. The Office of the Special Rapporteur regrets that the competent authorities failed to take account of the international standards referred to in the letters and reports that were sent at the appropriate time. The Office of the Special Rapporteur believes it is of the utmost importance that the authorities review the newly enacted law in light of developments in international human rights law and amend the aspects that could seriously jeopardize the right to freedom of expression of all persons in Ecuador.

According to information received, on July 4, the Constitutional Court admitted for processing an unconstitutionality action [demanda de inconstitucionalidad] against the Communications Act, filed by legislator Luis Fernando Torres. In addition, on September 3, 60 citizens filed another complaint against the Communications Act. As of the close of this report, these proceedings had not been adjudicated.

One of the first reactions to the Communications Act came on June 28, when the magazine Vanguardia, which specializes in investigative journalism, ceased operations. As the company’s executives indicated in an editorial, this decision resulted from the new restrictions imposed under the Communications Act signed into law in Ecuador on June 22. In the editorial, Vanguardia indicated that “there is no public body that has not contributed” to the “persecution” of the media, which, in consequence, had endured “seizures, theft, disproportionate fines, and bureaucratic harassment in all its forms,” and, on three occasions, loss of its equipment. “[...] We cannot silently accept the government’s capacity to determine the subject matter or agendas we are to discuss; the appointment of a censorship official to work on our magazine; that, as an investigative medium, we may not publish judicial matters until a judgment so authorizing has been rendered by the court of last resort, --which is to say never--; that crime and corruption-related matters may not be published; that we are liable for the opinions of third parties; that we are told what headlines we are to print; that all information-related activity will be supervised and monitored; and that a Superintendent appointed by the President of the Republic has dictatorial authority to impose sanctions. We will never tolerate any of this and to do so would be degrading and contrary to the values we uphold. These are our reasons for ceasing to operate [...]”

The general editor of Vanguardia and some of its team launched a new journalistic enterprise: the digital magazine Plan V. According to information received, the new magazine was launched on September 20 and, on September 26, journalist of the new outlet, Juan Carlos Calderón, received death threats. These facts resulted from the publication of an investigative article that

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denounced alleged mismanagement of the reinsurance of State enterprises. The journalist filed a complaint with the Office of the Public Prosecutor and had received a call from the Minister of Interior offering him security and indicating his “repudiation of these types of situations.”

340. According to information received, on August 9, the Council for the Regulation and Implementation of Information and Communications, created by the Communications Act, issued a press release addressed to “public opinion.” That press release indicated that “police blotter news, interview programs, and political debates in the media whose presenters and guests use abusive language, even when expressing their personal views, are negligent in their duty to respect and promote respect for human rights established in Article 71.1 of the Communications Act (LOC). This Council urges journalists, interviewers, public authorities, and public personalities to strive to elevate their tone when making statements in the media [...]; and calls for ethical and responsible use of information which, in all cases, entails respect for citizens’ rights to personal and family image and privacy and to protection of personal information since, unfortunately, some journalistic practices are still at variance with the professional and legal standards applicable to the media. Therefore, we propose that these be reviewed and how they are addressed brought into line with the rule of the law.”

341. On August 31, President Correa indicated in the Enlace Ciudadano broadcast that “following the Yasuní decision, newspapers have become extremely ecological, and I repeat, we will conduct a popular consultation; let’s ask ourselves whether we want digital newspapers to prevent the felling so many trees. I have received irate complaints asking how we are going to ripen avocados. Not with the corrupt press—the avocados rot. And what are we going to use as placemats for the crab stew [cangrejada]? Not the corrupt press—it will harm the crabs, it will make them ill.” On August 19, the newspaper El Universo published an article containing different tweets of citizen reactions to the Yusuni

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On August 19, President Correa posted on his Twitter account @MashiRafael: "...Now the greatest ‘ecologists’ are the mercantilist newspapers. Well, if we hold a ballot question, we too will propose only digital newspapers... to save paper and prevent so much indiscriminate felling of trees. We will see who is who. don’t be fooled...”. Cuenta oficial de Twitter de Rafael Correa @MashiRafael. *August 19, 2013 - 9:18 AM* and *August 19, 2013 - 9:20 AM*.

The tweet was published in reaction to criticism of the government’s decision to exploit the oil reserves in the Yasuní ITT National Park and to the citizen initiatives to submit the decision to a ballot question. El Tiempo/AFP. August 19, 2013. *Correa propone consulta para acabar con los diarios de papel*; El Universo. August 19, 2013. *Presidente condiciona consulta sobre Yasuní; propone que solo existan diarios digitales*; El Comercio/AFP. August 19, 2013. *Rafael Correa propone consulta para eliminar diarios de papel en Ecuador*.

On August 24, during the Enlace Ciudadano 336, President Correa repeated that if a referendum was held, it would include the question “Do you agree that all polluting publicity should be banned? [...] That is, all polluting goods in media banned?”. Presidencia de la República/Official YouTube channel. August 26, 2013 *Enlace Ciudadano Nro. 336 desde Sangolqui, Pichincha*. [02:41:49]; El Ciudadano. August 24, 2013. *Prohibir la publicidad de bienes que contaminan, la propuesta en una potencial consulta popular (VIDEO)*.
ITT matter and statements about the possible popular consultation.714 On August 21, the National Secretariat of Communications (SECOM) issued a press release that read: “The newspaper El Universo, with deliberate intent to harm the Ecuadorian President, is shielding itself behind tweets sent last August 19 that tarnish the honor and good name of President Correa […] Moreover, the decontextualization and superficiality of the journalism practiced by the newspaper again violates the rights of citizens to receive precise information […]. Under any code of ethics of Responsible Journalism, the information published in these tweets does not constitute information of public relevance. Quite the reverse—it constitutes infractions of provisions of Ecuadorian law, for example, Articles 7 and 23 of the Communications Act […]. The National Secretariat of Communications, in connection with subsequent responsibility as established in Articles 7 and 23 of the Communications Act, demands that the media outlet make the corresponding correction and public apology to its readership within 72 hours.”715 On August 24, the newspaper El Universo published a copy of the SECOM press release, corrected and offered apologies to its readers for publishing the above-mentioned information.716

342. On September 2, the Council for the Regulation and Implementation of Information and Communications issued a press release specifying the content of “media lynching.”717 It argued that the definition required “rigorous analysis” and “exhaustive evidence,” and that three conditions had to be demonstrated: “1. [There must be] agreement by at least two persons to disseminate the information […] with deliberate intent to harm a third party. Evidence must be adduced of the existence of the pact. […] The existence of collusion [cannot be] assumed simply because the information was published or disseminated by several media outlets at the same time; 2. The information must be published or disseminated repeatedly, i.e., more than once; and 3. An individual or institution must be negatively affected. The sanction is public apology by the media outlet and publication of that apology as many times as the information was published.”718

343. In Enlace Ciudadano 339 broadcast on September 14, President Correa referred to Walter Spurrier’s column in the magazine Análisis Semanal on the ports of Manta and Guayaquil. In that regard, he indicated “Well, don Walter, you will have to demonstrate the truth of this monstrous lie, which you will never be able to do because it is a lie. If you cannot, we will await the corresponding correction […]. Where that nonsense came from, I don’t know, but I hope that it will be demonstrated

714 Some of the tweets directed at President Rafael Correa: “@MayaGisela […]‘@MashiRafael la consulta es puro amarre y saldrá todo a su favor.. No gaste dinero en algo q ya esta decidido x ud’ […] hdvilla777 […]‘MashiRafael pregunto no mas… q hacen para progresar otros paises q no tienen petróleo?’ […] byron84o […]‘@MashiRafael no diga uno por mil....el área se mide en hectáreas….cuanta ignorancia...manipulador..Los jóvenes no somos tontos’”. El Universo. August 19, 2013. Presidente condiciona consulta sobre Yasuní; propone que solo existan diarios digitales.


717 “Art. 26.- Media lynching.- It is prohibited to disseminate information that, directly or through third parties, is produced in a coordinated manner and published repeatedly through one or more communications media with the purpose of harming the reputation or diminishing the public credibility of an individual or legal entity.” Asamblea Nacional. Ley Orgánica de Comunicación. Registro Oficial No. 22, published on June 25, 2013.

or corrected this week. If it is not corrected, well, thank God we now have the Communications Act and we will act within the legal framework.”  

344. On September 21, during the Enlace Ciudadano 340 broadcast, President Correa referred to the press notes published in different media outlets on the judgment of the Permanent Court of Arbitration of The Hague in the Chevron case. In that regard, he indicated that “the Communications Act must be enforced so that that lie is corrected in those same [...] eight columns, page one, of the country’s corrupt press. It is not true that The Hague judgment exonerates Chevron.”

345. The Office of the Special Rapporteur recalls that the right to correction or reply is simultaneously an important mechanism for the protection of certain right and a form of restriction to the exercise of the right to freedom of expression. Indeed, the right of correction or reply enshrined in Article 14 of the Convention is an appropriate measure to redress the harm caused to very personal rights such as one’s honor or reputation, and is—in principle—one of the measures least restrictive to freedom of expression in comparison to civil or criminal penalties. However, it is possible through this mechanism to force a medium to publish information it does not wish to publish, and if there is no appropriate and careful regulation, it can give rise to abuses that end up unnecessarily and disproportionately compromising freedom of expression. In this respect, it is necessary to mention that freedom of expression not only protects the right of the media to freely disseminate information and opinion but also the right not to have the content of others attributed to them. As such, the right to freedom of thought and expression must be compatible with the right of correction or reply, so that the latter may be exercised under fair conditions, when absolutely necessary to protect the fundamental rights of third parties under the terms set forth in Article 14 of the Convention.

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722 Article 14 of the American Convention states: “1. Anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication has the right to reply or to make a correction using the same communications outlet, under such conditions as the law may establish. 2. The correction or reply shall not in any case remit other legal liabilities that may have been incurred. 3. For the effective protection of honor and reputation, every publisher, and every newspaper, motion picture, radio, and television company, shall have a person responsible who is not protected by immunities or special privileges.”


724 I/A Court H.R. *Enforceability of the Right to Reply or Correction (Arts. 14(1), 1(1) and 2 American Convention on Human Rights).* Advisory Opinion OC-7/86 of August 29, 1986. Series A No. 7. Para. 25. Said advisory opinion establishes that: “[t]he fact that the right of reply or correction (Art. 14) follows immediately after the right to freedom of thought and expression (Art. 13) confirms this interpretation. The inescapable relationship between these articles can be deduced from the nature of the rights recognized therein since, in regulating the application of the right of reply or correction, the States Parties must respect the right of freedom of expression guaranteed by Article 13. They may not, however, interpret the right of freedom of expression so broadly as to negate the right of reply proclaimed by Article 14(1).”
346. At the public hearing “Right to Freedom of Expression and Association in Ecuador,” held on October 28, at the Inter-American Commission on Human Rights (IACHR), the petitioners referred to the enforcement of the Communications Act. Miguel Rivadeneira, Director of Ecuadorradio news and El Comercio newspaper columnist, indicated that the measure is “imprecise, restrictive, punitive, and anti-democratic, impedes the free flow of ideas and opinions […] tend to create a State monopoly of information, establishes a prior censorship regime, imposes content on the media, establishes State entities with discretionary powers to create subsequent liabilities, effected by public officials not independent of the President […] and establishes prior censorship utilizing the restrictive definition of “media lynching,” which is expressly intended to prevent investigative journalism into matters of public interest and prevent due press scrutiny of government.”

347. Journalist Jean Cano indicated that the Communications Act directly jeopardized the free flow of information in cases of public relevance, especially reports of corruption, violations of rights and liberties, and criticism of the work of public authorities and officials. He alleged that the law restricted the right of social communicators and the media not to reveal their sources of information, and that it expressly prohibited the reporting of facts deemed confidential, while not providing clear and precise definitions of those facts. The Act authorized the State to impose content on the media, in violation of the principle of editorial independence, and stipulated that what constituted a matter of public interest was left to the discretion of the Office of the Superintendent. He indicated that “The effects of these restrictions are already being felt in the country. Journalists have been restricted in their daily activities and the Act has led to self-censorship by practicing journalists, especially investigative journalists […] Less television time is allotted to public debate programs. Only one of six national channels still maintains a clearly free and critical editorial line that monitors the actions of the government of the day. The others have given in or silenced themselves in connection with sensitive matters.”

348. As regards radio frequency allocations to indigenous communities, the representative of the Confederación de Pueblos de la Nacionalidad Kichua del Ecuador [Confederation of Peoples of Kichua Nationality of Ecuador], composed of 14 indigenous peoples and 18 provincial organizations, indicated that despite having formally requested a radio frequency allocation, none been made since the enactment of the new law. He further indicated that in any event, the award of a license did not guarantee them the right to express themselves freely, given the restrictions of the law: “in the event we were awarded a frequency allocation, we would have to align ourselves with government policy, and if we align ourselves, purely and simply, they will take as much as they give.”

349. The representatives of the Illustrious State of Ecuador did not attend the hearing.


H. Other legal reforms

350. The National Government issued Executive Decree No. 16, published on June 20, containing the Regulations for the Operation of the Unified System of Information on Social and Citizen Organizations (SUIOS).\textsuperscript{728} This Decree regulates the recognition of social organizations as well as their operating system and the grounds for dissolution. The decree also authorizes the gathering and storage of large amounts of information about social organizations.

351. Some provisions of Decree No. 16 are of particular concern, primarily those related to: (i) recognition of legal status; (ii) grounds for dissolution; (iii) limits on the operation of organizations; and (iv) restrictions on foreign organizations.

352. The Decree establishes new procedures and requirements that social non-profit organizations must meet to obtain legal status and the approval of its statutes. Competent authorities must review the compliance with the requirements and ensure “that the statute is not contrary to public order and law” (Art. 18.3) to grant or deny legal status to the institution.

353. The Decree establishes wide-ranging powers on authorities to control the operation of civil society organizations and verify fulfillment of the mission and purposes for which they were established. Moreover, if civil society organizations seek to include in or exclude any member from their organizations, they must submit to the same procedure as is used to obtain legal status from the competent authority (Art. 23). Some of the obligations imposed on organizations whose compliance will be monitored by the administrative authorities, are: “Territorial organizations or those unique within their territory may not refuse entry to any individual with a legitimate interest in participating in them” (Art. 7.10)\textsuperscript{729}; civil society organizations must provide annual accounts to their members or a third or more of them that formally requests it (Art. 7.7)\textsuperscript{730}; and must annually update on the SUIOS portal the information on “projects funded with resources from abroad, and include the funding source and project status” (Art. 7.6).

354. The measure provides that “civil society organizations may be dissolved and liquidated ex officio or based on a report showing diversion from their purposes, or that any of the grounds for dissolution are present (Art. 28)."\textsuperscript{731} The determination to dissolve legally recognized civil society organizations requires the presentation of evidence and the approval of the competent authority.\textsuperscript{732}


\textsuperscript{729} Executive Decree No. 16. “Article 7. Obligations of organizations.- Without prejudice to the obligations established in other regulatory provisions, civil society organizations shall have the following obligations [...] 10. To respect the right of their associates or those who, through their residence in a specific jurisdiction or those in a specific labor, institutional, labor union, occupational, or professional capacity directly related to the mission or nature and purposes of the organization has a legitimate interest in participating in it. Territorial organizations or those unique within their territory may not refuse entry to any individual with a legitimate interest in participating in them. Available for consultation at: http://decretos.cege.gob.ec/decretos/

\textsuperscript{730} Executive Decree No. 16. “Article 7. Obligations of organizations.- Without prejudice to the obligations established in other regulatory provisions, civil society organizations shall have the following obligations [...] 7. To provide accounts to their members through their management or to the individual responsible for accounts, at least once a year or at the formal request or one or more third parties.” Available for consultation at: http://decretos.cege.gob.ec/decretos/

\textsuperscript{731} Executive Decree No. 16. “Article 28.- Civil society organizations may be dissolved and liquidated ex officio or
organizations shall be made by an administrative decision issued by the competent authority that “approved the statutes and awarded the recognition of legal status” (Art. 26). The Decree establishes broad grounds for dissolution of an organization, such as diversion from the purposes and mission for which it was established, repeated omission to comply with provisions issued by the authorities themselves, or carrying out activities that are “politically partisan, reserved to political parties and movements [...], interfere in public policies, jeopardize the internal or external security of the State, or that jeopardize public peace”, among others (Art. 26). In that regard, the Decree also contains an entire section governing foreign NGOs (Arts. 31-38).

355. At the public hearing held on October 28, at IACHR, the representative of the Confederación de Pueblos de la Nacionalidad Kichua del Ecuador indicated that indigenous organizations and communities had been affected by the regulations contained in Decree No. 16. He indicated that under the decree, through the creation of systems and registrations, the government would have access to all personal information, ideological and political beliefs, and activities carried out, “legalizing governmental control and espionage.” He indicated that all expressions of protest or actions of social resistance that questioned public policy or state decisions would be grounds for dissolving an organization, as they would be deemed to jeopardize internal or external public security or public peace. He further indicated that most indigenous communities do not have legal status because, in their based on a report providing evidence of diversion from their purposes or if any of the grounds for dissolution are present. The State ministry charged with legal registration of the organization, in the resolution declaring the dissolution of the organization, and if the entity’s articles of incorporation do not provide otherwise, shall appoint a liquidation committee from among the members of the dissolved organization undergoing liquidation. That committee shall submit a report within 90 days.”

Any moveable assets and real estate acquired by the organizations subject to these Regulations shall be donated to another nonprofit entity once the organization has been dissolved.” Available for consultation at: http://decretos.cege.gob.ec/decretos/

Executive Decree No. 16. “Article 26.- Grounds for dissolution. The following are grounds for dissolution of civil society organizations established under this regime:

1. False documentation and information provided, or the adulteration thereof;
2. Diversion from the purposes and mission for which established;
3. Repeated contravention of provisions issued by the authorities with competence to grant legal status or by supervisory and regulatory entities;
4. Declaration of the organization as inactive by the competent State ministry and remaining inactive for a period of over a year;
5. Decline in the number of members to below the number established in these Regulations;
6. Conclusion of the period established in the organization’s articles of incorporation;
7. Carrying out politically partisan activities, activities reserved to political parties and movements registered with the National Electoral Council, activities interfering in public policies that jeopardize the internal or external security of the State, or activities that jeopardize public peace;
8. Omission to fulfill the obligations established in the Constitution, the law, and these Regulations or for omission to observe any of the prohibitions establishes herein; and,
9. Other grounds established in their articles of incorporation.

Dissolution shall be declared by the competent State ministry that approved the articles of incorporation and granted legal status, in compliance with the procedures established in the Statute Governing the Legal and Administrative Regime of the Executive Branch [Estatuto del Régimen Jurídico y Administrativo de la Función Ejecutiva], where applicable.

Civil society organizations may institute any administrative and judicial actions they consider necessary to assert their rights. Available for consultation at: http://decretos.cege.gob.ec/decretos/
cosmovision, this is unnecessary but after the passage of the Decree they could be declared illegal if they do not comply with the new regulation. The petitioners indicated that they had instituted three unconstitutionality actions against the Decree on behalf of different civil society sectors. One action had been filed by, among others, for violation, inter alia, of its right to prior consultation to indigenous communities. 733

356. No representatives of the Illustrious State of Ecuador attended the hearing.

357. On December 4, 2013, the organization Fundación Pachamama, established for the defense of human rights and the environment was dissolved as a result of the implementation of Decree No. 16. 734 According to the available information, on November 28 members of the organization “Fundación Pachamama” along with other organizations, allegedly participated in protests on the occasion of the celebration of the “XI Ronda Petrolera” intended to guarantee the supply of hydrocarbon blocks in Ecuador. In his weekly show, on November 30, 2013, President Rafael Correa stated that the protesters allegedly attacked foreign participants of the Ronda Petrolera and, regarding the Fundación Pachamama, the President reportedly said “foundations cannot do politics, but after we suspend this foundation for clearly getting involved in politics [they will say] freedom of association is over”. 735 On December 4, the Deputy Minister of Internal Security of the Ministry of the Interior by letter addressed to the Ministry of Environment, requested the authority to proceed with the “immediate dissolution” of Pachamama organization. The facts in support of that request, would relate to presumed acts of violence in the context of protests that allegedly involved members of the organization Pachamama on the occasion of the celebration of the “XI Ronda Petrolera”. On this regard, through Resolution No. 125 736, adopted on the same 4th of December by the Ministry of Environment, the organization was dissolved ex officio on the grounds of “deviation of the aims and objectives for which it was created” and “the interference in public policies jeopardizing the internal security of the State and affecting public peace” in accordance with Article 26, paragraphs two and seven of Executive Decree No. 16.

358. The Office of the Special Rapporteur notes “[s]ocial protest is one of the most effective forms of collective speech. Indeed, in some circumstances it is also the only way in which certain groups can be heard. Indeed, when faced with institutional frameworks that do not favor participation, or in the face of serious barriers to access to more traditional forms of mass communication, public protest appears to be the only medium that really allows sectors of society traditionally discriminated against or marginalized from public debate to have their point of view heard and appreciated.” 737 It is of great concern that the participation of some members of a nongovernmental organization in a protest lead to the closure of the organization. This decision shows the problems generated by the ambiguity of the

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provisions of the above-mentioned decree regarding the exercise of rights such as freedom of expression.

359. On August 28, the legal secretary of the Office of the President of the Republic proposed to the National Assembly a special proceeding for the adjudication of any defamation perpetrated through social networks. The secretary indicated, with regard to the amendments to the Penal Code, that “I have proposed better regulation of all aspects of defamation perpetrated through social networks, because these networks cannot be instruments of impunity [...], that a special procedure be created for defamation made via Twitter or Facebook, because today, defamation via Twitter of an individual with 10,000 or 6,000 followers may be greater and done more swiftly than defamation through a communications medium.”

360. As previously mentioned, the National Assembly approved the new Comprehensive Organic Criminal Code. The Code abrogated the norms known as “desacato” and decriminalized defamation that does not constitute the imputation of criminal conduct [injuria no calumniosa], thus representing an important progress. Nonetheless, a concern for the Office of the Rapporteur is the broad and ambiguous wording of some of the crimes that could affect freedom of expression. For instance, article 178 consecrates as a “violation of intimacy” the conduct of those “who, without the consent or due legal authorization, accesses, intercepts, examines, retains, records, reproduces, disseminates or publishes personal data, messages of data, voice, audio and video, postal objects, information contained in computer-related devices, private or secretive communications of another person by any medium will be punished with imprisonment of one to three years. These norms are neither applicable to the person who disseminates audio and video recordings in which he or she personally intervenes, nor when it deals with public information in accordance with the provisions established by the law”. This norm establishes an exception to imprisonment when dealing with public information, but it does not establish any exception when dealing with information with a current and notorious public interest, when the person who disseminates it has not taken part in any illegal act in order to obtain it.

361. Similarly, the Office of the Rapporteur points with concern to the articles on the “disclosure of secrets” [revelación de secreto] and on “dissemination of information with a restricted circulation” of the Comprehensive Organic Criminal Code. Regarding article 179, it establishes that “The person who has knowledge as a result of his or her study or craft, employment, profession or art, or knows a secret which disclosure could cause damage to another person, and reveals it, will be punished with the penalty of imprisonment of six months to one year”, and article 180, “The person who disseminates information of restricted circulation will be punished with imprisonment of one to three years”. Thereon, the Office of the Rapporteur recalls, as expressed by the joint statement on

738 Teleamazonas. September 2, 2013. La posibilidad de sancionar injurias en las redes sociales abre el debate sobre el tema (VIDEO); La República. August 28, 2013. Alexis propone un procedimiento especial para juzgar las injurias en Twitter o Facebook.


740 The crimes established in articles 230, 231 and 232 of the Criminal Code currently in force are not retaken in Parts I and II of the approved Organic Comprehensive Criminal Code [Código Orgánico Integral Penal].


742 Código Orgánico Integral Penal approved by the National Assembly on December 17, 2013. Document provided by
WikiLeaks (2010) and by the joint declaration on surveillance programs and their impact on freedom of expression (2013), that public authorities and their staff bear sole responsibility for protecting the confidentiality of legitimately classified information under their control. Other individuals, including journalists, media workers and civil society representatives, who receive and disseminate classified information because they believe it is in the public interest, should not be subject to liability unless they committed fraud or another crime to obtain the information. In addition, 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.  

362. Moreover, the Comprehensive Organic Criminal Code sanctions with imprisonment from six months to two years those who practice a profession without a degree, in those cases that a degree is required by law. Also, the “professionals who favor the actions of another person in the illegal practice of the profession” will be sanctioned with imprisonment from three months to one year and barred from practicing the profession for six months (Art. 330). It is important to recall that Article 42 of the Communications Act determines that only “professional” journalists may perform certain media roles.


the president of the Justice and State Structure Committee [Comisión de Justicia y Estructura del Estado] to be distributed between assembly members. “Article 180. – Dissemination of information of restricted circulation. The person who disseminates information of restricted circulation will be punished with the penalty of deprivation of freedom from one to three years. “Information of restricted circulation” is understood as: 1. Information expressly protected by a secrecy clause previously stipulated in the Law. 2. Information produced by the Public Prosecutions Office [“Fiscalía”] under the scope of a previous investigation. 3. Information on girls, boys and adolescents, which might violate their rights according to the provisions of the Code on Childhood and Adolescence”. Available for consultation at: http://www.asambleanacional.gov.ec/


Código Orgánico Integral Penal approved by the National Assembly on December 17, 2013. “Article 176. - Discrimination. The person who, except in cases provided as affirmative action policies, propagates, practices or spurs any distinction, restriction, exclusion or preference due to their nationality, ethnicity, place of birth, age, sex, gender identity or sexual orientation, cultural identity, marital status, language, religion, ideology, socio-economic condition, migratory condition, disability or health situation with the target to annul or undermine the acknowledgment, enjoyment or exercise of rights in conditions of equality will be punished with imprisonment of one to three years. If the violation punctuated in this article is ordered or if incurred by public servants, such act will be punished with imprisonment of three to five years. ” Available for consultation at: http://www.asambleanacional.gov.ec/

Código Orgánico Integral Penal approved by the National Assembly on December 17, 2013. “Article 177. – Acts of hatred. The person who incurs in acts of physical or psychological violence by hate, despise or discrimination against one or more persons due to their nationality, ethnicity, place of birth, age, sex, gender identity or sexual orientation, cultural identity, marital status, language, religion, ideology, socio-economic condition, migratory condition, disability or health or carry HIV, situation will be punished with the penalty of deprivation of freedom from one to three years. If violent acts cause injuries to
mention that article 13.5 of the American Convention sets limits on the right to freedom of expression. In effect, to avoid the use of punitive law aimed at silencing uncomfortable or simply offensive ideas, it states that they must necessarily constitute “advocacy of hatred” aimed not simply at expressing an idea but rather to incite violence. 748 With this, the Convention proscribed the so-called “crime of opinion.” By virtue of this provision, the offensive character of speech, in and of itself, is not a sufficient reason to restrict it. Speech that offends due to the intrinsic falsity of racist and discriminatory conduct must be refuted: those who promote those views need to be persuaded of their error in public debate. In the face of unfairness of opinions, there is no better response than the justice of the arguments and that requires more and better speech. This is the logic of the American Convention that was expressed by the Inter-American Court in the case of The Last Temptation of Christ, which maintained that freedom of expression protects not only expressions that are “favorably received or considered as inoffensive or indifferent, but also those that clash, disturb or offend the State or any fraction of the population. Such are the demands of pluralism, tolerance and the spirit of openness, without which a ‘democratic society’ does not exist”749.

364. Finally, in regard to the above-mentioned norms, when limits on freedom of expression are established by criminal laws, the Court has established that they must satisfy the principle of strict legality: “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”750. The latter is expressed in the need “to use strict and unequivocal terms, clearly restricting any punishable behaviors,”751 which requires “a clear definition of the incriminated behavior, setting its elements and defining the behaviors that are not punishable or the illicit behaviors that can be punishable with non-criminal measures”752.

I. Internet and freedom of expression

365. The Office of the Special Rapporteur has received information indicating that on February 20, the official Twitter account of the Ecuadorian NGO Fundamedios was suspended. Following the suspension, the NGO received an email that read: “Hello! Your account has been suspended for a violation of Twitter rules […].” Subsequently, on February 26, at a press conference, in a press release, the organization denounced this act. According to the information received, a few minutes later, the account was reactivated.753
366. On July 13, the news portal Al Día, of Los Ríos province, was the victim of a cyber attack which left it down for several days. The hacking of the news website caused all articles and journalistic materials published on the portal to be deleted and the site’s programming damaged.  

367. On September 2, a YouTube video was withdrawn from the EcuadorLibreRed portal. If a viewer tries to load the video, the following message appears: “This video is no longer available due to a copyright claim by Ares Rights.” The video questions President Correa’s statements about an incident with singer-songwriter Jaime Guevara and about social protests against oil exploration in the Yasuní ITT National Park.

368. On October 9, a YouTube video by documentary film maker Pocho Álvarez was withdrawn. If a viewer tries to load the video, the following message appears: “This video is no longer available due to a copyright claim by Ares Rights.” The video, titled “Acoso a Intag [Harassment of the Intag],” documented problems of pollution and abuse suffered by an Intag commune as a result of its resistance to large-scale mining. Guido Proaño, director of EcuadorLibreRed, said that the video was withdrawn because permission had not been obtained to use images from one of President Correa’s Enlace Ciudadano broadcasts. Jorge Luis Serrano, Deputy Minister of Culture and Heritage, also tweeted “[…] Pocho confirmed to me that he HAD NOT requested permission to use images of the Office of the President. As simple as that.” On October 16, in a public letter to the Deputy Minister, Pocho Álvarez said that those were not his words “[…] my dear Deputy Minister of Culture, what You put in Twitter as my words is not right […]”

J. Other relevant situations

369. On April 12, President Rafael Correa, through his Twitter account, ordered the National Secretariat of Intelligence (SENAIN) to investigate a user of that social network who had published several comments criticizing the “dismay” expressed by the President following the murder of

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arbitrario de su cuenta en Twitter; Knight Center for Journalism in the Americas. February 26, 2013. Ecuadorian NGO protests “arbitrary” closing of Twitter account.


755 EcuadorLibreRed/YouTube. Como miente el presidente Correa.

756 EcuadorLibreRed. September 2, 2013. Censuran video que criticaba a Rafael Correa por sus declaraciones en el enlace ciudadano; Fundamedios. September 6, 2013. Portal informativo denuncia censura a video.

757 Pocho Álvarez/YouTube. Acoso a Intag.


journalist Fausto Valdiviezo. For example, one Tweet was: “@MashiRafael How hypocritical you are, Correa! You have no respect for anyone! Wretched man! You insult and abuse him and now you are «dismayed»? Have some dignity!” The President tweeted to SENAIN to “take care of” the matter. On April 13, during the Enlace Ciudadano 317 broadcast, Correa reported the order given to SENAIN: “[…] A Mrs. Soledispa, who they tell me is a journalist on the newspaper we know well in New York, so coarsely said: ‘talk, so-and-so, accomplice,’ and now, from embarrassment, she has deleted it, and a series of insults, not just once, but continually against the President of the Republic. So I sent SENAIN to investigate and immediately she throws up her hands in horror: Oh freedom of expression! What freedom of expression is it to insult the President of the Republic? […] Anyone tweeting like that has some sort of mental disorder and is a danger to the community, etc. So you have to know these types of people, but they call those insults freedom of expression […] They can say whatever they want. I will not allow the President of the Republic to be insulted.”

370. On January 30, a printing company was raided and over 10,000 copies of the book “La Roca: Cemetery for Living Men” were seized, because it allegedly contained “defamatory expressions.” The raid was authorized by the judge of the Judicial Penal Guarantees Unit of Pichincha. The author of the book, Óscar Caranqui, was murdered on June 30, 2013, in the Men’s Social Rehabilitation Center No. 2 of Guayaquil, known as La Roca. According to the information available, the book described conditions in that prison, such as overcrowding, corruption, and access to drugs and arms, among others.

371. On September 25, the judge of the Judicial Unit on Violence against Women and the Family of the Provincial Court of Justice of Pichincha banned the circulation and dissemination of the book “Una Tragedia Ocultada” [A Tragedy Concealed] by Miguel Ángel Cabodevilla, Milagros Aguirre, and Massimo de Marchi. The book, which was to be launched on September 25, was about a massacre that had taken place in March among the uncontacted Taromenane people, allegedly by members of the Waorani people, and about their conflicts and territorial and cultural policies. The ban was based on a precautionary measure requested by the national director for the defense of human rights and nature of the Office of the Ombudsman, among others, owing to a photograph of a girl that appeared on the book launch invitation but not reproduced in the book. Following the seizure, the Government denounced “any form of censorship” and “officially” declared its “public solidarity with the authors,” considering the action “abusive, and a violation of their constitutional rights, resulting from illegitimate prior censorship of the book.” On September 27, that Judicial Unit rescinded the precautionary

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763 Basol’s Twitter account @basoledispa. April 12, 2013- 9:42 AM.
764 “@basoledispa SENAIN: por favor atender”. Rafael Correa’s oficial Twitter account @MashiRafael. April 12, 2013, 1:12 PM.
765 Presidencia de la República/Official YouTube channel. April 13, 2013. Enlace Ciudadano Nro. 317 desde Riobamba - Chimborazo. [02:28:00].
767 Ecuador Inmediato. February 1, 2013. Confiscan 10 mil libros que atentarían contra la seguridad interna del Estado; Fundamedios. March 8, 2013. Se decomisa libro por “presunción de injurias”.
measure because the authors had demonstrated that “the cover of the book did not include the photo used on the invitation to its launch and that the photos appearing in the book were designed to prevent physical identification of the girl, and that the authors had taken precautions to ensure that the faces of all other children appearing in photos in the book were blurred.”

372. According to information received, on February 25, unidentified persons prevented the circulation of the newspaper El Diario in some areas of Manabí province through the compulsory purchase of copies. The measure was allegedly intended to prevent the dissemination of a news item regarding individuals implicated in a drug seizure case. According to reports in El Diario, the package containing the newspapers was seized by persons unknown upon its arrival at the Pedernales canton terminal and subsequently the party responsible for the newspaper’s circulation received payment for those copies.

373. At the hearing “Situation of the Right to Freedom of Expression in Ecuador,” held on March 12 in the framework of the IACHR’s 147 Period of Sessions, the Office of the Special Rapporteur received information regarding alleged restrictions encountered by the media during Ecuador’s presidential election campaign. At that hearing, the petitioning organizations indicated that the amendments to the Electoral Law promoted by the executive branch that had entered into force “gravely affect the exercise of freedom of expression by imposing a ban on the press expressing views, criticizing, and engaging in discussion of electoral candidates and their political views, and imposing the applicable sanctions.” According to the organizations, as a result, during the electoral period, media self-censorship was mandatory, “reflected as the publication of fewer editorial opinions regarding the elections.” The petitioners reported that the backgrounds of the candidates were not investigated, and ultimately, the Electoral Council “imposed a ban on media publication of information and photographs at the end of the campaigns.”

374. The State gave information about the importance of the universal right to receive truthful, verified, timely, pluralistic, and contextualized information, and of guaranteeing respect for other rights, such as the right to honor and the right of reply. The State pointed to the January 2013 rise in the minimum salary for journalists. Also, with regard to crimes against journalists, the State indicated that the three murders of journalists mentioned by the petitioners at the hearing were totally unrelated to their functions as reporters. Regarding media outlet closures and seizures, it indicated that in some cases they had been closed for technical or economic reasons, or for unauthorized operation. The State indicated that 1889 radio, television, and cable licenses and authorizations had been issued, 22 media outlets closed, and 254 new frequency allocations made. The documentation provided indicated that

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“from 2007 to date in 2013, 137 private media outlets, 241 public media outlets, and 20 community media outlets were created. From October 2009 to October 2012, 416 private stations were awarded licenses or had their licenses renewed, and were granted authorizations to operate. It indicated that 117 stations were closed, but strictly for technical and legal reasons, none for political reasons.”774 It also indicated that there was no harassment of private media outlets on mandatory broadcasts, since those messages “are created to clarify distorted, malicious, and even biased versions disseminated by some media outlets and, especially, to guarantee the veracity of information.”775 With regard to the amendments to the Electoral Law, it indicated that nothing at all prevented candidates from making their views known in the media and that “all candidates involved in the elections had the same opportunities in the private media and were at absolute liberty to enjoy them.”776

375. On August 31, President Correa indicated during the Enlace Ciudadano 337 broadcast, in connection with the social protests regarding the Yasuní ITT National Park: “Welcome to everyone wishing to discuss in good faith. But all decent people [...] to repudiate the stone-throwing that has now so harmed the country, what they want is a dead young man. And be careful on Monday when classes start. Parents, be very careful. We already have leaflets from the Popular Democratic Movement (MPD), who want to get young people out to find a dead youth. Be careful not to expose your children. Besides, any youth who goes out is a youth who will lose his [school] place.”777 Minister of Education Augusto Espinoza allegedly indicated “if any student leaves the educational institution outside classroom hours, we will immediately institute an investigation of the situation and he or she will lose the place in the institution to which he is assigned [...] No way are we going to expose them to being used as cannon fodder for the Democratic Popular Movement.”778 On September 3, President Correa tweeted that “Our youth may protest whenever they want for whatever reason they want OUTSIDE classroom hours.”779

11. El Salvador

376. The Office of the Special Rapporteur notes with satisfaction the decision adopted on February 14 by the president of El Salvador, Mauricio Funes, to veto Legislative Decree No. 303780,

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778 Canal Teleamazonas/Official YouTube channel. September 2, 2013. Ratifican que alumnos que protesten contra el Yasuní podrían perder sus cupos.

779 “@JussephBedran Está equivocado. Nuestros jóvenes pueden protestar cuando quieran y por lo que quieran FUERA de horas de clase”. Rafael Correa’s oficial Twitter account @MashiRafael. September 3, 2013 – 9:00 AM; Agencia Pública de Noticias del Ecuador y Suramérica (Andes). September 3, 2013. Presidente de Ecuador: ‘Estudiantes pueden protestar cuando quieran y por lo que quieran fuera de horario de clases’.

approved on Friday, February 8 by the Legislative Assembly, and which contained changes to the Access to Public Information Law [Ley de Acceso a la Información Pública] (LAIP). Various organizations that are defenders of freedom of expression had criticized the modifications to the Law because they took authority away from the Institute of Access to Public Information [Instituto de Acceso a la Información Pública] (IAIP) with respect to institutions of the State. As reported, the veto was “accepted” by the Deputies, who ordered the Decree shelved.

377. Similarly, the Office of the Special Rapporteur welcomes the decision by the President of the Republic to veto Legislative Decree No. 412, which prohibited “propaganda, advertising or campaign events” that, through the media, discredit candidates running for President and Vice president and imposes fines of five thousand to twenty-four thousand United States dollars. In a letter to the legislative body dated July 15, 2013, the President expressed his decision to veto the Decree because he considered it unconstitutional. He particularly indicated that it violated three fundamental constitutional precepts: the principle of equality, the prohibition of prior censorship and the principle of legal certainty.

378. On January 22, a journalistic team from the news program ‘Hechos’ on Canal 12 received threats as it was leaving a courthouse in Santa Tecla, where proceedings had been initiated against three men detained for their alleged implication in a shootout six days earlier in that city. The vehicle belonging to the media outlet was intercepted by an automobile, whose driver briefly aimed a firearm at the journalists. In a press release, the channel reported that it had received threats, in one case they had been warned that if the channel covered the referred hearing “they would not be responsible for the lives of the cameraman and journalists.” The next day, a man suspected of having made the threats was arrested.

379. Principle 9 of the IACHR’s 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

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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.”

380. On the other hand, the Office of the Special Rapporteur received information on the refusal by the Legislative Assembly to comply with a cautionary measure from the Institute of Access to Public Information (IAIP) which, in exercising its powers under the Access to Public Information Law (LAIP)\(^787\) and in the framework of a procedure to request information, ordered the Assembly to forward copies of the payrolls of legislative consultants and parliamentary groups, included “the name, identification of the parliamentary group to which they belong and the monthly salary received.”\(^788\) In a letter to the IAIP, the President of the Legislative Assembly indicated that, after deliberating about the request in an extraordinary session, the Assembly decided not to hand over the requested information, because it is of a confidential nature. According to the Assembly, providing this information would be against the law, because it involved personal information about consultants, legally protected information, whose publication could violate the right to privacy of these advisers.\(^789\) Civil society organizations expressed their concern over the decision by the Assembly not to hand over the information requested by the Institute, as this could endanger the binding nature of the decisions of the IAIP. They also expressed concern about diverse difficulties that had arisen in the implementation of the Access to Information Law and “the repeated threats regarding counter reforms” to it, situations that could endanger the exercise of the right of access to public information.\(^790\)

381. 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.”

382. On July 11, the Legislative Assembly approved the Special Law for Exercising the Right to Rectification or Response [Ley Especial del Ejercicio del Derecho de Rectificación o Respuesta],\(^791\) which

\(^787\) “Cautionary measures. Art. 85. - The Institute may adopt the cautionary measures that it deems necessary to ensure the efficacy of the resolution that it definitively issues, the satisfactory ending of the procedure, to avoid maintenance of the effects from the infractions and the requirements of the general interests in any moment in the proceeding, by means of a reasoned resolution. In particular, it may: [...] c. Request a copy of the information dealt with in the appeal, unless it is of a reserved nature, the copy shall be confidentially kept by the Institute and returned after the appeal.” Centro Nacional de Registros. Ley de Acceso a la Información Pública. Art. 85, c). April 8, 2011. Available for consultation at: http://www.cnr.gob.sv/index.php?option=com_phocadownload&view=category&id=35:ley-de-acceso-a


\(^790\) Alianza Regional. October 7, 2013. La Alianza Regional manifiesta su preocupación por el incumplimiento de la Ley de Acceso a la Información Pública por parte de la Asamblea Legislativa de El Salvador; Diario Co Latino. October 9, de 2013. Alianza Regional preocupada por incumplimiento en LAIP.

aims to “regulate exercise of the right of rectification or response as protection for the rights to honor, personal and family privacy and one’s own image, in concordance with the unlimited exercise of freedom of expression and information.”

12. United States

A. Progress

383. On February 19, a judge from the United States District Court for the Southern District of New York quashed a subpoena filed in October 2012 by the attorneys for different agencies and officials of the government of city of New York, requesting access to material surrounding the documentary “The Central Park Five,” including material that had not been included in the final edit of the film. The documentary referred to five individuals who were wrongly accused of attacking and raping a woman in 1989 and spent between seven and thirteen years in prison. In 2003, the five individuals brought a civil suit against various New York City government agencies. The attorneys defending the city government subpoenaed Florentine Films, the distributor of the “The Central Park Five” documentary to access the raw material produced during its making, such as several complete interviews conducted by the producers, arguing, among other, that the scenes excluded from the final version of the film contained material that could be of use in the trial. According to the information received, Florentine Films filed a motion before the District Court for the Southern District of New York to quash the subpoena, arguing that in making the documentary the filmmakers were entitled to the journalistic privileges guaranteed under the legal framework. In his decision, Judge Ronald Ellis found that the petitioners had demonstrated in the documentary the journalistic independence necessary to be protected under the reporters’ privileges set forth in the legal framework. In his decision, Judge Ronald Ellis found that the petitioners had demonstrated in the documentary the journalistic independence necessary to be protected under the reporters’ privileges set forth in the legal framework, and that the attorneys for the City of New York failed to meet their burden of proving the relevance and the necessity of the material requested in the case.

384. A Washington State Court of Appeals affirmed a decision of a trial court that dismissed a defamation suit filed by a transitional housing service in the city of Seattle against local television station KIRO-TV. The lawsuit was filed after the broadcast of reports detailing the organization’s alleged practice of using the residents of the transitional shelters to solicit donations door-to-door.

385. In a judgment handed down on March 14, 2013, a federal district judge in San Francisco ruled that National Security Letters (NSL), a tool provided for under federal law authorizing the Federal

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Bureau of Investigation (FBI) to make warrantless requests for information from wire or electronic communication service providers about their customers, violate the Constitution. The administrative requests are issued without the prior approval of a court and, in most cases, the FBI bars the providers from revealing to their clients or to the public that the information has been requested. In a lawsuit filed in 2011 by a telecommunications company represented by the Electronic Frontier Foundation (EFF), from which the FBI had demanded information about its customers, Judge Susan Illston of the U.S. District Court for the Northern District of California ruled that the legal mechanisms examined, that regulate the NSLs, violate the First Amendment. The Court found, among other, that the law did not require the authorities to submit to a process of judicial supervision in each case to verify the legality of the confidentiality order, or demonstrate the need for such order, and that it did not impose a time limit for the order to be valid prior to judicial review. At the conclusion of the judgment, the Court ordered the FBI to stop using the Letters and the nondisclosure orders in this case and all others. According to the information received, on May 6, 2013 the Department of Justice appealed the district court’s decision.

386. According to information obtained by the Office of the Special Rapporteur, a settlement was reached in July between the city of Oakland, California, its police department, and the American Civil Liberties Union of Northern California and the National Lawyers Guild, in the case brought by the latter two organizations on behalf of a group of Occupy Oakland protesters. The lawsuit, filed in 2011, called into question the excessive use of force by the police department against the protesters. The settlement agreement requires the Oakland police to abide by its crowd control policies and to negotiate any revision of that policy with the petitioning organizations. It also reportedly agreed to pay $1.17 million dollars in compensation to affected individuals.

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B. Assaults and threats against journalists and the media

387. According to information received, several journalists from the newspaper *The Journal News* were threatened and harassed after the paper published an interactive map\(^{802}\) in December 2012 that gave the names and addresses of individuals who possessed firearms in Westchester and Rockland counties. Some of the gun owners criticized the newspaper because they considered it an invasion of their privacy. On December 26, a blogger reportedly published the names and addresses of the newspaper’s editors and executives, together with information about the author of the article and his children. Several of them started receiving threatening phone calls and emails. In addition, during the first week of January, envelopes containing a while powder were reportedly delivered to the editorial staff, although upon analysis it was determined to be nontoxic.\(^{803}\)

388. On September 26, journalist Cláudia Trevisan, a Washington correspondent for the Brazilian newspaper *O Estado de São Paulo*, was reportedly arrested, handcuffed, and held for several hours by Yale University Police when she attempted to interview the Chief Justice of the Federal Supreme Court of Brazil, who was taking part in a seminar at the university in New Haven, Connecticut.\(^{804}\) According to the information received, the journalist was on the university’s campus waiting for the end of the event—to which the press had not been allowed access—to interview the judge, when police officers arrested her for criminal trespassing. The journalist was held for some five hours and, she alleges, the conduct of the police officers was violent and disproportionate.\(^{805}\) Yale University issued a statement maintaining that the journalist’s detention had been justified, but stating that it would not be pressing charges against her. The institution denied the allegation that Trevisan was mistreated.\(^{806}\)

389. Principle 9 of the Declaration of Principles establishes 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.”

C. Subsequent liabilities

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On February 14, a teenager was arrested after allegedly having made “terroristic threats” on his personal Facebook account. After spending five months in prison, nineteen-year-old Justin Carter was released on bail when an anonymous donor posted his bond. The arrest took place because the teen posted a comment on Facebook, in the midst of a discussion regarding a videogame. The next day, the police arrested him on the charges of making a “terroristic threat.” According to news reports, the police did not find any weapons in his home.

In this regard, the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR (African Commission on Human and Peoples’ Rights) Special Rapporteur on Freedom of Expression and Access to Information, affirmed in their 2008 Joint Declaration on Defamation of Religions, and Anti-terrorism and Anti-extremism Legislation that “[t]he definition of terrorism, at least as it applies in the context of restrictions on freedom of expression, should be restricted to violent crimes that are designed to advance an ideological, religious, political or organised criminal cause and to influence public authorities by inflicting terror on the public. The criminalisation of speech relating to terrorism should be restricted to instances of intentional incitement to terrorism, understood as a direct call to engage in terrorism which is directly responsible for increasing the likelihood of a terrorist act occurring, or to actual participation in terrorist acts (for example by directing them). Vague notions such as providing communications support to terrorism or extremism, the ‘glorification’ or ‘promotion’ of terrorism or extremism, and the mere repetition of statements by terrorists, which does not itself constitute incitement, should not be criminalised.”

### D. Surveillance programs

The Office of the Special Rapporteur observes with concern the information revealed about the scope of secret surveillance programs reportedly being implemented by the government of the United States for purposes of obtaining foreign intelligence information, which could be affecting large numbers of people. According to the information that has come to light since June 2013—from various print media outlets including the newspapers The Guardian, The Washington Post, and The New York Times, the National Security Agency (NSA) has implemented secret surveillance programs that enable it to obtain metadata on telephonic communications made or received in the United States, as well as access to global electronic communications data.

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393. The information on the existence and scope of these programs was disclosed in documents provided to the press by Edward Snowden, a former employee of the company Booz Allen Hamilton, an NSA contractor.\(^{810}\)

394. The Office of the Special Rapporteur observes that the published information has led to a broad national debate on the scope and oversight of the surveillance programs implemented by the National Security Agency. In the wake of these revelations, the government has explained that the programs are authorized by Executive Order No. 12333\(^{811}\) and by the Foreign Intelligence Surveillance Act, (FISA), in accordance with the amendments to that law under section 215 of the Patriot Act of 2001\(^{812}\) and section 702 of the Amendments Acts of 2008.\(^{813}\) According to the information obtained, the programs implemented under this law are supervised by an independent court that operates under rules of secrecy and confidentiality, and they are subject to mostly classified oversight of special committees of the United States Congress, as well as to the ongoing review of the Executive Branch.\(^{814}\)

395. As described below, these revelations evidence the risks that new technologies and communications surveillance techniques entail for the right to privacy and individual freedom of thought and expression. They also make clear the need to revise the respective laws and establish better transparency and oversight mechanisms, in accordance with international human rights law.

1. Telephone metadata collection program (section 215 of the Patriot Act)

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\(^{812}\) The United States Congress. \textit{Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001}. Public Law No: 107 -56. October 26, 2001. Section 215 authorizes the Director of the FBI (or designee) to apply for a court order requiring production of certain business records for foreign intelligence and international terrorism investigations. Requires the Attorney General to report to the House and Senate Intelligence and Judiciary Committees semi-annually.

\(^{813}\) The United States Congress. \textit{Foreign Intelligence Surveillance Act of 1978 Amendments Acts of 2008}. Public Law. 110-261. July 10, 2008. Section 702, that authorizes the Attorney General (AG) and Director of National Intelligence (DNI) to jointly authorize, for periods up to one year, the targeting (electronic surveillance) of persons located outside the United States in order to acquire foreign intelligence information, under specified limitations.

396. According to the information disclosed on June 5, 2013 by The Guardian, on April 25, 2013 the Foreign Intelligence Surveillance Court (FISC) reportedly ordered the telecommunications company Verizon to turn over to the NSA an electronic copy of all call records or metadata on the telephone communications of its subscribers made within the United States and between the U.S. and foreign countries, on a “daily basis,” until July 19, 2013. According to the court order that was revealed, telephony metadata includes identification data for the call session, including the numbers of the caller and the recipient of the call, the time and duration of the call, the number of the SIM card used, and other identifying numbers associated with the telephone device. The information does not include the substantive content of the communication, or the subscriber’s name, address, or financial data. The court order prohibits Verizon from disclosing information to the public about the request made.815

397. It follows from the information obtained that the FISC has been issuing similar orders since 2006 that periodically (every 90 days) authorize the mass collection of telephony metadata.816 The available information suggests that other telephone companies in the United States were subjected to similar requests.817 It was later learned that in July and October 2013, the FISC once again authorized the program, which will remain in effect until January 3, 2014, on which date the government must petition the court for its renewal.818

398. The competent authorities confirmed the existence of the massive classified telephony metadata collection program, and explained that it had been implemented during the previous two


administrations with the authorization and supervision of the FISC and Congress, in accordance with the FISA, as amended by section 215 of the Patriot Act. They stressed that it does not allow the government to hear the content of the recorded calls or determine subscriber identity, and that the government can only search the data obtained through this program "when there is a reasonable suspicion, based on specific facts, that the particular basis for the query is associated with a foreign terrorist organization [...]." 819

399. In response to a request for information by the Office of the Special Rapporteur, and after the hearing “Freedom of Expression and Communications Surveillance by the United States,” which took place on October 28, 2013, during the 149 period of sessions of the IACHR, the State provided additional information on the subject in question on December 4, 2013. In a document provided with its response, the government explained that under this intelligence collection program, "the Federal Bureau of Investigation (FBI) obtains court orders directing certain telecommunications service providers to produce telephony metadata in bulk. The bulk metadata is stored, queried and analyzed by the National Security Agency (NSA) for counterterrorism purposes. The Foreign Intelligence Surveillance Court (‘FISC’ or ‘the Court’) authorizes this program under the ‘business records provision of the Foreign Intelligence Surveillance Act (FISA), 50 U.S.C. § 1861, enacted as section 215 of the USA PATRIOT Act (Section 215). The Court first authorized the program in 2006, and it has since been renewed thirty-four times under orders issued by fourteen different FISC judges.” 820 The Government also indicated that “telephony metadata is important [...] because, by analyzing it, the Government can determine whether known or suspected terrorist operatives have been in contact with other persons who may be engaged in terrorist activities, including persons and activities within the United States. The program is carefully limited to this purpose. [...] Multiple FISC judges have found that Section 215 authorizes the collection of telephony metadata in bulk. Section 215 permits the FBI to seek a court order directing a business or other entity to produce records or documents when there are reasonable grounds to believe that the information sought is relevant to an authorized investigation of international terrorism. [...] Although broad in scope, the telephony metadata collection program meets the ‘relevance’ standard of Section 215 because there are ‘reasonable grounds to believe’ that this category of data, when queried and analyzed consistent with the [FISC]-approved standards, will produce information pertinent to FBI investigations of international terrorism, and because certain analytic tools used to accomplish this objective require the collection and storage of a large volume of telephony metadata. This does not mean that Section 215 authorizes the collection and storage of all types of information in bulk: the relevance of any particular data to investigations of international terrorism depends on all the facts and circumstances.” 821


400. Within the framework of the thematic hearing held with regard to this matter on October 28, 2013, the IACHR received questions about the scope of the program and its implications for the exercise of the individual rights to privacy and to freedom of expression, in particular by journalists and human rights defenders whose work is related to national security issues.\footnote{American Civil Liberties Union Foundation. Testimony of Alex Abdo, Staff Attorney, National Security Project. October 28, 2013. Document submitted in preparation to the thematic hearing held on October 28, 2013 by the Inter-American Commission on Human Rights “Freedom of Expression and Communications Surveillance by the United States.” Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Center for Democracy and Technology. Document submitted on October 25, 2013 in preparation to the thematic hearing held on October 28, 2013 by the Inter-American Commission on Human Rights “Freedom of Expression and Communications Surveillance by the United States”. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Electronic Frontier Foundation and others. October 2013. Document submitted in preparation to the thematic hearing held on October 28, 2013 by the Inter-American Commission on Human Rights “Freedom of Expression and Communications Surveillance by the United States”. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.} In the opinion of different organizations, although the program would not allow access to the content of communications, the gathering of telephony metadata would still invade reasonable expectations of privacy. They maintained that this type of information, compiled \textit{en masse} and with the support of powerful analytical tools, would exceptionally reveal the habits and associations of individuals, exposing personal relationships, health conditions, employment conduct, and political or religious affiliations, and therefore the State would have to justify the proportionality and reasonableness of the measure in relation to the aims it seeks to protect.\footnote{American Civil Liberties Union Foundation. Testimony of Alex Abdo, Staff Attorney, National Security Project. October 28, 2013. Document submitted in preparation to the thematic hearing held on October 28, 2013 by the Inter-American Commission on Human Rights “Freedom of Expression and Communications Surveillance by the United States.” Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Center for Democracy and Technology. Document submitted on October 25, 2013 in preparation to the thematic hearing held on October 28, 2013 by the Inter-American Commission on Human Rights “Freedom of Expression and Communications Surveillance by the United States”. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Electronic Frontier Foundation and others. October 2013. Document submitted in preparation to the thematic hearing held on October 28, 2013 by the Inter-American Commission on Human Rights “Freedom of Expression and Communications Surveillance by the United States”. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.} In addition, according to the information received, section 215 of the Patriot Act—the legal basis for the mass collection of telephony metadata—is being interpreted in a manner contrary to its ordinary language and the spirit of the lawmakers\footnote{For example, they maintained that the standard used to perform searches of the data obtained through the mass telephony metadata collection program is not established in the law, but rather arises from secret interpretations of executive bodies, approved in secret by the FISC. To this respect, see: Center for Democracy and Technology. Document submitted on October 25, 2013 in preparation to the thematic hearing held on October 28, 2013 by the Inter-American Commission on Human Rights “Freedom of Expression and Communications Surveillance by the United States”. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.} and the existing judicial oversight is ineffective.\footnote{American Civil Liberties Union. August 16, 2013. Request for a thematic hearing on the human rights implications of communications surveillance in the US and other OAS member states. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.} Particularly, the Commission received information suggesting that the program would have serious potential to limit the freedom of expression and association of human rights organizations that receive calls from current or potential clients and informants who seek legal support in cases against the government.\footnote{American Civil Liberties Union Foundation. Testimony of Alex Abdo, Staff Attorney, National Security Project. October 28, 2013. Document submitted in preparation to the thematic hearing held on October 28, 2013 by the Inter-American Commission on Human Rights “Freedom of Expression and Communications Surveillance by the United States”. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.}

401. According to the information obtained, the mass telephony metadata collection program is being litigated nationally. On June 6, U.S citizens Larry Klayman and Charles Strange, with
three other individuals, brought a lawsuit challenging the constitutionality and statutory authorization of certain intelligence-gathering practices by the United States government relating to the wholesale collection of the phone record metadata of all U.S. Citizens.\footnote{As of the closing of this report on November 1, the United States District Court for the District of Columbia ruled in this lawsuit that the “plaintiffs have standing to challenge the constitutionality of the Government’s bulk collection and querying of phone record metadata, that they demonstrated a substantial likelihood of success on the merits of their Fourth Amendment claim, and that they will suffer irreparable harm absent preliminary injunction relief.” Accordingly it granted a Motion for Preliminary Injunction and entered an order that “(1) bars the Government from collecting, as part of the NSA’s Bulk Telephony Metadata Program, any telephony metadata associated with their personal Verizon accounts and (2) requires Government to destroy any such metadata in its possession that was collected through the bulk collection program.” The judge stated that he will stay his order pending appeal “in light of the significant national security interests at stake in this case and the novelty of the constitutional issues.” United States District Court for the District of Columbia. \textit{Klayman et al., v. Obama et al.}. Civil Action No. 13-0851 (RUL). Memorandum Opinion. December 16, 2013. Available for consultation at: \url{http://online.wsj.com/public/resources/documents/JudgeLeonNSAopinion12162013.pdf}} On June 11, the American Civil Liberties Union and the New York Civil Liberties Union filed a lawsuit in the United States District Court for the Southern District of New York alleging that the program is not authorized by the law and that it violates the First and Fourth Amendments of the United States Constitution.\footnote{American Civil Liberties Union. \textit{ACLU v. Clapper – Challenge to NSA Mass Call-Tracking Program}; United States District Court. Southern District of New York. \textit{American Civil Liberties Union; American Civil Liberties Union Foundation; New York Civil Liberties Union; and New York Civil Liberties Union Foundation v. James R. Clapper et al.} Complaint for declaratory and injunctive relief. June 11, 2013. Available for consultation at: \url{https://www.aclu.org/files/assets/nsa_phone_spying_complaint.pdf}. As of the closing of this report, the Office of the Special Rapporteur for Freedom of Expression learned that on December 27, the United States District Court for the Southern District of New York ruled that the NSA’s metadata collection program was legal. The judge denied the request for injunction relief submitted by the plaintiffs and granted Government’s petition for dismissal. The United States District Court. Southern District of New York. \textit{American Civil Liberties Union et al. v. James R. Clapper, et al.} 13 Civ. 3994 (WHP). Memorandum & Order. 27 de diciembre de 2013. Available for consultation at: \url{https://www.aclu.org/sites/default/files/assets/order_granting_governments_motion_to_dismiss_and_denying_aclu_motion_for_preliminary_injunction.pdf}. Ver tambien: United States Court District Northern District of California. \textit{First Unitarian Church of Los Angeles et al. v. National Security Agency et al.} Complaint for Constitutional and Statutory Violations Seeking Declaratory and Injunctive Relief. July 16, 2013. Available for consultation at: \url{https://www.eff.org/files/filenode/firstunitarianvnsa-final.pdf}} Lawsuits have also been filed to demand the disclosure of decisions and the evaluation of the FISC regarding the content, meaning and constitutionality of section 215 of the Patriot Act.\footnote{United States Foreign Intelligence Surveillance Court. \textit{IN RE Orders Issued by this Court Interpreting Section 215 of the Patriot Act}. Docket No. Misc. 13-02. \textit{Motion of the American Civil Liberties Union, the American Civil Liberties Union of the Nation’s Capital, and Media Freedom and Information Access Clinic for the Release of Court Records}. June 12, 2013.}  

402. The Office of the Special Rapporteur observes with concern the information on the existence and scope of the massive telephone metadata collection program and its implications for the rights to privacy and to freedom of expression. As observed in the Joint Declaration on Surveillance Programs and their Impact on Freedom of Expression (2013), issued by this office and by the United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression, the information available on the scope of these programs “highlights the risks their implementation poses to the right to privacy and freedom of expression, as well as the need to amend the corresponding legislation and establish improved mechanisms for transparency and public debate on these practices.”\footnote{United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. June 21, 2013. \textit{Joint Declaration on Surveillance Programs and their Impact on Freedom of Expression}.} In this regard, chapter IV of this report explains the requirements that surveillance programs must fulfill in order to be consistent with international human rights law
standards. Said requirements are summarized in paragraphs 414 and following of Chapter II of this report (*Infra*), regarding electronic communications surveillance programs.

2. **Global electronic communications surveillance program (Section 702 of the FISA and Executive Order No. 12333)**

403. On June 6, 2013, *The Guardian* and *The Washington Post* newspapers disclosed the existence of a computer system known as PRISM, which reportedly facilitates access by the NSA and the Federal Bureau of Investigation (FBI) to digital communications data handled by nine Internet service provider companies, including Microsoft, Google, Facebook, Apple, Yahoo, and Skype. According to the information published, the program could give those government agencies access not only to the communications metadata but also to their content. Indeed, the data to which they reportedly have access include search history, email content, document transfers, and live chats. According to the information disclosed, the Foreign Intelligence Surveillance Court reportedly allowed the collection of those data, including data originating in the United States, without an individualized court order, in those cases in which the target of the surveillance is not a “United States person” and there is reasonable belief that the target was not within U.S. territory at the time the information was collected. According to the information revealed, the NSA also uses the program, known as UPSTREAM, to access large quantities of information about digital communications.\(^{831}\)

404. On July 31, the existence of another digital communications data analysis system known as XKEYSCORE came to light. The system allows, among others, NSA personnel to search and analyze data pertaining to an individual’s Internet activity.\(^{832}\)

405. On August 15, *The Washington Post* reported that, according to a May 2012 internal audit of the highest-ranking NSA directors, the agency had “broken privacy rules or overstepped its legal authority”. According to the report, most of the violations were reportedly unintentional, and many involved the absence of due diligence or violations of standard operating procedures. One of the reported cases involved the implementation for several months of a new data collection method without the knowledge of the FISC, which was later declared unconstitutional. The audit addressed only the incidents reported at NSA headquarters in Fort Meade and other agency facilities in the Washington


\(^{832}\) The Guardian. July 31, 2013. *XKeyscore: NSA tool collects 'nearly everything a user does on the internet'*; The original document indicates that: “XKeyscore provides the technological capability, if not the legal authority, to target even US persons for extensive electronic surveillance without a warrant provided that some identifying information, such as their email or IP address, is known to the analyst.” The Guardian. July 31, 2013. *XKeyscore System Power Point Presentation from 2008 – read in full.*
metropolitan area. In response to this article, the NSA told the newspaper that it tries to identify incidents or risks of incidents at the earliest possible moment, implement mitigation measures wherever possible, and drive those numbers down. It also acknowledged that the FISC had determined at one point that some data collection carried out pursuant to Section 702 of the FISA could be construed as unreasonable search and seizure, prohibited under the Fourth Amendment of the Constitution; in response to this decision, procedures were reportedly strengthened to safeguard the rights of U.S. persons, and therefore the court subsequently approved the collection.

406. That same day, The Washington Post published the written statement it had received from the Chief Judge of the FISC, District Judge Reggie B. Walton, according to which the court lacks the tools to independently verify how often the Government breaks the court’s rules that aim to protect Americans’ privacy the implementation of the surveillance programs. According to Judge Walton, the FISC “is forced to rely upon the accuracy of the information that is provided to the Court” and “does not have the capacity to investigate issues of noncompliance”. In that respect, the judge maintained that the FISC “is in the same position as any other court when it comes to enforcing [government] compliance with its orders.”

407. On September 28, The New York Times reported that, according to documents provided by Edward Snowden, the NSA has been using its huge metadata database of telephony and electronic communications since 2010 to create sophisticated graphs of the social connections of some persons, allowing the NSA to identify their relationships, their location at specific times, and other personal information. This type of analysis reportedly helps the agency to “discover and track” connections between foreign intelligence targets and persons in the United States. According to documents obtained by the newspaper, the tracking of Americans’ contacts is only authorized if a foreign intelligence justification is cited.

408. On October 30, The Washington Post revealed information indicating that the NSA had intercepted the main global communications links between Google and Yahoo data centers. According to the information published, Google and Yahoo maintain data centers on four continents, connected to each other through thousands of kilometers of fiber-optic cables. The main tool that the NSA reportedly has to exploit the data links is a project known as MUSCULAR, a system it operates jointly with the GCHQ.

409. It is apparent from the information disseminated following these revelations that these programs form part of the foreign intelligence data collection systems operated by the NSA pursuant to FISA section 702 and Executive Order No. 12333. In this regard, the Office of the Special Rapporteur

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learned that months before the revelations of these surveillance programs the United States Supreme Court dismissed a challenge to section 702 of the Foreign Intelligence Surveillance Act (FISA). The challenge was brought by lawyers, human rights and media organizations who claimed that their sensitive communications with clients, colleagues, and other individuals abroad were likely the target of surveillance, a situation that affected their constitutional rights under the First Amendment, among others. In Clapper et al. v. Amnesty International USA et al., the Supreme Court held that these organizations lacked standing to challenge the law because of the speculative nature of the injuries claimed.

410. Within the framework of the thematic hearing held on this matter by the IACHR on October 28, the organizations maintained that the revelations demonstrate that the United States government is using these provisions to implement excessively broad surveillance programs that interfere with the right to privacy beyond what is strictly necessary to pursue legitimate national security aims and that have a chilling effect on the right to seek, receive, and disseminate information and ideas of all kinds. They expressed their special concern over the breadth of the terms of FISA section 702, which authorizes the NSA to engage in the large-scale capture of electronic communications when two basic conditions are met: (i) that the target of the surveillance is a foreigner; and (ii) that the purpose of the surveillance is to gather “foreign intelligence” information.

411. As explained during the hearing, in the course of the surveillance conducted under section 702 of the FISA, the intelligence agencies can monitor communications “about” their foreign targets. This has reportedly been interpreted to allow the scanning of the content of any communication that originates or terminates in the United States, based on key words relating to their targets. In addition, the phrase “foreign intelligence information” is defined in an overly broad manner to include information about the conduct of international relationships in the United States. In other words, the surveillance conducted by virtue of section 702 of the law is not limited to the investigation of terrorism, but would also include any matter relevant to the country’s foreign interests.
Moreover, according to the information provided at the aforementioned hearing, there are no apparent protections or legal procedures designed to ensure the right of those foreigners who reside outside the United States, and who are not being criminally investigated, not to have their communications intercepted by the NSA under the premise that they enjoy lesser protection under the Constitution of the United States. In the opinion of the civil society organizations, this position is not supported by international human rights law. As such, they urged the government of the United States to meet its international obligations both within the United States and abroad. In this respect, the IACHR asked the State to explain whether there are any mechanisms to safeguard the rights of any person who may be adversely affected by the implementation of these programs in terms of international human rights law.

In its written response to the issues raised during the thematic hearing on freedom of expression and communications surveillance, the State reiterated that it is “committed to the right of freedom to expression, including freedom of expression on the Internet.” Also, it affirmed that “the United States has long championed these rights domestically and internationally, and [...] firmly believe[s] that privacy rights and the rights to freedom of expression must be respected both online and offline, as demonstrated by [State] co-sponsorship of a resolution on this topic at the UN Human Rights Council: ‘The Promotion, Protection and Enjoyment of Human Rights on the Internet’ and joining consensus on the resolution recently considered by the Third Committee of the UN General Assembly on ‘The Right to Privacy in the Digital Age.’ It is important to note that [the United States] do[es] not use [its] intelligence collection for the purposes of repressing the citizens of any country because of their political, religious or other beliefs.” As is explained below, in response to the aforementioned hearing, the Government indicated that the White House is leading a thorough review of the security programs, “which includes agencies from across the government. The review is looking across the board at our intelligence gathering to ensure that, as [the government agencies] gather intelligence, [they] are properly accounting for [the United States’] national security interests – including the security of [its]
citizens and [its] allies– and for the privacy concerns shared by Americans and citizens around the world.\textsuperscript{846}

414. The Office of the Special Rapporteur reiterates its concern over the broad scope of the programs revealed, noting the risks their implementation poses to the right to privacy and freedom of expression, as well as the need to amend the corresponding legislation and establish improved mechanisms for transparency and public debate on these practices.\textsuperscript{847} On the other hand, the Office of the Special Rapporteur takes notes of the vigor, openness and uninhibited nature of the public debate that followed these disclosures and the wide participation of civil society, the private sector, academia, media and members of the US Congress in the promotion of reforms to amend the deficiencies observed in the implementation of the surveillance programs, as well as the recommendations put forward by the Review Group on Intelligence and Communications Technologies (\textit{infra}).

415. As is developed further in Chapter IV of this Report, surveillance programs must be designed and implemented according to international standards on human rights. Particularly, States must guarantee that the interception, collection and use of personal information, including all limitations on the right of the affected person to access this information, be clearly authorized by law in order to protect them from arbitrary or abusive interference with their private interests. The law must pursue a legitimate aim, and establish limits with regard to the nature, scope and duration of these types of measures; the reasons for ordering them; the authorities with power to authorize, execute and monitor them; and the legal mechanisms by which they may be challenged. Furthermore, the law must authorize access to communications and personal information only under the most exceptional circumstances defined by legislation. When national security is invoked as a reason for the surveillance of correspondence and personal information, the law must clearly specify the criteria to be used for determining the cases in which such surveillance is legitimate. Its application shall be authorized only in the event of a clear risk to protected interests and when the damage that may result would be greater than society’s general interest in maintaining the right to privacy and the free circulation of ideas and information.

416. The Office of the Special Rapporteur observes that decisions to undertake surveillance activities that invade the privacy of individuals must be authorized by independent judicial authorities, who must state why the measure is appropriate for the accomplishment of the objectives pursued in the specific case; whether it is sufficiently restricted so as not to infringe upon the right in question more than necessary; and whether it is proportionate in relation to the interests pursued. Investigative proceedings involving an invasion of privacy authorized by law and by a competent judge must also respect other due process safeguards. States must ensure that the judicial authority is specialized and competent to make decisions on the legality of the communications surveillance, the technologies used, and its impact on the sphere of rights that could be involved, and that they have sufficient guarantees to fulfill its duties in an adequate manner. Finally, the Office of the Special Rapporteur observes that at the least, the decision-making criteria adopted by the courts should be public.


In this regard, the Office of the Special Rapporteur observes that States should establish independent oversight mechanisms over the authorities in charge of conducting surveillance capable of maintaining transparency and accountability for state surveillance of communications, as well as the criteria used in its implementation. Furthermore, States should allow service providers to publicly disclose the procedures they use when they receive requests for information from government authorities, as well as information on the types of requests they receive and the number of requests.\textsuperscript{848}

On August 9, United States President Barack Obama announced that his government would take measures to regain the public’s confidence in the surveillance programs and to impose greater safeguards against possible abuses of their implementation. First, he announced that his administration will work with the United States Congress to make the necessary reforms to the Patriot Act to increase the supervision and oversight of the foreign surveillance programs and establish additional constrains on the use of this authority by the government. Second, he indicated that he would propose reforms in Congress to increase the public’s confidence in the judicial oversight exercised by the FISA court and its procedures. In particular, he proposed the creation of an adversarial party to “give voice” to civil rights interests before the court. As a third measure, he announced that he had instructed the agencies of his administration to increase the transparency of the current foreign surveillance programs to the greatest extent possible, which includes the disclosure of currently classified documents, the establishment of “a Civil Liberties and Privacy Officer” at the NSA, and the creation of a website about the foreign surveillance programs that summarizes this information. Finally, the President announced the creation of a group of experts whose purpose is to review intelligence technologies and communications surveillance and its impact on national security, the right to privacy, and the government’s foreign policy.\textsuperscript{849}

The implementation of the measures announced by the government is explained with more detail in the following paragraphs of this report, in accordance with the response submitted to this Office by the State on this issue and the information publicly available.

In its written response to the issues raised during the thematic hearing on freedom of expression and communication surveillance,\textsuperscript{850} the State explained that “in an effort to increase the transparency of certain sensitive intelligence collection programs, the President of the United States directed the Intelligence Community to make public as much information as possible about these programs, while being mindful of the need to protect sensitive classified intelligence activities and


national security. Since that time, nearly 2,000 pages of documents have been released.”  

The State also informed that “these measures have been accompanied by numerous public statements regarding these intelligence programs and the framework within which they operate.” For example, according to the information sent by the State to the Office of the Special Rapporteur, on August 9, the government declassified information clarifying details about the workings and legal basis of one of the programs. Said document (the white paper) explains “why the telephony metadata collection program, subject to the restrictions imposed by the [FISC], is consistent with the Constitution and the standards set forth by Congress in Section 215” of the Patriot Act. During the month of August, the National Intelligence Director announced that the intelligence agencies will publish information annually on the total number of warrants issued and the number of targets affected through various national security-related legal procedures, including the surveillance authorized by section 702 of the FISA and section 215 of the Patriot Act. This information will reportedly be available on a new website (http://icontherecord.tumblr.com/) designed to provide direct and immediate access to factual information on the surveillance activities conducted by the United States intelligence community.

421. The State noted as well that “[...] the President called for a review of our surveillance policies and practices to ensure that the security concerns of our citizens and international partners are appropriately balanced with the privacy concerns that all people share. The White House is leading this review, which includes agencies from across the government. The review is looking across the board at our intelligence gathering to ensure that, as [the government agencies] gather intelligence, [they] are properly accounting for [the United States’] national security interests – including the security of [its] citizens and [its] allies– and for the privacy concerns shared by Americans and citizens around the world.”

422. In addition, the State informed that on August the President directed the establishment of the Review Group on Intelligence and Communications Technologies, which is charged with assessing “whether, in light of advancements in communications technologies, the United States employs its technical collection capabilities in a manner that optimally protects our national security and advances

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our foreign policy while appropriately accounting for other policy considerations, such as the risk of unauthorized disclosure and [the] need to maintain the public trust.”

423. According to the information provided, on September 4, 2013, the Review Group solicited comments from the public to inform its deliberations. Between September 4, 2013 and October 4, 2013, the Review Group received close to 250 comments. On December 12, the Review Group presented its final report to the President of the United States. The report provided 46 recommendations related to the surveillance of both US persons and non-US persons, the reduction of the risk of unjustified or unnecessary surveillance, global communications technology, among others.

Regarding the Surveillance of US persons under section 215 of Patriot Act, the Review Group recommended, inter alia, that “legislation should be enacted that terminates the storage of bulk telephony meta-data by the government under section 215 [of the Patriot Act] and transitions as soon as reasonably possible to a system in which such meta-data is held instead either by private providers or by a private third party.” It indicated that “[c]onsistent with this recommendation, we endorse a broad principle for the future: as a general rule and without senior policy review, the government should not be permitted to collect and store mass, undigested, non-public personal information about US persons for the purpose of enabling future queries and data-mining for foreign intelligence purposes.” The Review Group recommended restrictions “on the ability of the [FISC] to compel third parties (such as telephone service providers) to disclose private information to the government.” It is also recommended that “legislation should be enacted authorizing telephone, Internet, and other providers to disclose publicly general information about orders they received directing them to provide information to the government”. Regarding the Surveillance of Non-US persons, the Review Group said that “significant steps should be taken to protect the privacy of non-US persons.” It indicated that “any programs that allow surveillance of such persons even outside the United States should satisfy six separate constraints. They: 1) must be authorized by duly enacted laws or properly authorized executive orders; 2) must be directed exclusively at protecting national security interests of the United States or [its] allies; 3) must not be directed at illicit or illegitimate ends, such as the theft of trade secrets or obtaining commercial gain for domestic industries; 4) must not target any non-US person based solely on that person’s political views or religious convictions; 5) must not disseminate information about non-United States persons if the information is not relevant to protecting the national security of the United States or [its] allies, and 6) must be subject to careful oversight and to the highest degree of transparency consistent with protecting the national security of the United States and [its] allies.” It also recommended that “in the absence of a specific and compelling showing, the US government should follow the model of the Department of Homeland Security and apply the Privacy Act of 1974 in the same way to both US persons and non-US persons.” The Office of the Special Rapporteur specially notes that the Review Group recommended that “Congress should create the position of Public Interest Advocate to represent privacy and civil liberties interests before the Foreign Intelligence Surveillance Court”; and that “the transparency of the Foreign Intelligence Surveillance Court’s decisions should be increased, including by instituting declassification reviews that comply with existing standards.” Finally, the Office notes that the Review Group recommended that “the US Government should streamline the process for lawful


international requests to obtain electronic communications through the Mutual Legal Assistance treaty process.  

424. The Office of the Special Rapporteur further notes that the United States Congress is studying substantial limitations to the scope of the surveillance programs in operation. On July 24, a bill restricting the NSA’s budget to fund programs for the mass collection of telephonic metadata was defeated in the House of Representatives, with 217 votes against it and 205 in favor. According to the information available, on October 29 Congressman Jim Sensenbrenner introduced the draft USA Freedom Act in the House of Representatives, the purpose of which is to, among others: (1) limit the collection of information by the NSA and other government agencies; (2) increase the transparency of the Foreign Intelligence Surveillance Court; (3) provide businesses the ability to release information regarding FISA requests, and (4) create an independent constitutional advocate to argue cases before the FISC. The same bill was also introduced in the Senate by the Chairman of the Senate Judiciary Committee, Senator Patrick Leahy. This bill is supported by civil society organizations. For its part, on October 31, the Senate Intelligence Committee passed the FISA Improvements Act, which seeks to increase the privacy protections and transparency of the NSA’s telephonic metadata program and of other intelligence activities.

E. Privacy and confidentiality of sources

425. According to the information received, on May 10, The Associated Press (AP) news agency received a letter from the United States Attorney’s Office for the District of Columbia notifying it that the Department of Justice had obtained the phone records from more than 20 lines used by editors and journalists from the agency during April and May of 2012. The records reportedly included calls made from the AP’s offices and from the personal phone lines of various staff members. The gathering

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of this information had taken place without prior notice to the news agency or its journalists. On May 13, AP President and CEO Gary B. Pruitt sent a letter of protest to Attorney General Eric Holder, in which he objected “in the strongest possible terms to a massive and unprecedented intrusion by the Department of Justice into the newsgathering activities of The Associated Press.” In the letter, the Pruitt stated that, “These records potentially reveal communications with confidential sources across all of the newsgathering activities undertaken by the AP during a two-month period, provide a road map to AP’s newsgathering operations, and disclose information about AP’s activities and operations that the government has no conceivable right to know.” The Deputy Attorney General, James Cole, provided assurances in a response letter to the AP that the Department of Justice strives in every case to strike “the proper balance between the public’s interest in the free flow of information and the public’s interest in the protection of national security and the effective enforcement of our criminal laws.” In turn, Attorney General Eric Holder stated at a May 14 press conference that the actions were taken in the context of an investigation of a “very serious leak” of information that “put the American people at risk,” and that “trying to determine who was responsible for that, I think, required very aggressive action.” For his part, White House Press Secretary Jay Carney stated that the White House had no knowledge of any attempt by the Department of Justice to request AP telephone records. “The President believes that the press, as a rule, needs to have an unfettered ability to pursue investigative journalism.” He added that the president also believes in the need to ensure that “classified information is not leaked, because it can endanger our national security interests; it can endanger [individuals].” The Office of the Special Rapporteur expressed its concern and noted that these types of practices can infringe upon the free exercise of journalism by endangering the confidentiality of journalistic sources. Also, these types of measures must be governed by the human rights standards that guide any surveillance program, as indicated in the paragraphs 414 and following of chapter II of this report and its chapter IV.

426. The Office of the Special Rapporteur was informed that the FBI reportedly investigated the email and telephone records of journalist James Rosen, a Washington correspondent for the FOX News television channel. It had also reportedly tracked his visits to the State Department as part of an investigation opened in 2010 against State Department advisor Stephen Jin-Woo Kim, accused of

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violating the Espionage Act of 1917 for allegedly leaking classified information about North Korea in 2009.871 On May 19, The Washington Post published the warrant authorizing the search of the journalist’s email, together with the search warrant request filed by an FBI agent. In the request to the judge, the FBI special agent described the journalist as “a collaborator, accomplice, and/or co-conspirator” in the espionage case. According to the article, the legal protections of privacy limit the search or seizure of a reporter’s work, unless there is evidence that the journalist violated the law against unauthorized leaks. The federal judge authorized the search based on the existence of probable cause that Rosen participated in the offense.872

427. According to the information available, in response to the criticism of the U.S. government after it had obtained the telephone records and correspondence of The Associated Press and of journalist James Rosen, in May 2013 the president reportedly instructed the Attorney General to review the policies and practices of the Department of Justice with respect to the matter.873 In July, the Department of Justice made public the institution’s general policy changes regarding the use of investigative tools, including subpoenas and search warrants to obtain information or records from members of the press during the course of civil or criminal investigations. The changes announced are said to be aimed, among other things, at: (i) establishing a presumption in favor of prior notice to the news media whenever the Department seeks access to their records related to newsgathering activities, so as to ensure notice in all but the most exceptional cases; (ii) raising the standards and elevate the level of internal authorization required for search warrants and other court orders; (iii) creating a News Media Review Committee, whose duties would include advising the Attorney General and the Deputy Attorney General on the enforcement of policies; and (iv) establishing an Attorney General’s News Media Dialogue Group, comprised by members of the media, Department of Justice attorneys, and the director of the Office of Public Affairs, as a forum to regularly discuss the impact of the new policy. According to the information disclosed, the changes seek to “ensure the Department strikes the appropriate balance between two vital interests: protecting the American people by pursuing those who violate their oaths through unlawful disclosures of information and safeguarding the essential role of a free press in fostering government accountability and an open society.” 874

428. On September 12, the Senate Judiciary Committee approved a new version of the Free Flow of Information Act of 2013, known as the Media Shield Law. The bill establishes protection from subpoenas seeking confidential information obtained in the course of journalistic work. It was


introduced in May by Senator Charles Schumer, and if passed, it would be the first federal law of its kind. The changes introduced by the Senate Judiciary Committee include the broad definition of “covered journalist,” as well as the potential extension of the protections to any other person if a judge determines that they “would be in the interest of justice and necessary to protect lawful and legitimate news-gathering activities under the specific circumstances of the case.” The bill establishes different exceptions to its enforcement with respect to national security matters, among others.

429. On July 19, in a case brought by the Department of Justice against Jeffrey Sterling, a former CIA officer accused of leaking secret documents, the United States Court of Appeals for the

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876 United States Senate. S. 987: Free Flow of Information Act of 2013. Section 11. November 6, 2013. According to this provision “the term ‘covered journalist’ ([I(I]) means a person who—(aa) is, or on the relevant date, was, an employee, independent contractor, or agent of an entity or service that disseminates news or information by means of newspaper; nonfiction book; wire service; news agency; news website, mobile application or other news or information service (whether distributed digitally or otherwise); news program; magazine or other periodical, whether in print, electronic, or other format; or through television or radio broadcast, multichannel video programming distributor (as such term is defined in section 602(13) of the Communications Act of 1934 (47 U.S.C. 522(13)), or motion picture for public showing; (bb) with the primary intent to investigate events and procure material in order to disseminate to the public news or information concerning local, national, or international events or other matters of public interest, engages, or as of the relevant date engaged, in the regular gathering, investigate events and procure material in order to disseminate to the public news or information concerning local, national, or international events or other matters of public interest, and regularly conducted interviews; (BB) making direct observation of events; or (CC) collecting, reviewing, or analyzing original writings, statements, communications, reports, memoranda, records, transcripts documents, photographs, recordings, tapes, materials, data, or other information whether in paper, electronic, or other form; (cc) had such intent at the inception of the process of gathering the news or information sought; and (dd) obtained the news or information sought in order to disseminate the news or information to the public; or (II) means a person who—(aa) at the inception of the process of gathering the news or information sought, had the primary intent to investigate issues or events and procure material in order to disseminate to the public news or information concerning local, national, or international events or other matters of public interest, and regularly conducted interviews, reviewed documents, captured images of events, or directly observed events; (bb) obtained the news or information sought in order to disseminate it by means of a medium set out in subclause ([I(aa) of this section; and (cc) either—(AA) would have been included in the definition in subclause ([I(aa) of this section for any continuous one-year period within the 20 years prior to the relevant date or any continuous three-month period within the 5 years prior to the relevant date; (BB) had substantially contributed, as an author, editor, photographer, or producer, to a significant number of articles, stories, programs, or publications by a medium set out in subclause ([I(aa) of this section within 5 years prior to the relevant date; or(CC) was a student participating in a journalistic medium at an institution of higher education (as defined in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002) on the relevant date; or (I) includes a supervisor, editor, employer, parent company, subsidiary, or affiliate of a person described in subclause ([I or (II) of clause (I)).

877 United States Senate. S. 987: Free Flow of Information Act of 2013. Section 11. November 6, 2013. According to this provision “[I]n the case of a person that does not fit within the definition of “covered journalist” described in subclause ([I) or (II) of paragraph (A)(i), a judge of the United States may exercise discretion to avail the person of the protections of this Act if, based on specific facts contained in the record, the judge determines that such protections would be in the interest of justice and necessary to protect lawful and legitimate news-gathering activities under the specific circumstances of the case.”


Fourth Circuit reversed the 2011 decision of a district court and ordered *The New York Times* journalist James Risen to testify in the case against Sterling. The Department of Justice alleges that Mr. Sterling gave classified information to Mr. Risen that served as the basis for one of the chapters in Risen’s book *State of War*. The journalist had invoked his right to maintain the confidentiality of his source under the First Amendment of the Constitution.

430. According to the information available, the district court judge had ruled in July 2011 that Risen was protected from testifying by the reporter’s privilege. However, on October 19, 2011, the Department of Justice appealed the decision quashing its subpoena to the Fourth Circuit Court of Appeals. In a 2-to-1 decision, the Court of Appeals reversed the lower court’s decision and ordered Risen to testify as to the identity of the sources used in his book. In his dissenting opinion, Judge Gregory remarked on the importance of protecting the confidentiality of sources to ensure the free flow of information on issues of public interest. The judge further indicated that, although the public does not have the right to access all classified information in the possession of the government, public debate on the armed forces and the methods used by U.S. intelligence bodies are a critical element of public oversight of the government. To determine when a journalist has the right not to be forced to provide testimony about confidential sources, the judge applied a three-part test to the case, examining: (1) whether the information is relevant; (2) whether the information can be obtained by alternative means; and (3) whether there is a compelling interest in the information. The judge also weighed the public’s interest in the information disclosed by the source against the harm caused by its dissemination. Based on those factors, the judge concluded that Risen had a reporter’s privilege that entitled him to refuse to testify.

431. In view of the decision, Risen petitioned for a rehearing *en banc* and through his lawyers sent a letter to Attorney General Eric Holder, asking him to withdraw the subpoena for Risen’s testimony in light of the Justice Department’s new guidelines on the media and the use of subpoenas to obtain information from journalists (*supra*). On August 21, the organization Reporters Committee for...
Freedom of the Press sent a letter to the Attorney General, signed by numerous media outlets and nongovernmental organizations, in support of Risen’s request. On October 15, the full Court of Appeals denied the petition for a rehearing. According to the information obtained, on November 6 the Court of Appeals granted the journalist’s request for a stay of the proceedings so he could ask the Supreme Court of the United States to review the decision against him.

According to Principle 8 of the Declaration of Principles on Freedom of Expression of the IACHR establishes that, “Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential.” As the Office of the Special Rapporteur has indicated on other occasions, the importance of the right to the confidentiality of sources lies in the fact that in the context of their work and in order to provide the public with the information necessary to satisfy the right to receive information, journalists perform an important service to the public when they collect and publish information that would not otherwise come to light if the confidentiality of their sources were not protected. Thus, confidentiality is an essential element of journalists’ work and of the role that they play to society in reporting about matters of public interest. The Office of the Special Rapporteur reminds the State of the need to adopt all necessary measures to prevent endangering this fundamental guarantee for the exercise of the free practice of journalism.

F. Disclosure of confidential information

On January 25, 2013, former Central Intelligence Agency (CIA) employee John Kiriakou was sentenced to 30 months in prison for violating the Intelligence Identities Protection Act by revealing to a journalist the identity of an undercover CIA agent, who allegedly interrogated individuals detained in Guantánamo, Cuba. The journalist reportedly turned over the information to an investigator hired by defense attorneys representing individuals detained in that prison. As previously reported by this

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Office, in 2012 the United States government indicted Kiriakou on charges of having leaked classified information about national defense to journalists, including the disclosure of the identity of an intelligence agent. On October 23, 2012, Kiriakou plead guilty to revealing an intelligence agent’s identity, in exchange for which the prosecutor’s office withdrew the original charges that had been levied against him under the Espionage Act, among other laws. As part of the plea deal, Kiriakou agreed to serve a 30-month prison sentence.890

434. On June 14, the government of the United States filed a criminal complaint in the U.S. District Court for the Eastern District of Virginia against Edward Snowden, a former employee of the company Booz Allen Hamilton, a contractor of National Security Agency (NSA). Snowden was charged with theft of government property, unauthorized communication of national defense information, and willful communication of classified communications intelligence information to an unauthorized person (the last two charges under the Espionage Act of 1917),891 each of which carries a maximum penalty of 10 years in prison. That same day, the Court issued a warrant for Snowden’s arrest.892 As mentioned earlier (supra), Snowden revealed information on the existence of secret national security surveillance programs. On August 1, Snowden obtained temporary asylum from the government of Russia.893

435. On July 30, 2013, former soldier Chelsea Manning894 was convicted by the U.S. Army Military District of Washington of 20 criminal offenses, including “wanton publication,” “Stealing USG Property,” and of 7 counts under the Espionage Act of 1917, for having given information to Wikileaks


concerning, among other things, acts that allegedly occurred in the wars in Iraq and Afghanistan. On August 21, she received a 35-year prison sentence, which is reportedly the longest sentence ever imposed in a case of leaks of classified information to the public in the United States. She will receive approximately 3 years' credit for time served in pretrial detention, and 112 days for the abusive treatment to which she was subjected during her detention at Quantico. In September, Chelsea formally requested a presidential pardon.

Chelsea Manning formally pled guilty to 10 offenses relating to the unlawful possession and distribution of classified information. Manning was acquitted of “aiding the enemy,” an offense that carries a sentence of life in prison without parole. On this point, the Court found that the former soldier did not “knowingly give intelligence to the enemy, through indirect means.” The information disclosed by Manning included a video that showed an air attack on civilians in Baghdad in 2007, in which two journalists from the Reuters news agency were killed. Human rights organizations also

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reported that Manning had been kept in solitary confinement for eleven months and had been the victim of mistreatment during her pretrial detention from 2010 to 2011.902

437. The available information suggests that neither the trial and conviction of the soldier Chelsea Manning, nor the complaint filed against Edward Snowden, took account of the principles that require the protection of whistleblowers who, having the duty of confidentiality, report, in good faith, information of notable public interest. In this respect, in the context of the thematic hearing “Freedom of expression and the surveillance of communications by the United States,” held on October 28, 2013, the participating organizations indicated that although the United States has regulations that would protect informants from retaliation for the disclosure of information of public interest, they are not truly available to personnel from the national security sector. The participants explained that a Presidential Policy Directive issued in October 2012 is meant to protect the disclosure of waste, fraud, and abuse in the national security sector, in recognition of the limitations of the existing regulations that, in the opinion of the participating organizations, are insufficient insofar as they do not apply to contractors or members of the armed forces, do not have legal mechanisms to redress retaliations, and create a discretionary administrative review mechanism whose decisions would not be binding on the intelligence agencies. They stated that the laws of the United States for the criminal prosecution of public servants who disclose or leak national security information and the protection of whistleblowers do not meet international standards on freedom of expression and information. They asserted that the offenses defined in the laws are vague and overly broad, and do not require intent or harm. The offenses and the penalties also fail to take proper account of the public interest of the information disclosed, and they fail to provide protections to security sector whistleblowers. Finally, the penalties established for the disclosure of classified information, particularly pursuant to the Espionage Act of 1917, are said to be disproportionately severe.903

438. In its written response to the issues raised during the thematic hearing on freedom of expression and communication surveillance,904 the State explained that with regard to the protection of whistleblowers, it “has an array of laws, regulations and policies that provide confidential avenues for the protected disclosure of whistleblowing information. Whistleblowers are protected against retaliation for making protected disclosures and may be entitled to remedies, including equitable relief and monetary damages for violations of whistleblower protections and unlawful retaliation.” It also pointed out that “[o]n November 27, 2012, the President signed the Whistleblower Protection Enhancement Act, which significantly improves protection for Federal workers by clarifying the scope of protected disclosures; expanding judicial review; expanding the penalties imposed for violating whistleblower protections; creating new protections for Transportation Security Officers and scientists; creating whistleblower ombudsmen in Federal agencies; strengthening the authority of the United

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States’ Office of the Special Counsel (OSC), which receives, investigates, and may prosecute whistleblowing claims on behalf of most federal employees.” The State explained that protected whistleblower disclosures investigated by OSC fall into “five general statutory categories: violations of a law, rule or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; and a substantial and specific danger to public health and safety.” Finally, the State indicated that “due to the unique secrecy requirements of information they receive in their jobs, whistleblower laws do not apply in the same way to employees in the Intelligence Community or other Federal employees with access to classified information. However, in October 2012, the President issued a landmark directive (Presidential Policy Directive 19) that extended robust new whistleblower protections to such individuals.”

439. The Office of the Special Rapporteur insists that, as stated in the Joint Declaration on Wikileaks (2010) and Joint Declaration on surveillance programs (2013), that public authorities or its contractors and their staff bear sole responsibility for protecting the confidentiality of legitimately classified information under their control. Other individuals, including journalists, media workers and civil society representatives, who receive and disseminate classified information because they believe it is in the public interest, should not be subject to liability unless they committed fraud or another crime to obtain the information. In addition, “whistleblowers,” that being government employees or contractors release 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.905

440. Similarly, the Global Principles on National Security and the Right to Information (Tshwane Principles), 906 states that the law should protect public employees from retaliation for the disclosure of information concerning wrongdoing, so long as, among others, “the person making the disclosure had reasonable grounds to believe that the information disclosed tends to show wrongdoing” that falls into one of the following categories “(a) criminal offenses; (b) human rights violations; (c) international humanitarian law violations; (d) corruption; (e) dangers to public health and safety; (f) dangers to the environment; (g) abuse of public office; (h) miscarriages of justice; (i) mismanagement or waste of resources; (j) retaliation for disclosure of any of the above listed categories of wrongdoing; and (k) deliberate concealment of any matter falling into one of the above categories”.907

G. Other relevant situations

441. On April 23, the Twitter account of the news agency the Associated Press (AP) was suspended after having been subject to a cyber-attack. Hackers had posted a fake tweet on the AP’s

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account in which the AP was supposedly reporting on explosions at the White House. As a result of the attack, the account was suspended for some 20 hours.\footnote{USA Today. April 23, 2013. AP Twitter feed hacked; no attack at White House; Gigaom. April 24, 2013. AP returns to Twitter after hack — but where are its 2 million followers?; The Guardian. April 23, 2013. AP Twitter hack causes panic on Wall Street and sends Dow plunging; The Huffington Post. April 24, 2013. Associated Press Twitter Account Restored After Hack.}

13. Grenada

\footnote{Reporters Without Borders. September 23, 2013. Governor-General urged to veto law; Knight Center for Journalism in the Americas. September 27, 2013. RSF calls for veto of Electronic Crimes law in Grenada; Knight Center for Journalism in the Americas. September 18, 2013. New law in Grenada to punish offensive online content with up to one year in prison; International Press Institute (IPI). September 9, 2013. Once withdrawn, electronic defamation bill passes in Grenada. Government of Grenada. Electronic Crimes Bill, 2013. “6. (1) A person shall not knowingly or without lawful excuse or justification send by means of an electronic system or an electronic device— (a) information that is grossly offensive or has a menacing character […].” “3. This Act applies where— (e) an offence under this Act was committed by any person, of any nationality or citizenship or in any place outside or inside Grenada, having an effect on the security of Grenada or its nationals, or having universal application under international law, custom and usage.”


442. The Office of the Special Rapporteur expresses concern over the enactment of the Electronic Crimes Bill on September 9 by the Parliament of Grenada. The new law criminalizes, among other acts, the sending of “offensive” or “threatening” messages through electronic devices or systems, and punishes such acts with fines of up to 100,000 East Caribbean dollars (some US$ 37,000.00) and up to one year in prison. Civil society organizations criticized the ambiguity of the law, as well as the scope of its application, which would extend to any person in any country when the acts described in the law have “an effect on the security of Grenada or its nationals.”\footnote{Reporters Without Borders. September 23, 2013. Governor-General urged to veto law; Knight Center for Journalism in the Americas. September 27, 2013. RSF calls for veto of Electronic Crimes law in Grenada; Knight Center for Journalism in the Americas. September 18, 2013. New law in Grenada to punish offensive online content with up to one year in prison; International Press Institute (IPI). September 9, 2013. Once withdrawn, electronic defamation bill passes in Grenada. Government of Grenada. Electronic Crimes Bill, 2013. “6. (1) A person shall not knowingly or without lawful excuse or justification send by means of an electronic system or an electronic device— (a) information that is grossly offensive or has a menacing character […].” “3. This Act applies where— (e) an offence under this Act was committed by any person, of any nationality or citizenship or in any place outside or inside Grenada, having an effect on the security of Grenada or its nationals, or having universal application under international law, custom and usage.”


14. Guatemala

A. Progress

443. The Office of the Special Rapporteur has learned that the government of Guatemala published the Access to Public Information Act in the K’iche’ language. The initiative was said to be one of the actions being taken to “promote the transparency and social accountability of institutions.” Guatemala’s vice president, Roxana Baldetti, said the initiative constitutes an “important step” because “it will enable citizens who speak [K’iche’] to become aware of and demand better results, and reduce the levels of corruption.” According to the information received, the law will be translated into four additional languages and that the government’s intention is to have it in all 22 of the languages recognized in Guatemala.\footnote{Gobierno de Guatemala. Secretaría de Comunicación Social de la Presidencia de la República. June 14, 2013. Vicepresidenta promueve acceso a información pública en idioma K’iche’; Gobierno de Guatemala. Ministerio de Gobernación. June 17, 2013. Gobernación departamental respalda Ley de Acceso a la Información en idioma K’iche’; Agencia Guatemalteca de Noticias (AGN). June 13, 2013. Ejecutivo divulgará Ley de Acceso a la Información en idioma K’iche’; Inter American Press Association (IAPA). June 19, 2013. En idioma K’iche’ la Ley de Libre Acceso a la Información.}

444. The Office of the Special Rapporteur was informed that the State of Guatemala is in the early stages of designing and creating program to protect at-risk journalists. According to the information received, in May of 2013, the president of Guatemala - Otto Pérez Molina - reiterated in the presence of UNESCO and the United Nations Office of the High Commissioner for Human Rights in Guatemala his commitment to local journalism associations and the Centro de Reportes Informativos
sobre Guatemala (CERIGUA) “[t]o draw up and implement as soon as possible a preventive program for the protection of journalists”.911 In August 2013, the President of the Republic reiterated his commitment and affirmed that the State was studying the creation of a body to protect the work and lives of journalists.912

445. In a December 24, 2013 communication, the State provided updated information on the measures taken to create a program for the protection of journalists. The State reported that President Otto Pérez Molina, together with Vice President Ingrid Baldetti Elias, presented the “Plan for the Protection of Journalists.” The State reported that the Plan has “a structure for coordination among the Ministry of Interior [Ministerio de Gobernación], the Office of the Press Secretary of the President [Secretaría de Comunicación Social de la Presidencia] (SCSPR), the Office of the Public Prosecutor [Ministerio Público] (MP), the Presidential Human Rights Commission [Comisión Presidencial de Derechos Humanos] (COPREDEH), the Office of the Public Prosecutor for Human Rights [Procurador de los Derechos Humanos] (PDH), and organizations of journalists, which will be headed by the Office of the Press Secretary of the President of the Republic.” The State reported that the Plan would take account of “the recommendations of the United Nations Organization for Education, Science and Culture (UNESCO).”913 In that communication, the State also provided a copy of the document entitled “Program Proposal for the Protection of Journalists” dated November 28, 2013, which proposes, among other things, general provisions on the organization of the program, the bodies it would include, the process for requesting protection, the protection measures that could be taken, and ways of funding the program.914

446. In communication dated April 22, 2013, the State of Guatemala informed the Office of the Special Rapporteur of the protective mechanisms in existence in the country.915 The State indicated that the Service to Protect People Involved in Legal Proceedings and Individuals Connected to the Administration of Criminal Justice, which operates under Decree 70-96 of the Congress of the Republic, provides coverage to, among other people, “journalists who need it because they are at risk as a result


of performing their duties to inform.”\textsuperscript{916} The Protection Service is set up within the organizational structure of the Office of the Public Prosecutor and its principal role is to provide protection to individuals exposed to risks as a result of their participation in criminal proceedings.\textsuperscript{917} Likewise, the Guatemalan State reported on the existence of the Coordinating Unit for the Protection of Human Rights Defenders, Administrators and Operators of Justice, Journalists and Social Communicators. The unit was created in 2004, became a Department in 2008, and currently has the status of Directorate. The agency is responsible for “coordinating with the executive branch institutions in charge of granting and implementing protective measures for individuals who request precautionary, provisional and security measures before the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, the Rapporteurs of the Universal System […], or national mechanisms. Its purpose is to guarantee effective compliance.”\textsuperscript{918} In addition, the State indicated that the agency has been needed “for the protection of journalists in 48 cases.” Of these cases, 83% were in response to calls or urgent actions from the Rapporteurs of the United Nation system and 16% to precautionary protection of the Inter-American System. According to the State, only one of the cases had to do with a request under the national system for protection.\textsuperscript{919} Indeed, the State reported that: “The experience of protecting journalists and social communicators, as well as the degree to which they have accepted the mechanisms, is reflected in the fact that in three cases, personal protection or bodyguard services have been adopted (6% of cases), while in nine cases, perimeter protection was accepted (representing 18%), and finally, in 37 cases, (76%) journalists and social communicators did not feel any of the arrangements would be worthwhile”.\textsuperscript{920}

447. The State added that the high percentage of journalists who refuse any protection arrangements “continues to be a challenge for the State of Guatemala, and from there the need to create a protection program that allows for other security arrangements to be offered in accordance with and without limiting the activity or role petitioners play.”\textsuperscript{921}

448. On October 9, Judge Raquel Perdomo, who heads Guatemala’s multi-judge First Magistrate Criminal Court, reportedly handed down a six-month commutable prison sentence against a former Minister of Culture and Sports of Guatemala for having threatened journalist Sofía Menchú, a


\textsuperscript{917} Congreso de la República de Guatemala. Decreto Numero 70-96. September 27, 1996. Articles 1 y 2.


reporter with *elPeriódico*. On March 7, the journalist reportedly was a victim of intimidation on the part of the former minister, due to investigations and articles published about the relationship between a retired member of the military, who had been sentenced in the death of Bishop Juan José Gerardi, and prison system authorities. As alleged by *elPeriódico*, the reporter had been warned by the former minister that she should no longer publish stories about the former military man, and he had advised the journalist to “place her trust in God” so that nothing would happen to her.

449. As regards these events, the State of Guatemala reported, in a communication of December 24, 2013, that “upon receiving the report the Office of the Public Prosecutor carried out various investigative activities, among them copying video, photogram, interviews and testimonies of colleagues from work, friends of the journalist, in addition to documentary evidence. Psychological and linguistic expert reports were produced, as well as an analysis of inter-communication. With that evidence the conviction” of the former official “was obtained for the crime of threats.”

450. On October 17, the Second Criminal Court of First Instance sentenced two mining company employees to two years in prison (commutable), for threatening five journalists in November 2012, while they were covering protests against a mining project. According to the information received, the court found them guilty of the crimes of “intimidation and threats,” for which they must pay approximately $3 for each day of the suspended prison sentence and must pay financial restitution to the journalists.

B. Murders

451. The Office of the Special Rapporteur has become aware of cases of journalists being killed in which there is still no clear connection with the practice of journalism. Along these lines, the Office of the Special Rapporteur believes it is essential for the authorities to investigate these incidents without dismissing the hypothesis of a connection with journalism and freedom of expression. On March 20, journalist Jaime Napoleón Jarquín Duarte, a correspondent for the newspaper *Nuestro Diario*, was killed in the city of Pedro de Alvarado, in the department of Jutiapa. According to the information received, the journalist had not received threats. On April 7, also in Jutiapa, journalist Luis Alberto Lemus Ruano was killed; he was the head of *Radio Stereo Café*, owner of the cable channel *Café TV*, and

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vice president of the Association of Journalists of Jutiapa. 927 On August 6, journalist Luis de Jesús Lima, radio announcer for La Sultana and director of the radio magazine Somos Zacapa, was killed in the department of Zacapa. 928 On August 19, the body of journalist Carlos Alberto Orellana Chávez was found in the department of Suchitepéquez; he was the former director of Radio Victoria ‘La Venadita’, host of two news programs on the television cable channel Óptimo 23, and a former mayor of the municipality of Mazatenango. 929

452. In relation to these facts, in a communication of December 24, 2013, the State of Guatemala informed the Office of the Special Rapporteur that several investigative activities have been undertaken to clarify the facts, such as: “documentation of the crime scenes with photograph and planimetry; collection of evidence in the places where the killings were committed to proceed to take the expert evidence such as ballistics, ballistic trajectory, fingerprints, statements of possible witnesses, work colleagues, the journalist’s family members; collection and analysis of phone calls; travelling along the routes and surveillance for field investigation by investigators of the Bureau of Criminalistic Investigations and of the Specialized Division in Criminal Investigation of the National Forensic Science Institute; information on institutions such as the General Bureau of Arms and Munitions Control, Superintendency of Tax Administration, Supreme Electoral Tribunal, Center for Compilation, Analysis and Dissemination of Criminal Information of the National Civilian Police, and banking institutions, among others, that has made it possible to draw lines of investigation. In addition, information has been gathered on other cases and events that have occurred in the journalist sector for the purpose of obtaining information from other witnesses, similarities in the facts and means for their scientific analysis, checking of evidence; the four assassinations that are in the investigative phase.” 930

453. 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.”

C. Attacks and threats against media outlets and journalists


454. On April 3, reporter Alejandra Cano and cameraman Juan Rodríguez, from the Telecentro 13, were reportedly intimidated in the midst of a confrontation between street vendors and the municipal police, in Guatemala City. The vehicle the reporters were driving was apparently destroyed.931

455. On April 11, reporters Henry Bin, of Emisoras Unidas; Andrea Orozco, of Prensa Libre; and Álvaro Interiano, of Prensa Libre, were reportedly assaulted by officers of the Secretariat for Administrative and Security Affairs of the Office of the President [Secretaría de Asuntos Administrativos y de Seguridad de la Presidencia] (SAAS) and by staff of the Office of the Press Secretary of the President [Secretaría de Comunicación Social de la Presidencia] (SCSP) during a public government event in the municipality of Mixco. According to the information received, the incidents began when the reporters insisted on asking the president some questions, which is why security officers were said to have pushed and assaulted them. Later, President Otto Pérez Molina deplored the attacks and reportedly ordered the head of the SAAS to ensure that something like that would not happen again.932

456. In reference to these facts, the State of Guatemala informed the Office of the Special Rapporteur, in a communication of December 24, 2013, that on April 12 the Office of the Public Prosecutor began an investigation on its own initiative because of a publication in the news outlet Prensa Libre entitled “Agents of the Secretariat for Administrative and Security Affairs Attack the Press” [“Agentes de la Secretaría de Asuntos Administrativos y de Seguridad agreden a la prensa”] that reported the incident and named two members of the security personnel as being the persons allegedly responsible for the attacks. The State indicated that “the Office of the Public Prosecutor collected investigative means such as the Report of the Secretariat for Administrative and Security Affairs of the Office of the President – SAAS – which provided a list of the persons who were assigned to the security of the President of the Republic of Guatemala on April 11, 2013” and “the persons possibly responsible were identified”; nonetheless, “the SAAS reported that the accused do not work for said institution” and that one of them “is in the data base as support personnel and that he is part of the Ministry of National Defense.” The State indicated that it “has not had the support of the injured persons so as to be able to show the possible harm suffered and other information relevant to the case, even though they have been summoned and convened to the Prosecutorial Unit repeatedly.”933

457. On April 24, Prensa Libre correspondent Álexander Coyoy, along with a local television reporter, were reportedly intimidated by an assistant prosecutor with the Office of the Public Prosecutor and two alleged officers of the National Civilian Police when they were covering an exhumation in the Pajapita cemetery in the department of San Marcos. According to the information received, the assistant prosecutor ordered the police officers to remove them from the cemetery, so

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both journalists left the site and continued reporting from the outside. However, the prosecutor sent
the police officers back, and they interrogated the journalists and asked them for their personal
information. Later, the prosecutor stated that he would not allow photographs or video.934 The State of
Guatemala informed the Office of the Special Rapporteur, in a communication of December 24, 2013,
that as the case was not made known to the Office of the Public Prosecutor, it “does not have
information.”935

458. On May 18, journalist Carlos Alberto Salgado, editor of the weekly El Defensor in
Retalhuleu, complained that he received death threats on his mobile phone. The journalist indicated
that the threats may have been made because of articles the weekly had published about local
government officials.936 In a communication of December 24, 2013, the State reported that according
to the Office of the Public Prosecutor, “as the act was carried out by means of telephony, judicial
authorization was sought to request information from the related company as to who reported
incoming and outgoing calls, and it indicated that it does not have records.”937

459. On May 30, reporter Julissa Gutiérrez, of the ‘Súper Informativo’ news program on
Radio Súper, was attacked by an individual who had been sentenced for crimes involving murders
of women, in the department of Huehuetenango. The reporter was covering the trial of the accused and
was following the issue in the Femicide Court of Huehuetenango when the accused, even though he was
in police custody, attacked her and hit her on various parts of her body.938

460. On June 8, journalist Danilo López, a correspondent with Prensa Libre, was threatened
by the mayor of San Lorenzo, in the department of Suchitepéquez. According to the information
received, the threats stemmed from a story published in April 2013 about alleged irregularities
committed by the municipality in the management of public funds.939 As Prensa Libre reported, the
official told him, “I’m in power and I’ve got the money to take actions against you; you, on the other
hand, don’t have anything, so beware of the consequences.”940 On December 24, 2013, the State

Comunicado No. 8-04-2013. Intimidaron y agreden a corresponsal. Available for consultation at: Archives of the Office of
the Special Rapporteur for Freedom of Expression.

935 Communication from the Permanent Mission of Guatemala to the OAS. M12-OEA-F.2.4.2.1. No. 1230-2013 of
December 24, 2013, forwarding the communication from the Comisión Presidencial de Derechos Humanos (COPREDEH) Ref. P-
100-2013/AF/AF/MR/hm of December 18, 2013 and the communication from the Ministerio Público SAIC-1355-2013 of
November 26, 2013.

936 Siglo 21. May 28, 2013. Periodista amenazado en Retalhuleu; Centro de Reportes Informativos sobre Guatemala
(CERIGUA). July 2, 2013. Agresiones contra la prensa aumentaron durante el segundo trimestre del año.

937 Communication from the Permanent Mission of Guatemala to the OAS. M12-OEA-F.2.4.2.1. No. 1230-2013 of
December 24, 2013, forwarding the communication from the Comisión Presidencial de Derechos Humanos (COPREDEH) Ref. P-
100-2013/AF/AF/MR/hm of December 18, 2013 and the communication from the Ministerio Público SAIC-1355-2013 of
November 26, 2013.

938 Prensa Libre. May 31, 2013. Reo agrede a periodista; Centro de Reportes Informativos sobre Guatemala
(CERIGUA). May 31, 2013. Reportera es agredida por reo en Huehuetenango; Centro de Reportes Informativos sobre Guatemala
(CERIGUA). June 1, 2013. APEHUE condena ataque a periodistas durante coberturas.

939 IFEX/Centro de Reportes Informativos sobre Guatemala (CERIGUA). July 10, 2013. Periodista víctima de amenazas
July 9, 2013. Alcalde amenaza a periodista.

reported that the Office of the Public Prosecutor “requested the preliminary proceeding against the Mayor, who because of his position enjoys immunity.”

461. Starting on June 13, a correspondent for Siglo 21 and Al Día, Otoniel Esaú Rivera Rivera, and a correspondent for Nuestro Diario, Irma Elizabeth Tzi Yat, became targets of death threats as a result of their coverage of the arrest of alleged rapists in the department of Alta Verapaz. Both journalists filed complaints with the Office of the Public Prosecutor. In the communication of December 24, 2013, the State reported that the case “is under investigation” and that several steps were taken, such as documenting the crime scene and the linguistic expert report “that determines the existence of threats against journalists.” In addition, the State reported that “those who made direct threats have been identified, and the process is under way to identify persons who may be responsible for making threats via Facebook.”

462. In addition, Tzi Yat complained that she continued to receive threats and attacks related to her journalistic work. In the communication of December 24, 2013, the State reported that a series of steps have been taken in the context of the investigations into the threats allegedly directed against the journalist by an agent of the National Civilian Police. According to the State, those steps include documenting the crime scene using photography and planimetry; the request to conduct a psychological evaluation of the journalist; and obtaining a report on the offenses committed by the agent who is under investigation.

463. On July 14, in the municipality of La Democracia, Huehuetenango, two reporters from the newspaper Al Día and the news program Telecentro 13, were threatened by individuals presumed to be police officers whose faces were covered, while the journalists were covering raids for the arrest of suspects in the killing of eight police officers. The individuals presumed to be police officers reportedly threatened them at gunpoint, took away their equipment, and erased the material they had

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944 Information provided directly to the Office of the Special Rapporteur for Freedom of Expression by journalist Irma Elizabeth Tzi Yat.

On December 24, 2013, the State reported that the facts had not been “made known to the Office of the Public Prosecutor.”

On July 17, the president of the Association of Journalists and Social Communicators of Sololá, and correspondent for the Centro de Reportes Informativos sobre Guatemala (CERIGUA) Alfonso Guárrquez, reportedly received threats via anonymous text messages. Guárrquez apparently filed a complaint with the Human Rights Ombudsman’s Office (PDH).

Meanwhile, the Office of the Special Rapporteur was informed that journalist and elPeriódico chairman José Rubén Zamora complained that individuals identifying themselves as officers of the Secretariat for Administrative and Security Affairs (SAAS) and the National Civilian Police [Polícia Nacional Civil] (PNC) had showed up at his house on August 9 and 10 with a supposed search warrant. The journalist complained that these operations were acts of intimidation due to the journalistic work of the newspaper he heads. The Office of the Rapporteur was informed that Interior Minister Mauricio López Bonilla denied, during a news conference, that the officers had tried to enter the journalist’s home, and said the operation were related to a change of bodyguards, since precautionary measures were in place for the journalist.

In the communication of December 24, 2013, the State indicated that on August 9, 2013, journalist Rubén Zamora was informed that the Secretariat for Administrative and Security Matters (SAAS) could not continue offering protection, in keeping with Decree Number 50-2003, and that “he will continue to receive protection through the Division for Protection of Persons and Security (DPPS) of the National Civilian Police.” In this connection, the State reported that on August 9, 2013, members of the SAAS, the DPPS, and the Ministry of Interior went “to the residence of the beneficiary...”

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and his family to communicate to him or notify him of the change in the office that would be in charge of the service of protection with bodyguard.” According to the State, the journalist’s wife “was informed of the procedure and at the moment when she was going to be given the letter signed by the president of COPREDEH she suddenly accelerated her vehicle, which is why a copy of the letter was placed in the mailbox of his residence.” The State reported that the act was suspended and rescheduled for August 10. According to the State, on August 10, 2013, the change was made to the protection service.

467. On August 12, journalist Fredy Rodas, a correspondent for radio Sonora es la Noticia, was intercepted when heading for his home by unidentified individuals who shot him at least three times in the face and the back. The journalist was seriously injured in one eye and was taken to the hospital. The Office of the Special Rapporteur was informed that the police had arrested the alleged culprit. In the communication of December 24, 2013, the State of Guatemala informed the Office of the Special Rapporteur that “several investigative steps have been taken to clarify the incident and that are aimed at producing the respective evidence, whose positive results are translated into the apprehension” of two individuals “accused of committing the criminal act.”

468. The Office of the Special Rapporteur was informed about threats and attacks reportedly suffered by journalists Aroldo Marroquín, of Prensa Libre, and Esner Gómez Navarro, of Nuestro Diario, at the hands of alleged officers of the National Civilian Police (PNC), on August 25. According to the information received, these incidents were repudiated by the authorities, and a deputy police inspector was being investigated over the threats and his dismissal was being considered. In the communication of December 24, 2013, the State provided updated information on the investigations. In this regard, it reported that a series of steps had been taken to clarify the facts, such as “documenting the crime scene with photography and planimetry, interviews and testimony of the journalists’ colleagues from work, field investigation and documentary investigation [...], road map, GPS report to determine the exact location of the patrol car in which the agents of the National Civilian Police implicated were driving.”

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addition, according to what was reported by the State, six National Police agents "were summoned in their capacity as persons accused of the crimes of threats and abuse of authority."

469. On August 25, journalist Lucrecia Mateo, a correspondent for Corporación de Noticias (publishing house of the newspapers Siglo 21 and Al Día), was attacked while she was covering a meeting on hydroelectric projects in Huehuetenango. A group of people purportedly headed by a community leader was said to have burst into the place where the meeting was being held, attacking those who were present. Mateo was grabbed by her hair, flung to the ground, and struck, and her camera was snatched away from her. In the communication of December 24, 2013, the State reported that “the incident was not made known to the Prosecutorial Unit for Crimes against Journalists [Unidad Fiscal de Delitos contra Periodistas]."

470. On September 30, news teams from the media outlets Prensa Libre and Nuestro Diario were blocked from entering the municipality of Santa Cruz Barillas, in the department of Huehuetenango, where they were heading to cover some disturbances that took place during protests by community residents against a hydroelectric company. Journalist Hugo Alvarado and photographer Érick Ávila, of Prensa Libre, and journalist Keneth Monzón and photographer René Ruano, of Nuestro Diario, were prevented from driving down the road, which was blocked by campesinos who threw rocks, threatened to burn their vehicles, and threatened them with machetes so that they would leave. In addition, they forced photographer Ruano to erase the photos from his camera and punctured a tire on the vehicle belonging to Nuestro Diario.

471. On October 19, the bodyguard of journalist Karina Rottman, a board member of the cable channel Vea Canal, was killed by unknown individuals. According to the information received, this is the second attack on members of her security team during that month. Spokespeople for the channel reportedly stated that the attacks are meant to have a chilling effect on the journalist’s work. Previously, the general manager of Vea Canal, Otto Rottman, had complained that a number of cable

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961 Prensa Libre. October 1, 2013. Turba libera a 20 policías retenidos en Barillas; Centro de Reportes Informativos sobre Guatemala (CERIGUA). October 1, 2013. Turba retuvo a cuatro periodistas y dos pilotos en Santa Cruz Barillas.

962 El tiempo. October 20, 2013. Desconocidos asesinaron a tiros a uno de los guardaespaldas de Karina Rottman, directiva del canal de televisión por cable VEA Canal de Guatemala, que difunde programas de análisis y críticas; Centro de Reportes Informativos sobre Guatemala (CERIGUA). October 21, 2013. Guardaespaldas de Karina Rottman fue asesinado; segundo ataque contra su personal de seguridad; elPeriódico. October 20, 2013. Matan a guardaespaldas de personal de “Vea Canal”.
companies had blocked Vea Canal’s signal, which he said came in response to pressures due to the critical nature of its programs.963

472. 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.”

473. In a communication dated December 24, 2013, the State of Guatemala provided information on the “Prosecution Unit for Crimes against Journalists [Unidad Fiscal de Delitos cometidos contra Periodistas]” of the Human Rights Prosecution Section of the Office of the Public Prosecutor [Fiscalía de Sección de Derechos Humanos del Ministerio Público]. According to reports, the Unit was created in 2001, and “it became the specialized Prosecution Unit with national jurisdiction in 2011.” The purpose of the Prosecution Unit is to “give special treatment to crimes committed against journalists and to draw national attention to the existence of the Prosecution Unit for crimes against journalists, for purposes of implementing a direct procedure for the filing of complaints.” According to the information received, the Unit has jurisdiction to handle all crimes committed against journalists “in the practice of their journalistic work” anywhere in the country. Finally, the State reported that during 2013 the Prosecution Unit has documented 63 complaints of assaults on journalists, of which “approximately 50% involve threats or coercion.” The State indicated that the Prosecution Unit “has had successful cases,” such as the imposition of a two-year prison sentence (subject to commutation) on October 17, 2013, against two employees of a mining company for having assaulted five journalists who were covering a demonstration, and the sentencing of the former Minister for Culture and Sports on October 9, 2013, for the threats committed against journalist Sofía Menchú.964

D. Subsequent liability

474. On July 25, journalist Rolando Miranda, a correspondent for Prensa Libre in Retalhuleu, reportedly was subpoenaed by a court in connection with a defamation [calumnia and injuria] lawsuit brought against him by a company, over an article published on April 20 concerning pollution in a river.965 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.”

E. Access to public information

475. According to a report prepared by the Human Rights Ombudsman (PDH), in 2012 there was an increase in the number of requests for information received by government institutions, which, in the Ombudsman’s opinion, “reflects the fact that citizens are becoming somewhat more aware of their right to obtain access to information under the State’s control.” However, the report pointed to a decrease in the number of government institutions that complied with turning over reports on requests for access to public information. The Executive Secretariat of the PDH Commission on Access to Public Information received 409 reports in 2011, while in 2012 it received 342. The study also monitored 200 websites of different public agencies to see whether these were meeting the requirements under the Access to Public Information Act. Only seven of the websites had satisfactory results; 29 showed poor results, and the remaining 164 institutions had inadequate results. In its conclusions, the study indicated that “those subject to the Access to Public Information Act are not fully complying and thus are jeopardizing free access to public information under the control of the government, which implies that a culture of opaqueness remains when it comes to the management of public funds.” 966

476. 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.”

F. The Internet and freedom of expression

477. The newspaper *elPeriódico* reportedly was the victim of cyber-attacks over several months, some of which were said to have temporarily disabled its website. According to the chairman of the newspaper, José Rubén Zamora, the attacks coincided with the publication of investigative pieces on corruption and abuse of power.967 In the communication of December 24, 2013, the State reported that “investigative steps have been taken aimed at clarifying the facts reported” and that “it is indicated that according to the company Rackspace the attack involving the saturation of connections (DoS) directed against the server of *elPeriódico* came from the IP that corresponds to an entity in Seattle, Washington, United States of America.” The State also reported that the Office of the Public Prosecutor “is taking steps to locate an expert in cyber-crime so as to be able to continue the investigation.”968


968 Communication from the Permanent Mission of Guatemala to the OAS. M12-OEA-F.2.4.2.1. No. 1230-2013 of December 24, 2013, forwarding the communication from the Comisión Presidencial de Derechos Humanos (COPREDEH) Ref. P-
G. Community radio broadcasting

478. On March 15, during a hearing on the “Situation of the Right to Freedom of Expression of the Indigenous Peoples in Guatemala,” at IACHR headquarters, the Office of the Special Rapporteur received information from indigenous organizations on the situation regarding community radio stations in Guatemala. The organizations stated their concern over the lack of a regulatory framework that recognizes community radio stations and ensures they will be able to obtain access to the broadcast spectrum and operate under conditions of equality. According to the information provided by the petitioners, 65% of Guatemala’s population is indigenous, and 24 native languages are spoken in the country. For indigenous peoples, community radio is a valuable tool that helps strengthen and preserve their languages, their culture, their worldview, and their traditions, the organizations stated. 969 They also indicated that the General Telecommunications Act establishes public auctions as the only means for accessing usage rights for broadcast frequencies, 970 and they stressed that the situation of poverty of most indigenous organizations obstructs and keeps them from participating in such auctions. They added that broadcast frequencies have not been auctioned off since 2004, and they mentioned Decree 34-2012, which amended the General Act by extending for 20 years current concessions for the use of the broadcast spectrum. 971

479. According to the information provided during the hearing, the State has initiated criminal proceedings and seized the transmission equipment from operators who have not been able to obtain a license due to the existing legal framework. 972 According to what was reported, the Guatemalan Congress issued an opinion in favor of legislative bill 4479, which seeks to amend the Criminal Code to impose penalties of six to ten years in prison for the unauthorized or unlicensed broadcast of frequencies. 973 The organizations indicated that despite the March 14, 2012, judgment of

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the Constitutional Court, by which the Guatemalan Congress was urged to design a special legal framework,\textsuperscript{974} and despite the Agreement on Identity and Rights of Indigenous Peoples [\textit{Acuerdo sobre Identidad y Derechos de los Pueblos Indígenas}]\textsuperscript{975} and the recommendations of international bodies,\textsuperscript{976} Congress has not address the legal gap that hinders the recognition of community radio stations. In the last fifteen years, indigenous organizations have submitted four bills designed to put the situation of community radio stations on a regular footing, but these bills have not succeeded.\textsuperscript{977}

480. During the same hearing, the State of Guatemala reported that access to broadcast frequencies via public auction levels the playing field for the entire population. It indicated that even though the Constitutional Court had urged the Assembly to design a special legal framework, the Court did not find current laws regulating the adjudication system to be in violation of the right to equality. The State stressed that it has the authority to regulate the use of the broadcast spectrum and indicated that “the State of Guatemala considers that the main reasons for categorically opposing the operation of illegal radio stations also include the interference caused by these transmissions and [thus] the interference with the information conveyed to the public or audience. The interference caused by the illegal use of broadcast frequencies likewise limits Guatemalans’ human right to access to information.” The State noted that it would be wrong to interpret the Agreement on Identity and Rights of Indigenous Peoples as allowing for community radio stations to operate without state authorization.\textsuperscript{978}

481. Moreover, the State indicated that “of 550 radio stations, 50 could be considered community and indigenous stations on the FM band, authorized to operate under the existing mechanism,”\textsuperscript{979} and that indigenous organizations or other community radio stations can obtain access, through public competition, to the auction system for the AM spectrum. The State recognized “that there is a gap in the law that does not enable community radio stations to be properly identified as

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\textsuperscript{975} Acuerdo sobre Identidad y Derechos de los Pueblos Indígenas. March 31, 1995. México, D.F.. Section H(2)(b) of chapter III establishes that the Guatemalan State should “[p]romote before Congress the reforms needed to the current radiobroadcast law in order to facilitate frequencies to indigenous projects and guarantee the application of the non-discrimination principle in the use media outlets. Furthermore, promote the repeal of all norms in the legal framework that hinders the right of indigenous persons to use media outlets in the development of their identity.”


482. During the hearing, the Special Rapporteur for Freedom of Expression indicated that the community radio stations of the indigenous peoples have the right to be recognized and that, as part of this recognition, they have the right for community broadcasting to be properly recognized and regulated. In addition, the Rapporteur noted that it would be improper to equate community broadcasting with illegal broadcasting. In this sense, she considered it essential for the State to regulate the phenomenon of community broadcasting in accordance with international standards on the matter.\footnote{IACHR. 147 Period of Sessions. Hearing on the Situation of the Right to Freedom of Expression of the Indigenous Peoples in Guatemala. March 15, 2013. Available for consultation at: http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=en&Session=131&page=2; IACHR. \textit{Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression.} Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009.} In the opinion of the Special Rapporteur’s Office, not having a specific definition of community broadcasting means not having regulations that address its particular realities.

483. The Office of the Special Rapporteur reiterates its recommendation that the “the State must promote different groups’ access to radio and television frequencies and licenses under conditions of equality and non-discrimination, no matter their technology. In effect, the State is obligated to recognize and facilitate equal access to commercial, social, or public radio or television proposals, both in the radio spectrum and in the new digital dividend. It is crucial that all disproportionate or discriminatory restrictions that block radio or television broadcasters be removed so that the broadcasters can access their frequencies and complete the mission they have taken up. The State regulatory frameworks should establish open, public, and transparent processes for assigning licenses or frequencies. These processes should have rules that are clear and pre-established, as well as requirements that are necessary, just, and fair.’ Likewise, to ensure free, vigorous, and diverse radio and television broadcasting, the private sector media must have guarantees against State arbitrariness; social media should enjoy conditions that prevent them from being controlled by the State or by economic groups; and public media should be independent of the Executive Branch.”\footnote{IACHR. \textit{Annual Report 2010. 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). OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 284.}

484. On June 6, alleged officers of the National Civilian Police and the Public Prosecutor’s Office allegedly raided the premises of the community broadcast station \textit{Radio Roca}, in Sololá, and seized transmission equipment, according to a complaint by the Kajl B’atz association.\footnote{Centro de Reportes Informativos sobre Guatemala (CERIGUA). June 8, 2013. \textit{Denuncian allanamiento de radio comunitaria en Sololá; Kaji Batz Solola.} June 6, 2013. \textit{Comunicado por allanamiento ilegal a radios comunitarias de Solola.}}

H. Other relevant situations

485. In March, the Public Prosecutor’s Office and the Special Prosecutor’s Office of the International Commission against Impunity in Guatemala (CICIG) reportedly subpoenaed a reporter from...
the newspaper *La Hora* to ask her details about her source of information for an article citing a confidential report on the situation in the country’s prisons. According to an editorial in the newspaper *La Hora*, after the journalist refused to reveal details to protect the identity of her source, one of the investigators reportedly stated that they had information about the reporter’s emails.984

486. 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”.

487. On September 21, unidentified individuals reportedly bought up large quantities of the newspaper *Prensa Libre* in the city of Quetzaltenango, allegedly so that news about an alleged fraud and threats committed by the owner of a construction company and officials of the Rural Development Bank (Banrural) would not get out.985

15. Guyana

A. Progress

488. The Office of the Special Rapporteur received information indicating that during a mission conducted by representatives of the International Press Institute (IPI) from April 18-20, 2013, Attorney General Anil Nandlall reportedly agreed to prepare and present a memorandum to the Cabinet regarding the decriminalization of defamation. The Attorney General stated that journalists “should not go to jail for their work”, and indicated the criminal defamation laws had not been used against any journalists in the country in recent years.986

489. On May 22, President Donald Ramotar appointed the first Information Commissioner, Charles Ramson, pursuant to the Access to Information Act of 2011. Ramson, the former Attorney General and Minister of Legal Affairs, took the oath of office on July 15, and will reportedly be in charge of implementing the Access to Information Act.987

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490. According to the information received, on October 18 the Guyana National Broadcasting Authority (GNBA) granted new broadcasting licenses within the framework of the Broadcasting Act of 2011, which took full effect in September 2012. **988**

491. In late October, Attorney General Anil Nandlall issued an official press release to express his office’s deep concern over a decision handed down by a Justice of the High Court of the Supreme Court of Judicature prohibiting the Guyana Times newspaper from mentioning or publishing information related to a case of alleged corruption in the sale of a public asset, which was apparently being reviewed by that Justice. In the Attorney General’s opinion, the decision may be inconsistent with the fundamental right of freedom of expression enshrined in the Constitution. **989** He additionally stated that the information published by the newspaper referred to a State entity, that the funds in dispute were public property, and that the information disseminated by the newspaper had been taken from the entity’s annual report, which was a public document. **990** Accordingly, in his opinion, the presiding Justice “fell into error by issuing the said ‘gag’ order.” **991**

16. Haiti

492. On March 23, Georges Henri Honorat, the editor-in-chief of the weekly newspaper Haïti Progrès, was murdered. In addition to being a journalist, Honorat was also an adviser to Laurent Lamothe, Haiti’s Prime Minister, and the Secretary General of the National Popular Party. According to the information received, Honorat was murdered by unknown persons on a motorbike who fired at him in front of his house in the Delmas district of Port au Prince. Employees of Haïti Progrès confirmed that the weekly had previously received threats. **992**

493. Radio Kiskeya correspondent Pierre-Richard Alexandre died on May 20, 2013. He had been working as a correspondent for the radio station in St-Marc, in the Bas-Artibonite region, for the past ten years, and was also the host of a daily political debate program on the Radio Delta station. The

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**990** “The ruling to which I have made reference emanates from a case filed by the National Industrial Investment Company Limited (NICIL) against Royal Investments Limited. NICIL is seeking to recover from Royal Investment Limited, monies due and owing in respect of the sale of Guyana Stores Limited, a State owned entity. The monies which are being sued for are public funds. The articles which were published by the newspapers sought to disseminate information, which largely, were extracted from the Annual Reports of Guyana Stores Limited, a public company.” Ministry of Legal Affairs. Attorney General’s Chamber. Press Release.


journalist was reportedly the victim of a gunshot wound on May 17, and he died days later as a result of his injuries. According to the information available, a suspect is in custody. 993

494. On February 12, journalists Watson Phanor and Etzer César were reportedly assaulted by government security personnel during a visit from the head of state to the headquarters of the RFM radio network. According to Phanor, prior to the attack, the alleged agents accused them of being in contact with a senator critical of the government and of broadcasting false reports about supposed police beatings during Carnival. 994

495. On February 9, the press team from Radio Télévision Caraïbes (RTVC) was reportedly ejected from a public event at the Sans Souci Palace. The journalists were apparently required to turn off their cameras, and were removed from the premises by security officers. 995 Regarding this case, within the hearing on the “Situation of the right to freedom of expression in Haiti” held at IACHR headquarters on March 16, 2013, the State of Haiti provided information indicating that it was not a decision meant to systematically keep the media away from public ceremonies. It stated that the event in question was of particular importance to the Haitian State, and because it was a public event its mission was to broadcast a positive image of Haiti to the world, and therefore it was restricted in terms of publicity. They explained that the objective of the state-run television station, Télévision Nationale d’Haïti (THN), was to show special and original images of the artistic side of the ceremony. Other media, including the RTVC television station arrived at the event in error, and the security officers blocked their access. 996

496. The parties who requested that the IACHR hold a public hearing to discuss different aspects of the situation of freedom of expression in Haiti did not attend that hearing; therefore, their arguments regarding the facts were not presented.

497. Principle 5 of the IACHR’s Declaration of Principles on Freedom of Expression, approved in 2000, states that: “[r]estrictions 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.”

498. In relation to access to public information, at the abovementioned hearing the State of Haiti provided information which indicated that the government would be providing “now, more than ever, rapid access to public information,” and that the country’s major decisions, with the exception of strategic security issues, are discussed under the watchful eye of the press. It also reported that it would be making use of the social networks and maintaining and updating the information on the websites of

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996 Information sent by the State of Haiti within the hearing Situation of the Right to Freedom of Expression in Haiti, held during the 147 Period of Sessions of the IACHR. Available for consultation at: Archives of the Office of Special Rapporteur for Freedom of Expression.
the ministries and other public institutions. The government indicated that additional efforts remained to be made, and therefore it would be ready to discuss with the relevant actors the need for legislative reform, which will be an indispensable part of building the rule of law.  

499. With respect to the status of community radio broadcasters in Haiti, the State indicated at the aforementioned hearing that the sector’s regulatory agency (CONATEL) was making efforts to regulate their operation. In this regard, the State reported that it was preparing a new draft of law to allow existing community radio stations continue operating, and to facilitate the creation of new stations. Although it was not in attendance, the organization that requested the hearing had provided information in which it referred to the need to put an end to what it called “arbitrary and illegal” judicial measures against community radios, and to authorize the operation of the community broadcasters that submit applications.

500. The Office of the Special Rapporteur recalls its recommendation that, “the State must promote different groups’ access to radio and television frequencies and licenses under conditions of equality and non-discrimination, no matter their technology. In effect, the State is obligated to recognize and facilitate equal access to commercial, social, or public radio or television proposals, both in the radio spectrum and in the new digital dividend. It is crucial that all disproportionate or discriminatory restrictions that block radio or television broadcasters be removed so that the broadcasters can access their frequencies and complete the mission they have taken up. The State regulatory frameworks should establish open, public, and transparent processes for assigning licenses or frequencies. These processes should have rules that are clear and pre-established, as well as requirements that are necessary, just, and fair. Likewise, to ensure free, vigorous, and diverse radio and television broadcasting, the private sector media must have guarantees against State arbitrariness; social media should enjoy conditions that prevent them from being controlled by the State or by economic groups; and public media should be independent of the Executive Branch.”

501. In a communication sent to the IACHR, the organizations that had requested the hearing expressed the need for the revision of those regulatory provisions that may limit freedom of expression, especially desacato laws, which would be contrary to the inter-American standards.

502. In addition, the Office of the Special Rapporteur received information indicating that on October the Ministry of Justice and Public Safety in Haiti issued a statement reporting on an alleged plot

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997 Information sent by the State of Haiti within the hearing Situation of the Right to Freedom of Expression in Haiti, held during the 147 Period of Sessions of the IACHR. Available for consultation at: Archives of the Office of Special Rapporteur for Freedom of Expression.


to assassinate Jean Monard Métellus, a journalist from Radio Caraïbes FM. According to press reports, Monard Métellus was also victim of threats. The Minister of Justice and Public Safety, Juan Renel Sanon, was reported to have publicly expressed the State’s intent to provide protection to the journalist.

503. Principle 9 of the IACHR’s 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”.

17. Honduras

A. Progress

504. The IACHR is pleased to take note of the bill drafted by the Secretariat of Justice and Human Rights of Honduras, which proposes a reform to the Criminal Code. The bill partly repeals the criminal offenses of defamation [injuria, calumnia and difamación] in keeping with the recommendation made to the States of the region by the Office of the Special Rapporteur for Freedom of Expression in the 2012 Annual Report of the Inter-American Commission on Human Rights, concerning criminal or civil provisions that sanction expression. The Commission urges the government to move forward in said process of reform.

505. In April, the Sentencing Court of San Pedro Sula convicted an agent of the National Police to five years imprisonment for the torture of a cameraman on May 6, 2011, in Valle de Sula. The sentence was commutable and the convict could pay a fine of 10 lempiras (some US$ 0.5) per day of jail term. On May 6, 2011, cameraman Uriel Rodríguez, who at the time was working for Globo TV, was allegedly beaten by the agent of the National Police, while he was filming the breaking up of a demonstration. The reporter sustained injuries on the head and thorax and required hospitalization. On November 18, 2011, the Office of the Public Prosecutor brought charges for the Crime of Torture.

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1004 This section corresponds to the section on freedom of expression in Honduras in Chapter IV, Volume I, of the IACHR 2013 Annual Report, assigned to the Office of the Special Rapporteur for Freedom of Expression.


506. The Inter-American Commission received information indicating that the Government of Honduras had turned over at least nine frequencies for community radio broadcasters. On August 26, President Porfirio Lobo reportedly handed over decisions from the National Telecommunications Commission (CONATEL) to five organizations, allocating frequencies for them to operate community radio stations.\textsuperscript{1008} On October 1, the president reportedly turned over another four CONATEL decisions that grant frequencies for community broadcasting to four organizations.\textsuperscript{1009}

507. In its communication of December 19, 2013, the State of Honduras informed the IACHR that the Ministry of Justice and Human Rights signed a Cooperation and Technical Assistance Agreement with the non-governmental organization Centro de Investigación y Promoción de los Derechos Humanos de Honduras [Center for the Research and Promotion of Human Rights in Honduras] (CIPRODEH), to advocate for the enactment of a Special Law for the Protection of Human Rights Defenders; the Protocol for the implementation of security, precautionary, and provisional measures granted by national authorities, the Inter-American Commission on Human Rights, and the Inter-American Court of Human Rights, respectively.\textsuperscript{1010}

508. It also reported that it has promoted the draft bill of the “Law for the Protection of Human Rights Defenders, Journalists, Media Workers, and Legal Practitioners,” which will implement Resolution 13/13 of the United Nations Human Rights Council on the “Protection of Human Rights Defenders.”\textsuperscript{1011} According to the information received, the Draft Law provides for the creation of a National Protection Council attached to the Office of the Secretary of State for Justice and Human Rights that should act as “an executive, deliberative, and advisory body to guarantee and enforce the rights enshrined in the Protection Law […] and to advise the Office of the President of the Republic on matters concerning the protection of the groups enumerated in the law,” which would include journalists.\textsuperscript{1012} The Draft Law establishes that the Council will be comprised by representatives of State institutions and civil society organizations.\textsuperscript{1013} The Draft Law also stipulates that the Office of Protection Mechanisms for


\textsuperscript{1009} Presidencia de Honduras. October 1, 2013. \textit{Available for consultation at: }http://www.noodls.com/view/E0B4B9B8004194E347FD7C34877267217629CED3


\textsuperscript{1013} According to Article 17 of the Draft Law for the Protection of Human Rights Defenders, Journalists, Media Workers, and Legal Practitioners, the National Protection Council will be composed of representatives from: the Office of the Secretary of State for Justice and Human Rights; the Office of the Secretary of State for Security; the Office of the Secretary of State for Foreign Affairs; the Office of the National Human Rights Commissioner; the Office of the Public Prosecutor; the Office of the Attorney General of the Republic; the Judiciary; the Honduran Bar Association; the Honduran Association of Journalists; and by five representatives of civil society organizations. Draft Law for the Protection of Human Rights Defenders, Journalists, Media Workers, and Legal Practitioners. Article 17. Information provided by the State at the Hearing on the Implementation of Precautionary Measures in Honduras, held during the 149 Period of Session of the IACHR. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.
Human Rights Defenders, Journalists, Media Workers, and Legal Practitioners, will be the body responsible for “handling complaints of risk to the beneficiaries of this law, and the instructions and policies issued by the National Protection Council.” Accordingly, the Draft Law provides that the Office of Protection Mechanisms will have three auxiliary units: the Case Intake, Risk Assessment, and Immediate Response Unit, the Prevention, Monitoring, and Analysis Unit, and the Unit for the Protection of At-Risk Individuals. Additionally, the Draft Law contains various preventive and protective measures that will be able to be implemented according to the risk faced by the beneficiary, and provides that, “to the extent possible, the protection measures shall not restrict the normal activities of the beneficiaries or involve unwanted surveillance or intrusions in their personal or professional lives.” The State reported that the Draft Law was introduced to the Congress of the Republic on August 28, 2013 for debate and approval. Different civil society organizations reportedly made important observations to the draft bill at the hearing on the implementation of precautionary measures in Honduras, held on October 28, 2013, during the 149 Period of Sessions of the IACHR, especially insofar as it refers to the participation of social organizations in the protection mechanism, its institutional design, and the indiscriminate treatment under the draft bill of the populations subject to protection.


1015 This unit will be in charge of receiving complaints involving situations of risk, examining and evaluating the reported risk, recommending the adoption of protection measures, and identifying the urgent cases that will be dealt with through the extraordinary procedure. Draft Law for the Protection of Human Rights Defenders, Journalists, Media Workers, and Legal Practitioners. Article 31. Information provided by the State within the Hearing on the Implementation of Precautionary Measures in Honduras, held during the 149 Period of Sessions of the IACHR. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

1016 The unit will be responsible for ordering measures for the prevention of risks to individual beneficiaries, monitoring the protection measures implemented, and ordering any necessary corrective measures. Draft Law for the Protection of Human Rights Defenders, Journalists, Media Workers, and Legal Practitioners. Article 34. Information provided by the State within the Hearing on the Implementation of Precautionary Measures in Honduras, held during the 149 Period of Sessions of the IACHR. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

1017 The Unit will be attached to the Office of the Secretary of State for Security, and will operate as a specialized technical body to implement preventive, protective, and urgent protection measures. Therefore, the Draft Law provides that this unit will have its own security personnel in charge of implementing the measures. Draft Law for the Protection of Human Rights Defenders, Journalists, Media Workers, and Legal Practitioners. Articles 36 and 37. Information provided by the State within the Hearing on the Implementation of Precautionary Measures in Honduras, held during the 149 Period of Sessions of the IACHR. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.


In its communication of December 19, 2013, the State reported on the approval of the National Plan for the Protection of Human Rights Defenders, Journalists, Media Workers, and Legal Practitioners. The State reported that the plan was “in a process of socialization” and that an “awareness plan for the national authorities concerned with its implementation” had been approved for its proper implementation. The State also reported that a national directory of human rights defense organizations, journalists, media workers, and legal practitioners had been established, with the participation of 50 non-governmental organizations. According to the information provided by the State, a Working Table was assembled to monitor the implementation of the Plan for the Protection of Human Rights Defenders, Journalists, Media Workers, and Legal Practitioners, comprised by representatives from government institutions, academia, professional associations, and civil society. The State also reported that it convened civil society organizations to form the “National Protection Network for Human Rights Defenders, Media Workers, and Legal Practitioners, as a space for coordination, collaboration, and open dialogue among those organizations, with a view to empowering and strengthening the work of local, regional, and national alliances and networks.”

Additionally, at the hearing on the implementation of precautionary measures in Honduras, held on October 28, 2013 during the IACHR’s 149 Period of Sessions, the State provided information on the creation of a “High Impact Deaths Unit” assigned to the Office of the Special Prosecutor for Crimes against the Person. According to the information received, the unit was established to identify the murders of persons belonging to groups particularly affected by violence, such as journalists, legal practitioners, and human rights defenders. According to the information received, the unit was involved in 26 investigations into the murder of journalists during the period from 2009 to 2013, of which 10 have reportedly been prosecuted. The State reported that the case of the May 15, 2012 murder of journalist Alfredo Villatoro “was pending trial” against four defendants accused of aggravated kidnapping. According to reports, the trial is set for March, 2014.

B. Murders

On July 9, the lifeless body of journalist Aníbal Barrow was found in the municipality of Villanueva, Department of Cortes. Barrow had been abducted on June 24 by armed individuals in the...
City of San Pedro Sula, Cortés. According to the information received, the journalist, the host of the television program ‘Aníbal Barrow y nada mas [‘Just Aníbal Barrow’], broadcast by Globo TV, was in is automobile along with two family members and a driver, when unidentified individuals took control of the vehicle and, after releasing those who were accompanying him, proceeded to abduct him. The vehicle was found a few hours later with traces of blood and signs of gunshots. The authorities began an intensive search to find the journalist, who was finally found on July 9 in the area of a lake in the municipality of Villanueva. According to the report, the body of the journalist was mutilated and partially burned. The police authorities have reported that there are five suspects in custody and an arrest warrant is outstanding for another three individuals for their alleged association with the crime.

512. With regard to Barrow’s murder, in a communication dated December 19 the State reported that the Office of the Public Prosecutor (MP) had indicted eight individuals for the offenses of murder, aggravated robbery, and criminal conspiracy, and that hearings before the respective court are forthcoming. The State further indicated that it would continue the preliminary investigation to identify other persons involved.

513. Also, on July 9, the same day the body of Aníbal Barrow was found, journalist Eduardo Maldonado, the owner of the television channel Hable como habla, publicly exposed during the program ‘Hable como Habla’ that he had received a threatening text message: “That’s why you’re getting killed assholes because you mettle in things you shouldn’t, you’re scared you’ll be killed too.”

514. Additionally, on July 15, journalist Aldo Calderón of Channel 11 and the daily newspaper Diario Tiempo, was allegedly poisoned to death, after ingesting aluminum phosphide. Subsequently, the former chief of the office known at the time as the Internal Affairs Unit of the National Police stated to the organization C-Libre that at the time of his death, the journalist was in the process of investigating the murder of Aníbal Barrow. According to this account, the journalist had found evidence implicating authorities in the Barrow crime. According to the State, in relation to Calderón’s death, “there is no evidence that his death was a murder; rather, it would appear to be a suicide.”

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515. In its December 19, 2013 communication, the State of Honduras asserted that, just as it had indicated in its Observations to the 2011 Annual Report, “in the context of general violence that the country is unfortunately experiencing, there have been murders, attempts, and threats against members of the media during the past five years.” As it stated in those Observations, “The State of Honduras is aware of its commitment to guarantee that diligent and exhaustive investigations are conducted into the facts. Accordingly, the State of Honduras took part in the public hearing before the IACHR entitled ‘Situation of the Right to Freedom of Expression in Honduras,’ held in October 2010, and in the ‘Hearing on the General Human Rights Situation’ of March 2013.” It further indicated that “the preliminary investigations confirm that the homicides perpetrated are the result of common crime or organized crime, and it has not been determined that the opinions expressed by the media workers about the government served as the motive for their deaths. Proof of this cooperation is the progress made in the investigation and prosecution of those cases.”

516. Principle 9 of the IACHR Declaration on Freedom of Expression, approved in 2000, establishes 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.”

517. In their duties to protect and guarantee, States must carry out diligent, 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.

C. Attacks on and Threats against Media Outlets and Journalists

518. In early 2013, journalist and human rights defender Itsmania Pineda Platero was the victim of harassment, threats and email and blog account hacking. Consequently, the journalist announced that she was compelled to close the offices of her human rights defense organization, Xibalba Arte y Cultura. The journalist had been the victim of threats in the past. With respect to the incidents occurred in 2013, the State indicated that there wasn’t any complaint filed in the office of the Office of the Public Prosecutor (MP) regarding those events, and therefore asks the affected person to file the respective complaint “in order for the pertinent investigations to be conducted.”

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Television reporter Selvin Martínez, of the city of Puerto Cortés, reported that he had received death threats since early 2013 via text message. In 2012, the journalist was the victim of two armed assaults and several threats.

With respect to the attacks, the State reported that the Office of the Public Prosecutor (MP) had filed an indictment charging one individual with “attempted murder,” and that the court ordered his pretrial detention following an initial hearing. The public, oral phase of the trial will take place in March 2014. The State indicated with regard to the text message threats that Martínez had told the Prosecutor handing his case that they had stopped; “however, the Office of the Public Prosecutor (MP) took several steps, including filing a request for a wiretap.”

On January 15, alleged agents of the National Police arrested Honduran historian and writer Edgar Israel Soriano and transferred him in a supposed patrol car to police facilities. According to the information received, as soon as situation came to the attention of special Human Rights Prosecutor Leonel Casco Gutiérrez, he went to the police station and personally requested the release of the writer and said prosecutor was also arrested for allegedly disrespecting authorities. Both men were released the following morning. After decrying these incidents, the Office of the Special Prosecutor for Human Rights of the Office of the Public Prosecutor brought charges against Harold Bonilla Andara, head of Metropolitan Police Station Number 1 of Tegucigalpa, the official who had ordered the arrest of Casco Gutiérrez, for abuse of authority and unlawful detention. Available information indicates that in the context of this process, a hearing was held before a criminal court judge, who dismissed the charges and, consequently, the defendant was released in late May 2013. Casco Gutiérrez is the beneficiary of precautionary measures issued by the Commission.

With regard to these events, the State indicated in a communication dated December 19, 2013 that “the Office of the Public Prosecutor (MP) took the appropriate steps against Mr. Harold Bonilla Andara. The Office of the Public Prosecutor (MP) filed the respective appeal of the Court’s ruling, which is currently pending decision.”

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523. On January 23, journalist Renato de Jesús Álvarez, news editor-in-chief of the news program TNS and of the program ‘Frente a Frente,’ reported that he feared for his life as a consequence of an alleged stigmatization campaign against him fostered by a member of the National Congress and candidate for the presidency of the country. Álvarez alleges that the congressman accused him of being identified with ultra rightwing of his country. According to the journalist, said campaign was triggered by critical news coverage of several congressional acts.\textsuperscript{1044} The following day, the chief of the National Police Juan Carlos Bonilla contacted the journalist and offered him protection, as a result of evidence that his life may be endangered.\textsuperscript{1045} Additionally, in early January, Álvarez announced the alleged opening of fake Twitter and Facebook accounts in his name, which were used to extort his friends and tarnish his image.\textsuperscript{1046}

524. On February 5, journalist César Silva and cameraman Samuel Aguilera, of television network Globo TV, were assaulted by individuals presumed to be private transportation workers, while they were covering a demonstration of union members of that trade, nearby the Presidential Palace in Tegucigalpa. According to broadcasters, while the assaults were taking place, they called on members of the presidential guard to come to their aid, and were ignored by them.\textsuperscript{1047} With respect to these incidents, the State indicated that “it has not been able to locate any complaint regarding these events”, and therefore requests that the affected person file the respective complaint “in order for the pertinent investigations to be conducted.”\textsuperscript{1048}

525. On February 18, journalist Isaac Leonardo Guevara Amaya, correspondent of Radio Progreso in the municipality of Tela, was verbally threatened by alleged agents of the National Police. According to reports, Guevara Amaya was following the protests against mining projects. The individuals presumed to be police agents stopped the vehicle he was riding in and ordered him to stop taking photographs.\textsuperscript{1049} With respect to these incidents, the State indicated that “it has not been able to locate any complaint regarding these events”, and therefore requests that the affected person file the respective complaint “in order for the pertinent investigations to be conducted.”\textsuperscript{1050}


\textsuperscript{1047} IFEX/C-Libre. February 11, 2013.\textit{ TV journalists attacked during transport protest in Honduras}; ArgenPress. February 8, 2013.\textit{ Periodistas hondureños agredidos y amenazados. Solidaridad internacional a los colegas hondureños}.


526. It came to the attention of the IACHR that on March 4 journalist Julio Ernesto Alvarado, director of the programs ‘Medianoche’ of Radio Globo and ‘Mi Nación’ of Globo TV, announced his decision to resign from hosting the program ‘Medianoche’ because of repeated threats he had received. According to the information received, on March 1 and 2, the journalist was followed and harassed around his workplace. Similarly, in March 2012, Alvarado’s vehicle was vandalized and he was followed by unknown men several times. The journalist stated that, on his program, he regularly leveled complaints and criticism of the police and the armed forces and that on March 1, he issued a sharp denunciation against a high-ranking police official. 1051

527. On April 8, journalist Fidelina Sandoval of Globo TV was the target of an attempt on her life nearby the offices of this TV station. According to the information provided, two unknown individuals fired a gun in her direction. A few days earlier, the journalist had received two suspicious calls requesting personal information. The journalist indicated that the incidents could be related to reporting the week before on the process of “police purging” and on the land conflicts in the area of Bajo Aguan. 1052

528. On April 20, journalist and executive director of the Committee for Freedom of Expression (C-Libre, as it is known in shorten form in Spanish), Héctor Longino Becerra, received three telephone threats. In the last one of the three, the unknown individuals warned him that they were waging a campaign to kill him and his family. On April 22, the journalist filed a formal complaint with the Committee of Families of the Detained and Disappeared in Honduras (COFADEH) and with the Secretariat for Justice and Human Rights. 1053

529. On April 22, the daily newspaper El Heraldo reported information on a plan to kill three public figures: journalist Renato Álvarez, congressman Augusto Cruz Asensio and Police officer Héctor Iván Mejía. According to the story in El Heraldo, it involved “a plot orchestrated by persons linked to drug trafficking and organized crime with close ties to political and official sectors,” and that their purpose was to set fan the flames of “the climate of social chaos and ungovernability in the country, prior to the electoral process of November” 2013. Renato Álvarez, editor-in-chief of Canal 5, is a journalist who has come out sharply criticizing organized crime, as well as other aspects of the nation’s


1053 IFEX/C-Libre. April 26, 2013. Director of Honduran free expression NGO warned of plot against him; Cerigua. April 26, 2013. C-Libre denunció amenazas de muerte contra su director; Amnistía Internacional. May 5, 2013. ¿Quién quiere matar al periodista hondureño Héctor Longino Bacerra?
political life. The alleged offended parties confirmed the reports published by *El Heraldo* and the Council of Defense and Security ordered investigations to be opened into the complaint.

530. In the municipality of Nacaome of the Department of Valle, journalist Leonel García, of the programs ‘Noticias al pueblo’ and ‘Digalo como quiera’ of *Radio Discovery*, charged that he had been the target of death threats and intimidation by means of emissaries, who approached him as he left the radio station, as well as calls and text messages to his cell phone. According to the journalist, the intimidation could be linked to criticism on his news shows of local issues and authorities and the fact that he encouraged citizen participation during his news slots.

531. With regard to the case of journalist Leonel García, in its communication of December 19, 2013 the State referred to an event from 2011, indicating that “there was a complaint before the Office of the Public Prosecutor (MP) alleging threats and battery, but upon investigation the Office of the Public Prosecutor (MP) determined that they were not acts that constituted crimes, but rather were misdemeanors, as they were insults.” It adds that, “there have been no other complaints since then.”

532. On May 4, radio broadcaster and president of the Association of Independent Radio and Television Networks, Elias Javier Chahín, was beaten and threatened by three young men when he was leaving the premises of the radio stations *La Buenísima* and *Estéreo Tic Tac*. The assailants threatened to take his life. Chahín claimed that a few weeks earlier, an unidentified man doused gasoline on his house and set it on fire and he alleged that the incident was related to his criticism of the draft reform to the telecommunications law. President Porfirio Lobo condemned the acts and ordered an investigation and that security be provided to the businessman.

533. In a December 19, 2013 communication, the State reported that on May 10 Chahín was deposed before the Office of the Public Prosecutor (MP), and was ordered to undergo a physical evaluation by the Office of Forensic Medicine. Other proceedings were also reportedly conducted, “including investigations in the area into potential witnesses or video recordings,” and the State reported that “the preliminary investigation is ongoing in an attempt to identify the suspects.”

534. On May 7, a team from *Radio Televisión Española (RTVE)* reported that it would leave the country and would stop recording a special feature report, because of threats from members of

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1056 IFEX/C-Libre. April 23, 2013. [*Honduran radio journalist constantly threatened for his reporting*]; Cerigua. April 23, 2013. [*Honduras: Dos comunicadores son víctimas de censura y amenazas*].


“maras” (criminal gangs) while filming in the city of San Pedro Sula. With respect to these events, the State of Honduras indicated that “it is unknown whether a complaint was filed before any State institution.”

535. On May 15, journalist Geyby Arriaga, opinion columnist of the magazine Revista Imagen, was assaulted by unidentified individuals, who fired on the vehicle she was riding in with her husband, in the city of San Pedro Sula, Department of Cortés. With respect to these incidents, the State indicated that “it has not been able to locate any complaint regarding these events”, and therefore requests that the affected person file the respective complaint “in order for the pertinent investigations to be conducted.”

536. On May 20, in the city of La Ceiba, journalist Ramón Maldonado, correspondent of the television channel Hable como habla and host of the program ‘Noticias con Café’ of the TV station Litoral Atlántico, and cameraman Daniel Sánchez were the targets of an attempt on their lives by alleged hired hit men, who fired several shots at the vehicle they were driving in. Neither of the men was hit by the bullets. Maldonado reported the incidents and contended that the assault could be linked to broadcasting of reports criticizing issues tied to the local government. The State of Honduras indicated that the Office of the Public Prosecutor (MP) learned of these events through the media, and “immediately proceeded to obtain a statement from Mr. Maldonado”; nevertheless, he declined to file a formal complaint before the Office of the Public Prosecutor.

537. Journalist Isabel Antúnez, reporter of the television news program ‘Última Hora’ of Nortv Tocoa Canal 38, was assaulted by a public official of the Department of Justice of the Municipality of Tocoa, as she attempted to ask him questions about the presence of vendors stands on public roads. In its December 19, 2013 communication, the State of Honduras informed the IACHR that the Office of the Public Prosecutor (MP) “took the respective victim statement, however [the journalist] indicated that she did not want to have trouble with anyone.” The State reported that a document was drawn up informing the journalist of her right to file a formal complaint against the Municipal Judge.


On July 4, journalist Mario Castro, host of the program ‘El Látigo Contra La Corrupción’ ['The Whip against Corruption'], broadcast by Globo TV, was threatened via text message, in which he was warned that the same thing would happen to him as to his colleague, apparently in reference to journalist Aníbal Barrow, abducted on June 24 and found dead five days later, on July 9.\(^\text{1068}\) The State indicated that it has not been able to locate a complaint regarding these events and therefore requests that the affected person file the respective complaint “in order for the pertinent investigations to be conducted.”\(^\text{1069}\)

On July 17, journalist Joel Coca, coordinator of the program ‘Más Noticias’ of Canal 12 and correspondent of Canal 11 in the city of Puerto Cortés, was assaulted by two individuals, who beat him with a baseball bat and a weapon. He sustained two broken fingers, and had to receive medical care. The journalist linked the assault to his reporting work, because he had received threats for allegedly speaking out against local corruption on his program. Coca filed a complaint with the National Directorate of Criminal Investigation (DNIC) in Puerto Cortés.\(^\text{1070}\) Subsequently, the journalist and his family left the country for reasons of security.\(^\text{1071}\)

With regard to this case, the State of Honduras reported that the Office of the Public Prosecutor had knowledge of the complaint and initiated the respective proceedings, but indicated that “Mr. Coca had not cooperated subsequently in the investigation.”\(^\text{1072}\)

On August 18, broadcaster Rosa Álvarez, manager of the community radio station radio Wagia, was assaulted by an unidentified individual, who allegedly attempted to sexually assault her. Neighbors to the station came to the aid of the broadcaster, and were successful at preventing the assault. The director of the community radio station, Horacio Martínez Cálix, asserted that the assault was no isolated incident, but was instead linked to the station’s reporting criticizing the local situation.\(^\text{1073}\) The State indicated that it has not been able to locate a complaint regarding these events and therefore requests that the affected person file the respective complaint “in order for the pertinent investigations to be conducted.”\(^\text{1074}\)

On September 26, the daily newspaper El Heraldo denounced that armed individuals had told journalists of the company that they had orders from their superiors to follow the staff of the

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media outlet closely. In addition to intimidating the journalists, the alleged University Teaching Hospital security guards prevented them from taking photographs and conducting interviews. According to press reports, members of the Office of the Public Prosecutor (MP) had expressed concern over the alleged intimidation and threats of the reporters of the daily newspaper El Heraldo, and had started an investigation.

543. The State informed the IACHR that “The Office of the Public Prosecutor (MP) was aware and made statements in the media indicating that the reporters should go to the Office of the Public Prosecutor (MP) to file a complaint,” but that “there is no record of any complaint having been filed.”

544. On October 28, journalist Adolfo Hernández decried before the Human Rights Commissioner (CONADEH) that his television program ‘No se Deje’ [‘Don’t give in’], broadcast from Monday to Friday by Telered 21, was taken off the air as a result of political pressure after broadcasting reports of alleged acts of corruption involving public officials. The broadcaster also denounced that in the days prior to the suspension of his program, had had received death threats. The State of Honduras informed the IACHR that the case had been taken up by the Office of the Public Prosecutor (MP) and that the appropriate investigative proceedings were being conducted.

545. In its communication of December 19, the Honduran State indicated to the IACHR that “with respect to the complaints of threats and assaults, the State has made efforts to investigate the cases and punish the perpetrators, whether or not they are State agents, who have violated the rights of these persons. It has done so in compliance with its international and constitutional commitments, bearing in mind that it is necessary for a complaint to be filed before the authorities in order for the pertinent investigations to be conducted; under the Criminal Code, threats constitute a criminal offense that is actionable by the public prosecutor only at the request of the victim.” The State indicated that in most cases the investigations have revealed that they are private situations unrelated to the exercise of the right to freedom of expression and completely unrelated to the victims’ occupation, as crimes and attempted crimes have been committed against professional journalists and members of the media for different reasons.

546. Principle 9 of the IACHR Declaration on Freedom of Expression, approved in 2000, establishes 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.”

547. In their duties to protect and guarantee, States must carry out diligent, 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. Access to Public Information

548. The IACHR received information to the effect that the Sentencing Court with Nationwide Jurisdiction in Criminal Matters had denied a request made by a journalist for access to a copy of the transcript of the public oral trial against a group of police agents convicted of murdering two university students. Journalist Wendy Funes requested a copy of the judgment and of the volumes of the case file. The coordinator of the Sentencing Court argued that the journalist did not state the purpose she was pursuing in requesting said information. Additionally, the coordinator contended that she was unable to disclose the names of the witnesses who had already testified in the trial.\(^\text{1081}\)

549. In relation to this case, the State of Honduras indicated that “in view of the Trial Court’s alleged denial, [the journalist] should have made that request following the process” established in the law “that provides that in case of the denial of information by a State authority, the IAIP facilitates and guarantees public information.”\(^\text{1082}\)

550. In addition, with respect to access to public information, the State of Honduras reported that by means of Decree 170-2006 of November 27, 2006, which contains the Transparency and Access to Public Information Act, the State “promotes the development and implementation of the National Transparency Policy, as well as the exercise of the right of every person to access public information in order to strengthen the rule of law and consolidate democracy through citizen participation.” The State indicated that although “it is undeniable that the subculture of secrecy and opacity still prevails in some sectors of government,” the enactment of the Transparency and Access to Public Information Act (LTAIP) “has laid the foundation for a culture of transparency, and made significant progress so that the public nature of government acts will be the rule and not the exception.” The State indicated that “in order to attain this transition from opacity to transparency, among other actions, results-based management has been implemented at all levels of government. This is the model of public resources administration that centers on accomplishing the strategic actions defined in the government plan for a specific period of time.” The State reported that the Institute for Access to Public Information (IAIP) takes steps to promote the culture of transparency, the right to access to public information, accountability, and the protection of personal data, through the implementation of formal and informal educational activities in different sectors of the population. It reported that “it is a great initiative that seeks to educate students in their last year of teacher training, using content that revolves around transparency in order for them to replicate it in their teaching practice as a prerequisite to graduation.” It indicated that in 2013 “training conferences were held with students at the teacher training colleges


in cities like La Paz (La Paz), Juticalpa (Olancho), Danlí (El Paraíso), La Esperanza (Intibucá), and Gracias (Lempira), reaching 2,602 students.” The State further reported that “training on the Transparency and Access to Public Information Act has been provided through symposiums, forums, trainings, workshops, and panels aimed at: the university community; public information officers; civil society; public servants, and teachers.” The State also informed the IACHR that in 2013 the IAIP created “the Verification and Transparency Management Office, for purposes of corroborating the information that the Obligated Institutions are required to publish on their transparency portals.”

551. In fact, the right of access to information is a universal human right and because of that the IACHR notes with satisfaction the measures adopted to implement it. In this regard, it should be mentioned that everyone is entitled to request access to information, as set forth in Article 13 of the American Convention. In this regard, the Inter-American Court has clarified that it is not necessary to prove a direct interest or any infringement of one’s own rights in order to obtain information in the possession of the State, except in instances in which a legitimate restriction applies, as defined under the American Convention. Additionally, should the information requested contain confidential or classified information, public agencies must produce a redacted version of the information leaving out or excluding only the classified information.

552. Principle 4 of the IACHR Declaration on Freedom of Expression, approved in 2000, establishes 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.”

E. Stigmatizing Statements

553. On February 18, in a press conference and release issued that day, the Xatruch Joint Task Force of the Armed Forces made statements accusing journalists and human rights defenders of carrying out a “Disinformation Campaign” and of tarnishing “the image of the Honduran nation” by allegedly publishing communications, which are “groundless and far from the truth” about the performance of its members.

F. Other Relevant Situations

554. Journalist and owner of the daily newspaper El Libertador, Jhonny Lagos, denounced that the staff and the media company was under surveillance by a person allegedly linked to the Armed Forces of Honduras. Additionally, the newspaper company had been the victim of hacking several times.

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On August 19, the agent of the Special Forces of the National Police in charge of the investigations into the attempts on the lives and assaults against journalist José Luis Galdámez Álvarez and his family, was murdered. Police inspector Rubén Rolando Méndez Montenegro was shot to death by unidentified individuals. Galdámez and his family are beneficiaries of precautionary measures granted in 2010 by the Inter-American Commission to a group of community leaders, journalists and human rights defenders, who were victims of state persecution.

The Inter-American Commission reminds the State of the obligation to ensure the security of authorities responsible for investigations and to adopt whatever measures or means necessary to prevent inquiries from being hampered, in addition to measures designed to provide security to witnesses, victims, family members and other judicial representatives vis-à-vis threats and acts of intimidation or assaults, which are aimed at obstructing these processes. In this same vein of thought, the Inter-American Court has held categorically that, in order to meet the obligation to investigate within the framework of guarantees of due process of the law, the State must facilitate all necessary means to protect operators of justice, investigators, witnesses and family members of the victims from harassment and threats that are intended to hinder the investigation, prevent the truth of the facts to be known and avoid the identification of those responsible.

18. Jamaica

The Office of the Special Rapporteur commends the important legislative reform passed by the Parliament of Jamaica to decriminalize defamation offenses. According to the information received, the Jamaican Parliament’s House of Representatives enacted the Defamation Act of 2013, which does away with the use of criminal law in defamation matters, on November 5. The bill was passed with bi-partisan support in the Senate on July 12, and amends the defamation laws that have been on the books since 1851 and 1961. The reform decriminalizes criminal libel and establishes advanced criteria for the resolution of civil cases in accordance with the highest principles of international law on the issue. Thus, for example, it provides that the civil judge must consider principles such as exceptio veritatis, fair and accurate reports, innocent dissemination, and malice when dealing with media outlets that publish specially protected speech regarding matters of public interest. In this respect, the reform represents significant progress in the advancement of International Human Rights Law in civil proceedings pertaining to freedom of expression. The Office of the Special Rapporteur

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views this legislative advance positively, finds that it is a vital contribution to the protection of freedom of expression and the promotion of more vigorous democratic debate throughout the Americas.\textsuperscript{1091}

558. The Office of the Special Rapporteur views positively the statements of Sandrea Falconer, the Minister with responsibility for Information in the Office of the Prime Minister of Jamaica, on the occasion of the International Right to Know Day, in which she expressed the State’s commitment to “will continue to ensure that an effective and strong access to information regime exists including strengthening proactive disclosure [...] ensuring that public bodies and public officials are held accountable for actions and decisions made on behalf of the people.”\textsuperscript{1092} The Minister also mentioned the forthcoming comprehensive Government Communications Policy, which meets the information needs of the public, fosters greater access to information, and uses the best social media and technology available.\textsuperscript{1093} Falconer stated that from 2009 to 2012 the number of requests for access to information increased and she emphasized that most of those requests have resulted in grants of partial or total access to the information requested; fewer than 1\% of the requests have been denied.\textsuperscript{1094}

559. The Office of the Special Rapporteur was informed of the decision by television channels CVMTV and Television Jamaica not to authorize dissemination of the commercial “Love & Respect,” which apparently seeks to promote tolerance of diverse sexual orientations. An activist from the LGBTI community, who appears as one of the actors in the commercial, requested intervention by the Broadcasting Commission. That institution found no legal reason not to broadcast the advertisement, and urged the parties to engage in dialogue. Without having reached agreement, on October 2012, the activist filed a civil suit against the above-mentioned channels, alleging violation of his right to freedom of expression.\textsuperscript{1095} In May of 2013, the Supreme Court of Jamaica held a hearing on the case.\textsuperscript{1096} At the time of the report, the Supreme Court had not resolved the case.\textsuperscript{1097} The Office of the Special


\textsuperscript{1093} “As part of this process, a comprehensive Government Communications Policy which is responsive to the diverse information needs of the public, supports greater access to information and utilizes the best available technology and social media is being finalized.” Jamaica Information Service. September 28, 2013. \textit{Information Minister’s International Right To Know Day Message.}

\textsuperscript{1094} “The number of requests to public authorities monitored by the Access to Information Unit during the first four years of full implementation of the Act averaged 460. That number has jumped to an average of 960 during the last three years, 2009-2012. The majority of requests for information have been favourably responded to with full or partial access being granted. Less than one per cent of applications for information has been refused.” Jamaica Information Service. September 28, 2013. \textit{Information Minister’s International Right To Know Day Message.}


\textsuperscript{1096} The Gleaner. May 31, 2013. \textit{Court Reserves Decision In Tolerance Case; Gay Star News. May 29, 2013. Jamaica TV must not ban gay adverts, Supreme Court hears.}

Rapporteur observes that the media is a vehicle for the exercise of freedom of expression. Therefore, in terms of Principle 5 of the IACHR Declaration of Principles, the State cannot arbitrarily impose or control the contents of broadcasts. Nonetheless, the media that use the radio electric spectrum, because they are using public assets for their dissemination, they can be subject to a series of reasonable and proportionate regulations regarding the use of said public asset. Thus, for example, the media are free to choose among the diverse offerings both from commercial advertising and questions of public interest. However, in this selection process, they cannot, based on suspicious categories, exclude certain speech that promotes goods or values protected by international human rights law, such as equality and nondiscrimination.

560. Additionally, the Office of the Special Rapporteur expresses its concern over the promotion in some media outlets of outwardly discriminatory and homophobic messages that could incite violence against members of the LGBTI community, especially when those messages come from shapers of public opinion. According to the information received, during 2013 some media systematically published articles that could incite violence against LGBTI individuals, by disseminating messages that encourage hatred against the members of that community.

561. For example, on February 20, the newspaper Jamaica Observer published an article entitled “Vicious gays - Homosexual men stone supermarket, threaten staff.” On February 21, the paper published an article entitled, “Marauding homosexuals and J-FLAG,” which contains statements such as the following: the Jamaican nation continues to “struggle with the delicate issue of how to treat those of our citizens who are homosexuals.” In fact, “the problem has been seriously exacerbated by the emergence of a growing band of homosexual men, largely operating in New Kingston, who have demonstrated a willingness to attack other citizens and to carry out criminal acts.” The paper made similar, subsequent publications: on April 8, it ran an article entitled “Gay men, bystanders in missile-throwing brawl during road march;” on May 26 the article “Residents say gays take over Barbican house;” and on June 12, an article entitled “Caretaker wants uncontrollable gay men out of Millsborough house;” On previous occasions, the newspaper reportedly published cartoons depicting LGBTI persons with discriminatory stereotypes.

562. The Office of the Special Rapporteur notes that these types of discriminatory statements can potentially cause violence, depending on the context in which they are disseminated. In this respect, hate speech directed at against individuals on the basis of their sexual orientation or gender

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1099 Jamaica Observer. February 21, 2013. Marauding homosexuals and J-FLAG.
1104 In the context of Jamaica, there have been numerous attacks and assaults against persons because of their sexual orientation or gender identity. One example is the case of the murder of Dwayne Jones on July 22, 2013. IFEX/Human Rights Watch. August 1, 2013. Cross-dressing teenager murdered in Jamaica; Huffington Post/AP. August 11, 2013. Dwayne Jones, Jamaican Transgender Teen, Murdered By Mob: Report.
identity that constitutes the incitement of violence is not protected by freedom of expression. Article 13(5) of the American Convention establishes that: “[a]ny 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.”

563. In addition, Article 9 of the Inter-American Democratic Charter states that: “[t]he elimination of all forms of discrimination, especially gender, ethnic and race discrimination, as well as diverse forms of intolerance, the promotion and protection of human rights of indigenous peoples and migrants, and respect for ethnic, cultural and religious diversity in the Americas contribute to strengthening democracy and citizen participation.” Similarly, the Office of the Special Rapporteur recalls that principle 6 of the IACHR’s Declaration of Principles on Freedom of Expression, adopted in 2000, establishes, *inter alia*, that journalistic activities must be guided by ethical conduct.

19. Mexico

A. Progress

564. On February 6, the First Chamber of the Supreme Court of Justice declared unconstitutional several legal provisions establishing the absolute secrecy of criminal investigations (investigative proceedings undertaken by the Public Prosecutor’s Office following an allegation or complaint, to determine whether criminal action should be brought before the courts). The First Chamber of the Court ruled that the following provisions, whose interpretation had resulted in the prohibition of public access to any piece of information from a criminal investigation, are unconstitutional: paragraphs second, third and sixth of Article 16 of the Federal Code of Criminal Procedure; Articles 13, section V, and 14, sections I and III, of the Federal Transparency and Access to Public Government Information Act; and Article 9 of the National Human Rights Commission’s Rules for the Protection of Human Rights and Recommendations.

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1107 Cámara de Diputados del H. Congreso de la Unión. *Código Federal de Procedimientos Penales*. Article 16. “… Only the accused, his/her defender, and the victim or offended party or his/her legal representative shall have access to the criminal investigation file. The criminal investigation and all documents, regardless of their content or nature, and any objects or voice and image records, or related materials, are strictly confidential. For the purposes of access to governmental public information, only a public version shall be provided of the resolution to not bring criminal action, as long as a time period equal to that of the statute of limitations for the crimes involved has transpired, pursuant to the provisions of the Federal Criminal Code, provided that it is not less than three nor more than twelve years from the date such a resolution has been made final. […]The Public Prosecutor’s Office may not provide information to anyone who is not authorized once a criminal action has been brought […]”.

1108 Cámara de Diputados del H. Congreso de la Unión. *Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental*. June 11, 2002. Article 13. “Privileged information shall be that information the dissemination of which may: V. Cause a severe damage to law enforcement activities, crime prevention or prosecution, the administration of justice, tax collection, migratory control operations, procedural strategies in judicial or administrative actions, as long as their resolutions shall have not become final and conclusive”.

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of Procedure on Transparency and Access to Information.\textsuperscript{1109} The decision of Court’s First Chamber supported the claim of the weekly magazine \textit{Proceso}, which had challenged the decision of the National Human Rights Commission to classify as secret information documents of a file related to a petition against the Federal Secretary of Public Security [\textit{Secretaría de Seguridad Pública Federal}]. Among other reasons, the Commission stated that the documents were “related to information in a criminal investigation”, which according to the Office of the Attorney General of the Republic [\textit{Procuraduría General de la Nación}] were subject to secrecy rules.\textsuperscript{1110} The decision of the First Chamber of the Supreme Court of Justice stated that “[i]n the matter under discussion, the aforementioned requirement [proportionality] has not been met, inasmuch as there is no proper balance between the principles at play, [that is], between the right of access to public information and the purpose and objective being sought with its restriction, relative to the \textit{public or general interest} inherent in the \textit{public duty} to investigate and prosecute crimes.”\textsuperscript{1111}

565. On June 20, Mexico’s Supreme Court of Justice reportedly ruled in favor of the National Human Rights Commission, which had filed unconstitutionality action 29/2011 seeking to invalidate Article 373 of the State of Veracruz Criminal Code, which had been amended via Decree 296 published in the Official Gazette on September 20, 2011.\textsuperscript{1112} The challenged article established prison terms of one to four years and fines of five hundred to a thousand salary days for anyone who “falsely asserts the existence of explosive or other devices; of attacks with firearms; or of chemical, biological, or toxic substances that may cause harm to health, causing disturbance to law and order.”\textsuperscript{1113} The justices determined that the article was unconstitutional and invalid, finding it “in violation of human rights enshrined in the Constitution of the United Mexican States, specifically with reference to freedom of expression, right to information, legality, legal security, and precise application of criminal law,” as the Supreme Court of Justice reported in a press release.\textsuperscript{1114}

\begin{itemize}
\item Article 14. “The following information shall also be considered privileged information: I. That information which may be treated as confidential, privileged, privileged commercial information or governmental confidential information under a specific legal provision; [...] III. Criminal investigations”.
\item Comisión Nacional de Derechos Humanos. \textit{Reglamento de Transparencia y Acceso a la Información de la Comisión Nacional de los Derechos Humanos}, April 29, 2003. Article 9. “Pursuant article 4 of the National Commission of Human Rights Act and in accordance with section I of article 14 of the Act, the information or documentation contained in files of complaints, orientation, submission [remisión], recommendation follow ups and challenges that are processed by the Commission will be considered secret.”
\item Primera Sala de la Suprema Corte de Justicia de la Nación (SCJN). \textit{Amplio en Revisión 173/2012}. February 6, 2013. Para. 199.
\item Suprema Corte de Justicia de la Nación. June 20, 2013. \textit{Invalida SCJN Artículo 373 del Código Penal del Estado de Veracruz}.
\end{itemize}
On April 17, the state Congress of Colima reportedly approved Decree No. 99 rescinding the crime of defamation [delito de difamación] in the state Criminal Code. After the multi-judge Circuit Court of Colima declared that “the crime of defamation is unconstitutional in the State of Colima,” legislators voted unanimously to repeal Articles 218, 219, and 220 of the Criminal Code. Under the legislation, the crime of defamation [delito de calumnia] remains in effect and carries a penalty of two to five years in prison.

On November 26, 2013, the Chamber of Deputies of the United Mexican States passed an initiative to amend the Constitution that had been sent to it by the Senate. The initiative would give constitutional autonomy to the federal oversight agency on matters of transparency and access to public information. The scope of this autonomy would mean that its rulings are “definitive, biding and cannot be challenged by those legally bound” and that hereinafter it will hear matters resolved by its peer institutions in the federal entities as well as challenges to denials of information resolved by other constitutionally autonomous bodies and other powers, with the exception of the Supreme Court of Justice of the Nation. It also allows federal oversight agency to participate in conflicts over the constitutionality of actions and laws. The ongoing reform also broadens the sources of information considered public.

Federalizing investigations into crimes against journalists, individuals, or facilities that may affect, limit, or undermine the right to information or freedom of expression

On June 6, 2012, the Permanent Commission of the Mexican Congress approved an amendment to Article 73 of the Constitution, granting powers to the federal authorities to take over investigations of crimes committed in local jurisdictions when these involve crimes against journalists, individuals, or facilities that affect, limit, or undermine the right to information or freedom of expression or of the press.

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1118 H. Congreso del Estado de Colima. Código Penal para el Estado de Colima. Capítulo III. Calumnia. December 21, 2013. Article 221. “Those who falsely impute to someone facts that the law establishes as crime, knowing that the crime was not committed or that the accused is not responsible for it, will be punished by two to five years of imprisonment and fine of 70 units”.


The Office of the Special Rapporteur is pleased to take note of the legal reform approved in Mexico regulating the jurisdiction of federal authorities to investigate and punish crimes committed against journalists for practicing their profession. On April 25, the Chamber of Deputies approved a draft decree—approved in the Senate on April 11—authorizing the Federal Public Prosecutor’s Office to take over investigations into crimes of ordinary courts committed against journalists, individuals, or facilities that may affect, limit, or undermine the right to information or freedom of expression. The new provisions amend and add various provisions of the Federal Code of Criminal Procedure, the Organic Law of the Federal Judiciary, the Organic Law of the Office of the Attorney General, and the Federal Criminal Code. The reform establishes that “the Federal Office of the Public Prosecutor shall be able to exercise its takeover authority” to take cognizance of and prosecute crimes that threaten freedom of expression, and “federal judges, moreover, shall have jurisdiction to try them.” This authority shall be exercised in cases involving crimes presumed to be premeditated, when there is evidence that a state or municipal public servant may have participated in the crime, or in the case of felonies as defined by law. Other cases include when the victim’s life or physical integrity is at actual risk, when the competent state authority so requests, or when the events that constitute crime have a major impact on the exercise of the right to information or freedom of expression or the press. Moreover, the bill provides for this authority to be exercised when a judgment or resolution by a body established in an international treaty to which Mexico is a party has determined the State’s international responsibility, by fault or omission, in the investigation, prosecution, or judgment of crimes against journalists and/or media outlets. In addition, in all these cases “the victim or offended party may request that the Federal Public Prosecutor’s Office exercise its authority to take over [the case].” The bill also establishes that the penalty established for a specified offense is increased by up to one third when the offense is committed against a journalist, individual, or facility with the intent of affecting, limiting, or undermining the right to information or freedom of expression. The penalty shall be increased “by up to one half when, in addition, the crime is committed by a public

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servant in the exercise of his or her duties, or when the victim is a woman and gender motives also come into play in the commission of the crime.”

570. On August 13, the Office of the Special Prosecutor on Crimes against Freedom of Expression, of the Office of the Attorney General of the Republic, reportedly took over the investigations into the killing of Armando Rodríguez Carreón, a reporter from the Juárez newspaper El Diario, who was killed on November 13, 2008, in Ciudad Juárez. This is apparently the first homicide case the Office of the Special Prosecutor has taken over since the legal reforms were approved giving it jurisdiction to investigate crimes against journalists, according to the head of that office, Laura Angelina Borbolla Moreno. Media reports said that, according to that official, the Special Prosecutor’s Office has taken over another five cases involving crimes against media workers that have to do with attacks and abuse of authority.

571. Mexico’s National Human Rights Commission, in its General Recommendation No. 20, noted the lack of efficiency in the performance of the Special Prosecutor on Crimes against Freedom of Expression of the Office of the Attorney General of the Republic, based on the results obtained since its creation in 2010. The National Commission found that of the 378 criminal investigations initiated by the Special Prosecutor between July 5, 2010, and July 5, 2013, 210 were forwarded to other authorities due to lack of jurisdiction. Of the 168 remaining cases, criminal actions were brought in 28% of the cases, there has been no determination in 55% of the investigations, and in only one case has a ruling been issued. Meanwhile, according to information reported to the media by the deputy director of the Special Prosecutor Office, Alberto Peralta Flores, in the first nine months of 2013 the entity had reportedly initiated 150 criminal investigations into attacks against journalists.

572. In its 2010 Special Report on Freedom of Expression in Mexico, the Office of the Special Rapporteur urged the Mexican State to resolve “the existing ambiguity with regard to jurisdiction over crimes against freedom of expression, in order to permit the exercise of federal jurisdiction over crimes against freedom of expression when circumstances so demand.” It underscored the “greatest importance that the necessary reforms be advanced to allow federal judges jurisdiction over these kinds of crimes.”

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1130 Proceso. October 14, 2013. Acumula PGR 150 averiguaciones por agresiones a periodistas.

C. Constitutional Reform on Telecommunications and Economic Competition

573. The Constitutional Reform on Telecommunications and Economic Competition was enacted in Mexico on June 10.\textsuperscript{1132}

574. The Office of the Special Rapporteur is pleased to note that the initiative of the reform presented to Congress mentions international standards on freedom of expression; Article 13 of the American Convention on Human Rights; inter-American case law; the IACHR Declaration of Principles on Freedom of Expression; advisory opinions of the Inter-American Court of Human Rights; and the Joint Declaration on Freedom of Expression and the Internet, of the United Nations (UN) Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, the Representative on Freedom of the Media of the Organization for Security and Co-operation in Europe (OSCE), the Special Rapporteur on Freedom of Expression of the Inter-American Commission on Human Rights (IACHR), and the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples’ Rights (ACHPR), published on June 1, 2011\textsuperscript{1133}. According to this declaration, States have “an obligation [...] to promote universal access to the Internet. Access to the Internet is also necessary to promote respect for other rights, such as the right to education, health care and work, the right to assembly and association, and the right to free elections.”\textsuperscript{1134}

575. The reform introduces important changes to the constitutional legal framework on broadcasting and telecommunications, including the following: 1) the recognition of the right to free access to information that is pluralistic and timely, as well as the right to seek, receive, and disseminate information of all kinds by any means of expression; 2) the creation of two new, autonomous constitutional agencies on the issue: the Federal Economic Competition Commission and the Federal Institute for Telecommunications; and 3) the establishment of multi-judge and single-judge Circuit Courts and District Courts that are specialized in matters involving economic competition, broadcasting, and telecommunications. The Federal Institute for Telecommunications will be responsible for the regulation, promotion, and oversight of the use, operation, and development of the radio spectrum and networks, and the provision of broadcast and telecommunications services, as well as access to active and passive infrastructure and other essential inputs. In addition, the reform requires the Congress to issue a series of secondary laws for the purpose of, among others: 1) defining special criminal offenses to penalize monopolistic practices and situations of ownership concentration; 2) regulating the agencies that were created; 3) regulating the right to reply; 4) establishing mechanisms to ensure the promotion of independent domestic production; and 5) issuing a single legal framework to ensure the convergent regulation of the use, operation, and development of the radio spectrum, among other things. In addition, the reform mandates that the law must establish the rights of telecommunications users and


\textsuperscript{1133} Presidencia de los Estados Unidos Mexicanos. \textit{Iniciativa de Decreto que reforma y adiciona diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos}. March 11, 2013.

of the public, as well as protection mechanisms. It also contemplates that, once the Federal Institute for Telecommunications has been set up, bidding will be opened for new licenses for television broadcast frequencies to create at least two new open television channels that offer national coverage.  

576. The reform mandates that “the law must establish a decentralized public agency with technical, operational, decision-making, and management autonomy, which shall aim to provide broadcasting service on a nonprofit basis, in order to ensure that the greatest numbers of people in each of the federative entities have access to content that promotes national integration; educational, cultural, and civic instruction; equality between women and men; and the dissemination of impartial, objective, timely, and truthful information regarding national and international events, and which makes room for independently produced works, as well as the expression of diversity and pluralism of ideas and opinions that strengthen the democratic life of a society.” The public agency will have a Citizen Council “for the purpose of ensuring its independence and impartial and objective editorial policies.”

577. The Office of the Special Rapporteur notes, in any case, that the reform establishes that said body will ensure access to contents that promote “equality between women and men, the dissemination of impartial, objective, timely and truthful information about national and international events.” In this respect, it is true that the promotion of content to foster integration, education, equality, diversity and plurality of ideas, the dissemination of impartial information and independent production constitute a valuable asset. Nonetheless, this must not be understood as a prior condition, which is prohibited by Principle 7 of the Declaration of Principles on Freedom of Expression of the IACHR. In any case, the State must be neutral about editorial content or other information while seeking to avoid intervening in said content, with the sole exception stated in article 13 of the American Convention on Human Rights.

578. The Office of the Special Rapporteur reminds that the allocation of radio and television licenses has a definitive impact on the right to freedom of expression in its two dimensions: the right to freely express oneself and society’s right to receive diverse ideas and opinions. Therefore, this process must serve two objectives: 1) to ensure greater security so that people can freely express themselves without fear of being punished or stigmatized, and 2) to ensure equality in the conditions of access to frequencies and greater diversity in the media. The process of allocating frequencies must be strictly

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1135 Presidencia de la República. Decreto por el cual se reforman y adicionan diversas disposiciones de los artículos 68, 7º., 27, 28, 73, 78, 94 y 105 de la Constitución Política de los Estados Unidos Mexicanos, en materia de Telecomunicaciones. 10 de junio de 2013; Ver también: CNN México. 10 de junio de 2013. El Gobierno promulga la Ley de Telecom; Informador. 11 de junio de 2013. Pretende la reforma en telecomunicaciones más competencia; Vanguardia. 14 de junio de 2013. Leyes secundarias, el riesgo en la reforma de telecomunicaciones.


regulated by law, characterized by transparency and guided by objective, clear, public-spirited and democratic criteria.\textsuperscript{1139}

579. Similarly, as it was stated in the Special Report on Freedom of Expression in Mexico, the Office of the Special Rapporteur believes that the State must encourage media autonomy, as well as diversity and pluralism in the media by adopting structural measures, such as setting up a regulatory body for broadcasting that is independent of the government\textsuperscript{1140}. The Office of the Special Rapporteur notes that the State must recognize the unique existence of community stations and provide for reserving parts of the spectrum for this type of media, as well as for maintaining equitable conditions for access to licenses that differentiate among the varied circumstances under which private non-commercial media operate. As this office has indicated, states must have a clear, pre-established, precise and reasonable legal framework that recognizes the special characteristics of community radio broadcasting and that includes simple, accessible procedures for obtaining licenses that do not impose excessive technological requirements, that allow the possibility of using advertising as a means of financing, and that do not impose discriminatory limits on their financing and reach.\textsuperscript{1141}

D. Murders and disappearances

580. Journalist Sergio Landa Rosado, a police reporter for the local newspaper Cardel, reportedly disappeared in the state of Veracruz on January 23. A month before his disappearance, the journalist had reportedly been kidnapped by an armed group and released following the intervention of the authorities.\textsuperscript{1142}

581. Jaime Guadalupe González Domínguez, journalist and head of the digital newspaper Ojinaga Noticias, was killed on March 3 in the city of Ojinaga, in the state of Chihuahua. According to the information received, González Domínguez was attacked by armed men, who reportedly fired at least 17 shots at him. The attackers then reportedly stole his camera. Before working for Ojinaga Noticias, González Domínguez worked for several years as a journalist for the weekly newspaper Contacto, but he had reportedly resigned from that job after receiving threats. The Office of the Rapporteur was informed that the Ojinaga Noticias portal was suspended after the attack, out of fear of future attacks.\textsuperscript{1143}


On April 24, Daniel Alejandro Martínez Bazaldúa, a photographer for the newspaper Vanguardia of Saltillo, state of Coahuila, was killed. The 22-year-old photographer’s body was found with that of Julián Alejandro Zamora Gracia, who was 23. Both bodies were found mutilated. Martínez had been working for the newspaper for a month, as a photographer for the society pages. The crime does not have a clear connection with the profession of journalism. However, the Office of the Special Rapporteur urges the authorities to investigate the incident and make a judicial determination as to any connection it might have with journalism and freedom of expression.

On July 17, journalist Alberto López Bello, a reporter with the newspaper El Imparcial, was reportedly killed in Oaxaca de Juárez, in the state of Oaxaca. López Bello covered the police beat for said newspaper and was a contributor to the local radio station Radiorama. According to the information that was received, the journalist’s body was found around 7 a.m. on July 17, along with the body of another victim. Police authorities reported that the victims had been beaten and showed signs of injury. The governor of Oaxaca reportedly gave instructions to the state Office of the Attorney General for this crime against the journalist to “be handled as a high-impact crime and channeled toward the Special Committee on Journalists [Mesa Especial para la Atención a Periodistas] so as to clear up the killing, working where appropriate with the Office of the Attorney General of the Republic (PGR),” as the state government of Oaxaca said in a press release. Previously, on May 18, López Bello and reporter Jacobo López of El Imparcial were detained for five hours by individuals presumed to be members of the State Police when they were found taking photographs of a banner with threats that had been hung over an avenue by a criminal group.

The National Human Rights Commission, in its General Recommendation No. 20, indicated that “the authorities responsible for pursuing justice have caused a significant gap when it comes to results in the investigation of crimes committed against journalists and media outlets.” The CNDH also stated that “deficiencies in the public security system and justice system; corruption and abuse of power in some institutions; the lack of programs for effective prevention, inspection, and oversight; and the lack of timely sanctions that would set an example for law-breaking or negligent public servants have all led to an increase in impunity with respect to attacks against members of the journalism field.”

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585. Along these lines, the National Commission recommended to the National Security Commissioner and public security secretaries at the state level that “a decisive and effective response be provided by the authorities from the three levels of government to foster an effective, complete, and independent public security system, in order to prevent and dissuade attacks against members of the journalism field and thus prevent a greater increase in murders and disappearances of journalists, as well as attacks on media facilities.” It also recommended that “those concerned be instructed for the purpose of providing training in prevention and dissuasion of criminal acts so that members of law enforcement at the three levels of government preserve and guarantee the rights of journalists.”

586. Finally, the National Commission recommended to Mexico’s Attorney General and to state attorneys general that “instructions be issued to those concerned so that, in each case, the respective steps are taken to set up an effective inquiry, for the purpose of exhausting all avenues of investigation, including those related to the work of journalism in the exercise of the right to freedom of expression,” and that “the necessary and appropriate measures be implemented and applied purposefully, directly, and permanently to combat impunity, so that the appropriate criminal investigations are resolved as soon as possible, to clear up any murders, disappearances, attacks, threats, and any and all other offenses committed against journalists.”

587. Principle 9 of the IACHR establishes 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.”

588. The obligations of the State in regard to the prevention and protection of journalists, and to the fight against impunity, are developed in Chapter III of this report.

E. Detentions, attacks, and threats against media outlets and journalists

a. Attacks on journalists and media workers during demonstrations

589. On February 24, a group of journalists were reportedly attacked in Hermosillo, state of Sonora, while they were covering a march by a movement called “No More Taxes” [“No Más Impuestos”]. The journalists were said to have been victims of physical and verbal attacks. The attackers were allegedly members of a group that called itself “I Am Low-Income” [“Soy Bajos Recursos”].

590. On April 26, journalist Martha Izquierdo, from the news program ‘Orientación Matutina’ in Ixtepec, state of Oaxaca, was reportedly assailed and held by workers and ejidatarios de Nizanda while she was covering a dispute between them and the community of Ixtepec. The workers and
ejidatarios reportedly detained her and forced her to erase her photos and recordings with the interviews she had conducted. Other journalists were also reported to have been threatened while they were covering the conflict.\textsuperscript{1153}

591. On September 1, four journalists were reported to have been detained by officers of the Metropolitan Police and one journalist was injured, during protests against educational reforms and the president’s presentation of the government’s annual report. According to reports, Daniel Cruz, a photojournalist for the newspaper Milenio, was attacked by someone presumed to be a policeman, who reportedly hit him with his shield, even after the reporter had identified himself as a member of the press. Journalists Estela Morales, from Regeneración Radio; Alejandro Amado Fraustro, an independent journalist; Pável Primo Noriega, from Multimedios Cronopios; and Gustavo Ruiz, from Subversiones, reportedly were all arrested while they were doing their jobs of reporting the news.\textsuperscript{1154} On September 3, journalists Alejandro Amado Fraustro and Estela Morales apparently were released on bail.\textsuperscript{1155} On September 6, Gustavo Ruiz and Pável Primo Noriega reportedly were released after posting bail.\textsuperscript{1156} On September 10, the Division 23 Misdemeanor Judge of the Federal District Superior Court (TSJDF) [Juez Vigésimo Tercero de Delitos No Graves del Tribunal Superior de Justicia del Distrito Federal], reportedly ordered the incarceration of Gustavo Ruiz, who will face charges for the crimes of dishonor to the authority (ultrajes) and resistance by individuals.\textsuperscript{1157}

592. On September 12, journalists Anarcis Pacheco Polito and photographer Lenin Ocampo Torres, from the newspaper El Sur; Jonathan Cuevas, from the newspaper Novedades; Jesús Eduardo Guerrero, from the newspaper La Jornada; and Víctor Hugo Wences Martínez, from Radio Universidad,
were reportedly attacked by individuals presumed to be police officers during the eviction of demonstrators from the area around the palace of government in Chilpancingo, state of Guerrero.\footnote{1158 El Financiero. September 12, 2013. \textit{Agreden a 5 periodistas durante desalojo en Guerrero}; Proceso. September 13, 2013. \textit{Reporteros presentan queja contra la Policía de Guerrero por abuso de autoridad}.}

593. On September 14, in Xalapa, Veracruz, during an operation to evict teachers who were demonstrating in the city’s main plaza, at least five journalists were reportedly assaulted by the state police. Melina Zurita, a reporter for \textit{Radio Centro} and correspondent for \textit{AFP}, was reportedly assaulted when covering the eviction by individuals presumed to be police officers who also stole her camera and other belongings. Óscar Martínez and Rubén Espinoza, photojournalists for the \textit{AVC} agency, were reportedly held by individuals presumed to be police officers, who erased their camera memory cards. Roger López Martínez, a photographer and director of \textit{Imagen del Golfo}, reportedly had his camera stolen by individuals presumed to be police officers who were said to have chased him and attacked him with an electric device.\footnote{Article 19. September 16, 2013. \textit{FEADLE debe investigar agresiones cometidas a libertad de expresión en Xalapa.} Available for consultation at: http://www.libertad-expresion.org.mx/alertas-de-agresiones/feadle-debe-investigar-agresiones-cometidas-a-libertad-de-expresion-en-xalapa/; Reporters Without Borders. September 16, 2013. \textit{More police violence against journalists covering demonstrations}; Periódico Veraz. \textit{Rechazamos prácticas ilegales de censura periodística por parte de Seguridad Pública}; CNN México. September 14, 2013. \textit{La policía de Veracruz desaloja plantón de profesores}; Proceso. September 14, 2013. \textit{Desalojan de madrugada a maestros y estudiantes de la plaza Lerdo de Xalapa}.}

594. In addition, Juan Alberto Arellano Mariano, photojournalist and member of the organization La Vida, was reportedly arrested and charged with the crimes of illegal possession of firearms and narcotics. Reportedly he was freed on bail, but still faces criminal proceedings.\footnote{Reporters Without Borders. September 16, 2013. \textit{More police violence against journalists covering demonstrations}; Article 19. September 16, 2013. \textit{FEADLE debe investigar agresiones cometidas a libertad de expresión en Xalapa.} Available at: http://www.libertad-expresion.org.mx/alertas-de-agresiones/feadle-debe-investigar-agresiones-cometidas-a-libertad-de-expresion-en-xalapa/; La Jornada. September 15, 2013. \textit{Estiman 40 desaparecidos y detenidos tras desalojo}; Plumas Libres. September 17, 2013. \textit{Activista pide a PGR lo exonere de delitos fabricados en su contra tras desalojo}.}

595. Multiple journalists were reported to have been injured while they were covering a march to commemorate the 45th anniversary of the October 2, 1968, Tlatelolco massacre, according to reports from organizations such as Article 19 and Periodistas de a Pie. Most of the attacks on journalists and members of the media were reportedly committed by members of the Federal District Metropolitan Police. There were also attacks on demonstrators, particularly a group of self-described “anarchists.”\footnote{Article 19. October 2, 2013. \textit{#RompeElMiedo documenta violencia durante marchas}; Herramientas de Periodismo. October 9, 2013. \textit{51 periodistas agredidos en la marcha del 2 de octubre}; Prensa Libre México/YouTube. October 11, 2013. \textit{Voces de periodistas mexicanos tras las agresiones en la marcha del 2 de octubre}; Reporters Without Borders. October 3, 2013. \textit{More than fifteen journalists assaulted during Mexico City marches}; Variopinto. October 3, 2013. \textit{22 periodistas silenciados por SSPPDF durante conmemoración del 2 de octubre}; Lado B. October 2, 2013. \textit{Un #2deoctubre entre balas de goma y bombas molotov}.}

among the journalists were Guillermo Barros, Yuri Cortez, and Alfredo Estrella. Verónica Galicia of La Voladora reportedly suffered an attempt of detention. Freelance photographers Consuelo Pagaza and Iván Castaniera; Quetzalli González, a photographer for Excélsior; Nicolás Tavira of Notimex; and Javier Lira of Notimex were reportedly struck by individuals presumed to be police officers. Journalist Alejandro Medina Guzmán, a photographer for OOCHEL, was reportedly detained. Xilonen Pérez, a reporter with Subversiones, was reportedly beaten in the head and kicked in the back by individuals presumed to be police officers. Freelance photo journalist José Manuel (Pepe) Jiménez was reportedly struck by a group of alleged members of the police. Journalist Daniel Paniagua was reportedly detained for about 20 minutes. Milenio photographer Mónica González was reportedly attacked by individuals presumed to be police officers. Journalist Nayeli Roldán from Efekto Noticias was reportedly struck by individuals presumed to be police officers. Simón Hernández León, human
rights defender with the group Centró Prodh, was reportedly struck when they tried to help journalist Roldán.1172 Omar Franco of Sol de México reportedly attacked and resulted injured.1173 Gregorio Cortés Rojas of Agencia Prensa Internacional reportedly was beaten and had his equipment stolen by demonstrators.1174 Issac López, a cameraman with Grupo Imagen Multimedia, reportedly had his video camera stolen by demonstrators.1175 Raúl Sánchez, a cameraman with Efecto Noticias, was reportedly attacked by demonstrators.1176 Heriberto Paredes, cameraman with Subversiones was reportedly beaten by individuals presumed to be police officers.1177 Ricardo del Conde, a documentary filmmaker for Tejemedios-EmergenciaMX, was reportedly struck with rocks by individuals presumed to be police officers.1178 Journalism student Frida Casillas was reportedly detained.1179 In addition, a group of demonstrators reportedly threw rocks at the offices of the newspaper Excélsior, breaking windows.1180


1179 Herramientas de Periodismo. October 9, 2013. 51 periodistas agredidos en la marcha del 2 de octubre; Cencos/Article 19. October 2, 2013. #AlertaLE: Autoridades policíacas actúan contra periodistas y defensores de DH en marcha del 2 de octubre.

In addition, the organization Periodistas de a Pie documented attacks on Alberto Torres, photographer of *El Universal*, Edgar López photographer of *El Financiero*; Excélsior photographer Karina Tejada; Jorge González, from *El Razón* newspaper; Marco Rosales, from *La Crónica*; freelancer Moisés Rosas; Juan Pablo Zamora and Adriana Álvarez, photographers with the Cuartoscuro agency; independent cameraman Froylán Gutiérrez; Javier Vázquez, from *Nuestro Diario*; Prometeo Lucero, a contributing photographer for the newspaper *La Jornada*; Rodolfo Valtierra, a photographer for *En Foco*; freelance Guadalupe Ramírez; Kenya Ramírez, a reporter for *Excélsior TV*; Miguel Dimayuga, Octavio Gómez, Hugo Cruz and Alejandro Saldívar photographers for *Proceso* magazine; Leonardo Sánchez and Daniel Villa Rodríguez, photographers for the newspaper *Reforma*; Javier García, photographer for *Milenio*; Rodolfo González Ortega, video producer for *Reforma*; freelance photographer Carlos Echegoyen; and María Constante Cepeda, of the Agencia República Española.

On October 18, the Inter-American Commission sent the State a request for information regarding the attacks on and detentions of journalists, media workers, human rights defenders, and demonstrators that took place during the October 2 demonstrations. In its reply, dated October 28, the State of Mexico informed the Commission about the aforementioned acts of violence. It indicated that the Federal District Human Rights Commission (CDHDF) had begun *ex officio* investigations into the incidents that took place during the march. It reported that the CDHDF had received seven complaints from journalists, four from human rights defenders, and eight from individuals who participated in the march. It also reported that the CDHDF deployed a group of deputy visitors and officials to act as observers and monitor events during the march, and they were able to verify acts of violence against demonstrators, passersby, and law enforcement officers. It added that the CDHDF’s medical personnel treated 21 individuals, of which 15 were demonstrators, 5 human rights defenders, and 1 journalist. It also reported on the situation of the demonstrators who were arrested during the march.

On October 16, journalist Fátima Monterrosa and cameraman Víctor Olvera, of the Televisa program “Punto de Partida,” were reportedly attacked by teachers demonstrating against educational reforms, in the municipality of Simojovel, Chiapas. The demonstrators reportedly struck them and snatched the journalists’ video camera and credentials.

In addition, in November the Inter-American Commission received information on attacks against journalists committed by individuals presumed to belong to the teaching profession in Chiapas, during demonstrations against educational reforms. A group of journalists from Chiapas sent a letter addressed to the Mexican authorities and to several organizations, including the IACHR, denouncing “the systematic attacks, censorship, persecution, and threats perpetrated by teachers...

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1181 Foto Reporteros MX/Vimeo. Testimonio de Adriana Álvarez, Fotorreportera colaboradora de la Agencia Cuartoscuro.
1182 Foto Reporteros MX/Vimeo. Testimonio de Prometeo Lucero, Fotorreportero colaborador de La Jornada.
1183 Herramientas de Periodismo. October 9, 2013. 51 periodistas agredidos en la marcha del 2 de octubre.
against journalists, on grounds of inexistent instances of bias.” The letter reported on an attack on November 6 suffered by journalist Claudia Lobatón Vásquez and cameraman Ernesto Morales Lira, who was reportedly threatened so he would erase the images he had recorded during the protest.1186

601. In its General Recommendation No. 20, the National Human Rights Commission (CNDH) recommended that the Federal District government take “necessary and decisive steps to ensure adequate conditions for security and prevention, so that the work carried out by members of the journalism profession is not hampered or threatened by any circumstance; moreover, so that public policies are implemented to guarantee journalists’ safety, especially for those who cover dangerous situations.”1187

602. Principle 9 of the IACHR Declaration of Principles establishes 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.”

603. Similarly, the Office of the Special Rapporteur reminds that the Joint Declaration on violence against journalists and media workers in the context of protests, adopted in 2013, indicates that during demonstrations and situations of social unrest, the work of journalists and media workers, as well as the free flow of information, “is essential to keeping the public informed of the events. At the same time, it plays an important role in reporting on the conduct of the State [...] preventing the disproportionate use of force and the abuse of authority.”1188 Accordingly, the authorities must provide journalists with the maximum guarantees in order for them to perform their functions. In this respect, they must ensure that journalists are not arrested, threatened, assaulted, or limited in any manner in their rights as a result of practicing their profession in the context of a public demonstration. The State must not prohibit or criminalize live broadcasts of events, and must abstain from imposing measures that regulate or limit the free circulation of information.1189 Journalists must not be called as witnesses before the courts, and the authorities must respect the right to the confidentiality of sources of information. In addition, their work materials and tools must not be destroyed or confiscated.1190 The authorities must adopt a public discourse that helps prevent violence against journalists, vigorously condemning assaults, investigating the facts, and punishing the perpetrators, as established in Principle


9 of the IACHR’s Declaration of Principles.\textsuperscript{1191} It is also especially important in these contexts that the authorities have special protocols for protecting the press in situations of social unrest and educate State security forces on the role of the press in a democratic society.\textsuperscript{1192}

b. Attacks and arrests

604. On January 4, journalist Carmen Olsen, who runs the website rosaritoenlanoticia.info, was reportedly assaulted by someone presumed to be a member of the municipal police, and later insulted by the director of public security, in Playas de Rosarito, state of Baja California. The journalist has reportedly filed a criminal complaint with the Office of the Attorney General of the Republic against the public official. According to the available information, on January 31 the journalist was reportedly enlisted to the National Mechanism for the Protection of Human Rights Defenders and Journalists and given protection measures ordered by the Governing Junta of that mechanism\textsuperscript{1193}.

605. On May 2, journalist Armando Acosta Rojas, a correspondent for the newspaper El Mexicano in Tecate, Baja California, and his son, journalist Armando Acosta Vargas, president of the Manuel Buendía Association of Journalists, were reportedly detained and beaten by alleged municipal police officers when Acosta was arriving at his home. After the attack, Acosta Rojas, his son, and his wife were reportedly taken to facilities of the municipal police, where they were told that the individuals presumed to be police officers had accused them of assault and that they had to post bail of 7,000 pesos each (some US$ 500) before they could be released. Acosta reportedly filed a criminal complaint over the incidents.\textsuperscript{1194}

606. In the state of Guerrero, on May 14, journalist Sergio Ulises Ferrer Martínez, a reporter for El Sur and for the radio station Kukulkan Sonido Antisistema, was reportedly beaten by someone alleged to be a member of the municipal police.\textsuperscript{1195}

\textsuperscript{1191} Principle 9 of the IACHR Declaration of Principles: “[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”.


On May 15, journalist Ezequiel Flores Contreras and photographer José Luis de la Cruz, of Proceso magazine, were reportedly attacked by someone presumed to belong to the Federal Judicial Police while they were covering the court appearance of two union leaders, in Chilpancingo, state of Guerrero.\footnote{Proceso. May 15, 2013. \textit{Ratifican amparo a líderes de la CETEG; agrede federal a corresponsal y fotógrafo de Proceso}; El foro de Taxco. May 16, 2013. \textit{Polícia Federal agrede a corresponsal de Proceso; comunicador interpondrá queja ante Coddehum}; Article 19. May 16, 2013. \textit{Alerta: Agriden a periodistas de Guerrero}; Centro de Reportes Informativos sobre Guatemala (CERIGUA). May 18, 2013. \textit{Reporteros son agredidos y amenazados por agente federal}.}

For more than three years, journalist María José Gamboa with the newspaper Notiver, in the state of Veracruz, reportedly lived on the paper’s premises as a security measure after she was a victim of several attacks. According to the journalist, in the first attack her car windows were broken, and in the second, her tires were damaged. In a third attack, unidentified individuals reportedly entered her ex-husband’s house and scattered her daughter’s toys, burying one of them in the ground along with a machete.\footnote{CNN México. March 28, 2013. \textit{Una periodista de Veracruz vive en su lugar de trabajo tras agresiones}; El Diario Fénix. April 9, 2013. \textit{El periodismo se encuentra bajo amenaza de muerte}; Knight Center for Journalism in the Americas. March 29, 2013. \textit{After attacks, Mexican journalist in Veracruz has lived at newspaper’s offices for three years}.}

Principle 9 of the IACHR Declaration of Principles establishes 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.”

c. Threats

The Office of the Special Rapporteur was informed that the Mexican newspaper Zócalo, in Saltillo, Coahuila state, announced that as of March 11 it would no longer publish information involving organized crime.\footnote{Zócalo. March 11, 2013. \textit{El Zócalo deja de publicar del crimen organizado}; Knight Center for Journalism in the Americas. March 11, 2013. \textit{Newspaper in northern Mexico will stop reporting on crime after threats}.} The decision was reportedly taken after dozens of banners appeared on March 7 in various cities in Coahuila, with threats against the newspaper and its managers.\footnote{Proceso. March 7, 2013. \textit{Arrecian ataques contra la prensa: amenazan a Zócalo, de Saltillo}; Knight Center for Journalism in the Americas. March 8, 2013. \textit{Authorities remove 45 signs threatening a newspaper along the Texas-Mexico border}; Inforrnador. March 7, 2013. \textit{La Procuraduría de Coahuila reporta amenazas contra periódico}.} Following the threats, the Coahuila General Prosecutor’s Office reportedly launched a criminal investigation into the appearance of the messages.\footnote{CNN México. March 7, 2013. \textit{Autoridades de Coahuila investigan supuestas amenazas contra un diario}; Excelsior. March 7, 2013. \textit{Coahuila toma medidas para proteger a medios de comunicación}; Proceso. March 7, 2013. \textit{Arrecian ataques contra la prensa: amenazan a Zócalo, de Saltillo}; Knight Center for Journalism in the Americas. March 8, 2013. \textit{Authorities remove 45 signs threatening a newspaper along the Texas-Mexico border}.} The newspaper’s editorial board stated that “there are no guarantees or security for the full exercise of journalism,” and explained: “The decision to suspend all information involving organized crime is based on our responsibility to safeguard the integrity and security of more than a thousand workers and their families, as well as our own.”\footnote{Zócalo. March 11, 2013. \textit{Editorial}.}
On March 20, the editor and publisher of *Raza Cero*, Fernando Miranda Servín, reportedly received threats from two individuals with alleged ties to the mayor of Durango. In addition, on March 25 newspaper vendors who sell *Raza Cero* in the city of Durango reportedly received threats from municipal employees who warned them to stop selling the newspaper. The paper publishes critical coverage of local authorities in Durango, and it has reported on cases of corruption and irregularities in the region.1202

On April 4, individuals presumed to be police officers of the state of Oaxaca reportedly arrested and attacked journalist Carlos Sánchez Martínez, of *Radio Totopo*. In addition, on March 26 the journalist was reportedly injured while he was covering a clash between police and indigenous demonstrators who were trying to block construction of a wind farm in the area. That same day, *Radio Totopo* alleged in a press release that unidentified individuals had cut off the radio station’s electricity and stolen the meter. The incidents were said to be linked to the station’s opposition to the wind farm, which is proposed to be set up in an area in the state of Oaxaca. In addition, on March 20, journalist Filiberto Vicente Aquino, of *Radio Xadani*, reportedly received death threats after attending a conference on opposition to the aforementioned wind farm project. On March 21, several journalists were reportedly detained for a number of hours when they were reporting on area residents’ opposition to construction of the wind farm.1206

On April 16, the weekly magazine *Proceso* publicly complained that it had received information regarding the alleged intention of Veracruz state officials and former officials to “violate the personal integrity” of *Proceso* journalist Jorge Carrasco, reportedly because of his coverage of the case involving the killing of the *Proceso* correspondent in Veracruz, Regina Martínez Pérez. The magazine reported that it had received information concerning meetings held between former and current state officials of Veracruz for the purpose of reaching agreement on hostile actions to take against the reporter, in response to what he had published about the Regina Martínez case. The weekly indicated that it had informed the National Human Rights Commission, the Office of the Attorney General of the Republic, and the Secretariat of the Interior as to the details of these meetings and the alleged participants. The authorities reportedly activated the mechanism for protection of journalists for the reporter’s benefit. According to the magazine, the state governor, the deputy secretary of state public security, and the director of the Veracruz Investigation Agency were reported to have sharply


denied having taken part in the meetings. In statements to Proceso, the governor and his associates apparently made an explicit commitment to respect the journalistic efforts of the magazine, its reporters, and its correspondent in Xalapa, Noé Zavaleta.\footnote{Proceso. April 16, 2013. Amenazas contra el reportero Jorge Carrasco.} The day Proceso was published, the Veracruz Attorney General disseminated a letter in which he rejected the accusations and asked requested that, if the magazine had evidence, it should present it “immediately to the relevant authorities so that due process can be followed and, if appropriate, accountability can be assigned.”\footnote{Coordinación General de Comunicación Social del estado de Veracruz. April 16, 2013. Carta del Procurador de Justicia a la revista Proceso.}

614. On April 19, the international organization Article 19, dedicated to defending and promoting the right to freedom of expression, received an anonymous letter at its office for Mexico and Central America, threatening the organization’s team. The letter, addressed to its director, Dario Ramírez, contained death threats against him and the organization’s staff.\footnote{Article 19. April 19, 2013. ALERTA: México: Amenazan al equipo de ARTICLE19; Knight Center for Journalism in the Americas. April 22, 2013. Press freedom organization Article 19 receives threats in Mexico; Committee to Protect Journalists (CPJ). April 22, 2013. CPJ alarmed by threats against Article 19 in Mexico.} Moreover, the organization denounced that on October 11, independent journalist and documentary filmmaker Ricardo del Conde and two members of the Article 19 staff were reportedly assaulted and intimidated while they were holding an informal meeting at the organization’s offices. According to reports, the three individuals were on the balcony of the building when they noticed someone taking pictures of them. According to the organization, minutes later, a metal object reportedly hit one of the staff members in the torso, and then someone with a radio communication device appeared. When the staff of Article 19 started to photograph him, the individual apparently reacted by saying hello to the camera and laughing in a threatening manner, the organization reported.\footnote{Article 19. October 14, 2013. Comunicado: el Estado es responsable de nuestra seguridad. Available for consultation at: http://www.libertad-expresion.org.mx/alertas-de-agresiones/comunicado-el-estado-es-responsable-de-nuestra-seguridad/; La Centro Nacional de Comunicación Social (Cencos). October 16, 2013. Cencos condena las agresiones a Ricardo del Conde y Artículo 19.}

615. On April 30, journalists Pedro Matías Arrazola, a Proceso magazine correspondent in Oaxaca, and Giovanni Vásquez Sagrero, host of the radio news program “Sin Muros,” reportedly received death threats via a message\footnote{In Spanish the message stated: “Que paso pendejo ya bajale de wevos porque te los vamos a cortar y dile a ese pendejo que luego handa llorando y no entiende con sus notas varatas y esta vez no llegara ni Alemania” [sic]. Article 19. May 6, 2013. ALERTA México: Amenazan de muerte a periodistas de Oaxaca.} sent to Vásquez’s cell phone.\footnote{Article 19. May 6, 2013. ALERTA México: Amenazan de muerte a periodistas de Oaxaca; Diario Despertar de Oaxaca. May 1, 2013. Amenazan a periodistas por audio escándalos de Jorge Coco Castillo.} On July 22, journalist Matías Arrazola reportedly received more threats, this time after publishing a critical article about a visit by two federal government officials to Oaxaca. The journalist stated that he had received messages with threats and disparaging remarks on his Twitter social network account. The journalist blamed the harassment on one of the officials referred to in the published article.\footnote{Notiese. July 30, 2013. CARTAS A NOTIESE. Demandan detener amenazas a reportero de Oaxaca; Revista Tucán. July 27, 2013. Pedro Matías, Corresponsal de Proceso en Oaxaca, amenazado por funcionario de Enrique Peña Nieto; Presenta denuncia ante la Fiscalía Especial; El Piñero. July 26, 2013. Héctor Pablo Ramírez Puga Leyva amenaza a corresponsal de la Revista Proceso en Oaxaca.}
On May 20, the newspaper Notivisión, which circulates in several towns in the north of Veracruz, reportedly received an anonymous message threatening newspaper’s editor and publisher and its staff. The editor and publisher stated that the threat could be tied to the paper’s critical coverage of the municipal governments in the midst of an electoral campaign.1215

On May 22, journalist Rocío Gallegos, of El Diario in Ciudad Juárez, Chihuahua, reportedly received intimidating telephone calls after publishing an article about ongoing investigations of a businessman for the alleged crime of fraud. Gallegos reportedly filed a complaint with the state delegation of the Office of the Attorney General of the Republic (PGR).1216

On June 7, journalist Alfonso Hernández, a correspondent in Torreón for a media outlet based in the city of Saltillo, received threats, reportedly from a federal congressman. The reporter reportedly filed a complaint with the regional office of the Human Rights Commission.1217

The editor and publisher of the news site Ágora Guerrero, Emilio Lugo, reportedly decided to leave the city of Acapulco to “protect his integrity,” after being repeatedly threatened and intimidated since March.1218

The newspaper Presencia, in the municipality of Las Choapas, Veracruz, was reportedly subject to threats and intimidation in connection with its coverage of the July 7 elections of local authorities, according to the editor and publisher, Roberto Morales Ayala. According to the information disclosed by said newspaper, they had received “warnings and threats of an attack on the newspaper’s staff and premises due to the climate of hostility that prevails in the municipality because of the results of the elections.” As it was reported, after receiving the complaint the state authorities contacted the media outlet “to warn that protective measures were being sent to the newspaper to prevent any type of attack against the safety of officers of the SSP [Secretaría de Seguridad Pública]”.1219

In July, journalist Jaime Delgado, who runs the news portal Periodismo Negro, edited in Baja California, reported that threats had been made against him and against his family in connection with the dissemination of a video said to link a congressman romantically with a minor.1220


On July 10, unidentified individuals were said to have threatened vendors of the weekly *Luces del Siglo* in Quintana Roo, as part of a harassment campaign reportedly waged against the publication during the July 7 election process. A chain of sales outlets where the weekly was sold reportedly told the publication’s management that it would stop sales until after the elections. According to what the editor of the weekly, Norma Madero, stated, the magazine keeps a critical coverage of state’s government.  

On October 14, in Tijuana, Baja California, journalist Lorenzo Garibay Martínez, editor and publisher of the weekly *Expediente Público*, reportedly found a black mourning bow on his vehicle. Days later, he reportedly found a cluster of black plastic roses in the same place. According to the reporter, the threats came from authorities of the municipal police, due to information the weekly had published in August and September, linking police officers to irregularities that had been committed during a police operation.

Principle 9 of the IACHR Declaration of Principles establishes 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.”

d. Attacks on media outlets

The newspaper *El Siglo de Torreón*, in the state of Coahuila, was reportedly the target of attacks over three consecutive days, February 25-27. According to the information received, on February 25 a Federal Police patrol vehicle that was designated to guard the newspaper building was attacked by an armed group. On the 26th, the newspaper was reportedly attacked by unidentified individuals who fired at the building and at federal police officers who were keeping watch over the premises. The next day, a Federal Police patrol vehicle that guarded *El Siglo de Torreón*’s building was attacked again by unidentified individuals who fired at the vehicle, killing someone who worked in the vicinity. A policeman and a civilian were also reportedly wounded. The newspaper had already suffered an attack several weeks earlier, when on the night of February 7 five of its employees were kidnapped then released several hours later. The workers reportedly had been captured by an armed group, which held them hostage for 10 hours. After the events, the authorities announced the detention of individuals allegedly associated with the kidnapping of the workers of *El Siglo de Torreón* and the attacks against...
the police officers that kept watch over the facilities of the newspaper.\textsuperscript{1225} \textit{El Siglo de Torreón} has reportedly been the victim of two other attacks on its premises, in August 2009\textsuperscript{1226} and November 2011.\textsuperscript{1227}

626. On March 6, the premises of two media outlets in Ciudad Juárez, state of Chihuahua, were reportedly attacked. Around 1 a.m., the newspaper \textit{El Diario} apparently was hit with seven gunshots, and approximately 20 minutes later a similar attack was made on \textit{Canal 44}. Following the incidents, local and state police officers reportedly provided security at the offices of other media outlets to prevent new attacks.\textsuperscript{1228}

627. On April 17, the premises of the Zapopan, state of Jalisco, newspaper \textit{Mural}—part of the Grupo Reforma—reportedly were attacked with two explosive devices. The attack left no injuries, although it apparently did cause damage to the building\textsuperscript{1229}. According to the organization Article 19, this is said to be the seventh attack on Grupo Reforma since 2010.\textsuperscript{1230}

628. On July 27, unidentified individuals reportedly threw an explosive device at the facilities of the newspaper \textit{El Piñero de la Cuenca}, in the municipality of Loma Bonita, in the state of Oaxaca.\textsuperscript{1231} The governor of Oaxaca reportedly condemned the attack and instructed the state Office of the Attorney General to open the relevant investigations to identify those responsible for the attack.\textsuperscript{1232} Some weeks before that, the newspaper had made allegations of attacks and threats targeting the newspaper’s vendors, allegedly ordered by political figures from the region.\textsuperscript{1233}


\textsuperscript{1230} Article 19. April 17, 2013. \textit{ALERTA: Atacan con artefactos explosivos las instalaciones del Periódico Mural en Jalisco}.


\textsuperscript{1232} Gobierno del Estado de Oaxaca. July 28, 2013. \textit{Instruye Gabino Cué investigar agresión a las instalaciones del diario El Piñero de la Cuenca}.

\textsuperscript{1233} El Piñero de la Cuenca. July 8, 2013. \textit{Gamboa, a través de esbirros, ataca y frena la circulación de El Piñero de la Cuenca en Loma Bonita}.
629. On August 1, individuals presumed to be police officers reportedly raided the premises of the newspaper *Contexto*, in the town of Miguel Alemán, in Hermosillo, Sonora. Editor and publisher Carlos Roberto Marroquín reported that the operation was carried out violently and that no search warrant was shown.\(^{1234}\)

630. On October 1, a distributor of the newspaper *El Norte*, which belongs to the Grupo Reforma, reportedly was attacked by armed individuals who beat and threatened him before demanding a payment of 3,000 pesos per week to allow him to continue distributing the paper in the area around the La Talaverna arroyo, between the towns of Guadalupe and San Nicolás, in Nuevo León. It was reported that the attackers had also shouted threats against the newspaper: “And tell your bosses that if they don’t get in line they’re going to be screwed... Fucking sensationalists!”\(^{1235}\)

631. Principle 9 of the IACHR Declaration of Principles establishes 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.”

F. Mechanism for the Protection of Human Rights Defenders and Journalists

632. The Office of the Special Rapporteur has observed that on June 2012, the “Law for the Protection of Human Rights Defenders and Journalists” entered into force.\(^{1236}\) The law creates the “Mechanism for the Protection of Human Rights Defenders and Journalists” in order to attend the State’s “fundamental responsibility to protect, promote and guarantee human rights.”\(^{1237}\) Its stated objective is to establish coordination between federal and state governments in the implementation of preventive and protective measures to guarantee the “life, integrity, liberty and security of persons who are in a situation of risk as a consequence of the defense or promotion of human rights or the exercise of freedom of expression and journalism.”\(^{1238}\) As is developed in greater detail in Chapter III of this report, the mechanism is made up of a Government Council, an Advisory Board, and a National Executive Coordinator, and it is run by the Ministry of Interior.

633. On November 8, 2013, the State sent updated information on the national protection mechanism.\(^{1239}\) The State reported that 105 requests for protection had been received, 40 of which


were requests from journalists. In 9 of the 105 cases, the determination was reportedly made not to include the petitioning individual in the mechanism. In addition, the State reported that the main protection measures that had been granted included ongoing bodyguard services or transportation security; security measures at residences; armored vehicles and the provision of gasoline; telecommunications equipment; panic buttons; surveillance by police patrols; a directory to be used in case of emergencies; self-defense manuals; and support in the filing of complaints. The State also reported that the Government Council had approved the Protocols on Preventive, Protective, and Urgent Measures for Risk Assessment and Protection.\(^{1240}\)

634. With respect to the Mechanism’s operational personnel, the State reported that the National Executive Coordination and its three technical units would be comprised by 20 individuals, and that “there are plans to increase the technical know-how of the individual members of the Government Council and the Advisory Board, as well as of the personnel that form part of the National Executive Coordination.”\(^{1241}\) The State further reported that various measures would be put in place with the “objective of consolidating and strengthening the operation of the Mechanism,” including the integration of indicators for the evaluation of the mechanism, in cooperation with the Office of the United Nations High Commissioner for Human Rights in Mexico, and the signing of a memorandum of understanding with the organization Freedom House, which “has the purpose of strengthening the Mechanism technically.”\(^{1242}\) The State also provided information on the establishment of the “Fund for the Protection of Human Rights Defenders and Journalists.” According to the information received, the Rules of Operation of the Public Trust were reportedly approved on February 27, 2013, and published on November 5, 2013. On October 1, the funds authorized for the 2013 fiscal year were reportedly transferred to the Trust, a total of $127,500,000.00 Mexican pesos (some US$ 9,720,000). As of the date of the communication, the Trust has $169,895,841.61 Mexican pesos (some US$ 12,952,145). Finally, the State reported that 25 Mexican states had signed Cooperation Agreements with the federal mechanism.\(^{1243}\)

635. The Office of the Special Rapporteur notes that the law was passed in June 2012, meaning that the Mechanism is in its initial stage of implementation. That said, the resolution of certain pending questions is crucial for guaranteeing the law’s effectiveness and adequate application. As is developed further on Chapter III of this report, the Office of the Special Rapporteur would particularly like to point to the importance of assigning and training of personnel necessary for its proper operation; guaranteeing that studies and implementation of urgent, preventative and protective measures are


carried out in an adequate manner, meeting the deadlines set by law, and that the urgent measures and protective measures granted are not replaced or withdrawn prior to the resolution of potential disagreement and; guaranteeing the coordination of the different State federal agencies, as well as with the federal entities for its adequate operation.

G. Subsequent liabilities

636. On March 6, 2013, the First Chamber of the Supreme Court of Justice of the Nation ruled on a review appeal against direct protection (amparo), in which it found that homophobic expressions used in a newspaper column to criticize a newspaper owner were not protected by the right to freedom of expression. In its ruling, the Court did not take into account whether the expressions had been produced in a context of violence against the homosexuals or if they would constitute incitement to violence. For the First Chamber, it was sufficient that they involved expressions that, because of their content, would generate “incitement or promotion of intolerance towards homosexuality” and that they were “impertinent because they had no connection with the message that the author intended to deliver.”

637. The Office of the Special Rapporteur observes that article 13.5 of the American Convention provides that “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”. In a sense, to avoid use of a punitive law to silence uncomfortable or offensive ideas, article 13 proscribed the so-called “crime of opinion.” By virtue of this provision, the offensive character of speech, in and of itself, is not sufficient reason to prohibit it. In effect, as has been said by this Office of the Special Rapporteur, speech that offends because of the intrinsic falsity of its homophobic and discriminatory contents must be refuted: those who promote such views need to be persuaded of their error in public debate. There is no better response to unfair opinions than the justice of arguments, and that requires more and better debate, not less. This is the logic of the American Convention that was expressed by the Inter-American Court in the case of The Last Temptation of Christ, where it held that freedom of expression protects not only expressions that are “favorably received or considered inoffensive or indifferent, but also for those that shock, concern or offend the State or any sector of the population. Such are the requirements of pluralism, tolerance and the spirit of openness, without which no ‘democratic society’ can exist.”

638. On April 7, journalist Martín Ruiz Rodríguez, editor and publisher of the digital newspaper e-consulta Tlaxcala, was arrested as the result of an arrest warrant issued by the Judge of the First Criminal Court of Sánchez Piedras, in Tlaxcala. As it was informed, the journalist was reportedly accused of defamation by a high-level administrative official of the government of Tlaxcala, Ubaldo Velasco, who claimed he had been aggrieved because the journalist, in his “Señorio Tlaxcalteca” column, had referred to the official as “a hobbled little old man” and “mediocre.” The journalist was released

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after being held for hours and posting bail of 35,351 Mexican pesos (some US$ 3,000). On April 10, the Judge of the First Criminal Court in Sánchez Piedras, Tlaxcala, reportedly issued an order for the journalist’s incarceration.

639. In its General Recommendation No. 20, Mexico’s National Human Rights Commission (CNDH) mentioned that one “practice that stifles freedom of the press comes into play in those cases in which public servants or representatives of groups that actually hold power file a criminal complaint when they see that their right to honor has been impaired, thus hampering freedom of expression. In that regard, criminal offenses such as defamation [difamación, injuria o calumnia] have become the most common means used to establish subsequent liability for reported abuses of freedom of expression. The inhibiting effect that the mere existence of these criminal offenses can have on public debate must not escape notice, because these charges lead to indirect restrictions on freedom of expression, as they carry the threat of incarceration or fines for anyone who allegedly insults or offends a public servant.” Along these lines, the CNDH indicated that “criminal penalties are not necessary to protect the honor of public individuals, as a degree of inhibition is established that has a persuasive effect on the population as a whole and on whoever speaks out publicly to criticize someone carrying out a government role. The effect that is created exceeds the minimum restriction standard, because of the fear of losing freedom over the act of criticizing.”

640. As Mexico’s CNDH points out in its General Recommendation No. 20, “freedom of expression is a precondition in every democratic society, as it constitutes a prior condition for the full exercise of other fundamental rights closely tied to a pluralistic system, such as ideological and religious freedom, the right of assembly, the right of petition, and the right to education, among others. Thus, any limitation or restriction undermining this fundamental freedom is bound to have repercussions on the advancement of other rights, leading to consequences that in no way benefit the development of the country’s democratic life.”

641. Additionally, the CNDH points out in its cited General Recommendation No. 20, that “any attack or act of aggression against a media worker constitutes an attack to the detriment of the democratic life of the country, as it attacks the collective right to information.”

642. The crimes of defamation [difamación y calumnia] were eliminated from the Federal Criminal Code and from several state legislations, but they are still present in the criminal legislations of several states of Mexico.

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643. 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.”

H. Stigmatizing statements

644. On March 15, an official from the government of Veracruz reportedly disparaged the work of photojournalist Félix Márquez, from the Cuartoscuro agency, related to a news report on the establishment of a “Self-Defense Civil Guard” in Tlalixcoyan, Veracruz.1250 The Secretary of Public Security of Veracruz reportedly said that photographer Márquez should be detained for photographing members of an alleged paramilitary group called the Self-Defense Civil Guard in the town of Tlalixcoyan, and questioned the veracity of the images: “who should be in custody is the person who went to take their photos”, the secretary was quoted as saying.1251 On March 15, a group of journalists demonstrated in the state capital of Xalapa to express their solidarity with the photographer with the slogan “Veracruz, we photographers are not criminals.”1252 According to the available information, the Secretary of Public Security reportedly apologized for his remarks and offered assurances that he had not intended to threaten the photographer nor discredit his work.1253 For his safety, the journalist decided to leave the state of Veracruz.1254

I. Confidentiality of sources of information

645. Journalists Daniel Ángel and Vicente Calderón, of the Tijuana Press news agency, were reportedly subpoenaed for the second time to serve as witnesses in the trial of an alleged drug trafficker. According to the information received, the subpoena was issued at the request of the defense


so that the journalists would provide recordings they had made of the defendant’s arrest. According to
the information received, reporters and camera operators from other media outlets who had covered
the defendant’s arrest had also been subpoenaed to appear in court at the request of the defense.1255

646. Along these lines, it is worth noting that Mexico’s National Human Rights Commission
(CNDH), in its General Recommendation No. 20, stated that “news professionals should not be subject
without just cause to subpoenas from courts or judges, summoning them to appear and using them in
judicial investigations, as this inhibits their work.” Moreover, “practices in which justice officials
summon journalists to appear, as a result of some criminal investigation underway involving facts they
have reported to the public, and ask them to reveal their sources, infringe on their right to privacy.” In
this regard, the CNDH recommended to the government of the Federal District that it “promote, with
the respective legislatures, the necessary additions and reforms so that federal criminal codes and codes
of criminal procedure, as well as state criminal codes, decriminalize so-called press crimes, and so that
confidentiality of sources is expressly protected, it also being necessary that, as is the case for
defamation [calumnias and difamación], civil legislation establish the steps to follow when a harm is
inflicted.”1256

647. Principle 8 of the Declaration of Principles on Freedom of Expression states that “[e]very
social communicator has the right to keep his/her source of information, notes, personal and
professional archives confidential.”

J. The Internet and freedom of expression

648. The Office of the Rapporteur was informed that the Twitter and Facebook accounts
called “Valor por Tamaulipas” (“Courage for Tamaulipas”), which were used to report on incidents of
violence and dangerous situations in the northern part of Mexico, were closed. On April 7 The account
administrator reportedly announced their final shutdown after fliers had appeared in the state of
Tamaulipas in February, offering a reward for information that would lead to the identification of the
administrator of the “Valor por Tamaulipas” account or of any of his family members.1257

649. On May 12, the website of the newspaper El Mañana, in Nuevo Laredo, Tamaulipas, was
reportedly the victim of two cyber-attacks, which caused service to be interrupted for several minutes.
According to the information received, the attacks occurred after the newspaper published articles
questioning the performance of the municipal authorities.1258

1255 Campaña Permanente de Protección a Periodistas/Article 19. June 21, 2013. ALERTA: En Tijuana, citatorios a
periodistas vulneran libertad de expresión; El Sol de Tijuana. June 20, 2013. Abogado de “El Melvin” llama a tres reporteros y
pide videos a televisoras. See also, Tijuana Press/YouTube. Citan a Reporteros en Juicio contra Melvin Gutiérrez.

1256 Comisión Nacional de los Derechos Humanos. August 15, 2013. Recomendación General Nº 20, sobre agravios a
periodistas en México y la impunidad imperante.

1257 Valor por Tamaulipas. April 7, 2013. Untitled; Proceso. April 7, 2013. Administrador de ‘Valor por Tamaulipas’
anuncia cierre definitivo de la página; BBC. April 8, 2013. México: página de Facebook Valor por Tamaulipas cerrará
definitivamente. See also, Proceso. February 13, 2013. Grupo criminal quiere la cabeza del administrador de una página en
Facebook; Proceso. February 13, 2013. No todos nos rendiremos ante ustedes, responde “Valor por Tamaulipas”; Sin embargo.
February 15, 2013. “Tengo tanto miedo que ya no puedo tener más”, dice, oculto, el administrador en FB de “Valor por
Tamaulipas”; Proceso. April 30, 2013. Gobierno y narco, unidos contra “Valor por Tamaulipas”.

Atacan la página de internet de “El Mañana” de Nuevo Laredo.
650. The Office of the Special Rapporteur was informed that in July, the Internet portals of the newspapers *El Mañana*, in Nuevo Laredo, Tamaulipas; *Zócalo*, in Saltillo, Coahuila; and *Noroeste*, in Sinaloa, were targets of cyber-attacks that caused momentary shutdowns of their websites. The attacks reportedly occurred in the days leading up to the July 7 elections.1259

K. Other relevant situations

651. On August 8, the Seventh Criminal Chamber of the State of Veracruz Superior Court overturned the 38-year prison sentence of the man who had been convicted of killing Mexican journalist Regina Martínez Pérez in 2012. The grounds for the court’s decision were that due process guarantees of the accused had been violated.1260 On April 9, the Third Trial Court of the judicial district of Xalapa had handed down a prison sentence of 38 years and 2 months to a man who had confessed to killing the journalist Regina Martínez. The court also imposed a fine and reparations, in an amount of close to $8,000, for the crimes of aggravated homicide and aggravated robbery.1261 Nevertheless, *Proceso* magazine, where the journalist worked, has expressed its doubts about the arrest and confession of the individual who was sentenced. “We did not believe them, and we do not believe them now that they have sentenced someone who cannot defend himself,” the magazine said after the conviction ruling.1262

According to *Proceso*, there were a number of inconsistencies in the investigation of the homicide: the most significant was that the fingerprints found at the scene of the crime did not match those of the accused. Moreover, the man convicted reportedly made allegations that he was tortured by Mexican authorities into confessing to the killing.1263 The defense reportedly has appealed the sentence.1264 The body of Regina Martínez Pérez was found in her home, with signs of violence, on April 28, 2012, in the state of Veracruz. The journalist had covered issues related to state policy, and organized crime. Moreover, days before her death she had published an article on alleged irregularities committed by local authorities.1265

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The Office of the Special Rapporteur notes that the Federal Institute for Access to Information (IFAI) and the Permanent Commission of the Mexican Congress are reportedly investigating allegations that telecommunications companies and federal government entities are using a surveillance software program (spyware) that makes it possible to access Internet users’ private communications.\(^{1266}\) The Sixth District Judge for Federal Criminal Proceedings of the State of Mexico, reportedly absolved Marco Arturo Quiñones Sánchez with regard to his alleged involvement in the armed attack on journalist Jesús Blancornelas, founder and former editor of the weekly *Zeta*, in Tijuana. In November 1997, Blancornelas survived an attack by a group of hit men, in which his bodyguard, Luis Valero, was killed. Investigations by the authorities identified Marco Arturo Quiñones as one of the hit men in the attack, working in the pay of a Tijuana drug cartel. In 2003, Quiñones was charged for his alleged participation in the murder of Valero and the attempted murder of the journalist. Although he has been absolved of that conviction, currently Quiñones is reportedly serving a prison sentence of 12 years and 9 months for the crime of organized crime, and he is scheduled to be released in October 2016.\(^{1267}\)

According to the information received, on November 8, 2013, the Sixth Collegiate Court of the Auxiliary Circuit of the Third Region of the Judicial Branch of the Federation decided to revoke the protective sentence that prevented the exhibition and commercialization of the documentary film *Presunto Culpable* ("Presumed Guilty").\(^{1268}\) The documentary questions the Mexican judicial system and lays out the proceeding against José Antonio Zúñiga Rodríguez, who was convicted and sentenced to 20 years in prison for the crime of first-degree murder without any clear evidence and despite the existence of testimony placing the defendant elsewhere at the time the crime took place. In April 2008, after 28 months in prison, the Fifth Chamber of the Tribunal of Justice of the Federal District acquitted him for reasonable doubt.\(^{1269}\)

The received information indicates that the protective appeal to prevent the public exhibition of the documentary was presented by a person who appeared as witness of the legal

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investigation, and who understood that an unauthorized use of her image had taken place, thus characterizing a violation of her human rights. The judge, through the protective measure [amparo] issued on December 19, 2011, ordered the Direction-General of Radio, Television and Cinematography (RTC) of the Ministry of Interior to leave the authorizations of publication and commercialization of the film without effect, and to determine whether these authorizations would infringe the claimant’s right to privacy, by describing, in the case of granting the authorizations, the reasons for which his right to privacy was not being violated.1270 After analyzing the matter, the Sixth Collegiate Court decided to revoke the appealed sentence and to pronounce on the impropiety of the protection appeal [amparo]. The Court understood that the claimant did not present sufficiently strong evidences to substantiate the juridical interest he was claiming, as both in the documentary’s motion picture and in the anthropometric expert evidence – which could effectively establish if the person in the documentary was the claimant – were excluded by the district judge after being submitted extemporaneously.1271 According to the information, the documentary was also facing millionaire suits for non-material damage.1272

656. Principle 5 of the IACHR’s 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 obstacles to the free flow of information violate the right to freedom of expression.”

657. The Inter-American Court has established 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.”1273

658. In its General Recommendation No. 20, Mexico’s National Human Rights Commission (CNDH) indicated that “indirect means of restriction often involve using legitimate mechanisms in ways that are discretionary or abusive to reward or punish journalists or other people based on what they say. Nowadays it is common for federal or local public officials to engage in these types of practices that hamper the freedom of expression of journalists and media workers; these involve practices such as the arbitrary and discriminatory allocation of official advertising and official credit, lawsuits, restrictive legislation, police harassment, and the refusal to provide official information to certain media outlets.”1274


20. Nicaragua

A. Arrests and assaults

659. According to information received, on May 7 Chilean photojournalist Héctor Retamal, a correspondent for Agence France-Presse (AFP), was reportedly arrested and transported to the Judicial Assistance offices of the police while on his way to cover a meeting between Nicaraguan President, Daniel Ortega and the Foreign Minister of the Palestinian Authority. The journalist reportedly remained in custody for four days, without being given the opportunity to communicate with anyone on the outside and without legal assistance. On May 11, Retamal was reportedly deported from the country.

As explained by Nicaragua’s Ministry of Interior, the journalist was deported because he was working as a reporter without a work visa, did not have the legal documentation for the vehicle in which he was traveling, and attempted to breach the security cordon of the Office of the President of the Republic. AFP’s Latin American chief, Juliette Hollier-Larousse, sent a letter to the Communications and Citizenship Coordinator of the Office of the President of Nicaragua and First Lady Rosario Murillo, expressing her “most vigorous protest” against the reporter’s detention “for four days, without the opportunity to communicate with anyone on the outside and without legal assistance” and his subsequent expulsion from the country, and asking for the government to explained what happened and to guarantee the conditions for the practice of journalism.1277

660. The Office of the Special Rapporteur received information indicating that, on February 9, 2013, during a protest held in Santo Domingo, Chontales, by local mining groups and members of the environmental movement Salvemos Santo Domingo (SSD) against a foreign mining company, multiple assaults and arrests were reportedly made by alleged state agents. According to reports, alleged riot police belonging to government special forces went to the protest and violently removed the protesters. Both police officers and demonstrators were reported to have been injured, and other individuals were reportedly detained. According to the information available, some of the detainees were released the same day; however, others were prosecuted, including twelve leaders who were apparently taken to the country’s capital. The court hearing the case scheduled a hearing for April 25, 2013, although the detainees were reportedly released prior to that date.

661. The Office of the Special Rapporteur was informed that, during the peaceful protests held by the National Union of Older Adults [Unión Nacional de Adultos Mayores] (UNAM) over alleged reductions to their pension benefits, members of the community of older adults from at least four departments of Nicaragua reportedly staged takeovers of Nicaraguan Social Security Institute (INSS) facilities and held a sit-in that lasted for several days. According to reports, there were multiple acts of violence during the demonstration, against demonstrators as well as journalists who were there.

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1275 AFP. May 14, 2013. AFP protesta por la expulsión de su fotógrafo de Nicaragua; Confidencial. May 11, 2013. Gobierno expulsa al fotógrafo carcelado de la AFP; La Prensa. May 11, 2013. Expulsan de Nicaragua a reportero gráfico de AFP;


1277 AFP. May 14, 2013. AFP protesta por la expulsión de su fotógrafo de Nicaragua; El Heraldo. May 13, 2013. AFP entrega carta de protesta a gobierno por trato a fotoperiodista.

covering the events. The available information indicates that the government sent police forces to remove the protesters. According to complaints filed, law enforcement officers reportedly used tear gas and assaulted senior citizens and others present.1279 In particular, on June 19 journalist Roberto José Martínez of El Nuevo Diario was reportedly struck by police officers while covering the protest, in spite of the fact that he had stated that he was a journalist. According to the journalist, the alleged agents hit him in the head and the back, held him with his arms behind his back, which prevented him from being able to show his identification, and then threw him up against a wall in the vicinity of the San Pedro Cemetery.1280 On June 22, a group of hooded individuals riding in trucks, allegedly from the Managua mayor’s office, reportedly assaulted and attacked peaceful demonstrators who were still at the UNAM protests. The victims were reported to have been beaten, robbed, and subjected to the destruction of their property. According to complaints, the attackers were tied to pro-government groups and were acting in complicity with state agents, who also failed to take any measures in response to the attacks.1281

662. On October 11, a peaceful march protesting the exclusive use of electronic cards for the payment of city bus fares was reportedly dispersed by a group of motorcyclists, allegedly belonging to a para-state group, which assaulted and intimidated the demonstrators. A news team from El Nuevo Diario that was covering the events was also threatened and intimidated by these motorcyclists, who had complained about being photographed. According to reports, government forces failed to intervene in the events.1292

663. The Joint Declaration on violence against journalists and media workers in the context of protests, adopted in 2013, indicates that during demonstrations and situations of social unrest, the work of journalists and media workers, as well as the free flow of information, “is essential to keeping the public informed of the events. At the same time, it plays an important role in reporting on the conduct of the State […] preventing the disproportionate use of force and the abuse of authority.”1283 Accordingly, the authorities must provide journalists with the maximum guarantees in order for them to perform their functions. In this respect, they must ensure that journalists are not arrested, threatened, assaulted, or limited in any manner in their rights as a result of practicing their profession in the context


of a public demonstration. The State must not prohibit or criminalize live broadcasts of events, and must abstain from imposing measures that regulate or limit the free circulation of information. Journalists must not be called as witnesses before the courts, and the authorities must respect the right to the confidentiality of sources of information. In addition, their work materials and tools must not be destroyed or confiscated. The authorities must adopt a public discourse that helps prevent violence against journalists, vigorously condemning assaults, investigating the facts, and punishing the perpetrators, as established in Principle 9 of the IACHR’s Declaration of Principles. It is also especially important in these contexts that the authorities have special protocols for protecting the press in situations of social unrest and educate State security forces on the role of the press in a democratic society.

B. Access to public servants and public places

On May 24, 2013 the newspaper La Prensa denounced the expulsion of one of its teams of reporters from the Central Judicial Complex in Managua, while they were trying to cover the filing of a lawsuit by the daughter of the Nicaraguan President’s wife. According to the newspaper, while journalist Martha Vásquez was registering the press team at the respective office, photographer Manuel Esquivel was surrounded by alleged security agents who, after a struggle, violently threw him out of the area.

Principle 4 of the IACHR’s Declaration of Principles establishes 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.”

C. Reforms underway: the Internet and the forced localization of intermediaries

The Office of the Special Rapporteur notes that an initiative proposing the amendment of the Constitution of Nicaragua was introduced before the National Assembly. The proposed reforms include the amendment of Article 92 of the Constitution regarding the defense and security of the State.

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1286 Principle 9 of the IACHR Declaration of Principles: “[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”.


The new article\textsuperscript{1289} would require that all “databases and computer records remain in the country,” and would prohibit the establishment of “systems that alter or affect national communications systems.” These provisions have reportedly given rise to debate about the scope of state power over telecommunications, the handling of information said to be controlled by the State, and the possible consequences that such measures could have on individual privacy and freedom of expression.\textsuperscript{1290}

667. Indeed, in the event that the constitutional amendment is passed, the government could require all Internet intermediaries that store data to have their servers located in Nicaragua. This concept, known as “forced localization,” has complex repercussions on the freedom of users to choose the intermediaries that they believe provide better security, and bars intermediate companies from providing the service unless their data storage equipment is located in Nicaraguan territory. In addition, it prohibits those companies from being able to be located in those States that offer the best guarantees for their proper operation, and facilitates the establishment of surveillance programs that have already been called into question by this Office of the Special Rapporteur.\textsuperscript{1291}

668. According to the information received, the Nicaraguan Government explained that “the intention of the Executive Branch is not to violate the privacy of companies’ internal data, but rather to have them [in the country] so that citizens can make claims based on the use that is made of the information they produce.”\textsuperscript{1292}

669. The Office of the Special Rapporteur finds that this amendment could have a serious and negative impact on the use of the Internet, for the reasons explained in Chapter IV of this report. Therefore, it recommends to the Nicaraguan State, as well as to all States that have at any point suggested this alternative, to abandon the proposal of forced localization contained in the abovementioned constitutional reform, and to allow users to choose the intermediaries that, in their opinion, are the most trustworthy.

D. Other relevant situations

670. The Office of the Special Rapporteur received information that on October 28, 2013, journalist Carlos Fernando Chamorro presented a letter to the Nicaraguan Army Chief to officially complain of alleged intimidating activities and espionage by the Directorate of Defense Information \textit{[Dirección de Información para la Defensa]} (DID) against journalist Ismael López Ocampo of \textit{Esta Semana}

\textsuperscript{1289} Article 92 “[...] It is the responsibility of the Commander in Chief of the Nicaraguan Army, under guidance of the President of the Republic as chief supreme of the Nicaraguan Army, to participate in the formulation of national defense and security plans and policies and in the coordination of its execution. In terms of national defense and security: a) Databases and computer registries must remain in the country; b) In no case the establishment of systems that alter or affect national communication systems are to be allowed; c) State communication points must be the property of the State of Nicaragua; and d) the radio electric and satellite spectrum that affects Nicaraguan communications must be controlled by the State. National Assembly of Nicaragua. Proyecto de Ley de Reforma Parcial a la Constitución Política de Nicaragua. October 31, 2013.


and *Confidencial* and his family since August 2013. According to Chamorro, who is the director of both media outlets, Ismael López was summoned on October 11 to a meeting with the DID, at which time he was questioned about his personal life and issues concerning his professional activities, including the news agenda of the media outlets for which he works, the positions of the columnists critical of the government, the duties and responsibilities of the producers and editors of both media outlets, and their funding policies. Chamorro reportedly asked the Army Chief for “the immediate cessation of all overt and covert activities of intimidation and espionage against journalist Ismael López and his family, and against the media outlets *Esta Semana* and *Confidencial,*” as well as for the Army Chief “to take corrective measures and punish those responsible.” In addition, he asked the National Assembly to conduct “an independent investigation into these overt and covert practices of political espionage and intimidation, which are prohibited by the Constitution.”

671. In a communication received on December 18, 2013, the State informed the Office of the Special Rapporteur that the National Army had learned of the “alleged intimidating activities” through the media and from the letter submitted by journalist Fernando Chamorro. The State reported that on November 13, 2013, the Inspector General of the National Army reportedly stated to the media that “the Military Institution is not engaged in any type of espionage, let alone political espionage.” Additionally, the State was of the opinion that the journalist’s public condemnation of the events failed to “provide specific information on the involvement of any member of the National Army in the alleged intimidating acts,” and that the country’s legal system “allows for the use of several remedies and mechanisms so that individuals who believe that their constitutional rights—or any other rights—have been violated, or are in danger of being violated, can demand their protection and reestablishment,” and that the journalist had not availed himself of them.

672. According to reports, Elizabeth Romero, a correspondent for the newspaper *La Prensa,* complained of alleged acts of intimidation, detention, and espionage against the newspaper, as well as against representatives of the Nicaraguan Association for Human Rights (*Asociación Nicaragüense Pro Derechos Humanos*) (ANPDH), following the coverage of the alleged existence of irregular armed groups.

673. Principle 9 of the IACHR’s Declaration of Principles establishes that “the murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction

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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.”

21. Panama

A. Progress

674. The Supreme Court of Justice of Panama granted an unconstitutionality writ against a ruling issued in September of 2010 by the Second Superior Criminal Court of Justice that sentenced the former news director of TVN Canal Dos, Sabrina Bacal, and radio journalist Justino González, of KW Continente, to one year in prison for the alleged crime of defamation [calumnia]. Both journalists were sued in 2005 by officials from the Directorate of Migration, over a news story mentioning them as alleged members of a people-trafficking network. On September 28, 2010, the Second Superior Criminal Court of Justice of Panama sentenced the journalists to one year in prison for the crime of defamation [calumnia]. The ruling also prohibited them from engaging in activities associated with their profession for one year and replaced the jail term with a fine of US$ 3,650 for each.1296 On October 7, 2010, President Ricardo Martinelli pardoned the convicted journalists.1297 However, journalist Bacal initiated amparo proceedings against the Supreme Court’s ruling, which she considered—as stated by magistrate Jerónimo Megía in a reasoned opinion—that “the fact that the President of the Republic has granted a pardon in this case in no way impedes the relief functions of the amparo tribunal, taking into account that the main legal effect of a pardon is to extinguish the penalty, leaving intact all of the other consequences that arise from a criminal conviction, which do not disappear merely because of the issuance of a presidential pardon.”1298

675. In the Supreme Court Ruling of June 4, 2012 —publicly disseminated on February 22, 2013— the magistrates cite the ruling by the Inter-American Court of Human Rights in the Case of Herrera Ulloa v. Costa Rica,1299 which establishes that “democratic control by society through public opinion fosters transparency of state activities and promotes responsibility on the part of government officials in their work, which is why there must be a reduced margin for any restriction on political debate or debate over questions of public interest. [...] In this context, it is logical and appropriate that expressions concerning government officials or others who fulfill duties of a public nature must enjoy, under the terms of article 13.2 of the Convention, a margin of openness to broad debate regarding matters of public interest, which is essential for the functioning of a truly democratic system.” In that sense, the magistrates state that “freedom of information and the press, in relation to a matter of public interest, displaces the protection of honor and dignity, only when it involves situations, discussions, criticisms and opinions about the actions or omissions of public servants, as well as literary, artistic, historic, scientific, or professional criticism; so that this exception of liability do not apply to people who do not hold a

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government post.” The magistrates concluded that the journalist’s intention “was not to affect the honor of the public officials, but rather to exercise the right to information about questionable actions, derived from a Security Council report, which was not refuted as false and evidently was going to cause scrutiny by their hierarchical superiors, as well as by the society in general.”

676. The Office of the Special Rapporteur welcomes the application of Inter-American standards in the field of freedom of expression in the above-mentioned ruling, particularly in relation to specially protected speech. Indeed, according to the jurisprudence developed in recent years by the organs of the Inter-American system, a democratic and pluralistic regimen must work for the largest and broadest circulation of information, opinions and ideas relating to the State, particularly in relation to the above-mentioned forms of speech. At the same time, emphasis has been placed on freedom of expression as one of the most effective ways to expose corruption. In this respect, Principle 11 of the Declaration del Principes provides that “[p]ublic officials are subject to greater scrutiny by society.”. Similarly, Principle 10 of the Declaration of Principles 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.”

677. On April 1, the Public Prosecutor, Ana I. Belfón, issued a bulletin to all superior prosecutors, circuit level prosecutors and ombudsmen of the Office of the Public Prosecutor at the national level, containing the text of the Declaration of Principles on Freedom of Expression of the IACHR and urged that it be complied with. The Public Prosecutor called particular attention “to the fulfillment of aspects of procedural character of evidentiary order, which arises from its postulates, considering as a fact that in their actions, journalists are covered by the animus informandi, unless there is proof to the contrary that shows that there was an animus contrario.”

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1301 This office has indicated that while it is true that all forms of expression are protected in principle by the freedom enshrined in Article 13 of the Convention, there are certain types of speech that receive special protection because of their importance to the exercise of other human rights, or to the consolidation, proper functioning and preservation of democracy. In the case law of the inter-American system, the types of specially protected speech are the following three: (a) political speech and speech involving matters of public interest; (b) speech regarding public officials in the exercise of their duties and candidates for public office; and (c) speech that is an element of the identity or personal dignity of the person expressing herself. IACHR. Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 33.


According to available information, in June, the Office of the Public Prosecutor of Panama allowed to lapse visual inspection orders for the installations of the daily newspapers El Siglo and La Estrella. The proceedings had been ordered as part of criminal proceedings initiated following the filing of lawsuits by a government official, who alleged the commission of crimes against his honor and which were detrimental to him, stemming from the publication of “de glosas en las columnas ‘La llorona’ (La Estrella) and ‘Infidencias y confidencias’ (El Siglo)”. The visual inspection orders sought to gain access to the computers on which the articles in question presumably were edited. The Office of the Special Rapporteur subsequently found that the Office of the Attorney General had requested the judicial branch to shelve both proceedings permanently.

On August 8, the Eleventh Criminal Court order the provisional shelving of an investigation for defamation (injuria and calumnia) against journalist Jairo Cornejo of Mi Diario, the former director of El Siglo Jean Marcel Chéry and the acting director of El Siglo, Magaly Montilla. The suit was filed in 2011 by the director of the Panama Canal Authority. In August, the attorney of the director announced that they will appeal the decision.

B. Attacks and threats against media outlets and journalists

On February 17, journalist Álvaro Alvarado, host of the news program ‘Telemetro Reporta’, of Canal 13, received threats through the Twitter social network, presumably from an attorney and at that time adviser to the National Assembly. In his Twitter account, the attorney published a message that said: “I’ve decided not to read the press or see the opposition newscasts of 2 and 13. Whenever I see Mr. Alvaro Alvarado, I am going to punch him out.”

On June 11, journalist Elizabeth González and cameraman Bolívar Jurado, of television channel 2, TVN, were detained by members of the State Security Council. The journalist in her Twitter account reports that “Units of the SPI or Security Council have detained me along with my cameraman. The agent wants access to my camera and recording. I refuse.” The journalistic team had tried to film in an area near one of the offices of the Security Council in Ancón. The secretary general of the Journalists Union of Panama, Filemón Medina, went to the scene of the events. According to what was reported, Medina tried to record what they were saying, which led public officials to assault him in an

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effort to take away his cellular phone. As a result, Filemón Medina suffered two broken vertebrae. The secretary of the Public Security Council, after reviewing the videos of the journalistic team, apologized to them for what had happened. The secretary general of the Journalists Union of Panama published a report on freedom of expression and journalism in Panama in which he affirmed that the criminal complaint filed regarding these events before the Third Anti-corruption Prosecutors Unit was not admitted. The Ombudsman’s Office announced that “it will initiate proceedings regarding the denunciation of the detention of journalist Elizabeth González and her cameraman, Bolívar Jurado”. The Latin American Federation of Culture and Social Communications Workers (FELATRACCS), in a letter of June 13, condemned the events and demanded that the State carry out “the immediate firing of the public official for the attack”.  

682. Principle 9 of the IACHR’s Declaration of Principles 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 liabilities

683. On April 15, the Eleventh Criminal Court called to trial a team of journalists from La Estrella for alleged crimes against honor committed in a series of reports published in the daily newspaper between May and June of 2011, regarding possible irregularities in the awarding of a State contract to a company. The suit was filed by a company shareholder against the director of the media outlet, Gerardo Berroa; the head of information, Alexis Charris; editor Carlos Atencio and the former general manager of the GESE group (Grupo La Estrella and El Siglo), Juan Luis Correa, for alleged attacks against her honor. The articles made no mention of the entrepreneur, but only the company, as a result of which the prosecutors who investigated the case moved for dismissal of the lawsuit during different hearings, as they considered that crimes against honor are applicable to private individuals and not legal persons, and in view of which they maintain that no crime was committed.

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1313 Federación Latinoamericana de Trabajadores de la Cultura y la Comunicación Social (FELATRACCS). June 14, 2013. *Felatraccs demanda destitución de funcionario público que agredió a periodista panameño*; Crónica Viva. June 14, 2013. *Felatraccs demanda destitución de funcionario público que agredió a periodista panameño*.

On October 10, the First Municipal Criminal Court of the District of Panama handed down ruling No. 54, holding Balbina Herrera Araúz criminally responsible for a crime against privacy, specifically for reporting on the contents of an e-mail that had not been sent to her. She was sentenced to three years imprisonment and barred from holding public office for the three years after having served her principal punishment. In 2011, Balbina Herrera showed personal e-mails on television that had been sent by President Ricardo Martinelli. On October 17, the President of Panama, Ricardo Martinelli, issued executive decree No. 717, granting “total reduction of the penalty imposed by sentence No. 54 of October 10, 2013” on behalf of Balbina Herrera. On October 21, Herrera Araúz filed an appeal against the ruling.

Likewise, the Office of the Special Rapporteur has indicated that “public authorities and their staff bear sole responsibility for protecting the confidentiality of legitimately classified information under their control. Other individuals, including journalists, media workers and civil society representatives, who receive and disseminate classified information because they believe it is in the public interest, should not be subject to liability unless they committed fraud or another crime to obtain the information.”

As already pointed out by this office, various media outlets have had civil lawsuits filed against them in relation to the publication of news of public interest. The plaintiffs, who were public officials or owners of companies that maintain contracts with State agencies, demanded payment of large sums of money for damages and losses, which in one case would total as much as $5.5 million. According to information published by the daily newspaper La Prensa, the cases remain open and pending resolution in diverse judicial instances.

Principle 10 of the IACHR’s Declaration of Principles 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

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1315 Criminal Code of Panama. “Article 164. Whoever seizes or improperly reports the contents of a letter, e-mail message, document, telegram or of another type, which was not addressed to them, shall be punished by imprisonment of one to three years or its equivalent in daily fines or weekend arrest.”


1322 La Prensa. September 17, 2013. 54 demandas a periodistas.
news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.” Similarly, principle 11 of the IACHR’s Declaration of Principles establishes that, “Public officials are subject to greater scrutiny by society.”

688. 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.”

D. Stigmatizing statements

689. The Office of the Special Rapporteur has warned of an increased climate of tension between senior officials of the Panamanian State and certain media outlets in 2013. According to available information, high public officials regularly used the social network Twitter to question the work of daily newspapers that they consider to be of the “opposition.” For example, on July 10, President Ricardo Martinelli published on his Twitter account that “The opposition newspaper is doing poorly with the Italian actors in its soap operas. They use confessed thieves and drug addicts to discredit the government.”

On September 26, he said “[w]hat the opposition newspaper most lacks is objectivity and through its evasion and its candidate tried to block the sun with their hand. If someone else does so, they lash out at them.” On October 15, he stated that in the “[o]pposition media, they have defamed [calumniado and injuriado] me about everything associated with Italy just to charge taxes for carrying out works. No objectivity.”

690. When asked during a television interview if he had any “apprehension” about the daily newspaper La Prensa, the President of Panama answered in the following terms: “No [...] in fact, I am a shareholder of La Prensa [...] and sincerely, they do have quite a critical policy over there [...] They come after you with everything, a lot of times with invented things [...] they have invented everything about me in that medium [...] They have not wanted to publish things as they are [referring to the Finmeccanica case and Italy] and that was totally planned by one person, two people, one is a cocaine addict and the other is someone who competed against me [...] and have tried to demerit the government’s actions [...] They [La Prensa] sometimes confuse liberty with licentiousness, they denigrate people.”

691. Also, according to available information, president Martinelli discredited journalist Santiago Cumbmera, from the newspaper La Prensa, after the publication of an article linking individuals

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1324 Ricardo Martinelli’s Twitter account @rmartinelli. July 10, 2013 – 6:40 AM.

1325 Ricardo Martinelli’s Twitter account @rmartinelli. September 26, 2013 – 7:42 AM.

1326 Ricardo Martinelli’s Twitter account @rmartinelli. October 15, 2013 – 6:40 AM.

close to the president with the country’s hydroelectric plants. On his Twitter social network account, the president published a message that said: “For anyone who does not know about the hatred that Santiago Cumberera has for me, it is because he is being fired from the Epasa [publishing group] for corruption and harassment.” The journalist was a reporter for Editora Panamá América (Epasa), in which the Martinelli family is a shareholder.

692. In this context, the newspaper *La Prensa* has reported the existence of obstacles to obtaining access to public officials by certain media and journalists. In that sense, on October 10, president Martinelli requested that his officials abstain from giving declarations to journalists from that newspaper. The president affirmed that “that is what the opposition newspaper is asking for […] Every time they send me a questionnaire […] I have told people ‘do not answer the questionnaires’ […] you write about something and they take it up and don’t include what you have written. They use whatever they want.” As reported by the newspaper, the president of the Committee on Freedom of the Press of the Inter American Press Association stated with respect to Martinelli´s declarations that: “Presidents have the right to speak to whatever media they wish, or to stop saying whatever they want. But in no case do they have the right to order the entire government not to provide information of a public nature or not to make comments to a particular medium.” Respectively, the director of the Americas Division of Human Rights Watch declared that: “It’s very serious when a government, whether it be the Government of Panama, or any other, decides not to act with transparency and account for its actions, and instead resorts to discrimination with respect to those with whom it communicates and those with whom it doesn’t.”

693. On June 17, the governor of the province of Panama, Omaira Correa, referred to journalist Flor Mizrachi Ángel as “the little Jewess of the Gestapo.” The aggression came about during the radio program ‘La palabra’, which is broadcast by *KW Continente*. In a letter to Deputy Elías Castillo (President of the Latin American Parliament, Parlatino), Shimon Samuels (Director of International Relations at the Wiesenthal Center) and Sergio Widder (Director for Latin America), condemned the governor’s words and requested that “this incident be denounced as a violation of the Declaration against Anti-Semitism, initiated by [the] Center and adopted by the PARLATINO during its XXVII Assembly in December of 2011.”

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1328 Ricardo Martinelli’s Twitter account @rmartinelli. May 20, 2013 – 4:34 AM.


1332 La Prensa. October 11, 2013. Todos esperan a Martinelli.

1333 La Estrella. June 20, 2013. Primero Garuz y ahora Mayín Correa son criticados por agredir a periodistas; Aurora.

694. The Office of the Special Rapporteur recalls the importance of creating a climate of respect and tolerance for all ideas and opinions. 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. The Office of the Special Rapporteur additionally recalls that freedom of expression must be guaranteed not only with respect to the dissemination of ideas and information that are received favorably or considered inoffensive or indifferent but also in cases of speech that is offensive, shocking, unsettling, unpleasant, or disturbing to the State or to any segment of the population.1335

E. Access to public information

695. On April 25, the National Assembly approved Law No. 33, which created a National Authority of Transparency and Access to Information.1336 The new authority is constituted as the “guiding body in the field of the right to petition and gain access to public information, protection and of personal data, transparency, ethics and prevention of corruption at the governmental level” (Art. 4.2). It is to be a decentralized institution “with full functional, administrative and independent authority” (Art. 1). Its main powers include overseeing compliance with the Law on Transparency (Arts. 4.6 and 6.6); to periodically providing statistics, reports and evaluative reports on the compliance of all institutions with the law (Art. 6.7); coordinating and facilitating the requests of interested parties their requests for access to public information when an institution has not responded regarding the requested information (Art. 6.11); training public servants regarding transparency and access to information (Art. 6.16) and dealing with claims, complaints and matters involving the right to petition and the right of access to information and “to press the respective institutions to eliminate practices that prevent people from fully exercising their rights” (Art. 6.24). The law stipulates that all persons can “petition the Authority when the established measures for the effective exercise of the right to petition and the right of access to public information held by the state” are not being met (Art. 36) and that “once a claim has been admitted, the Authority must verify and resolve the complaint” (Art. 38). The Authority may sanction the public official responsible if it is proven that they did not comply with the law (Arts. 40 y 41).

696. The Authority will be directed and administered by a director general nominated by the executive branch and confirmed by the National Assembly for a period of seven years, renewable for one time only (Art. 10 and 12). The Law also provides for establishment of information officials in various state institutions, which are to serve as liaisons with the Authority to coordinate implementation of the Law on Transparency (Arts. 7 and 8).

697. On other occasions, the Office of the Special Rapporteur has recognized that the creation of an autonomous and specialized agency for supervision, responsible for promoting implementation of legislation on access to public information and for reviewing negative responses by the administration with the aim of adopting a decision in this respect is essential to achieve effective satisfaction of the right.1337 Experience and compared practice have shown the importance of the


existence of this type of independent and specialized authorities in the diverse legal systems to avoid weakening efforts to comply with laws regarding access to public information. All of the above, naturally, notwithstanding timely judicial control with respect to decisions denying access to information. In this sense, the Office of the Special Rapporteur has urged states to shape their legislation to strengthen the institutional structure for oversight of the implementation of laws regarding access to public information, pursuant to the highest standards in this area, such as those adopted by the General Assembly of the OAS, in its Resolution AG/RES. 2607 (XLO/10), by means of which it adopts the “Model Inter-American Law on Access to Information.”

698. The Model Law provides for the creation of a specialized agency called the “Information Commission,” which is to be in charge of promoting effective implementation of the Law in each Member State and the review of appeals of rulings adopted regarding its nonfulfillment. Among other specifications, the Model Law stipulates that said agency must have full legal standing, operational, budgetary and decision-making autonomy, and be composed of at least three commissioners, designated by means of a public, open and transparent process. Also, as a means to guarantee the effectiveness of the supervisory agency’s decisions, the Model Law stipulates that, independently of its mediating role, in resolving appeals, the agency shall have the power “to require the public authority to take necessary measures to comply with its obligations under [...] Law, such as, but not limited to, providing information and/or reduction of costs” and to “file a complaint with the competent tribunal to obtain compliance with its decisions.” Practice has shown that systems that have an autonomous and specialized “Information Commission,” as provided for in the Model Law, are in a better position to guarantee adequate implementation and supervision of norms in the field of access. In this sense, it is relevant to review aspects such as the integration of the National Authority and the guarantees that it has to adequately carry out its duties.

699. The Office of the Special Rapporteur views as crucial that the recently-created National Authority of Transparency and Access to Information in Panama, in carrying out its duties for supervision of the functioning and compliance of the system for access to information, be able to decisively promote timely resolution of requests for access in Panama and help to surmount obstacles that continue to prevent full exercise of this right in the country. In this sense, the Office of the Special Rapporteur recalls that, during the public hearing on Access to Public Information in Panama, held by the IACHR on October 28, 2011, it received information that indicated that the effectiveness of the law has encountered difficulties, given the issuance of administrative decisions that contradict what is stipulated by the Law - such as the requirement to be an interested party in a matter in order to request public information, non-fulfillment of the stipulated time limits for providing information and the lack of an effective judicial remedy to opportune protect this right. According to information received, there is a problem of delay in the provision of information at administrative offices and considerable congestion in the judicial remedies that are processed by the judicial branch in this field.


In that respect, for example, the daily newspaper *La Prensa* reported that on 19 occasions in 2013, it went before the Supreme Court of Justice, by means of *habeas data* actions, due to refusals by public officials to provide public information and that as of October 20, 2013, these actions have not been resolved.  

As an action to foster effective and efficient implementation of norms on access to information, the Office of the Special Rapporteur has recommended that the States adequately train officials and educate the citizenry regarding their rights in order to eradicate the culture of secrecy. To this end, it reiterates its complete willingness to cooperate with the state authorities and civil society to adequately implement the right of access to information in Panama.

**F. Internet and freedom of expression**

On December 12, 2012 the daily newspaper *La Estrella* of Panama was the victim of a cyber-attack that affected the functioning of its website and blocked access to it. The attack followed the December 10 posting on the newspaper’s website of a video showing the transfer to Panama of former dictator Manuel Noriega and alleging a lack of professional and fraternal treatment by some of the guards involved.

On October 9, access to the website of the daily newspaper *La Prensa* was blocked for approximately eight hours. According to *La Prensa*, when readers attempted to access certain information on the website’s pages, an “error” message appeared.

**G. Other relevant situations**

According to information received by the Office of the Special Rapporteur, Spanish journalists Francisco Gómez Nadal and María Pilar Chato Carral, expelled from Panama in February of 2011, are still unable to return to the country, despite expiration of the legal prohibition on February 27, 2013. As reported, on February 28, 2011, the national authorities ordered the “voluntary return” of the journalists to their country of origin. Gómez Nadal and Chato Carral were in the country filming a demonstration by indigenous people in Panama City for a documentary. A press release issued by the organization Human Rights Everywhere indicated that on April 4, an application had been filed with the National Director of Migration to lift the measure that had been imposed, given

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its expiration, without having received a response.\textsuperscript{1345} According to available information, the legality of the repatriation order was being questioned in the courts.\textsuperscript{1346}

22. Paraguay

A. Progress

705. On June 15, the indigenous radio station Voces Nativas 90.9 FM was inaugurated in the Cayinóclim community, in the Colonia Neuland in the district of Mariscal Estigarribia. This is the fourth indigenous radio station inaugurated within the framework of the National Program for Communication and Indigenous Peoples \([\text{Programa Nacional de Comunicación y Pueblos Indígenas}]\) of the Secretariat of Information and Communication for Development \([\text{Secretaría de Información y Comunicación para el Desarrollo}]\) (Sicom).\textsuperscript{1347}

706. The Office of the Special Rapporteur received with satisfaction the ruling by the Supreme Court of Justice of Paraguay, on an action of unconstitutionality brought by the Ombudsman of the Republic \([\text{Defensor del Pueblo de la República}]\) against Agreement and Judgment No. 78 of July 16, 2008, issued by the Fifth Chamber of the Civil and Commercial Appeals Court of the Capital \([\text{Tribunal de Apelaciones en lo Civil y Comercial Quinta Sala de la Capital}]\). In this decision the Court denied an appeal for legal protection brought by a citizen to obtain information on the number of employees, names, positions and salaries of employees in the different departments of a municipality.\textsuperscript{1348} In its ruling of October 15, 2013 the Supreme Court of Justice decided to annul the decision that had refused access to public information and, instead, determined that the information should be published and disseminated. The Court cited the sentence by the Inter-American Court of Human Rights in the case of Claude-Reyes et al. v. Chile as the precedent for establishing the scope of the right to access to information, pursuant to Article 13 of the American Convention on Human Rights. The Office of the Special Rapporteur considers this decision a significant regional advance on the issue of access to information and freedom of expression.\textsuperscript{1349}

B. Detentions

707. The Office of the Special Rapporteur was informed that the Police had detained an activist who expressed opposition to the then president of Paraguay, Federico Franco. Dressed as the German Nazi party dictator and leader, Adolf Hitler, and holding a sign that said: “I am Franco, coup d’État president”, Malena Bareiro stood at the entrance to the offices of the Liberal Party, where Franco


\textsuperscript{1348} Corte Suprema de Justicia República de Paraguay. \textit{Acción de Inconstitucionalidad en el Juicio: “Defensoría del Pueblo c/Municipalidad de San Lorenza s/Amparo”}. Acuerdo y Sentencia número 1,306. October 15, 2013.

\textsuperscript{1349} Corte Suprema de Justicia República de Paraguay. \textit{Acción de Inconstitucionalidad en el Juicio: “Defensoría del Pueblo c/Municipalidad de San Lorenza s/Amparo”}. Acuerdo y Sentencia número 1,306. October 15, 2013; Corte Suprema de Justicia República de Paraguay. October 15, 2013. \textit{La Corte sienta jurisprudencia en materia de acceso a la información pública}. 
was to present a report on the government’s administration. Supposed officers temporarily took Bareiro to a police precinct. According to the media, a police officer reported that the demonstrator had been detained for obstructing entrance to the offices.1350

C. Attacks and threats against media outlets and journalists

708. The Office of the Special Rapporteur was informed that in 2013, in the city of Pedro Juan Caballero, capital of the department of Amambay, bordering Brazil, at least five journalists had received death threats. On April 18, journalist Aníbal Gómez, of Radio América was threatened by text messages sent to his mobile phone while broadcasting his radio program.1351 Similarly, on April 26, journalist Cándido Figueredo, correspondent for the daily newspaper ABC Color of Asunción, received text messages containing death threats on his mobile phone after having reported on the attack against journalist Carlos Artaza.1352 Both Figueredo and Gómez received police protection following the threats.1353 On July 9 and 12, journalist Cándido Figueredo again received threats.1354 Similarly, on May 8, journalist Lourenso Veras, owner of the Pedro Juan News portal and correspondent for ADN, received threats by means of text messages, presumably related to his journalistic coverage.1355 On May 11, journalist Marciano Candia, correspondent for Última Hora, received a threatening message on his mobile phone. Journalist Emerson Dutra, of La Nación, also received a threatening message on his cellular phone on May 11 and again on July 9.1356 The three journalists filed a complaint with the first Police Precinct of Pedro Juan Caballero.1357

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709. On May 1, the vehicle belonging to radio announcer Luis Horacio Fernández, of Radio Difusora Mangoré, of San Juan Bautista, Misiones, was hit by a bullet that damaged the windshield. The journalist stated that he is frequently attacked because of criticisms he makes on his radio program.\(^{1358}\)

710. Also on May 1, unknown persons broke into the facilities of Radio Libertad FM 95.7, of San Estanislao, and assaulted and threatened announcers Iván Ruiz, the owner of the station, and Antonio Dávalos. Shortly after, unknown persons fired shots from a vehicle at the home of Dávalos. The journalists told the media that the attacks may be linked to citizens’ complaints aired on the station.\(^{1359}\)

711. Journalist Perla Silguero, of radio station Radio UNO 650 AM, was violently expelled by a security guard from the Luque courthouse, while covering a trial.\(^{1360}\)

712. Journalist Arturo Godoy of the daily newspaper ABC Color was assaulted when trying to photograph a prosecutor who was having lunch in the restaurant of the Governing Board of the Colorado Party.\(^{1361}\)

713. 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

714. In May of 2013, announcers at Radio Comunitaria Integral, in the municipality Carlos Antonio López, department of Itapúa, were subpoenaed by a prosecutor supposedly due to information disseminated by the radio station about a fire that had broken out during celebrations over the results of national elections on April 21. Radio announcer Derlis Benítez declared to a media outlet that he does not rule out an attempt to frighten the radio station in order to obstruct its work.\(^{1362}\)

715. On October 9, a group of social organizations that make up the Initiative for Democratization of Communications in Paraguay issued a public press release rejecting accusations by


\(^{1360}\) ABC Color. April 24, 2013. *Agregan a una periodista en juicio a Trotte*; Hoy. April 24, 2013. *Caso Trotte: Guardia agreden a periodista de Radio UNO.*


certain communications companies regarding alleged collaboration by community radio stations with the EPP guerrilla group (Ejército del Pueblo Paraguayo). According to the press release, representatives of those media outlets had stated before the Office of the Attorney General of the Republic and before the media that the popular and educational radio stations are instruments used by the EPP to obtain information and carry out their attacks. The community radio stations categorically rejected these accusations, calling them unfounded declarations seeking “to limit free expression by the country’s least favored citizens, for whom the community radio stations are the only channel for making their voices and thoughts heard.”

716. The Office of the Special Rapporteur reminds that community media perform an essential function not only in the process of social inclusion but also as mechanisms to promote culture and history, and for the development and education of different communities. The right to freedom of expression requires that the States not only refrain from performing acts that prevent the exercise of the right but also take measures to guarantee its exercise under conditions of equality and nondiscrimination. On several occasions, the IACHR and the Office of the Special Rapporteur have recognized that community media perform an essential function in our hemisphere for different sectors of society to exercise their rights to freedom of expression and access to information. In those declarations they have established that it is necessary for States to legally recognize community media, for spectrum to be reserved for these types of media, and for there to be equal access to licenses that recognize the distinct nature of private non commercial media.

717. Principle 12 of the IACHR’s Declaration of Principles on Freedom of Expression, approved in 2000, establishes that “[m]onopolies 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.”

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23. Peru

A. Progress

718. On March 21, the First Criminal Appeals Chamber of the Superior Court of Justice of Lambayeque acquitted journalist Daniel Chávez Huapaya of the crime of aggravated defamation against the district mayor. The chamber revoked a sentence of October, 2012, that had sentenced Chávez to a suspended sentence of six months imprisonment and payment of civil reparations in the amount of 5,000 new soles (some US$ 1,700). The journalist was sued for defamation by the mayor of the District of La Victoria after publishing information on supposed regularities in a public tender process.¹³⁶⁹

719. On April 25, the Judge of the 25th Criminal Court of Lima acquitted journalists César Hildebrandt, director of the weekly Hildebrandt en sus Trece, and Melissa Pérez, a reporter for that same publication, in a suit for defamation [difamación e injuria] filed in 2012 by the president of the regional government of Ancash, César Álvarez Aguilar. The suit was filed after the publication in 2012 of two reports on supposed irregularities under the administration of Álvarez. In her sentence of acquittal, the judge argued, among other things, that “protection of the affected party will be relativized when the questioned expressions involve public personalities or people of public relevance, who, in the general interest at play, must tolerate certain risks that their subjective rights may be affected by expressions or information of that caliber – particularly if those expressions involve political criticism, as these are perceived as rights of political participation.”¹³⁷⁰

720. On May 25, a judge of the Ninth Criminal Court of Free Defendants in Lima declared inadmissible the suit brought by the former president of Peru, Alan García Pérez, against journalist Fernando Valencia, director of diario16, for the supposed crime of defamation.¹³⁷¹ The suit was brought in response to a publication by that periodical on March 1, 2013, which, according to the plaintiff, was defamatory because it attacked his honor and reputation. In the ruling, the judge considered that the publication had limited itself to making publications and reporting on complaints and facts revealed by a third person. The former president appealed the ruling.¹³⁷²

721. In September of 2011, the police captured three alleged perpetrators of the murder of journalist Pedro Flores Silva, which took place in Casma, department of Ancash, on September 8, 2011.¹³⁷³ The First National Criminal Court decided to open proceedings against 6 persons accused of the murder of the journalist.¹³⁷⁴

¹³⁶⁹ Instituto Prensa y Sociedad (IPYS). April 24, 2013. Corte absuelve a periodista querellado por alcalde.
B. Murders

On February 23, photojournalist Luis Choy, of the newspaper *El Comercio* in Lima, was murdered. Choy was attacked by an unknown assailant when leaving his home, who, after saying something to him, shot him. The president of Peru, Ollanta Humala, condemned the crime and demanded “results” from the police. In March, the authorities captured the perpetrator of the crime, who confessed. On June 12, 5 prisoners escaped during a transfer of convicts to the Lurigancho Correctional Establishment, including some of the main individuals implicated in the murder of Choy. On June 18, two of the implicated individuals were killed in a police operation and one of the fugitive prisoners was recaptured. The recaptured prisoner stated that the two people implicated in the case of Luis Choy (who had been killed by the police) had confessed to him that the motive for the murder was related to his journalistic work in a case of illicit drug trafficking that involved an “important politician.”

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. Attacks and threats against media outlets and journalists

On January 14, journalist Nixon Solórzano Bernales, host of the program ‘Alerta Ciudadana’, which is broadcast on *Canal 25* and covers the security matters, was attacked by a knife-
wielding individual when leaving the offices of the channel in Cajamarca, in an alleged reprisal for information disseminated by the journalist implicating him in a case of domestic violence.1381

725. On February 1, journalist Marco Antonio Uriarte Chávez, a correspondent for ATV, was assaulted by supposed relatives of a municipal alderman when covering the detention of that official for supposedly driving while intoxicated a vehicle in a state of inebriation, in the city of Cajamarca.1382 On February 3, cameraman Robert Ascate del Águila, of the Antares Televisión TV station, was assaulted by the mayor of the region and two municipal workers, who also took his video camera and cellular phone.1383 On February 6, journalist Juan Carlos Yaya Salcedo, host of the program ‘Sin escape’, on Radio Max, in the province of Cañete, region of Lima, was the victim of an attack when going to his work. According to information received, unknown individuals from a vehicle shot at him and the journalist was wounded.1384

726. On February 8, radio station Paraíso 92.1 FM, located in Olmos, department of Lambayeque, was the scene of a fire, supposedly set intentionally by unknown individuals, which destroyed the station’s equipment. It was the second such attack over a period of 15 days. On January 23, unknown individuals broke the roof of the radio station and damaged one of its pieces of equipment.1385 On February 8, the home of journalists Jaime Toledo Maldonado and Richard Toledo Maldonado, who host the news program ‘La Verdad y Análisis’, on Elite radio, was the target of an attack carried out by unknown individuals using explosive devices.1386 On February 20, Ciro Severo Vargas Sánchez, a journalist for Radio Melodía and correspondent for the daily newspaper Prensa Regional, was attacked by a group of people, while covering repercussions stemming from the return by the mayor of the District of San Marcos to his job.1387

727. On March 9, the home of journalist Teobaldo Meléndez Fachín, director of the news program ‘Ribereña Noticias’, broadcast on radio and television La Ribereña, in the department of Loreto,


1383 Asociación Nacional de Periodistas del Perú (ANP). February 18, 2013. Alcalde y municipales golpean a periodista y le roban equipos de trabajo; Crónica Viva. February 18, 2013. San Martín: alcaldes y municipales golpean a periodista y le roban equipos de trabajo; Instituto Prensa y Sociedad (IPYS). February 5, 2013. Alcalde y personal de su seguridad agreden a periodista.

1384 RPP. February 6, 2013. Desconocidos disparan a quemarropa a periodista en Cañete; Committee to Protect Journalists (CPJ). February 6, 2013. Peruvian journalist shot after reporting on corruption; IFEX/Instituto Prensa y Sociedad (IPYS). February 8, 2013. Journalist shot on his way to radio programme in Peru.


was set on fire by two people who threw a lighted fuse. The attack may be linked to reports by the journalist on supposed acts of corruption. Meléndez had previously received threats and faced lawsuits for his reports.

728. On April 1, cameraman Milton Vásquez Cruz, from the ‘JC Noticias’ program on Julises TV, Canal 7, was assaulted and detained against his will while covering a public assembly convened to organize protests against two mining projects in the region of Cajamarca. On April 3, journalist Javier Nilo Poma Sotelo reported that he had been attacked by the former manager of the municipality of Huaraz. The ex official threw a glass at him, hitting the reporter in the face, after Pomelo Sotelo asked about his supposed links to people investigated by the Justice System. On April 6, journalist Gudelia Gálvez Tafur, from the Radio Alpamayo radio station and the digital newspaper Huaraz Noticias, was the victim of threatening messages and insults painted on her home and on the educational center where she works. Days before, the journalist was attacked by an unknown assailant, who made death threats against her and her family. The journalist believed that the intimidations may be linked to her journalistic reports criticizing the office of the governor of Huaraz.

729. On April 8, reporters Gudelia Gálvez Tafur, of the ‘Huaraz Noticias’ program on Radio Alpamayo and the digital newspaper Huaraz Noticias, Fortunato Guillermo Ibarra Méndez, of the ‘Primera Edición’ program on Global TV, and Juan Carlos Loayza Rivera, of the program ‘Destapa Tus Oídos’ on Radio Melodía, were threatened and assaulted by supposed members of the police when covering a student strike at the Universidad Santiago Antúnez de Mayolo de Huaraz, in the department of Ancash. Reporters Roberto Ramírez and cameramen Jorge López and Orlando Cánepa, from the program ‘Punto Final’ on Frecuencia Latina TV, received death threats following the broadcast of a report linking the provincial mayor’s office of Talara to supposed acts of corruption. The situation was denounced by the program’s director, Nicolás Lúcar, on April 21. On April 30, journalist Iván


1394 IFEX/Instituto Prensa y Sociedad (IPYS). April 24, 2013. TV crew in Peru threatened in attempt to stop broadcast of report on corruption; Notas de Prensa. April 24, 2013. Perú: Alcalde quiere impedir que emitan reportaje que lo investiga por
Fustamante Gálvez, director of a program on Sudamérica radio station, in the province of Cutervo, department of Cajamarca, was threatened by the presumed brothers of the mayor of that province, who warned him: “If you do not shut up we will shut you up.” The threat would be linked to reports by the journalist on the administration of the local government.1395

730. On May 3, journalists Iván de La Rosa Vives and Carlos Mestanza Coronado, from the journalistic program ‘#Es Noticia’, on the ATV channel were attacked by the sons of a congressman while filming images of the façade of Canal 31 television channel in Chimbote, which belongs to the politician. According to information received, the program was working on a report involving the parliamentarian.1396 On May 6, journalist Oswaldo Marcos Casazola Paredes, director of the program ‘Horas de Lucha’, on radio La Ribereña, was insulted and threatened by persons supposedly linked to the organization of a bullfighting event, which the journalists had criticized.1397 For the same reasons, on May 7, three individuals broke into radio station La Ribereña and insulted and threatened journalist Juan Carlos Chuquilín Barrantes, director of the Huaral.pe News Agency, while he broadcast his program.1398

731. On May 18, journalist Mauro Cecilio Ccapa Zapana, correspondent for the daily newspaper Los Andes in the province of Lampa, was threatened with death supposedly by an official from the municipal mayor’s office, allegedly in reprisal for information published by the reporter about the administration of the municipality.1399

732. On May 23, journalist Evaristo Yangua Carhuapoma, correspondent for the daily newspaper Ahora and the weekly Nor Oriente was supposedly threatened by the director of the Local Educational Management Unit (UGEL) of Condorcanqui, department of Amazonas, for denunciations of supposed irregularities in the administration of the UGEL.1400 The journalist had given this information to the Regional Council of the Regional Government of Amazonas. That agency, by means of agreement No. 151-2013, had requested information from the President of the Regional Government.1401


1397 Federación Internacional de Periodistas/Asociación Nacional de Periodistas del Perú (ANP). May 16, 2013. ANP: Amenazan a periodistas que criticaron realización de corridas de toros en estadio de Perú; El Altiplano. May 9, 2013. En Huaral amenazan a dos periodistas por cuestionar corrida de toros en estadio.


733. On May 24, journalist Jorge Moncada Mino, of the daily newspaper El Ciclón of Chiclayo and Radio Caliente, was attacked by two armed individuals in the province of Chiclayo, department of Lambayeque. The journalist was taken to a hospital due to the gravity of his wounds. According to information received, the attack may be linked to allegations raised by the journalist about a criminal known as alias “Viejo Paco.” Days prior to the attack, the journalist had received death threats.\textsuperscript{1402}

734. On July 4, an explosive device was detonated at radio station Tropicana and caused serious damage to the building. The station’s program ‘Noticias Tropicana’ had reported alleged corruption acts.\textsuperscript{1403} On July 19, journalist Fernando Valverde received death threats from people close to the governor of the district of Llumpa, province of Mariscal Luzuriaga, Ancash, stemming from a report on a series of denunciations that would linked the authority in alleged crimes of domestic violence.\textsuperscript{1404}

735. On July 28, journalist César Estrada Chuquilín, of Radio Coremarca and a collaborator of Radio Líder, was insulted and struck by workers from a mining company and supposed members of the police armed with rifles in the province of Celendín, department of Cajamarca. The aggressors blocked the journalist’s path, insulted and struck him and took away his journalistic equipment.\textsuperscript{1405}

736. On July 31, journalist José Manuel Pereira Rivas, host of the programs ‘Prensa Popular’, on radio La Hechicera and ‘Sin Mordaza’, on Canal 43, was brutally beaten and threatened with death by unknown individuals. In the opinion of Pereira Rivas, the attack was linked to certain journalistic investigations that he made about the administration of the president of the Regional Government of Tumbes.\textsuperscript{1406}

737. On September 4 journalist Elqui Herrera Cabanillas requested personal guarantees for the protection of his life after receiving constant death threats by means of text messages and phone calls. He submitted his request before the governor of the province of Hualgayoc, department of Cajamarca. The journalist, director of the newscast ‘Bambamarca en la Noticia’, which is broadcast by radio Bambamarca, host of the program ‘Noticias en 60 minutos’ on Canal 6 of Genial TV and a commentator for the weekly Tribuna Libre, had reported on supposed irregularities in the


administration of the mayor of the provincial municipality of Hualgayoc and on social protests by the population against the mining companies.\textsuperscript{1407}

738. In October, journalists Consuelo Lezcano Ruiz and Eduardo Cabrera Urteaga, from the program ‘Nuestra Voz’, on TV Canal 45, were personally attacked through the municipal channel TV Norte, after having questioned the administration of the mayor of the provincial municipality of Cajamarca regarding denunciations of corruption.\textsuperscript{1408}

739. Principle 9 of the 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.”

D. Subsequent liabilities

740. On January 11, 2013, journalist José Luis Napoleón Márquez, editor of the weekly El Búho of Arequipa, was made to comply with a ruling issued against him for the crime of defamation. Napoleón Márquez was sentenced in February of 2012 to a one-year suspended sentence and payment of 6,000 news soles (some US$ 2,100) as civil reparation on behalf of a university authority. The reporter published an interview with a student at the university who denounced that the academic had carried out acts of harassment against her and the academic had filed a criminal complaint because of that. Napoleón Márquez appealed the ruling and the case came before the Second Permanent Liquidating Criminal Chamber in Arequipa, but admission of the appeal required the payment of 1,600 new soles (some US$ 630) under the heading of court costs. The reporter argued the unconstitutionality of that requirement. However, the chamber declared his appeal inadmissible because Napoleón Márquez had not been able to pay the court costs due to economic limitations. According to information received, the First Temporary Criminal Court required the journalist to pay the reparations within five days or he would have to go to prison for one year.\textsuperscript{1409}

741. The Office of the Special Rapporteur observes that article 24 of the Organic Law of the Judicial Branch establishes: “The administration of justice is free of charge for people with scarce economic resources, and for all cases expressly provided for by law. The following are exonerated from the payment of court costs: [...] d) those involved in criminal trials, with the exception of lawsuits.”\textsuperscript{1410} On the other hand, Article 6 of the Court Costs Regulation would establish that the payment of court costs is a prior requirement for carrying out the corresponding judicial proceedings. The regulation


\textsuperscript{1408} Noticias SER. October 31, 2013. Cajamarca: ANP rechaza ataques de canal municipal contra periodistas independientes; Asociación Nacional de Periodistas del Perú (ANP). October 30, 2013. Comunicado - ANP exige respeto al trabajo de los periodistas en Cajamarca.

\textsuperscript{1409} Instituto Prensa y Sociedad (IPYS). January 23, 2013. Amenazan con cárcel a periodista impedido de impugnar sentencia en su contra; Prensa Trujillo. January 24, 2013. Amenazan con cárcel a periodista impedido de impugnar sentencia en su contra.

\textsuperscript{1410} Ley Orgánica del Poder Judicial. Texto Único Ordenado.
provides that payment of court costs “is made considering the amount of the corresponding proceeding.”

742. The American Convention recognizes in article 8.2 that “[a]nyone accused of a crime has the right to the presumption of innocence as long as their guilt is not legally established. During the proceedings, everyone has the right, in total equality, to the following minimum guarantees: [...] h) the right to appeal the ruling before a higher judge or court.” In light of article 1.1, the States make the commitment to guarantee that, with respect to access to these guarantees, the parties in proceedings shall be treated without any discrimination whatsoever.

743. Based on their ruling in the case of Herrera Ulloa v. Costa Rica, the Inter-American Court has reiterated that the right to appeal rulings is a primordial guarantee that must be “respected in the framework of due legal process, to enable an adverse sentence to the reviewed by a different judge or court and of a higher organic hierarchy.” In the words of the Court, “it involves a guarantee for the individual vis-à-vis the State and not just a guide for the design of systems for challenges in the legal systems of the State Parties to the Convention.” The Court has held that article 8.2.h of the Convention guarantees an accessible and effective ordinary appeal. That an appeal be accessible implies that “it must not require greater complexities that make this right illusory.” In its recent decision in the case of Mohamed v. Argentina, the Court explained that “the formalities required for an appeal to be admitted must be minimal and must not constitute an obstacle for the appeal to fulfill its purpose of examining and resolving the grievances claimed by the appellant.” Similarly, in referring to the right to access to justice, in the case of Cantos v. Argentina the Court indicated that “[a]ny norm or measure of the internal order that imposes costs or creates difficulties in any other way for access by individuals to the courts, and which is not justified by the reasonable needs of the administration of justice itself, must be understood as contrary to the foregoing article 8.1 of the Convention.”

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In that respect, this office is concerned that legislation and judicial practice establish a rigid obligation to pay large amounts of money under the heading of court costs, as a prior requirement for carrying out a proceeding that the State has the obligation to guarantee, without discrimination, according to articles 8.2.h and 1.1 of the Convention, and that these limitations apply to criminal proceedings in which people’s responsibility for disseminating information of public interest is determined.

On April 24, the Second Criminal Chamber for Trials involving prisoners in the Jail of the Superior Court of Justice of Lima Jail revoked a ruling by a lower court that ordered the definitive shelving of criminal proceedings against the editor of the economics page of the daily newspaper Peru 21, Gina Sandoval Cervantes, as the main accomplice in the crime of revealing national secrets sanctioned by article 330 of the Peruvian Penal Code. According to information received, Sandoval Cervantes was accused of having permitted, as editor, that secret information be published, such as the Draft Cotton Agreement between Peru and Venezuela, along with the digital file “Agenda Consejo de Ministros” (Council of Ministers Agenda), in which one of the topics addressed was a legislative resolution that authorized the entry of a foreign naval unit into state territory. If she had been convicted, Sandoval Cervantes could have been sentenced to five to fifteen years imprisonment.

The Office of the Special Rapporteur recalls that, pursuant to international standards in the field, everyone has the right to access to information under the control of the State. This right includes information relating to national security, except for the precise exceptions established by law, as long as these are necessary in a democratic society. Under no circumstance can journalists, members of the media or members of civil society who merely disseminate information classified as reserved, when they consider it of public interest, be subjected to subsequent liabilities for the mere fact of publication.

On May 21, journalist Alcides Peñaranda Oropeza, director of the daily newspaper and magazine Integración, was given a suspended sentence of two years imprisonment for the crime of defamation, in a suit brought by the president of the regional government of Ancash, César Álvarez Aguilar. The official had sued the journalist for publishing information on supposed acts of corruption in the administration of the regional government, in an article titled “El Misterioso Poder En Ancash”, which also cited information published in the weekly Hildebrandt en sus Trece. The judge of the Single-judge Criminal Court of the Judicial District of Ancash had ruled in favor of the plaintiff, sentencing the journalist to two years imprisonment and payment of 10,000 new soles (some US$ 3,500) under the heading of civil reparations. On May 13, after a hearing on the case, the journalist and manager of the

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daily newspaper *Integración*, Yolanda Quito Camones, was beaten by persons supposedly close to Álvarez Aguilar. The journalist denounced that she had also received threats.1420

748. On May 25, journalist and cartoonist Enzo Fidel Ruiz Ramírez, director of the blog *El Embeleco* and a collaborator on the daily newspaper *Ímpetu*, received a notarized letter in which an attorney, who supposedly represented the president of the regional government of Ucayali, warned him that the official would take legal action against him if he continued to publish content critical of the official’s administration.1421

749. Journalist Pedro Yaranga Quispe, responsible for covering drug trafficking and terrorism matters, had been denounced by the Public Prosecutor of the Office of the President of the Council of Ministers for crimes against public faith and security in the modality of generic falsehood, for an interview he had given to a media outlet. The suit, filed with the 33rd Provincial Criminal Prosecutor’s Office of Lima, involves information that the journalist disseminated over supposed wiretaps by intelligence units against terrorist groups. In the framework of the investigation, on April 13, the journalist was ordered to appear by the Division for Investigation of Crimes against State Security of the National Police of Peru, where he was interrogated about the identity of the sources that provided him with information on the supposed wiretaps.1422

750. On August 20, it was revealed that a complaint had been filed with the Third Single-judge Criminal Court of the Superior Court of Justice of El Santa, against journalists Miguel Alcántara Flores, of the newspaper *Correo*, César Quino Escudero, of the *El Observador* magazine, and Santos Paredes García and Noé García Vásquez, of *Canal 55*, in which they were sued for alleged defamation by the regional president of Ancash, César Álvarez Aguilar. The regional authority requested that each defendant pay one million new soles (some US$ 360,000) under the heading of civil reparations.1423

751. Journalist Humberto Espinoza Maguiña was sentenced for defamation twice on two consecutive days in September by the First Single-judge Court of the Supreme Court of Justice of the department of Ancash. On September 18, he was given a suspended sentence of two years imprisonment, 120 days of community service and ordered to pay 5 thousand new soles (some US$ 2,000) for the crime of defamation against regional president of Ancash, César Álvarez. The sentence stemmed from an article published in August of 2012 in the daily newspaper *Prensa Regional*, where

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Espinoza was the director at that time, in which he denounced Álvarez for supposed acts of corruption. On September 19, that same chamber sentenced Espinoza for the crime of defamation against the same official, for an article published in October of 2012, in the daily newspaper Prensa Regional, in which he denounced the alleged interference of the regional government in closing the radio station Radio Ancash. Journalist Espinoza supposed stated that the sentences are part of a campaign against him because of the journalistic denunciations against the administration of César Álvarez.  

On October 21, 2013, Esther Valenzuela Zorrilla, editor of the daily newspaper La Calle de Ayacucho, and Asencio Canchari Sulca, columnist for that same publication, were sentenced for defamation. Esther Valenzuela was sentenced for publications in 2010 in which she denounced supposed acts of corruption by Ernesto Molina Chávez, former president of the regional government of Ayacucho. She was given a two-year imprisonment suspended sentence, and made to pay 25,000 new soles (some US$ 9,000) in civil reparations, along with a fine of 1,050 new soles (some US$ 380) to the State. Asencio Canchari was sentenced for having criticized Magno Sosa Rojas, departmental dean of the college of journalists and former advisor to the president of the regional government of Ayacucho, to two years imprisonment and 3 thousand new soles (some US$ 1,000) in civil reparations. Both appealed the sentences.

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 aggravated defamation and for defamation of public servants or former public servants.

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


1426 The First Criminal Appeals Chamber of the Superior Court of Justice of Lambayeque acquitted journalist Daniel Chávez Huapaya and a judge of the Ninth Criminal Court of Free Defendants of Lima declared inadmissible the suit filed against journalist Fernando Valencia.

1427 The judge of the 25th Criminal Court of Lima acquitted journalist César Hildebrandt and reporter Melissa Pérez.

falsity of such news.” Also, principle 11 of the Declaration establishes that, “[p]ublic officials are subject
to greater scrutiny by society.”

755. 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.”1429

E. Legal reforms

756. On February 15, the Ombudsman’s Office of Peru filed an action of
unconstitutionality1430 against Article 12 of Legislative Decree 1129, approved on December 6, 2012,
considering that it violated the right to access to public information.1431 The article establishes the secret
nature of all documentation or information regarding matters referring to national security and defense,
along with the obligation of every person to maintain secret all information on such matters in their
possession.1432 In a hearing on freedom of expression in Peru held on March 11, in the framework of the
147 Period of Sessions of the Inter-American Commission on Human Rights (IACHR), the Office of the
Special Rapporteur was informed of the above-mentioned decree.1433 On October 11, the Constitutional
Court held a public hearing in which the Ombudsman justified the suit.1434

757. Additionally, in the above-mentioned hearing, the Office of the Special Rapporteur
received information on draft legislation No. 1464/2012-PE,1435 which would modify the Criminal Code
to add the crime of “negacionism” to the crimes of terrorism. The petitioning organizations and

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1429 I/A Court H.R. Case of Tristán-Donoso v. Panama. Preliminary Objection, Merits, Reparations and Costs. Judgment


1431 Defensoría del Pueblo. February 16, 2013. Defensoría del Pueblo demandó la inconstitucionalidad del artículo 12°
del Decreto Legislativo Nº 1129; La República. February 17, 2013. Defensoría: Decreto legislativo que limita transparencia en

1432 Decreto Legislativo Nº 1129. Article 12. Access to information: "Agreements, minutes, recordings, transcripts and,
in general, any information or documentation generated in the scope of the issues pertaining to the National Security and
Defense, and those containing the proceedings at the Council of National Security and Defense meetings, are secret." [...] “Final
Supplementary Provisions First. Obligation to provide information and maintain confidentiality [...] Any person who by reason
of his/her position or function becomes aware of classified information secret, reserved or confidential, related to National
Security and Defense, it is required to keep the reserve.”

1433 IACHR. 147 Period of Sessions. Hearing on the Situation of the Right to Freedom of Expression in Peru. March 11,

1434 Tribunal Constitucional del Perú. October 11, 2013. TC dejó al voto demandas de inconstitucionalidad contra la
Ley De Reforma Magisterial y Decreto Legislativo Nº 1129; Federación Iberoamericana del Ombusman. October 10, 2013. Perú:
El Defensor del Pueblo sustentará demanda de inconstitucionalidad contra el artículo 12º del Decreto Legislativo Nº 1129.

1435 El Comercio. December 11, 2012. Ley del Negacionismo aprobada hoy plantea pena de cárcel de 6 a 12 años;
December 11, 2013. Comisiones aprueban proyecto de ley del negacionismo.
representatives of the State discussed the compatibility of the bill with Article 13 of the American Convention. On that occasion, the Office of the Special Rapporteur expressed its concern regarding the ambiguity of the formulation of Article 316-A incorporated into the above-mentioned bill.  

758. In a communication dated March 27, the State forwarded information on the March 11 hearing to the Inter-American Commission. The information summarized the position of the State with respect to the draft legislation and indicated that it was aimed “[at] avoiding incitement of violence of new terrorist acts” pursuant to Article 44 of the Peruvian Constitution and Article 13 subsection 5 of the American Convention. It also affirmed that “it is seeking to employ clear terminology in order to be able to identify the type of discourse that is prohibited.”

759. In following up on the above-mentioned hearing, on April 16, the Office of the Special Rapporteur sent the State of Peru a letter requesting information. The communication pointed out certain aspects of the Inter-American legal framework that the Office of the Special Rapporteur viewed as relevant for the Government to take into account when debating the draft legislation. On April 26, the State sent the Office of the Special Rapporteur relevant information on the procedure of the bill and its legislative status “which is the same as what was observed in [...] [the] presentation during the development of the [...] hearing.”

760. On October 22, the Congress of the Republic published Law No. 30096 on Computer Crimes. The law aims “to prevent and punish illicit conducts that affect the computer systems and data and other legal properties of criminal relevance, committed through the use of technologies of the information [...].” The Office of the Special Rapporteur observes that civil society organizations have expressed concern over the breadth and vagueness of certain conducts and suppositions that, in practice, could lead to the application of severe punishments for the exercise of activities protected by the right to freedom of expression and access to information. Thus for example, the National Association of Peruvian Journalists affirmed that “simply because of its confusing and ambiguous wording, it could give rise to serious problems in the honest administration of justice, could constitute an attack on freedom of expression and, therefore, a worrisome restriction on freedom of the press.” And the Press and Society Institute of Peru (IPYS) regretted that the law had not been thoroughly reviewed by the Congress and the Executive Branch prior to its promulgation. According to IPYS, application of the law could lead to persecution of activities that use legal information and databases,

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1437 Communication from the State of Peru. March 27, 2013. Subject: Referral of information on the Hearing on the Situation of the “Right to Freedom of Expression in Peru”, held during the 147 Period of Sessions of the IACHR.
1440 Congreso de la República. October 22, 2013. Ley 30096 de Delitos Informáticos.
such as for example those using electronic platforms of the State. In the same sense, the law was criticized by the Peruvian Press Council for not having established safeguards to ensure that the dissemination of information of public interest will not be a target of investigation or criminal punishment. At the same time, the new law was criticized by civil society organizations for imposing ambiguous restrictions aimed at punishing discriminatory expressions using the Internet, which would receive punishments equivalent to those imposed for acts of violence for discriminatory reasons.

761. In this regard, the president of the Council of Ministers assured that the law does not violate freedom of expression because it punishes interception and that the objective is “to protect people’s information [...] that people have rights and these rights have a real content and not just content on paper.” The Office of the Special Rapporteur has been informed that the authorities are reviewing the new law in order to study possible modifications in accordance with the objections made by civil society organizations.

762. In diverse pronouncements, the Office of the Special Rapporteur has considered it is a matter of fundamental importance that States protect the rights to freedom of expression and access to information on the Internet and ensure that measures that affect this right have the objective of preserving the singular capacity of this medium to promote freedom of expression through the free, instantaneous and low-cost exchange of information and ideas, without consideration of borders. In this sense, the right to freedom of expression benefits when States protect the privacy of digital communications, as well as the confidentiality, completeness and availability of computer data and systems. The adoption of legislative frameworks to prevent and punish cyber crimes and punishable conducts that make use of computer media is an important measure to achieve those objectives.

763. In any case, in adopting a criminal policy in this field, States must ensure that it is in conformance with international obligations in the field of human rights and particularly avoid it disproportionately restricting the freedom to seek, receive and disseminate information and ideas of all kinds or generating disuasive effects in the exercise of those rights. In this sense, the States must guarantee compliance with international standards that provide, among other things, that all restrictions on freedom of expression must be provided for by law under the clearest and most precise

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terms possible; pursue a legitimate objective recognized by international law and be necessary to achieve said objective ("tripartite test"). When limitations imposed by criminal norms are involved, the Inter-American Court has stated that additionally, the inherent demands of strict legality must be satisfied: “If the restriction or limitation stems from criminal law, the strict requirements characteristic of criminal classification must be observed in order to satisfy the principle of legality in this realm.” This leads to the need “to use strict and univocal terms that clearly delineate the punishable conducts,” which implies “a clear definition of the incriminated conduct, the determination of its elements and the demarcation of non-punishable behaviors or illicit conducts punishable with noncriminal measures.”

764. With respect to the above, the Office of the Special Rapporteur observes with concern that the broadness of the terms in some of the norms enshrined in Law No. 30096 can give rise to interpretations leading to the punishment of practices and activities that are regular or inherent to use of the Internet and of information and communications technologies in general. For example, article 3 imposes a punishment of 3 to 6 years imprisonment on whoever uses information and communications technologies to “introduce, erase, deteriorate, alter, delete or render inaccessible computer data.” Article 6 of the law imposes a punishment of 3 to 6 years imprisonment for illegal data trafficking, defined as the creation, uploading or improper use of “a database concerning a private individual or legal entity, identified or identifiable for commercializing, trafficking, selling, promoting, favoring or facilitating information regarding any realm of the personal, family, patrimonial, labor, financial or similar sphere, whether or not damage is thereby created [...].” In this sense, while it recognizes that the definition of this type of crimes is complex, given the dynamic character of technological developments, in taking initiatives to punish cyber crime, States must include explicit safeguards in the norm to ensure that legitimate conducts are not criminalized, such as the requirement that the defined acts cause damage and involve criminal intent.

765. Likewise, regulation in this field must make clear that under no circumstance, journalists, members of the media or members of civil society who merely disseminate public information classified as reserved, because they consider it to be of public interest, may be subjected to subsequent punishments for the mere fact of publication. Equally, confidential sources and materials relating to the dissemination of research information must be protected by law.

766. Regarding the modification adopted in article 323 of the Penal Code, the Office of the Special Rapporteur considers it relevant to mention that article 13.5 of the American Convention sets limits on the right to freedom of expression. In effect, to avoid the use of punitive law aimed at silencing uncomfortable or simply offensive ideas, it states that they must necessarily constitute “apology for hate” aimed not simply at expressing an idea but rather to incite violence. With this, the

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1450 Congreso de la República. October 22, 2013. Ley 30096 de Delitos Informáticos: “ADDITIONAL PROVISIONS AS AMENDED. FOURTH. Amendment of Articles 162, 183-A and 323 of the Penal Code. To amend Articles 162, 183-A and 323 of the Penal Code, approved by Legislative Decree 635, as follows […] Article 323. Discrimination. […] The same deprivation of liberty given in the preceding paragraph will be imposed if discrimination has materialized through acts of physical or mental violence, or if it is carried out through information and communication technologies.”

Convention proscribed the so-called “crime of opinion.” By virtue of this provision, the offensive character of speech, in and of itself, is not a sufficient reason to restrict it. Speech that offends due to the intrinsic falsity of racist and discriminatory conduct must be refuted: those who promote those views need to be persuaded of their error in public debate. In the face of unfairness of opinions, there is no better response than the justice of the arguments and that requires more and better speech. This is the logic of the American Convention that was expressed by the Inter-American Court in the case of "The Last Temptation of Christ", which maintained that freedom of expression protects not only expressions that are “favorably received or considered as inoffensive or indifferent, but also those that clash, disturb or offend the State or any fraction of the population. Such are the demands of pluralism, tolerance and the spirit of openness, without which a ‘democratic society’ does not exist.”

In any case, with its Joint Declaration on Freedom of Expression and Internet, the Special Rapporteurs recall the importance of avoiding the establishment of special restrictions on the content of materials disseminated through the Internet. In accordance with this principle, the laws that establish subsequent liabilities for the abusive exercise of freedom of expression must be neutral in terms of technology and avoid, except with reasonable justification, increasing the penalties for the simple fact that the crimes are committed using the Internet or communications technologies in general.

767. The Office of the Special Rapporteur expresses its concern over Draft Legislation 2511/2012-CR, under which a state agency would be authorized to filter access to Internet servers, by means of filters at the level of Internet providers, in other words, at the national level, on pornographic contents, understood as “all visual or auditory representations, real or simulated, that imply sexually explicit contents or that, because of their obscene character, can greatly affect modesty, prematurely excite or pervert the sexual instinct of minors” (Art. 2).

768. The prohibition against inciting violence, the special and priority protection for boys, girls and adolescents and the fight against forms of discrimination are essential objectives of a State under the rule of law that honors its international commitments. Nonetheless, these goals cannot be reached by using just any means. In particular, it is a source of concern that the application of the legal tools mentioned in the previous paragraph could lead to the possibility of permanently filtering and monitoring contents that circulate on the Internet, thus endangering freedom of expression. Any activity of this nature, due to its impact on the exercise of freedom of expression, must be subject to strict judicial control and requires clear and precise legal definitions, transparent procedures and strict controls, according to international standards on the matter.

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Dominican Republic

A. Progress

769. On June 25, the Chamber of Deputies approved a bill to reform the Penal Code of the Dominican Republic. According to the information received, the bill eliminates imprisonment for the crimes of defamation [defamación e injurias], and establishes fines of up to six salaries as penalties. The modifications are under study by the Senate. 1455

770. On May 20, the Fifth Division of the Civil and Commercial Chamber of the First Instance Court of the National District rejected an appeal for protection [recurso de amparo] brought by the Family and Life Pastoral Vicariate [Vicaría Pastoral Familia y Vida] and the Health Pastoral [Pastoral de la Salud] of the Archdiocese of Santo Domingo of the Catholic Church against a sex education campaign produced by the organization Profamilia, and disseminated through the media. 1456 The appeal requested that the Court adopt measures ordering the withdrawal of the campaign called “Promoting the Exercise of Sexual Rights and Reproductive Rights” from the media, arguing that it violated the Constitution and the laws on protection of children. In the ruling rejecting the appeal, Judge Eunice Minaya Pérez considered that the campaign “does not violate the fundamental rights invoked” and held that pursuant to jurisprudential doctrine in the matter, “recognition of freedom of expression also guarantees the maintenance of free public communication, without which the real content of other rights enshrined in the Constitution would be hollow and the representative institutions would be reduced to hollow forms and the principle of democratic representation, which is the basis for all legal – political organization, would be absolutely distorted.” [...] “The confrontation of opinions necessary for democratic debate to be robust requires the admission of expressions that ‘offend, worry or disturb’ the majority of public opinion [...].” 1457 The attorneys representing the church filed an appeal for constitutional review of the ruling before the Constitutional Court. 1458

771. On February 26, the First Chamber of the National District Court of Appeals annulled a sentence of three months of imprisonment for defamation that had been imposed on journalist Melton Pineda. On September 13, 2012, Pineda was sentenced by the Fourth Criminal Chamber of the National District to three months imprisonment and payment of a compensation of 5 million pesos (some US$
120,000). Pineda was sued for defamation [difamación e injuria] for having accused the plaintiff of “fixing” alleged crimes by the police when the plaintiff worked as a spokesperson for that agency.1459

772. On April 17, the President of the Supreme Court of Justice declared null a lawsuit filed in July of 2012 by former president of the Dominican Republic, Hipólito Mejía, against the director of the newspaper El Caribe, Osvaldo Santana, and senator Wilton Guerrero, for alleged violations of articles 29 and 33 of Law 6132 on the Expression and Dissemination of Thought,1460 which refers to the crimes of defamation [difamación e injurias].1461 Former president Mejía filed the suit against Santana in his capacity as director of the daily newspaper El Caribe, where the article was published that in the plaintiff’s view contained defamatory affirmations, in application of the figure of “cascading liability” of those who participate in disseminating news by means of public information media, as enshrined in article 46 of Law 6132.1462 In the ruling, the President of the Supreme Court of Justice considered that article 46 of Law 6132 was unconstitutional because it is contrary to the provisions contained in articles 6, 40 numeral 14 and 49 of the Constitution,1463 and therefore decided “to declare the lawsuit


1460 Ley No. 6132, de Expresión y difusión del Pensamiento. “Article 29.- Defamation consists of all allegations or accusations of a fact that involve an attack on the honor or the consideration of a person or entity to whom the fact is imputed. The publication or broadcast, whether direct or for reproduction, of such an allegation or of such an accusation, is punishable, even when made in a doubtful manner or if it alludes to a person or entity not expressly mentioned, but whose identification is made possible by the terms of the speech, shouts, broadcast, motion pictures, threats, written or printed, posters or incriminating edicts. Defamation [injuria] consists of any insulting expression, term of disdain or invective that does not lead to accusation of a fact.” Article 33.- Defamation committed against private parties by one of the means mentioned in articles 23 and 29 shall be punished by fifteen days to six months imprisonment and a fine of RD$ 25.00 to RD$ 200.00, or by just one of the present law, but because of their origin or because they belong to a determined race or religion, shall be punished by one month to one year of imprisonment and a fine of RD$ 25.00 to RD$ 200.00, when its aim is to provoke feelings of hatred among the population.”


1462 Ley No. 6132, de Expresión y Difusión del Pensamiento. “Article 46. The persons indicated in the following order shall be considered, as the main perpetrators, to be subject to the penalties that constitute repression of crimes committed through the press: 1.- The directors or editors of publications, whatever their professions or denominations, and in the cases provided for in the second paragraph of article 4, the substitutes for the directors. 2.- if directors, substitutes or editors are lacking, the authors; 3.- if the authors are lacking, then the printers; 4.- if the printers are lacking, then the salespersons, distributors, motion picture exhibitors, narrators and those who put up posters. […]”.

1463 Constitución de la República Dominicana. “Article 6.- Supremacy of the Constitution. All persons and entities that exercise public authority are subject to the Constitution, the supreme and fundamental norm of the legal organization of the State. All laws, decrees, resolutions, regulations or acts contrary to this Constitution are null and void.” “Article 40.- Right to personal liberty and security. Everyone has the right to personal liberty and security. Therefore: […] 14) No one is criminally responsible for the acts of another […]”. “Article 49.- Freedom of expression and information. Everyone has the right to freely
inadmissible."^1464 After the ruling, the former president filed an appeal for cassation against the ruling.^1465

773. Similarly, February 25, the directors of three printed media -Rafael Molina Morillo, director of El Día, Miguel Franjul, director of Listín Diario, and Osvaldo Santana, director of El Caribe- and the Press and Law Foundation [Fundación Prensa y Derecho], filed a motion of unconstitutionality with the Constitutional Court with regard to various articles of Law 6132 on Expression and Dissemination of Thought^1466 and the Penal Code,^1467 which provide for prison terms for the crimes of defamation [difamación e injuria], along with the system of special liability for crimes of defamation [difamación e injuria], known as “cascading liability,” which make it possible to criminally punish these crimes, even when they are committed by third parties.^1468 At the time of this report, the Constitutional Court had not issued a ruling on this appeal.^1469

774. The Dominican State forwarded information to the Office of the Special Rapporteur on investigations by the national authorities into the murder of journalist José Agustín Silvestre de los Santos, which took place on August 2, 2011^1470. Journalist Silvestre de los Santos had been forced into a vehicle by various individuals in La Romana and hours later his body was found with various gunshot wounds on a nearby road. Silvestre directed the magazine La Voz de la Verdad and was the host of a program of the same name at the television station Caña TV^1471. In its letter, the State indicated that it had identified the possible mastermind of the crime, as well as the alleged perpetrators who were subjected to coercive measures and would be brought to trial.^1472 However, the alleged mastermind is a

express their thoughts, ideas and opinions, using any medium, without the possibility of prior censorship being established [...]”.


^1465 Diario Libre. 30 de abril de 2013. Hipólito Mejía eleva recurso de casación sobre demanda por difamación; Acento. 24 de julio de 2013. Suprema admite recurso de Hipólito sobre sentencia favoreció a Wilton Guerrero.

^1466 Ley No. 6132, de Expresión y Difusión del Pensamiento. Ver, inter alia, artículos 46 a 48.

^1467 Código Penal de la República Dominicana. Ver, inter alia, artículos 367 a 372.


^1469 Diario Libre. October 21, 2013. Informan a la Sociedad Interamericana de Prensa sobre el recurso contra la Ley 6132; Listín Diario. October 21, 2013. La SIP espera fallo del TC sobre recurso de inconstitucionalidad.


fugitive from justice. Available information indicates that in February of 2013, Interpol detained the alleged accused in Spain and that he could be subjected to an extradition process.  

775. The Office of the Special Rapporteur particularly expresses its gratitude for the information provided by the State and stresses the importance of investigating acts of violence against journalists stemming from the exercise of their profession.

B. Attacks and threats against media outlets and journalists

776. On January 9, unknown individuals fired shots at the home of journalist Justo María Cruz, producer of the news program 'Teve-Notas' on Telever-Canal 12, in the municipality of Jarabacoa, La Vega province. The attack did not cause injuries, although various shots impacted the vehicle and the walls of the house. According to information received, the journalist tends to report on alleged cases of corruption, which could be related to the attack.  

777. On April 11, cameraman Marcelo Contreras, in the province of María Trinidad Sánchez, was assaulted, threatened and detained for several hours by an individual alleged to be a police officer, while covering an eviction in a community. The reporter had his camera taken away and was handcuffed and threatened with a firearm by a supposed police colonel.  

778. On May 7, photojournalists Estherlin García and José Grullón were assaulted and threatened with firearms by supposed members of security forces while covering an eviction in the area around the Bragaña García Stadium, in the city of Moca, in the province of Espaillat.  

779. On May 8, journalist Rafael Lara, a correspondent for Noticias SIN in the province of San Cristóbal, was beaten and had his camera taken away by supposed members of security forces, while covering an eviction of families in the community of Monte Adentro, in the municipality of Haina, in the province of San Cristóbal. Also, they had erased the images recorded on his camera.  

780. On May 15, photojournalist Cándido Peralta of Mao Cable Visión, Canal 12, was threatened and detained for several hours by security personnel from a banana company, while

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covering a protest by company employees, in the community of Hato Nuevo, municipal district of Amina, in the province of Valverde.\footnote{Consejo de Seguridad de la empresa bananera GUIDOM secuestra camarógrafo en Mao; Noticias del Noroeste. April 16, 2013. Medios de comunicación de Mao condenan secuestro de GUIDOM a camarógrafo; Vigilante Informativo. April 21, 2013. Empresa bananera secuestra reportero gráfico en Mao.}

781. In June Journalist Salvador Holguín had announced on his program ‘Hilando Fino’, which is broadcast by Supercaanal, that he had information on meetings held with the purpose of creating a plan to murder journalist Fausto Rosario Adames, director of the digital newspaper Acento.\footnote{Acento/EFE. June 19, 2013. Denuncian presunta trama para matar a Fausto Rosario Adames, director de Acento; Listín Diario. June 28, 2013. Un grupo de periodistas denuncia trama contra el comunicador Fausto Rosario; Hoy. June 25, 2013. Rosario afirma es real trama; confía en que se investigue.} The spokesperson for the national police reported the creation of a commission to investigate the alleged plan to murder the journalist.\footnote{El Caribe. June 23, 2013. Comisión de la PN investigarán supuesta trama para matar al periodista Fausto Rosario; Hoy. June 23, 2013. PN investiga supuesta trama mator periodista; Apunte. June 23, 2013. Comisión PN investigarán supuesta trama para matar al periodista Fausto Rosario.} At a press conference, various journalists and communicators denounced the situation and called on the president and competent authorities to allocate all necessary resources to protect Rosario.\footnote{Hoy. June 27, 2013. Periodistas en alerta por amenaza a Fausto Rosario; Listín Diario. June 28, 2013. Un grupo de periodistas denuncia trama contra el comunicador Fausto Rosario.} Rosario had already been the victim of threats against his life in the past. In 2010, the Office of the Special Rapporteur expressed concern over threats received by the journalist, as well as the closure of the weekly Clave, of which he was the director, after having published articles about drug trafficking activities in that country. The president of the republic ordered that protective measures be taken immediately on behalf of the journalist.\footnote{IACHR. Office of the Special Rapporteur for Freedom of Expression. August 10,2010. Press release. R80/10. Office of the Special Rapporteur for Freedom of Expression Concerned about Threats against Dominican Journalist; El Faro. August, 2010. Presidente dispone protección periodista Fausto Rosario director periódico Clave.}

782. On August 5, an agent of Prison Oversight and Treatment \footnote{Policía le da trompada a camarógrafo cubría audiencia caso Moncada; Listín Diario. August 7, 2013. Piden a Procurador cancelar agente penitenciario agredió camarógrafo de SIN.} (VTP) struck Noticias SIN cameramen, Rafael Silverio, while he covered a trial at a courthouse in Santo Domingo.\footnote{Diario Libre. August 7, 2013. Suspenden agente penitenciario acusado de agredir camarógrafo; Listín Diario. August 8, 2013. Suspenden agente penitenciario que agredió camarógrafo durante juicio.} Subsequently, the Office of the Public Prosecutor of the Republic apologized to the cameraman and suspended the agent while the corresponding investigations are carried out.\footnote{Diario Libre. August 7, 2013. Suspenden agente penitenciario que agredió camarógrafo durante juicio.}

783. On September 6, reporter Julio Benzant, from the portal Ciudadoriental.org, was threatened with death and had his camera taken away by two supposed members of the Armed Forces, while photographing how they were assassinating an individual on a public thoroughfare.\footnote{Demandan autoridades "detener" violencia de militares y policías contra periodistas; Vida Dominicana/Ciudad Oriental. September 10, 2013. CDP reclama sanción a militares atacaron periodista de Ciudad Oriental.}
Principle 9 of the IACHR’s Declaration of Principles on Freedom of Expression, approved in 2000, establishes 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.”

C. Other relevant situations

The Office of the Special Rapporteur received information about the filing of a criminal complaint for defamation and a liability lawsuit by Senator Félix Bautista against journalist Juan Taveras Hernández of radio station Z101, as well as against the general director of the station, Willy Rodríguez, and its owner, Bienvenido Rodríguez. The complaint was founded in several remarks made by the journalist in one of the station’s programs, in which the journalist linked the Senator with alleged misuse of public funds.

Additionally, the Office of the Special Rapporteur was informed that the leaders of the National Network for Sovereignty Defense of had reportedly filed their own complaint with the Public Prosecutor of the National District requesting the investigation of journalists Luis Eduardo (Huchi) Lora and Juan Bolívar Díaz, as well as the representatives of the organization Citizen Participation, Roberto Álvarez and Rosalia Sosa, for “treason against the Homeland” and inciting contempt for Judgment 168/13 of the Constitutional Court. The organization reportedly stated that it was requesting the investigation of the journalists “for their dishonest and indecorous actions against the Homeland,” and that “they are the first ones to be denounced, but there will be others.”

The first week of December the Inter-American Commission on Human Rights made an in loco visit to the Dominican Republic. During the visit, the Inter-American Commission received troubling information concerning statements made against journalists, intellectuals, lawyers, politicians, legislators, human rights defenders, public figures, and even high-level public servants who have criticized ruling 168/13 of the Constitutional Court of September 23, 2013. These individuals have been characterized as “traitors to the homeland” and have been targets of treats. In addition, calls of “death to the traitors” have been made publicly. The Commission also expressed its concern that the intolerance and racist discourse creates an environment that could increase vulnerability to violence for persons of Haitian descent. At the end of the visit, the Commission called on the authorities to act

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resolutely to help build a climate of tolerance and respect in which everyone can express his or her thoughts and opinions without fear of being attacked, punished, or stigmatized for doing so.  

25. **Suriname**

788. The Office of the Special Rapporteur received information indicating that during a mission conducted by the International Press Institute (IPI) from April 21-23, 2013, Surinamese government officials reportedly expressed their support for the revision of the country’s existing defamation laws. They further indicated that this revision should include proper training for journalists and the establishment of appropriate mechanisms for citizens to channel discrepancies with the press. In this respect, National Assembly spokeswoman Dr. Jennifer Simons, a member of the party in government, reportedly stated that “journalists should not be jailed just for writing something that someone else doesn’t like.”

789. The Office of the Special Rapporteur received information about the lawsuit filed by former Government Minister Ramon Abrahams against the monthly investigative magazine *Parbode*, headed by publisher Jaap Hoogendam, for the publication of an article on alleged acts of corruption by the former minister prior to his removal from office. According to reports, the former minister requested the publication of a correction of the report, and 1 million Surinamese dollars (some US$ 300,000) in compensation.

790. 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.” Likewise, 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.”

26. **Trinidad and Tobago**

791. During a press conference held on May 1, the Prime Minister of Trinidad and Tobago, Kamla Persad-Bissessar, announced his administration’s intent to amend the Libel and Defamation

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Act to add a new clause that “would ensure that no journalist can be criminally charged and prosecuted under section 9 of the Libel and Defamation Act” for the publication of defamatory libel. The prime minister underscored the value and importance of freedom of the press, and the duty of democratic governments to respect and defend the right to freedom of expression.

27. Uruguay

A. Progress

792. In February, the Uruguayan Government, by means of a public call, assigned six community radio frequencies in applying law 18,232, approved in 2007. The frequencies were assigned in the departments of Cerro Largo, Treinta y Tres and Lavalleja. Frequency assignments for community radio broadcasting services are made for a period of ten years, which can then be renewed for five year periods.

793. On May 9, the Uruguayan Government renewed its “call on those interested in obtaining authorization to provide open digital commercial television service” in the department of Montevideo, which had been temporarily suspended by decree 028 of January 23, 2013. Decree Nº 144/013 launched the call for assignment of as many as five commercial channels, with a time limit of 45 working days to submit proposals for exclusive or shared management of the channels. On August 8, the government published proposals that had been submitted for digital television. On October 23, the Minister of Industry announced the awarding of two private open digital television channels to a corporation that operates the VTV cable TV channel and another to the Consorcio Giro. A community channel was also awarded to the PIT-CNT trade union federation, a public channel to Televisión Nacional del Uruguay, another to the Municipal Government of Montevideo TV Ciudad, and four regional channels to municipal governments in the interior of the country.

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1491 Ministry of Legal Affairs. Libel and Defamation Act, Chapter 11:16. Section 9. “If any person maliciously publishes any defamatory libel, upon conviction thereof he is liable to pay a fine and to imprisonment for one year.”

1492 Government of the Republic of Trinidad and Tobago. May 1, 2013. PM makes a statement on the Libel Defamation Act.


B. Act on Audiovisual Communication Services

794. On May 21, the Executive Branch sent a Draft Bill on Audiovisual Communication Services to the Parliament with the aim of “establishing basic regulation in the provision of services of Radio, Television and other Audiovisual Communication Services”. The original bill proposed the creation of an Audiovisual Communications Council as a decentralized body of the Executive Branch, to monitor and supervise the enforcement of the law. It also establishes, inter alia, the right of freedom of expression and information, the prohibition of prior censorship, the independence of the media and editorial freedom for providers of audiovisual communications services, while promoting the “ethical self-regulation” of the media. The bill sets limits to the ownership of audiovisual communication services and establishes a system of concessions with pre-determined duration (10 years for radio broadcasting and 15 years for television, with a possible renewal for 10 years) for the use of the radio spectrum. It extends the child-protection hours to the period between 6 am and 10 pm, prohibiting during these hours the transmission of “excessive violence”, “truculence”, “advocacy” [apología] of violence, “pornography”, “explicit and abusive drug consumption”, and contents that exalt or incite discrimination, among others. The bill also proposes the creation of a Register of Audiovisual Communication Services with the purpose of “securing transparency in the ownership of the audiovisual communication services,” which will be public and will “include information on the holders of authorizations, licenses or registers for providing these services.”

795. After the bill was presented, and in the wake of several recommendations by different civil society actors, the Executive Branch proposed to Parliament a number of modifications in the bill, to integrate of the criticism by civil society to the original proposal. The changes would grant additional autonomy to the Audiovisual Communications Council, by establishing that the President of the Council will be appointed by the President of the Republic, in agreement with the Council of Ministers, and that the other four members will be elected by the General Assembly, by a number of votes equivalent to two thirds of its members. Another clause was incorporated establishing incompatibilities with becoming a member of the Council, such as “political activity in a party, guild or union.” Several limitations previously imposed on advertising for children were eliminated, and the possibility that informative programs may broadcast images of excessive violence during the child-protection hours was included “when presenting situations with a notorious public interest in live broadcasts.”


At the invitation of the Government of Uruguay, the Office of the Special Rapporteur issued a technical opinion on the bill in the light of international standards.\textsuperscript{1502} In this opportunity, the Office of the Special Rapporteur highlighted the openness of the government to the debate and the search for achieving a bill that adjusts to the international standards in the issue of freedom of expression.\textsuperscript{1503} It stressed the important guarantees contained in the draft bill, such as the prohibition of prior censorship or of interference, or direct or indirect pressure on any expression, opinion or information disseminated through the media, and the recognition that the media has the right to work in an independent way, while expressly prohibiting pressures or the use of State resources either to award or punish media outlets because of their editorial line. It also highlighted the measures adopted to prevent or limit the existence or emergence of monopolies and oligopolies in the audiovisual communication services, and the establishment of transparent and public procedures in the allocation of frequencies.

On the other hand, the Office of the Special Rapporteur made a remark on the importance of reviewing some norms in the light of the international standards for freedom of expression. It recalled that the Commission and the Inter-American Court have remarked that any restriction to freedom of expression must be defined in a formal and material law, and must be written in the clearest and most precise possible terms. In this sense, the language of the law must clearly establish the causal links of subsequent liability to which the exercise of freedom of expression must be subjected. As Inter-American Doctrine has indicated, “[v]ague, ambiguous, broad or open-ended 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.”\textsuperscript{1504}

In face of the norms that seek to set limits to discriminatory expressions, the Office of the Special Rapporteur recalled that article 13.5 of the American Convention sets limits for prohibiting racist and discriminatory discourses. To avoid the use of the punitive law with the objective of silencing uncomfortable or simply offensive ideas, it added that it is necessary to characterize an “advocacy of hatred” aimed not only at manifesting an idea, but at inciting violence. As the Office of the Special Rapporteur has expressed, the offensive nature of a discourse is not, by itself, a sufficient reason to restrict it. A discourse that offends on account of the intrinsic falsehood of racist or discriminatory content, instead of silenced, must be refuted; those who promote such views need to be persuaded of their error in the public debate. In face of the inequity of the opinions, there is no better reply than the justice of reason, and this requires not less, but greater and better discourse. This is the logic of the American Convention, expressed by the Inter-American Court in the case of The Last Temptation of Christ, in which it established that freedom of expression protects not only the expressions “the information or ideas that are favorably received or considered inoffensive or indifferent, but also for those that shock, concern or offend the State or any sector of the population. Such are the requirements of pluralism, tolerance and the spirit of openness, without which no ‘democratic society’ can exist.” In all


\textsuperscript{1503} Presidencia de la República Oriental del Uruguay. October 4, 2013. \textit{Conferencia con expertos - Ley Audiovisual}.

cases, in order to enable a vigorous debate it is necessary to guarantee greater diversity and pluralism in access to the media.1505

799. On the other hand, the Office of the Rapporteur highlighted the bill’s progress regarding the shape and the independence of the Audiovisual Communications Council. The Office of the Rapporteur recognized to the State the included changes, which seek to grant more autonomy to that body. The Office of the Special Rapporteur highlighted that after approving the creation of said body as proposed in the bill, it would be necessary to review the rest of the norms, so that its powers correspond to that of the main body of application of the law. The Office of the Rapporteur insisted in the importance of the fact that for a body to be autonomous in relation to the political and economic power, it must count with guarantees for independent operations, such as budgetary independence and stability in the work positions of its members.

800. On October 29, the Executive Branch sent a new draft bill to Parliament, incorporating some of the recommendations of the international experts. For instance, there was a change in the article on the right to non-discrimination. The new wording of the norm establishes that communication services cannot disseminate contents “that incite or advocate discrimination and national, racial or religious hate, which are incitements to violence, or any other similar illegal action against any person or group of persons, for reasons of race, ethnicity, sex, gender, sexual orientation, gender identity, age, disability, cultural identity, place of birth, creed or socio-economic condition.” Article 28 clarifies that “in no case, these provisions can be interpreted as an impossibility of informing on the facts, or of analyzing and holding discussions on these issues, particularly during educational, informative and journalistic programs”.1506 As of the writing of this report, the Draft Bill was under discussion at the Parliament.

C. Attacks on and threats against media outlets and journalists

801. On February 21, photographer Francisco Flores and driver Julio Secondo, of the daily newspaper El País, were detained by supposed police officers guarding a judicial installation, when they took photos in front of the building. They were detained for about one hour without being informed of the reason for their detention, and were not permitted to use their cellular phones. Subsequently, they were informed that the detention had been ordered by the judge of the judicial seat.1507

802. On May 9, journalist Gabriela Ibarra and cameraman Martín Pérez of the CV 10, television channel in the city of Mercedes, department of Soriano, and photographer Carlos Techera, of the daily newspaper Crónicas, were attacked by individuals who hindered their journalistic work when covering a police procedure.1508

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803. In May, the Radio Agraciada radio station in Mercedes, department of Soriano, was the target of an attack that took it off the air. Its owner, Néstor Graña, reported that unknown persons damaged the broadcasting equipment. He also said that the radio station had previously received threats.\footnote{Asociación de la Prensa Uruguaya (APU). May 28, 2013. \textit{APU Soriano denuncia ataque contra radio Agraciada}; Montevideo COMM. May 28, 2013. \textit{Las invasiones bárbaras}; @gresor. May 27, 2013. \textit{“Acto de sabotaje o terrorismo”}.}

804. Journalist Washington Fernández, of the weekly \textit{EL ECO} in Colonia, was attacked physically and verbally by workers from a construction company, when he attempted to take photos of the work being carried out by the company in the city of Nueva Palmira.\footnote{Asociación de la Prensa Uruguaya (APU). July 31, 2013. \textit{APU denuncia nueva agresión contra colega en interior del país. Comunicado a la opinión pública}; El Eco digital. July 30, 2013. \textit{Agresión al personal de El ECO por personal de Santa María}.}

805. On July 17, journalist Gustavo Guisulfo was assaulted by supposed police officers. The reporter had filmed the detention of a person in the Plaza de la Independencia. Despite having identified himself as a member of the press, he was handcuffed and taken to a police station, where he was temporarily held. Also, the recording of the events had been erased.\footnote{Asociación de la Prensa del Uruguay (APU). July 18, 2013. \textit{La APU denuncia abuso policial contra periodista de Radio Uruguay y pide reunión urgente con el ministro del Interior}; U Noticias. July 18, 2013. \textit{Periodista denuncia agresión de policías}; Inter American Press Association (IAPA). October 18-22, 2013. \textit{Assembly: 2013 – Midyear Meeting – Puebla, México. Reports. Country Report: Uruguay}.}

806. 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 liabilities

807. The co director of the weekly periodical \textit{EL ECO}, in the department of Colonia, Daniel Roselli, was sued for defamation \textit{[difamación and injurias]} following the publication on October 5, 2013, of an article on supposed irregularities in the transit fines archive of the Municipal Government of Colonia. According to the information received, the head of the Municipal Government Inspectors, Daniel Sánchez Torterolo, stated that the information reported was false and that its dissemination had been damaging to him, and so he had filed a lawsuit for defamation \textit{[difamación and injurias]}, which was being considered by the Lower Court of Carmelo \textit{[Juzgado Letrado de Carmelo]}.\footnote{El Eco digital. October 22, 2013. \textit{Primera audiencia en el Juzgado por irregularidades en la Dirección de Tránsito}; El Telégrafo. November 1, 2013. \textit{Denunciaron a periodista de El Eco de Colonia por informar irregularidades en la Intendencia}; Sociedad Uruguaya. October 29, 2013. \textit{Alerta GMS: Justicia de Colonia da trámite a juicio de difamación contra periodista de El ECO}; 180. October 30, 2013. \textit{Colonia: juicio por difamación contra periodistas}.}

808. The Office of the Special Rapporteur recalls that Principle 11 of the IACHR’s Declaration of Principles on Freedom of Expression establishes that, “[p]ublic officials are subject to greater scrutiny
by society.” Additionally, 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.”

E. Other relevant situations

809. On October 29, a journalist from a local radio station in the department of Durazno, Estela Apollonio, received a notification from the Durazno Police Station informing her that, by order of the Justice of the Peace of the 4th Section of Durazno, she should not “receive public complaints against the Local Polyclinic, and the Local Court and Police, under penalty of committing the crime of defamation [difamación and injuria] as a co-perpetrator.” The journalist had to go to police headquarters to sign the notification. As reported, the journalist received several complaints on her radio show regarding alleged shortcomings in the services at the local Polyclinic.1513 On Wednesday, October 30, the justices of the Supreme Court of Justice (SCJ) requested a report of the events from the Justice of the Peace within 72 hours.1514

28. Venezuela1515

A. Detentions and destruction of material

810. On February 20, photojournalist Jaime Manrique, with newspaper La Voz, was attacked and detained in a military vehicle while covering a demonstration of individuals protesting a lack of housing. Individuals presumed to be soldiers took his camera and broke the memory card.1516

811. On February 21, individuals presumed to be members of the National Bolivarian Militia detained and interrogated photographer Cristian Hernández and journalist Eliscart Ramos, with local newspaper 2001, and erased the photos they had in their possession while the reporters were investigating a supposed food shortage.1517


1515 This section corresponds to the section on freedom of expression in Venezuela in Chapter IV, Volume I, of the IACHR 2013 Annual Report. This section was assigned to the Office of the Special Rapporteur for Freedom of Expression.


1517 Instituto Prensa y Sociedad (IPYS). February 21, 2013. Milicia Bolivariana ordenó a reportero gráfico borrar
On February 25, reporter Serge Boire, South American correspondent for La Presse de Montreal, was interrogated and detained by individuals presumed to be security officials while filming outside the Miraflores Presidential Palace. Minutes later, he was approached by two civilians who identified themselves as intelligence officials. They asked him about the images he had on his camera. Then, two individuals presumed to be officers with the National Bolivarian Police arrived and forced Boire to empty his pockets. They checked his cell phone and his documentation. When the journalist returned to the hotel where he was staying, he was approached in the reception area by individuals presumed to be intelligence officials, who interrogated him regarding the reasons for his visit to Venezuela and the images he had captured with his camera.  

On March 1, the journalist Víctor Manuel García Hidalgo was detained. He is the editor and director of news website Informe Cifras, and as of the close of this report, he was being held prisoner in Yare III, a penitentiary for common criminals. According to the information received, the Office of the Attorney General of the Republic has charged him with the crime of "civil rebellion," after he expressed his opinion in the media following the April 2002 coup d'etat. The charge was also based on the existence of photographs showing him in the facilities of the Army General Command. His defense team has stated that García Hidalgo was there together with other communicators reporting on what was happening.  

On March 6, in Caracas, reporters Jesús Alberto Yajure, with Últimas Noticias, and Andrew Rosati, a correspondent with the Miami Herald, were detained and interrogated while performing their duties in the chapel of the Militar Hospital following the death of Hugo Chávez. The officials accuse the Miami Herald reporter of being "a spy," interrogated him, and searched his telephone and camera. As for the Últimas Noticias reporter, they erased a number of photographs that he had taken in recent days.  

On April 14, the day of the presidential elections in Venezuela, reporter Ana María Paz, with the community radio station of Zulia Azul FM, was detained for more than an hour after denouncing alleged irregularities during the voting in a municipal electoral center called La Cañada de Urdaneta, in the state of Zulia.  

On April 15, a team of journalists with the newspaper La Verdad was detained by individuals assumed to be officials with the San Francisco Police while they were covering the protests that took place following the April 14 presidential elections. Reporters Juan José Faria and Eduardo Méndez and driver Yolman Bejarano were held for 12 hours, and their telephones and equipment were
On April 24, American film director Timothy Hallet Tracy was detained in the Maiquetía International Airport for his alleged connection with the acts of violence that took place following the presidential elections in Venezuela, held on April 14, 2013. He was later charged with “conspiracy, materially aiding, criminal conspiracy and the use of a false public document,” crimes established by and punished under the Penal Code and the Organic Law against Organized Crime and the Financing of Terrorism. He was ordered placed in preventative detention. Finally, on June 5, Tracy was freed and deported to Miami. The documentary filmmaker’s attorney told the press that Tracy had been freed due to lack of evidence.

On April 27, 2013, Antonio Rivero, a former general with the Venezuelan armed forces, was arrested, allegedly over public statements that, according to some officials, connect him to the events that took place following the April 14 election. On April 29, Rivero was charged with the crimes of instigation of hate and criminal conspiracy. On May 17, Rivero was ordered released, but he is not allowed to leave the country and must appear before the court periodically. On June 12, the Office of the Special Rapporteur sent the State of Venezuela a letter asking for information on the detention of retired General Antonio Rivero, among other issues.

On May 18, a Social Communication student with the Universidad de los Andes was detained by individuals presumed to be officials with the National Bolivarian Intelligence Service (SEBIN) in La Fría, García de Hevia municipality, Táchira. Leonardo Sánchez Cárdenas was taking photographs in front of the headquarters of the intelligence agency for a news report on the arrest of a number of individuals when the presumed SEBIN officials detained him and forced him to erase the photographs he had taken.
820. On July 18, individuals presumed to be members of the Bolivarian National Guard prevented journalists with Últimas Noticias from accessing the shelter where families who had lost their homes to the rains were staying. The officials also took their camera and erased the images.1531

821. On November 7, Venezuelan authorities detained Miami Herald journalist Jim Wyss while he was gathering information on the upcoming municipal elections and on supposed shortages of certain basic products in Venezuela. The journalist, who is the Miami Herald’s bureau chief for the Andean region, was detained by the National Guard in the city of San Cristóbal and then transferred to the custody of Venezuelan military intelligence.1532 On November 9 the journalist was released.1533

B. Attacks and threats

822. On January 10, journalist Eleonora Delgado, a correspondent in the state of Táchira with newspaper El Nacional, was physically and verbally assaulted by individuals presumed to be members of the Bolivarian National Guard (GNB) while covering a demonstration by students from a number of different universities in the city of San Cristóbal.1534

823. On January 23, a team of journalists with State broadcaster Venezolana de Televisión (VTV) was physically assaulted during an event of the Mesa de la Unidad Democrática (MUD).1535

824. On February 7, journalist Carlos Páez and photo journalist Eduardo Molina, with the newspaper Frontera, were intimidated by individuals assumed to be Mérida state police officers after recording video of an officer riding a motorcycle with three passengers on board. The presumed police officer went to the newspaper’s office and demanded that the recorded material be erased. When his demands were denied, he returned accompanied by a group of other officers. Reports indicate that the Mérida state police have launched an administrative investigation into the officers involved in the incident.1536

825. On February 20, individuals presumed to be members of the National Bolivarian Militia assaulted journalists Gabriela Salcedo and Felipe Lugo, with Globovisión, while they were in the Miguel

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Pérez Carreño Hospital, in Caracas, covering a demonstration by workers there. The militia members also prevented reporter Félix Pirela and cameraman Rogelio Coronado, with Televen, from entering the hospital.\footnote{Globovisión. February 20, 2013. Milicianos arremeten contra manifestantes y equipo de Globovisión en el Hospital Pérez Carreño; Diario La Voz. February 20, 2013. Trabajadores se amotinaron en el Hospital Pérez Carreño.}

826. On November 24, Rocío San Miguel, the president of human rights NGO Control Ciudadano, received death threats in an anonymous phone call, as well as intimidating and insulting messages through social networking site Twitter. San Miguel indicated that starting in September 2011, she has been the victim of acts of intimidation and aggression through social networks and has received death threats against her and her family. On January 18, 2012, the Inter-American Commission on Human Rights granted the activist precautionary measures and ordered the Venezuelan State to take the necessary measures to protect the life and safety of San Miguel and her daughter.\footnote{Instituto Prensa y Sociedad (IPYS). February 24, 2013. Amenazan de muerte a activista de DDHH; IACHR. 2012 Annual Report. Chapter III (The Petition and Case System). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. para. 43. Available for consultation at: http://www.oas.org/en/iachr/docs/annual/2012/TOC.asp}

827. The Inter-American Commission learned of a number of situations of violence faced by journalists in the exercise of their profession covering events linked to the health and death of Venezuelan President Hugo Chávez. On February 5, a Televen news team was intimidated and threatened by individuals presumed to be supporters of the current administration while it was covering the announcement of Hugo Chávez’ death at the Carlos Arvelo Military Hospital.\footnote{Instituto Prensa y Sociedad (IPYS). March 5, 2013. Intimidaron a equipo reporteril cuando cubrían el fallecimiento del Presidente.} On February 7, individuals identified as supporters of the current administration intimidated and threatened cameraman Alberto Porras and journalist Luis Alfonso Fernández, with América Noticias, a TV channel based in Miami, United States. The incident took place in Caracas nearby the Military Academy where the funeral of former president of the Republic Hugo Chávez took place. According to the information received, Fernández was recording a news brief when individuals presumed to be supporters of the current administration surrounded him and prevented him from doing his work, all the while insulting them.\footnote{Instituto Prensa y Sociedad (IPYS). March 7, 2013. Intimidaron a equipo de televisora extranjera durante funeral del Presidente; Miami Diario. March 7, 2013. Agreden a otro corresponsal en Venezuela; La Nación. March 8, 2013. Agredieron en Venezuela a periodistas que informaban sobre la muerte de Chávez.} On February 14, individuals presumed to be members of the Bolivarian National Guard assaulted Televen reporter Olivier Fernández and photographers Esaúd Olivares, with El Universal, and Juan Camacho, with international agency News Report, preventing them from doing their work while they were covering a demonstration by students from a number of universities throughout the country at the Cuban Embassy in Venezuela, in Caracas. The demonstration was to demand information on the health of then-President Hugo Chavez. In addition, Globovisión reporter Daniel Guillermo Colina was ordered to leave that place.\footnote{Agencia Caribeña de Noticias. February 14, 2013. CNP condena represión y agresión a periodistas durante protesta frente a embajada de Cuba; Instituto Prensa y Sociedad (IPYS). February 14, 2013. Militares agredieron a periodistas cuando cubrían una protesta estudiantil.} On March 5, Colombian journalist Carmen Andrea Rengifo, a correspondent with RCN Noticias in Venezuela, and cameraman Samuel Sotomayor were attacked by a group of people outside the Military Hospital as they were covering the death of president Hugo Chávez. According to the information received, the demonstrators struck the journalist and insulted her and the
That same day, reporter David De Matteis and cameraman César Fuentes, who work in Caracas for the Spanish-language US news network Univisión, were physically assaulted in the Bolívar Plaza in Caracas by individuals identified as supporters of the current administration. Fuentes had his camera and equipment taken away. The incident took place while the journalists were covering citizen gatherings following the announcement of President Chávez’ death. Also on March 5, individuals identified as “chavistas” surrounded the headquarters of Globovisión, in Caracas, and used firearms to threaten a team of journalists that was arriving there. The incident took place a half hour before Nicolás Maduro, then the vice president of the Republic, announced the death of Hugo Chavez. During the demonstration, one of the participants told Globovisión reporters that the purpose of the action was to peacefully reject the campaign of “harassment and demonization” in reports on the health of President Chávez.

On March 6, in Caracas, alleged supporters of the current administration assaulted journalist Francho Barón, a correspondent with Canal Sur in Spain and Televisión Nacional de Uruguay (TNU). The incident took place when the journalist began recording images of crowds of citizens attending the funeral of President Hugo Chávez.

828. Also on March 5, broadcasters Radio Fe y Alegría 103.1 and Pentagrama 107.3 were victims of a robbery perpetrated by six armed individuals. They damaged the facilities and took part of the stations’ cable, leaving the broadcasters temporarily off the air. The host of the program “Public and Confidential,” which began broadcasting the previous day, stated that the vandalism may have been intended to take him off the air due to his criticism.

829. The Inter-American Commission was informed that cartoonists, journalists, writers and artists have been subjected to death threats, insults and denigrating comments through phone calls, text messages to their mobile telephones, and through social network Twitter. The assaults began on March 15 and are linked to criticisms the communicators have voiced with regard to the country’s political situation. According to the information received, the victims of the assaults include cartoonist Rayma Suprani, writer Leonardo Padrón, humorist Laureano Márquez, television host Mariela Celis and journalists Francisco Bautista, Ibeiyise Pacheco, Ana Beatriz (Nitu) Pérez Osuna, Mary Montes, Milagros Socorro, Berenice Gómez and Alfredo Federico Ravell. Likewise, starting on March 20, blogger

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1545 Instituto Prensa y Sociedad (IPYS). March 6, 2013. Simpatizantes oficialistas atacaron a corresponsal de TV española durante funeral del Presidente; Last night dozens of Chavez supporters attacked me and my driver. We are miraculously unharmed, but the car has been badly damaged. Original text: “Anoche decenas d chavistas nos agredieron a mi y a mi chofer. Milagrosamente estamos ilegos, pero el coche ha quedado mal parado”. Twitter Account of Francho Barón @FranchoBaron. March 7, 2013- 5: 21.


Guillermo Baena began receiving threatening phone calls. The communicator has been critical on his blog of the country’s political situation.\textsuperscript{1548}

830. On April 2, in the context of a campaign event, a group presumed to be supporters of the Partido Socialista Unido de Venezuela (PSUV) attacked photographer David Puertas, with local newspaper \textit{El Informador}, and cameraman Ángel López and reporter Rafael Riera, both with television station \textit{Promar TV}, in Barquisimeto, Lara state.\textsuperscript{1549}

831. On April 3, a news team with \textit{Agencia Venezolana de Noticias} (AVN) was attacked by individuals assumed to be security guards with the Simón Bolívar opposition campaign headquarters during a presidential campaign event in Caracas.\textsuperscript{1550}

832. On April 8, a number of students with an organization called Operación Soberanía were attacked with rocks, bottles, blows and gunfire in La Castellana Plaza, where starting on April 5 and for a number of days afterward they went on a hunger strike to demand answers from the National Electoral Council to petitions that they submitted demanding “just, democratic and free elections.”\textsuperscript{1551}

833. On April 9, the headquarters of newspaper \textit{Ciudad Valencia} and radio broadcaster \textit{Ciudad Valencia 89.9 FM} in Carabobo state were attacked with rocks. The incident led to injuries for two of the radio station’s employees.\textsuperscript{1552}

834. On April 10, journalist José Gerardo Lozada Rojas, director of newspaper \textit{La Opinión}, was physically assaulted by an individual presumed to be an official with Plan República while he was covering the installation of voting machines in a voting center in the city of San Carlos.\textsuperscript{1553}

835. On April 12, unidentified individuals burned the vehicle of journalist Lilia Giménez, a correspondent with the newspaper \textit{El Anaquense} in the Aragua de Barcelona municipality, Anzoátegui.
state. According to reports, the newspaper is critical of governmental authorities.\textsuperscript{1554}

836. The Commission was also informed that in the context of the April 14 election, and especially over in the days following it, polarization in Venezuela intensified, accompanied by a substantial increase in violence against journalists. The Inter-American Commission received information on a number of incidents that limited the freedom of expression and exercise of journalism during the days following the election, including the detention of reporters by police, destruction of material, bans on covering certain information, and threats and physical attacks on journalists and the headquarters of media outlets by demonstrators belonging to a variety of political movements, among other incidents.

837. On April 14, Emir Fernández, a cameraman with community television network Barrio TV in El Valle and an employee of community radio station Alí Primera, in Caracas, was shot in the chest and the arm while interviewing members of a communal counsel during the election.\textsuperscript{1555} Also, Raúl Galindo, a photographer with newspaper Notitarde, in Valencia, Carabobo state, was threatened by an individual assumed to be a member of the Bolivarian National Guard (GNB), a State security agency. The individual also confiscated his camera, press credential provided by the National Electoral Council (CNE), and his identification card issued by the media organization for which he works.\textsuperscript{1556} A news team with radio broadcaster Fe y Alegria and a reporter with Globovisión were robbed of their belongings and equipment in Maracaibo, Zulia state.\textsuperscript{1557} Additionally, journalist Daniel Cáceres, a host with radio station La Mega 102.1 FM, in San Cristóbal, Táchira state, was chased down and intimidated by a group of individuals riding motorcycles, identified as supporters of the candidate of the party in power, Nicolás Maduro.\textsuperscript{1558}

838. On April 15, Joel Páez, a producer with Globovisión in Barinas, accused an individual assumed to be a member of the National Guard (GNB) of preventing him from doing his work while he was covering a post-electoral protest.\textsuperscript{1559} Alejandro Ledo, a cameraman with Globovisión, was struck by a vehicle while covering a demonstration near the headquarters of the National Electoral Council in Aragua. Ledo was using his camera to capture images of demonstrators when he was struck by the vehicle.\textsuperscript{1560}

839. Likewise, two photojournalists were assaulted on April 15: Carlos Barrios, with


\textsuperscript{1555} Telesur. April 16, 2013. \textit{Violencia opositora en Venezuela deja siete muertos y 61 heridos}.


\textsuperscript{1559} Instituto Prensa y Sociedad (IPYS). April 15, 2013. \textit{Barinas: Efectivo militar impide a productor de Globovisión realizar trabajo informativo}.

\textsuperscript{1560} Instituto Prensa y Sociedad (IPYS). April 15, 2013. \textit{Aragua: Vehículo golpea a camarógrafo cuando realizaba trabajo informativo}.
newspaper *El Periódico* in Mongas, who was struck in the back with a rock; and Alberto González, of Diario *El Sol*, in Maturín, Monagas state.\textsuperscript{1561} Also on April 15, Rosana Villa, a journalist with newspaper *Los Andes de Mérida*, was attacked by a group of individuals identified as belonging to the Movimiento Revolucionario Tupamaro as she was photographing a group of citizens in front of the National Electoral Council.\textsuperscript{1562} Also that day, a number of reporters were injured while covering a citizen demonstration at the headquarters of the regional directorate of the National Electoral Council (CNE) in Barquisimeto, Lara state. The attack was perpetrated by individuals presumed to be members of the National Bolivarian Guard (GNB). Photojournalists Ricardo Marapacuto and Juan Carlos Leal, with local newspaper *El Impulso*; independent journalist Héctor Andrés Segura, and Héctor Azuaje, with *Diario de Lara*, were injured. Also, Richard Lameda, a reporter with *El Impulso*, and Marla Prato, a Lara state correspondent for newspaper *El Universal*, accused individuals presumed to be members of the National Bolivarian Guard (GNB) of firing at them. None of the reporters were struck by the bullets. Lameda accused one guardsman of firing at him even though he identified himself as a journalist.\textsuperscript{1563} The following individuals were also assaulted while covering a demonstration in front of the headquarters of the National Electoral Council (CNE) in Mérida: reporters Saíd Rivas, Johana Briceño and Ramón Fajardo with broadcaster *YVKE Mundial los Andes*, journalist Adalberto González, with *Agencia Venezolana de Noticias* (AVN), and Annel Mejías, journalist with *Correo del Orinoco*.\textsuperscript{1564}

840. On April 15, there were protests at the headquarters of *Venezolana de Televisión* (VTV) and *Telesur* by persons beating on pans and carrying signs and insignias showing support for the opposition candidate.\textsuperscript{1565} That same day, individuals riding motorcycles and carrying signs for the opposition candidate appeared at the headquarters of the National Telecommunications Commission (Conatel) shouting intimidating slogans. One of the demonstrators threw a blunt object at agency's headquarters.\textsuperscript{1566}

841. On April 15, eight radio broadcasters and one community television channel were attacked by groups presumed to be armed and opposed to the current administration. The attacks took place in the municipalities of Maracaibo, San Francisco and La Cañada de Urdaneta, in Zulia state.\textsuperscript{1567} Attacks on community media outlets were also reported in the states of Amazonas, Táchira, Yaracuy and

\textsuperscript{1561} Instituto Prensa y Sociedad (IPYS). April 15, 2013. *Agredieron a reporteros gráficos en ente electoral de Monagas*.

\textsuperscript{1562} Instituto Prensa y Sociedad (IPYS). April 15, 2013. *Reportera fue amedrentada en Mérida*.


\textsuperscript{1565} Telesur. April 15, 2013. *Antichavistas rodearon sede de teleSUR y amenazaron a sus trabajadores*; Espacio Público. April 16, 2013. *Motorizados rodearon sede de VTV, TeleSur y Conatel*.

\textsuperscript{1566} Telesur. April 15, 2013. *Antichavistas rodearon sede de teleSUR y amenazaron a sus trabajadores*; Instituto Prensa y Sociedad (IPYS). April 15, 2013. *Simpatizantes opositores protestaron en la sede de organismo de telecomunicaciones y canales oficiales*.

842. On April 16, two photojournalists with newspaper _El Carabobeño_, in Valencia, were threatened by an individual presumed to be a police officer while covering the unrest that took place following a gathering of the opposition outside the National Electoral Council to demand that the electoral body conduct an audit of all the votes from the April 14 presidential elections. Likewise, individuals presumed to be members of the Bolivarian National Guard (GNB) tried to block journalist Ana Isabel Rodríguez, with newspaper _Sol de Monagas_ and a correspondent for IPYS Venezuela in Monagas, from doing her work by covering a citizen demonstration at the regional headquarters of the National Electoral Council (CNE). Individuals presumed to be members of the Bolivarian National Guard (GNB) also fired at the journalist Eduard Martínez, with newspaper _La Prensa_ in Lara, while he was covering the protests.

843. On April 16, a mobile unit transporting a reporting team with TV channel _Telecentro_, in Barquisimeto, was damaged during a confrontation between individuals presumed to be members of the Bolivarian National Guard (GNB) and groups in opposition to the elected administration of President Nicolás Maduro.

844. On April 16, reporter Mariha Morales and cameraman Moisés Vargas, with community television station _LaraTvec_, in Barquisimeto, Lara state, were attacked by a group of individuals identified as supporters of the opposition presidential candidate who were participating in a protest.

845. Also on April 16, a group of individuals riding motorcycles, presumed to be supporters of the government, used Molotov cocktails to attack the headquarters of newspaper _La Región_, in Los Teques, and threatened to burn down the offices. The journalists who were in the building were evacuated by the police. There was also an attack on the headquarters of newspaper _El Avance_, in which attackers fired at the building, and threw rocks and bottles of gasoline.

846. On April 17, a group of cameramen and reporters in the state of Aragua, belonging to

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1568 Venezolana de Televisión (VTV)/Sistema Bolivariano de Comunicación e Información. _Grupos violentos mantienen ataques contra medios comunitarios_.


1570 Instituto Prensa y Sociedad (IPYS). April 16, 2013. _Monagas: Militares intentaron impedir trabajo a reportera en manifestación en el ente electoral._

1571 La Prensa. April 16, 2013. _Herido reportero gráfico de La Prensa_; Instituto Prensa y Sociedad (IPYS). April 16, 2013. _Lara: Militar disparó a quemarropa a reportero gráfico._

1572 Instituto Prensa y Sociedad (IPYS). April 16, 2013. _Lara: Atacaron a unidad móvil de televisora regional en protesta postelectoral._


Venevisión, Globovisión and Dat TV news teams, were subjected to verbal and physical assault by individuals presumed to be members of a Communal Brigade.\footnote{Notitarde. April 17, 2013. \textit{Grupo de reporteros y camarógrafos agredidos en el Hospital Central de Maracay}; El Aragüeño. April 17, 2013. \textit{Grupo de reporteros y camarógrafos agredidos en el Hospital Central de Maracay}; Starlitephi/YouTube. April 18, 2013. \textit{Agreden a equipo de Globovisión en Hospital Central de Maracay en Venezuela}.}

Starting on April 17, journalist and parliamentary assistant Richard Sayago was the victim of surveillance and threats perpetrated by unknown individuals.\footnote{IFEX/Instituto Prensa y Sociedad (IPYS). May 16, 2013. \textit{Venezuelan parliamentary journalist reports being followed}; Colegio Nacional de Periodistas. May 9, 2013. \textit{Periodista parlamentario denuncio ser víctima de seguimiento}.}

On April 20, Idania Chirinos, Venezuelan journalist and director of NTN24, a news channel in Colombia, accused presumed to be officials with the Scientific, Criminal, and Forensic Investigation Corps (CICPC) of spying on her while she was boarding a plane in the Maiquetía International Airport. The journalist returned to Bogotá after having spent two weeks in Caracas working and broadcasting her program ‘The Afternoon,’ distributed by NTN24, in which she addressed the sociopolitical situation in Venezuela during the election and the days following it.\footnote{NTN24. April 21, 2013. \textit{Autoridades solicitaron información de la Directora de Contenidos de NTN24 Idania Chirinos}; Venezuela al día. April 21, 2013. \textit{Idania Chirinos ya se encuentra en Bogotá}.}

On April 29, a group of individuals identified as supporters of the current administration threw bottles and intimidated a group of journalists who were in the Palace of Justice in Caracas covering the arraignment hearing of Antonio Rivero, a retired general of the Armed Forces and leader of opposition party Voluntad Popular. He was arrested on April 27 and charged by the Office of the Public Prosecutor with the crimes of criminal conspiracy and instigation of hate.\footnote{IFEX/Instituto Prensa y Sociedad (IPYS). May 2, 2013. \textit{Lazaron botellas contra reporteros en Palacio de Justicia en Venezuela}.}


On May 22, Isayen Herrera, a reporter with newspaper 2001, was struck in the face by an unidentified individual during a march of university students and professors in the city of Caracas.\footnote{Instituto Prensa y Sociedad (IPYS). May 22, 2013. \textit{Agredieron a reportera en manifestación de gremios universitarios}.}

On May 27, unidentified individuals threw an explosive from a moving vehicle at the offices of newspaper Panorama, in the city of Maracaibo, Zulia state. According to a report from the media outlet, the explosive was thrown together with leaflets from a group calling itself the Fuerzas
Bolivarianas de Liberación (FBL) Bolívar Vive (Bolivarian Liberation Forces, Bolívar Lives).\textsuperscript{1583}

854. Journalist Lisbeth de Cambra, general secretary of the Caracas branch of the Colegio Nacional de Periodistas (CNP), alleged that individuals presumed to be members of the intelligence police force were following her during June and July of 2013. The journalist suspected that the surveillance was in response to statements she often makes on behalf of the CNP regarding the problems facing communicators in the country.\textsuperscript{1584}

855. On July 16, journalist Eduardo Galindo, a correspondent with Globovisión and El Nacional and secretary of the regional branch of the Colegio Nacional de Periodistas (CNP), filed a complaint with the Office of the Superior Public Prosecutor of San Fernando de Apure indicating that he was being accused in a video circulating via social networks of being a “destabilizer” and “psychological operator of the Empire,” something that could endanger his physical integrity and that of his family.\textsuperscript{1585} Later, on July 30, individuals presumed to be members of the police force assaulted the journalist while he was covering a refugee protest in the city of San Fernando de Apure, Apure state.\textsuperscript{1586}

856. On July 27, 28 and 29, unidentified individuals attacked the servers of news website Correo del Caroní. The attack saturated the website with visits, blocking the server.\textsuperscript{1587} The server was changed and service reestablished on September 2, but the cyber attacks continued, according to the media organization’s president. During the second week of September, there were 95 attempts to take the site down again.\textsuperscript{1588}

857. On August 23, journalist Gonzalo Albano, reporter with broadcaster Class 98.7 FM, in San Carlos, Cojedes state, received a death threat from unknown individuals. An individual forced him into a car, where they pointed a gun at his head and warned him to "stop talking shit [pendejadas] on the radio." They told him that the threat extended to the radio station’s editorial chief, Germán Lozano. “This is a warning, the next time you’ll pay with your life,” said the attacker, who was accompanied by two other individuals. According to the reporter, the threat followed the broadcasting of information on allegations of corruption in the regional government.\textsuperscript{1589}

858. On August 28, reporters with the website Aporrea and community television channel
Barrio TV were threatened by Casa Militar officers in charge of security for the Presidency of the Republic and by the National Police while they were in the Miraflores Presidential Palace, in Caracas, covering a protest by public-sector employees.\textsuperscript{1590}

859. On October 29, journalist Karolina Olivo and cameramen Rodolfo Urbina, with HCTV, were assaulted by individuals presumed to be supporters of the current administration while they were covering a campaign event for the opposition party mayoral candidate in the municipality of Páez, in Alto Apure.\textsuperscript{1591}

860. On November 1, Eliscart Ramos, Jorge Leonardo Santos, and Diana Escalona, journalists with the newspaper 2001, were beaten and detained by individuals presumed to be soldiers while they were covering a Christmas Fair in Los Próceres, Caracas.\textsuperscript{1592}

861. On January 14, the organizations Espacio Público, Colegio Nacional de Periodistas (CNP) and Sindicato Nacional de Trabajadores de la Prensa (SNTP) of Venezuela presented a writ of abstention before the Contentious Administrative Court against the Office of the Public Prosecutor for "lack of timely and adequate response to the request for information on investigations in cases of attacks against journalists," filed in July of 2012.\textsuperscript{1593}

862. As of the closing of this report, there was no information on any progress in the investigations into the assaults, detentions and threats against journalists.

863. 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. Mandatory presidential broadcasts and government interference in informative spaces

864. In 2013, the government of Venezuela has continued to use obligatory national radio and television broadcasts to transmit government messages. According to information received by the Inter-American Commission, the use of obligatory national broadcasts intensified during the campaign


and in the days following the April 14 presidential elections, on a number of occasions interrupting speeches or press conferences given by leaders of groups in opposition to the government. According to various organizations that monitor the issuance of obligatory national broadcasts in the country, during 2013 the Venezuelan government reportedly ordered dozens of obligatory national broadcasts.\footnote{1594} Additionally, according to Cadenómetro, a project of the nongovernmental organization (NGO) Monitoreo Ciudadano, from June 3, 2013 to September 19, 2013, Maduro appeared on the state channel VTV for 182 hours over 114 broadcasts, an average of 1 hour and 40 minutes each day.\footnote{1595}

865. For example, on January 3, then-Vice President Nicolas Maduro gave an official address during an obligatory national broadcast criticizing the way the media and journalists were covering Hugo Chavez’s health.\footnote{1596} Also on January 3, Ernesto Villegas, Minister of communication and information, read an official press release during an obligatory national radio and television broadcast warning the Venezuelan people about “the psychological war” supposedly being waged by the media regarding Chavez’s health.\footnote{1597} On April 16, after the presidential elections, the government ordered three obligatory national radio and television broadcasts showing government authorities at official events. One of them interrupted the broadcast of a press conference by opposition candidate Henrique Capriles.\footnote{1598} On April 18, president Nicolás Maduro appeared on an obligatory national radio and television broadcast, accusing Televen of having “responsibility” for the incidents of violence that took place following the presidential election because it had broadcast a press conference of the opposition candidate. He also accused Globovisión of being a “fascist” television channel.\footnote{1599} On April 24, an obligatory national radio and television broadcast interrupted a speech by the opposition candidate in which he was calling for a recount of the votes from the presidential election.\footnote{1600} On May 2, another obligatory national radio and television broadcast interrupted a press conference by the opposition candidate in which he was explaining the reasons for which he was challenging the results of the

\footnote{1594} According Cadenómetro a project of the nongovernmental organization (NGO) Monitoreo Ciudadano, which keeps track of the number of obligatory national broadcasts ordered by the Venezuelan government, from March 5 through October 31, 137 national radio and television broadcasts were ordered. Monitoreo ciudadano. \textit{Contador de horas de Nicolás Maduro en Cadena Nacional de Radio y Televisión}. Furthermore, according to the count kept by NGO Espacio Público (Public Space), from January 1 though October 31, 2013, the Venezuelan government ordered 192 obligatory broadcasts, for a total of 137 broadcast hours. \textit{Horas en cadena obligatoria por año}. Available in: Archives of the Office of the Special Rapporteur for Freedom of Expression.


866. On January 3, the National Telecommunication Commission (Conatel) launched three administrative proceedings against television channel La Tele and radio broadcasters Candela Pura 91.9 FM and Es 96.9 FM for having failed to broadcast or having delayed the broadcast of a statement from Ernesto Villegas, Minister of Communication and Information, regarding the health of former president Hugo Chavez. Article 10 of the Law on Social Responsibility in Radio Television and Electronic Media makes it obligatory for public- and private-sector audiovisual media outlets to broadcast official statements. On April 1, the National Telecommunications Commission (Conatel) reported that an administrative sanction procedure had begun against Globovisión for "alleged interference with a statement" during an official radio and television broadcast by Nicholas Maduro on April 1. According to Conatel, the obligatory radio and television broadcast had no audio for more than 6 minutes. Globovisión's legal counsel stated that there was an "involuntary" technical problem with the audio during Maduro's obligatory national broadcast and explained that minutes prior to the start of his statements, a communication had been sent to Conatel informing it of the technical problems that had been detected in the original transmission of the Venezolana de Televisión (VTV, a State audio-visual media outlet) signal. According to available information, this would be the tenth administrative procedure Conatel has launched against Globovisión in recent years.

867. On September 10, President Nicolas Maduro announced that as part of a new communication strategy, he was going to create Noticiero de la Verdad, which would be transmitted in an obligatory national broadcast, in order to provide information on the activities of his administration, as he believes that private media outlets do not report on official acts and conceal his administration's achievements.

868. On May 13, the creation of the "Joint Chiefs of Communications" was announced in the state of Mérida. The body was to be made up of university professors, social communicators and writers in order to "counteract" the “twisted” information distributed by private-sector media outlets. Mérida’s governor indicated that the agency emerged from concern over the way private-sector media were handling information, stating that they are used "as weapons against the people, fomenting lies and aiding economic groups.” He added that the agency would seek measures allowing for “the
incorporation of and articulation with alternative media in order to confront the media outlets that twist the truth.” The Colegio Nacional de Periodistas de Mérida rejected the creation of the agency, calling it an “anti-democratic review that violates constitutional principles” and that “corrupts the free exercise of journalism and the right to work.” Likewise, on May 23, the "Joint Chiefs of Communications" was set up in the state of Yaracuy, made up of 350 of the state’s community media outlets. According to reports, the agency’s objective is to respond to “the media attacks of destabilizing groups against the Government” and keep “the people informed of everything that the Bolivarian Revolution is doing for the well-being of everyone.”

869. The Inter-American Commission 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, 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 life.” Additionally, the fifth principle of the IACHR’s Declaration of Principles states that: “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.”

870. 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. 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

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individuals or groups at a given time.\footnote{1612} 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.”\footnote{1613}

\section*{D. Access to public officials and public places}

871. In its articles 56 and 66, the Rules of Procedure for the Floor and Debates of the National Assembly of Venezuela prohibits journalists who are not with ANTV (the National Assembly’s TV channel) or Venezolana de Televisión (VTV) from entering the sessions. On March 26, the Constitutional Chamber of the Supreme Tribunal of Justice (TSJ) admitted a suit of nullity filed by members of the organizations Espacio Público, the Sindicato Nacional de Trabajadores de la Prensa (SNTP), and the Colegio Nacional de Periodistas (CNP) alleging that the aforementioned articles were unconstitutional. In addition, the requested a precautionary injunction suspending the rules restricting the entrance of all media outlets to National Assembly sessions. The remedy was declared “inadmissible” by the court, as it did not demonstrate “prima facie, the violation of the rights alleged to have been violated.”\footnote{1614 In addition, on May 28, the president of the National Assembly, Diosdado Cabello, rejected a request from opposition deputies to include a discussion on the daily agenda regarding the amendment of articles 56 and 66 of the rules of procedure and parliamentary debate to allow the media access to the National Assembly. The opposition deputies had requested amendment of the aforementioned articles, but Cabello argued that the request must be presented in writing before the leadership of the National Assembly in order for the body to be able to consider it.\footnote{1615}

872. In addition to the ban on independent media covering the sessions of the National Assembly, assembly officials blocked the media from entering the administrative headquarters to cover other public events.\footnote{1616}
873. The Inter-American Commission has also received information indicating that the journalists of private sector media outlets are systematically prevented from covering or accessing public events, press conferences and official acts.\(^{1617}\)

874. Journalists from a number of media outlets reported that they faced restrictions at a number of electoral centers while covering the April 14 vote. Some obstructions were put in place by officials with the Plan República, the military organization in charge of security during the presidential elections. It prevented journalists from accessing voting centers or made access more difficult.\(^{1618}\) Also, the journalists covering the elections had difficulty in getting statements from the officials working in the voting centers. They had supposedly been ordered not to comment to the press.\(^{1619}\) Reporter Keren Torres, with newspaper *El Impulso*, had a difficult time doing her job because in only one of the five voting centers she visited was her photographer allowed to take pictures inside.\(^{1620}\) Natalia Urdaneta, a reporter with *Diario Primicia*, was removed from a voting center in Puerto Ordaz, Bolívar state, supposedly on the orders of officials with Plan República.\(^{1621}\) Likewise, reporter Eunice Gamero, with

\(^{1617}\) On January 7, a Globovisión news team was not informed of an official event of the vice president of the Republic at the time, Nicolás Maduro. When the news team went to cover the event, a press officer informed them that credentials had already been assigned. Globovisión representatives have alleged on a number of occasions that they have not received press invitations to government events. Instituto Prensa y Sociedad (IPYS). January 7, 2013. *Impidieron cobertura de equipo reporteril de canal privado en actividad dirigida por el Vicepresidente de la República*; On January 15, the Legislative Committee of the state of Miranda prevented journalists and media outlets from covering the swearing-in of Enrique Capriles as the re-elected governor of the state of Miranda. Only the press team of the Miranda government had access. Instituto Prensa y Sociedad (IPYS). January 15, 2013. *Impidieron a la prensa cubrir juramentación del Gobernador del estado Miranda*. On April 1, reporters from state broadcasters *Radio Nacional de Venezuela* (RNV) and *Venezolana de Televisión* (VTV) were prevented from attending a press event on the beginning of the campaign of opposition presidential candidate Henrique Capriles. Venezolana de Televisión (VTV)/Sistema Bolivariano de Comunicación e Información. *Impiden acceso a periodistas de VTV y RNV a rueda de prensa de Capriles*. DailyMotion. April 1, 2013. *Impiden acceso a periodistas de VTV y RNV a rueda de prensa de Capriles*; On January 21, a number of media outlets were prevented from attending the State of the Judiciary of the Supreme Tribunal of Justice, where a report was to be presented on the judicial body’s performance during 2012. Instituto Prensa y Sociedad (IPYS). January 21, 2013. *Poder judicial impide a los equipos reporteriles presenciar la rendición de cuentas de su gestión pública*. On May 24, the press director of the Ministry of the Interior and Justice prevented journalist Danielle Guillermo Colina, with Globovisión, from covering an event to honor posthumously five National Police officers in Caracas. Instituto Prensa y Sociedad (IPYS). May 24, 2013. *Corporación Eléctrica limitó el acceso de equipo periodístico a evento oficial*. On June 3, officials with the Supreme Tribunal of Justice denied the press access to a public oral hearing of a deputy of the National Assembly over allegations of corruption. Instituto Prensa y Sociedad (IPYS). June 25, 2013. *Corporación Eléctrica limitó el acceso de equipo periodístico a evento oficial*.
newspaper *Correo del Caroní*, was verbally assaulted and prevented from doing her work by an individual presumed to be an official with the National Elections Council (CNE).\textsuperscript{1622} Gladyscary Guzmán, a reporter with newspaper *Nuevo Día*, alleged that officials presumed to be members of Plan República denied her access to the voting center located in the Diego León Zuniaga school in Coro.\textsuperscript{1623} Journalists Cintia González and Elier Galicia, also with *Nuevo Día*, were prevented from entering and taking photographs in a number of voting centers.\textsuperscript{1624} José Barrios Díaz, a photographer with *El Tiempo*, was assaulted by an individual presumed to be a soldier while he was covering allegations of irregularities in a voting center in the city of Puerto La Cruz, Anzoátegui state.\textsuperscript{1625} Individuals presumed to be officials with the National Electoral Council (CNE) and Plan República blocked journalists with the newspaper *La Verdad* - Ana Carolina Mendoza and Sheyla Urdaneta - access to voting centers in the city of Maracaibo.\textsuperscript{1626} Members of Plan República prevented or slowed the work of new teams from the newspaper *El Siglo* and radio broadcaster *Universitaria* 104.5 FM, in Maracay, Aragua state.\textsuperscript{1627} Members of Plan República also prevented reporters with the newspaper *Las Noticias* from entering voting centers in Cojedes state.\textsuperscript{1628}

875. 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.”

E. Subsequent liability

876. Over the last decade, Venezuela has been going through a process of structural reforms to the legal and public policy application framework that has weakened guarantees of the right to freedom of expression in the country, as the IACHR has maintained in previous reports.\textsuperscript{1629} The IACHR has repeatedly pointed to the need to revise the legal framework in which Venezuelan media operate. Specifically, the IACHR has called the authorities’ attention to the existence of ambiguous or
disproportionate sanctioning rules that allow for discretionary opening of judicial and administrative processes and that do not offer sufficient guarantees for ensuring the full exercise of freedom of expression without fear of retaliation.¹⁶³⁰ The Inter-American Commission has received information indicating that the government of Venezuela continues to apply the provisions of the Law on Social Responsibility in Radio, Television and Electronic Media [Ley de Responsabilidad Social en Radio, Televisión y Medios Electrónicos] (Resorte Law) regarding incitement of hate, intolerance, and calls to violence to initiate legal or administrative proceedings against media outlets and journalists who distribute information that runs contrary to the government’s interests.¹⁶³¹

877. As the Inter-American Commission has indicated on previous occasions, law including the Penal Code of Venezuela, the Organic Code of Military Justice, and the Law on Social Responsibility in Radio, Television and Electronic Media (Resorte Law) all have sections that are not compatible with Inter-American standards on freedom of expression. In previous reports, the IACHR and its Office of the Special Rapporteur for Freedom of Expression have expressed concern at the existence of these laws and urged the government of Venezuela to change them to meet international standards on the subject.¹⁶³²

878. In December of 2012 and January 2013, television channel Globovisión broadcast four messages transcribing the text of Article 231¹⁶³³ and the articles of the Constitution of Bolivarian Republic of Venezuela related to the inauguration of the president. On January 9, National Assembly president Diosdado Cabello and Energy and Petroleum Minister Rafael Ramírez asked the National Telecommunications Commission (Conatel) to launch an investigation into Globovisión, a private-sector news channel, on allegations of manipulation of information. Cabello stated that Globovisión explains only the part of Article 231 of the Constitution “that suits them because they are irresponsible and manipulative. I hope Conatel follows the appropriate procedure and applies sanctions for the manipulation of the truth, for being manipulative, for trying to sow unease in the population, just because they are full of hate - a sick hatred, too - for a human being, Hugo Chávez, and toward [...] the people of Venezuela.” The statements were backed by Ramírez, who during an event with the workers of state company Petróleos de Venezuela (PDVSA) stated: “[w]e agree with the president of the National Assembly; Conatel has to act to sanction [Globovisión].”¹⁶³⁴ That same day, the National Telecommunications Commission of Venezuela (Conatel) launched an administrative sanction

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¹⁶³³ Consejo Nacional Electoral (CNE). Constitución de la República Bolivariana de Venezuela. “Article 231. The candidate-elect will take up the position of President of the Republic on January 10 of the first year of his or her constitutional term by being sworn in before the National Assembly. If for some unforeseen reason, the President of the Republic cannot take possession before the National Assembly, he or she shall do so before the Supreme Tribunal of Justice.”

proceeding against Corpomedios GV Inversiones, C.A. (Globovisión) for the alleged violation of Article 27 of the Law on Social Responsibility in Radio, Television and Electronic Media (Resorte Law) through the broadcasting of the messages. According to the measure, “the messages [...] could incite or promote hatred or intolerance for political reasons, defending or inciting subversion of the public order, fomenting unease in the citizenry or disrupting public order or failing to recognize legitimate authorities, which, should it be proven in this administrative proceeding, would lead to the imposition of administrative sanctions established in the [Resorte] Law. Through the measure, the General Director of the National Telecommunications Commission of Venezuela (Conatel) issued an injunction ordering Globovisión to abstain from broadcasting the four messages identified, as well as any other message with similar content. On January 16, Globovisión went to Conatel to file a “brief to challenge” the administrative proceeding, alleging that "the injunction clearly represents prior censorship, blocks the free debate of ideas and opinions on a matter of constitutional relevance, and therefore unjustly, disproportionately and illegitimately restricts freedom of expression and limits the effective development of the democratic process." In the document, the media outlet states that Conatel's administrative action "does not explain how short informational segments could incite what it is suggesting, nor does it provide any serious indication that there has been in Venezuela any demonstration of hate, intolerance, disruption of the public order or failure to recognize authorities as a result of the broadcasting of the short informational segments. The act is based on a simple individual assumption by the official, purely subjective, that is not based on any evidence that the stated effects could be or have been observed in Venezuela." Globovisión representatives demanded that the regulator revoke "the injunction, restore the right to disseminate and receive information and opinions on the interpretation of Article 231 of the Constitution, and permit the free circulation of information, ideas and opinions regarding this matter." On January 11, the Office of the Special Rapporteur sent a letter to the government of Venezuela, pursuant to Article 41 of the American Convention on Human Rights, requesting information regarding the administrative sanction procedure launched against Globovisión and recalling the standards on the subject.

879. According to information received by the Inter-American Commission, the Scientific, Criminal and Forensic Investigation Corps (CICPC) of the state of Zulia, called and interrogated Juan José Faria [or Farias], a journalist with the newspaper La Verdad and correspondent with the organization IPYS Venezuela because of his articles about the murder of a criminal leader in a prison in the city of Maracaibo. On January 28, the reporter received a summons from the CICPC, and when he appeared on

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1635 Ley Resorte/Sistema Bolivariano de Comunicación e Información. Ley de Responsabilidad Social en Radio, Televisión y Medios Electrónicos, Gaceta Oficial No 39.610. February 7, 2011. “Article 27: Distribution through radio, television and electronic media is not permitted of messages that: 1. Incite or promote hatred and intolerance for reasons of religion, politics, gender difference, racism or xenophobia. 2. Incite or promote and/or defend crime. 3. Constitute war propaganda. 4. Foment unease in the citizenry or upset public order. 5. Do not recognize legitimate authorities. 6. Encourage murder. 7. Incite or promote a failure to comply with in-force legislation (...).”


January 30, he was interrogated for more than four hours without counsel. The officials tried to get information from him about his sources and mentioned the possibility of charging him with the crimes of instigation and criminal conspiracy. Later, they summoned the heads of the newsroom at *La Verdad* over their alleged responsibility for the authorization of the publication of the articles by Faría. Later, on April 2, the former director of the El Marite prison threatened Faría with filing a criminal complaint against him with the justice system after the journalist published articles on controversies and accusations of corruption in that prison. On July 17, the reporter filed a complaint with the Office of the Superior Public Prosecutor of Maracaibo, Zulia state, over the repeated threats he had received from State security agents and individuals presumed to be members of criminal gangs in the region.

880. On January 30, the general secretary of the government of Carabobo filed a criminal complaint against journalists Francisco Pérez, a columnist with the newspaper *El Carabobeño*, accusing him of defamation and aggravated defamation ([difamación](null) and [injuria agravada](null)), after Pérez published a column on January 14 accusing members of the PSUV of being responsible for a January 1 fire in a garbage dump.

881. On February 7, representatives of the permanent security and defense committee of the national assembly announced that they would ask the National Telecommunications Commission (Conatel) to launch an investigation into media outlets that distributed the results of the report “Government Defense Anti-Corruption Index,” prepared by NGO Transparency International. The legislators accused the organization of carrying out a “media campaign” to hurt the image of the National Bolivarian Armed Forces ([Fuerza Armada Nacional Bolivariana](null)) (FANB) and destabilize the country politically. The accusations arose after Transparency International presented the results of its report on corruption, in which 82 countries were evaluated. In its conclusions, the report indicates that Venezuela has “a very high risk of corruption,” and demonstrates “a serious lack of transparency and poor application of existing laws, leading to poor results in all risk categories.”

882. On April 10, the minister of Energy and Petroleum and president of the state-owned
company Petróleos de Venezuela (PDVSA), Rafael Ramírez, announced a legal action against Rayma Suprani, cartoonist of the *El Universal* newspaper, and Nelson Bocaranda, radio host with the radio station Éxitos FM and director of the Runrun.es portal, for supposedly damaging the reputation of the State company. The warning was issued after the cartoonist and journalist expressed opinions about a supposed link of PDVSA officials in the case of a scandal that took place on March 30, 2012.1645

883. The Attorney General of Venezuela, Luisa Ortega, announced on April 24 that her office was investigating messages published on the Twitter Social network to determine if they contained hidden calls to generate violence in the days following the elections of April 14. “There are direct and subliminal calls. Review the Twitter networks to see the calls made there, that is what we are investigating,” said the Attorney General.1646

884. According to information received, on Wednesday, April 24, a Commission was set up in the General Assembly to investigate possible responsibility for the violence that took place after the presidential elections of April 14.1647 The people to be investigated by the Commission included journalist Nelson Bocaranda, a columnist for the *El Universal* daily newspaper, host of the program ‘La cola feliz’ at the Éxitos 99.9 FM radio station and director of the Runrun.es news site, for alleged responsibility for attacks, according to the government, on the facilities of certain Integrated Diagnostic Centers [Centros de Diagnóstico Integral] (CDI).1648 The allegations were based on the journalist’s publication of a message on his Twitter Social network account alleging the presence of boxes with votes from the presidential elections at an Integrated Diagnostic Center (CDI) in Gallo Verde, Maracaibo.1649

Based on this publication, the National Assembly representative for the United Socialist Party of Venezuela (PSUV), Pedro Carreño, on April 16 published the following in his Twitter account: “@NelsonBocaranda is responsible for damage to the CDIs. Today in the National Assembly we urge the Public Prosecutor to hold him criminally responsible.”1650 Regarding this matter, on June 12, the Special Rapporteur sent the State a letter requesting information about the investigation of journalist Nelson Bocaranda.

885. On July 4, the Public Prosecutor subpoenaed Bocaranda as a witness in the context of

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1649 “Reports are that in the CDI of La Paz in Gallo Verde, Maracaibo, ballot boxes are hidden away and the Cubans are not letting them get out.” Original text: “Informan que en el CDI de La Paz en Gallo Verde, Maracaibo, hay urnas electorales escondidas y los cubanos de allí no las dejan sacar.” Twitter account of Nelson Bocaranda @NelsonBocaranda. *April 15, 2013, 12:24 PM*; Instituto Prensa y Sociedad (IPYS). April 16, 2013. *Diputado amenaza a periodista con acciones penales por mensaje publicado en Twitter*.

investigations carried out by that agency into the violent events that took place after the presidential elections of April 14. On July 11, Bocaranda testified in response to a second subpoena from the Public Prosecutor. Upon leaving, a group of people supposedly identified as government supporters shouted insults at the journalist. On September 26, the president of Venezuela, Nicolás Maduro, accused Bocaranda of working for the United States Central Intelligence Agency (CIA) and warned him that his “treason” would face “justice”. The president stated that his Government would present “evidence to show that Bocaranda worked for the CIA and the US State Department”.

886. On May 24, Héctor Horacio Contreras, a journalist and announcer at Studio 102.7 FM, received a copy of a lawsuit filed against him by the governor of Mérida state, for supposedly inciting violence during events that took place in the days following the presidential elections of April 14. On May 13 and 15, the governor of Mérida state announced in press conferences that he would sue the journalist for allegedly inciting violence. On April 15, groups of armed individuals used firearms and blunt objects to attack medical personnel, patients and people at the Health Center at the Universidad de Los Andes (Camiula). As a result, Contreras issued a call to the state governor, reminding him of his duty to guarantee the security of the citizenry. Contreras received two death threats on his cellular phone. Additionally, on May 15, the governor announced that he would also file suit against journalist Leonardo León, of ULA 107.7 FM, the radio station of the Universidad de Los Andes and correspondent for El Nacional.

887. On the second week of July, the First Court for Mediation, Prosecution, Enforcement and Transitory Rules of Procedure of the Judicial Circuit for the Protection of Boys, Girls and Adolescents of the Judiciary the State of Falcón prohibited the daily newspaper La Mañana from publishing photographs of “events” until a lawsuit against the newspaper is resolved by the Ombudsman’s Office, stemming from the publishing of photographs in 2012 that, according to that agency, endangered the integrity of children and adolescents. On July 17, a parliamentary hearing was held in the case, in which it was decided to begin a trial against the newspaper after the parties were unable to reach an agreement.

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Representatives of the Ombudsman’s Office filed a lawsuit against the daily newspaper *La Mañana*, stemming from the publication of photographs in 2012 that, according to that agency, endangered the integrity of children and adolescents. On June 20, the directors of that medium received a subpoena for the preliminary hearing.\textsuperscript{1659}

On June 22, the Minister of Penitentiary Services requested the Public Prosecutor to investigate the journalistic team at the ‘Sucesos’ section of the daily newspaper *La Verdad*, for holding conversations with prison inmates, after the medium published an article on the profile of three prisoners, presumably “leaders” at a penitentiary center in Maracaibo, and an interview with an inmate.\textsuperscript{1660}

On July 23, supposed agents of the Scientific, Criminal and Criminalistics Investigations Corps (CICPC) raided the home of an official from the Ministry of Housing and Habitat, and confiscated his personal computer and mobile phone. Presumably, the official had been detained under suspicion of having committed computer crimes by placing a video on the YouTube platform showing the minister of Housing and Habitat threatening to fire workers who are government opponents. The official was transferred to the Computer Crimes Division, where he was detained throughout the day. He was finally freed without being charged.\textsuperscript{1661}

On July 23, the First Trial Court of the State of Bolivar partially admitted a criminal lawsuit filed on July 15 by an entrepreneur against the president of the daily newspaper *Correo del Caróni*, David Natera, for the alleged crimes of defamation [difamación] and injury [injuria].\textsuperscript{1662} The Court also ordered precautionary measures, prohibiting the newspaper from reporting on investigations against the entrepreneur, charged by the Public Prosecutor for his alleged links to episodes of corruption at a State company.\textsuperscript{1663} According to what was reported, on July 24, *Correo del Caróni* received notification from the Court ordering it “to abstain from publishing or permitting the publication of subjective or prejudicial information issued directly or indirectly, simulated or presumed relating to citizen Yamal Mustafá, as well as referring to any other criminal proceeding that could be brought against him, that could be interpreted as damaging to his constitutional rights, such as due process, presumption of innocence, the right to honor and reputation and the right to integrity of people and families, and to objectively publish information in accordance with journalistic ethics.” On July 18, he was charged by the Public Prosecutor as “immediate cooperator in the crime of embezzlement [peculado doloso propio], collusion of a government official with a contractor [concertación de funcionario público con contratista] and criminal conspiracy [asociación para delinquir].”\textsuperscript{1664}

\textsuperscript{1660} Instituto Prensa y Sociedad (IPYS). June 22, 2013. *Zulia: Ministra pidió investigar a periodista de diario local*.
\textsuperscript{1664} Ministerio Público. July 21, 2013. *Privan de libertad a empresario y tres exdirectivos de la CVG Ferrominera Orinoco por hechos de corrupción*. 
892. On August 8, the 3rd Trial Court of the Caracas Metropolitan Area fined daily newspapers El Nacional and Tal Cual in the amount of 1% of their gross revenues of 2009, due to the publication of a photograph on August 13, 2010 on the front page of El Nacional, and which was reproduced on August 16, 2010, in the daily newspaper Tal Cual, which showed images of cadavers at a morgue in Caracas. The Court also ordered both media to abstain from publishing images “of violent content, weapons, physical assault and bloody and nude cadavers.” Both media announced that they will appeal the decision.

893. On September 28, President Nicolás Maduro accused the private media of having published “war propaganda” with its coverage of shortages of certain basic products in Venezuela. Maduro had ordered the Attorney General of the Republic and the Judicial Branch to take action against private media that report on the subject: “I want to publicly request the Attorney General to evaluate special measures […] along with the Judicial Branch so that we may punish the psychological war being carried out by the written press, television and radio against the people’s food security and the economic life of the nation,” stated Maduro.

894. On September 30, the National Telecommunications Council (Conatel) began a new administrative procedure against Globovisión, this time for having disseminated a report on supposed shortages of basic goods in Venezuela. The President of Conatel, Pedro Maldonado, reported in statements to media outlets that the agency had begun an administrative sanction proceeding against the private news channel for allegedly having disseminated content fomenting unrest among the citizenry.

895. On October 10, officials presumed to be with from the Scientific, Criminal and Criminalistics Investigations Body [Cuerpo de Investigaciones Científicas, Penales y Criminalísticas] (CICPC) detained journalist Víctor Hugo Donaire, host and director at radio station Morros 89.7 FM, in San Juan de Los Morros, Guárico state, for the alleged crime of “insulting officials.” As reported, the journalist was broadcasting his radio program ‘De frente,’ when individuals presumed to be security officials detained him, without a court order, and moved him to the agency headquarters. According to the journalist’s attorney, when Donaire was detained, he was denouncing the supposed use of luxury automobiles by officials from the CICPC. The journalist was freed 48 hours after being detained and reported that he had been threatened with a criminal lawsuit in addition to being pressured about his

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journalistic activity.\textsuperscript{1670}

896. On October 10, the daily newspaper 2001 published an article on supposed fuel shortages in Caracas.\textsuperscript{1671} That day, Attorney General Luisa Ortega, announced the launch of an investigation against the newspaper.\textsuperscript{1672} According to the Attorney General, the information reported was “false” and sought to create “chaos, worry and anxiety in the collectivity.”\textsuperscript{1673} Similarly, president Nicolás Maduro affirmed that the report in 2001 constituted a “crime,” whose objective was to “sabotage the country’s system for distribution of gasoline and hydrocarbons.” Maduro referred to the owners of the media outlet as “unpatriotic and parasitic bourgeoisie against national interests,” and affirmed that “if when applying the law it becomes necessary to resort to more severe punishment, whatever that punishment may signify, let it be so. But this cannot be permitted. Society must be defended against these bandits, these criminals […]”.\textsuperscript{1674}

897. Principle 10 of the IACHR’s Declaration of Principles on Freedom of Expression, approved in 2000, establishes that “[p]ravity 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. Stigmatizing statements

898. The Inter-American Commission received information about the persistent use of stigmatizing declarations by public officials to discredit journalists, communicators and members of the opposition who express ideas, opinions or disseminate information contrary to the interests of the Venezuelan Government.\textsuperscript{1675}

899. The Inter-American Commission was informed that on March 6 employees of the Globovisión Channel filed a complaint with the Public Prosecutor regarding supposed threats by representatives of the Executive Branch against the media. “Statements by senior officials constitute an

\textsuperscript{1670} Instituto Prensa y Sociedad (IPYS). October 16, 2013 \textit{Guárico: Funcionarios policiales amenazaron con acciones penales a director de emisora y luego lo dejaron en libertad plena}.  
\textsuperscript{1671} 2001. October 10, 2013. \textit{La gasolina la echan con gotero}.  
\textsuperscript{1674} Noticias Venezuela/YouTube. October 10, 2013. \textit{Maduro sobre Diario 2001}.  
\textsuperscript{1675} Detailed information on stigmatizing statements by Venezuelan Government officials are addressed in Chapter IV, Volume I, of the IACHR 2013 Annual Report.
official discourse that incites physical and verbal attacks on the employees of Globovisión, and guarantees impunity for the aggressors”, expressed the employees in their complaint.1676

900. The Commission learned of a series of pronouncements in the course of the news reports related to the health and death of then-President Hugo Chávez. For example, in January 2013, President Nicolás Maduro, who at the time was Vice President, made a series of accusations on nationwide broadcasts (required) in which he referred to “ultra-rightwing” sectors who “have an absolutely wretched soul, absolutely wretched, and answer to anti-patriotic plans. [...] There is a very venomous minority of that ultra-right that never stops in its attack against President Chávez [...] they answer to plans from elsewhere; they are not plans to help, nor are they accompanied by any wishes for the health and life of Commander Chávez, or the wish that there be tranquility among Venezuelans. [...]”1677 The Minister of Communication and Information, Ernesto Villegas, spoke in similar terms on a national radio and television broadcast (required) in an official press release that warned the Venezuelan people “about the psychological war that the translational media network has unleashed around the health of the Head of State the ultimate purpose being to destabilize the Bolivarian Republic of Venezuela [...] to bring an end to the Bolivarian Revolution led by Chávez [...] purposes at odds with the iron unity of the Bolivarian Government and the people organized, and the Bolivarian National Armed Force around the leadership and political thought of Commander Hugo Chávez.”1678 In subsequent statements Minister Villegas reiterated that various sectors not supportive of the national government were carrying out “a psychological operation deployed to bring about intranquility in the Venezuelan people.”1679

901. On March 2, Maduro accused the daily newspapers El Universal and El Nacional of carrying out a “media terrorism” strategy and a “psychological war,” after one of the above-mentioned media re-published information on the supposed transfer of then president Hugo Chávez to the presidential residence on the island of La Orchila, due to a relapse in his health.1680

902. The President of the National Assembly, Diosdado Cabello, was reported to have made statements to a group of students who in early March 2013 had chained themselves in a sign of protest near the Office of the Executive Director of the Judiciary, warning: “Don’t even think of coming to the Military Hospital because we are not going to allow absolutely any activity of that type.” On that occasion he was also reported to have said that the private media are “the enemies of the homeland, of


the people, of the Revolution, of the Constitution” and that they should not be “[...] encouraging activities of this type because it might backfire [...] and in the face of these media who are going with the ruin of the peace in this country, with the destruction of the peace of this country, I’m going to tell them: the day that something happens here, the people know what they are going to grab on to – and I’m almost certain that the rightwing media are not going to go without visits from the people. And this is not threats, I am just trying to interpret the reality of a people that is tired, that is sick and tired of being subjected and harassed, every day, to a thousand pressures by the rightwing media with their lies [...]”.  

903. The IACHR also observes with concern the pronouncements made after the announcement of the electoral results of April 14 and the incriminating statements by President Nicolás Maduro and other State authorities. For example, on April 16, 2013, President Maduro announced publicly that “the time for definitions [had come] in Venezuela,” in particular encouraging the media to define their political affiliation and decide “who they are with [...] with the homeland, with peace, with the people, or are they going to be on the side of fascism once again [...]?” In subsequent months, the President of the Republic had made similar statements on several occasions, asserting for example that the media “are sadists of journalism and communication,” that “they celebrate [with] the feast of death,” and that “one of the challenges of the resolution is to denounce these economic groups that exercise a dictatorship complacent and complicit with corruption and with the mismanagement of the regional governments.” The National Assembly President Diosdado Cabello has made various statements in which he refers to certain opposition leaders as “fascists” and alleges they answer to the interests of other governments. In October and November 2013, insinuations continued to be made against three of the leading spokespersons of the opposition, who are depicted as a “trilogy of evil [...] who are heading up the fascist script against Venezuela, inside and outside the country.”


1685 El Nacional. September 16, 2013. Cabello: el asesino fascista de Capriles fue a EEUU a rendirle cuenta a sus amos; Sistema Bolivariano de Comunicación e Información (SIBCI). October 29, 2013. Diosdado Cabello asegura que Capriles actúa como un cobard por no ir a la marcha que convocó.

904. The IACHR highlights the accusations made by high-level authorities of the Government against the organization PROVEA. According to the available information, during the protests in Venezuela in the days following the election various authorities alleged that different Comprehensive Diagnostic Centers [Centros de Diagnóstico Integral] (CDIs) were said to have been subject to violence by the demonstrators identified with the opposition sectors. According to the official information, by April 17, 2013, at least eight CDIs had been set ablaze and others had been pillaged and vandalized.

905. On April 18, 2013, PROVEA issued a press release in which it reported “after an exhaustive search in digital media and state bulletins [...] it did not obtain any evidence concerning the Comprehensive Diagnostic Centers (CDIs) that had allegedly been set on fire by opposition partisans [...].” On April 19, PROVEA reported through its website that Minister of Communication and Information Ernesto Villegas had asked the organization about the information it had published. That same day, PROVEA issued another press release in which it reported that on the afternoon of April 19, Minister Villegas had disseminated “through his Twitter account several messages discrediting and inciting hatred” against the organization. PROVEA denounced that such messages criminalized the organization’s work on behalf of human rights and instigated “public hatred,” which is particularly serious in the context of polarization and “crisis marked by lawless expressions of violence, fanaticism, and intolerance.”

906. On April 25, 2013, the organization received a communication from the Minister of Communication and Information, which it published at its website at the request of the Minister in response to a right to reply requested by PROVEA, in which he indicated:

[... You supported, with your weak Report, the fascists who attacked the CDIs, Mercal centers, housing of the Great Mission Housing Venezuela [...] and the poor people who are the

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1687 The CDIs are care centers that are part of the social program Inside the Neighborhood Mission aimed at offering health services to the population.


1692 One of the messages published through the account @VillegasPoljakE stated the following: “It’s a shame that Provea acts like the rearguard for fascism, certifying that ‘there is no evidence’ of the excesses by the bands that attacked the people.” Ernesto Villegas P.’s Twitter account @VillegasPoljakE April 19, 2013-2:18 PM.

1693 Programa Venezolano de Educación – Acción en Derechos Humanos (PROVEA). April 19, 2013. Provea responsabiliza a Ministro de Comunicación e Información, Ernesto Villegas, de cualquier violación a la vida e integridad de nuestro equipo de trabajo. According to the information available at PROVEA’s website, on April 22, 2013, the organization sent a communication to the Office of the Minister requesting the right to reply in view of the statements he had made on a program broadcast by Venezolana de Televisión (VTV), rejecting the press release on the CDIs. PROVEA. April 22, 2013. Comunicación enviada al Ministro de Comunicación e Información, Ernesto Villegas, sobre derecho a réplica a Provea.
protagonists of this Revolution. One who attacks places that guarantee social rights [...] and murders persons who peacefully defend their social rights is no more than a fascist. And those who do not condemn those deaths, but who attempt (with a very poor Report) to downplay such acts, are accomplices of that fascist. The action of Provea helps render invisible the crimes committed by violent elements of their same political stripes, thereby favoring impunity for those crimes and constituting a form of symbolic violence against the direct victims and their family members [...].

907. The Inter-American Commission took note of the declaration by the Minister of Popular Power for Penitentiary Services [Poder Popular para los Servicios Penitenciarios], Iris Varela, on January 25, according to which the acts of violence that took place in the Penitentiary Center of the Central Western Region of Uribana were the result of reports transmitted by Globovisión and by the web page of newspaper El Impulso about a search of the center planned by the authorities for that same day. In a press release, the minister stated: “[W]e were surprised at the announcement of the search by the privately held Globovisión network, the social networks and the webpage of newspaper El Impulso, which undoubtedly constituted a detonator for the violence, as shown by the beginning of a mutiny within the Penitentiary Center hours later, during which the gang leaders attacked members of the National Guard, resulting in an unfortunate number of casualties.” As reported, the search had previously been announced by officials from the Ministry of Popular Power for Penitentiary Services. The accusation against the media was reiterated by the minister at a press conference on January 26, where she announced the clearing out of the Penitentiary Center of the Central Western Region.

908. On May 27, the president of Venezuela, Nicolás Maduro, affirmed during a broadcast by Venezolana de Televisión (VT) that CNN en Español, based in Atlanta, United States, was promoting “a coup d’état in Venezuela.” Maduro accused the media of being a channel “at the service of destabilization,” that calls “openly for a coup d’état in Venezuela.” According to Maduro, CNN en Español had become “the spearhead for promoting intervention against our homeland.” After the president’s statements, CNN en Español issued a press release rejecting the accusations.

909. On September 25, Nicolás Maduro stated, with regard to journalists from the El Nacional daily newspaper: “Or they are ignorant or misinformed or perverse, manipulators, or all three things, ignorant, perverse and manipulators”. He also referred to the newspaper as “El Nazi – onal” and affirmed: “Buying El Nacional is like buying muriatic acid and breakfasting on muriatic acid every day. That’s right, it’s poison! I don’t buy it, I don’t recommend that anyone buy it either, really; not even the

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1694 On that occasion the organization indicated that “the response sent by Minister Villegas does not respond to what was requested....” Programa Venezolano de Educación – Acción en Derechos Humanos (PROVEA). April 25, 2013. Ministerio Ernesto Villegas responde a exigencias de Provea para cumplir con el derecho a réplica.


people of the opposition because if they do they will make a bad impression.  

910. The Inter-American Commission reiterates the importance of “creating a climate of respect and tolerance for all ideas and opinions.” The Inter-American Commission 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.” The Inter-American Commission additionally recalls that freedom of expression must be guaranteed not only with respect to the dissemination of ideas and information that are received favorably or considered inoffensive or indifferent but also in cases of speech that is offensive, shocking, unsettling, unpleasant, or disturbing to the State or to any segment of the population.

911. The Inter-American Commission 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.”

G. Access to public information

912. Venezuela does not have a law on access to public information, and judicial and administrative appeals that could serve the purpose of gaining access to such information have proven ineffective. In a hearing on the Situation of the Right to Freedom of Expression and Access to Information in Venezuela, held on October 31 in the framework of the 149th period of Sessions of the
IACHR, the petitioning organizations pointed to difficulties that exist in the country for gaining access to public information. PROVEA reported that government agencies do not disseminate information that they have the legal obligation to publish. For example, the organization monitored all of the webpages of the country’s ministries and found that only three have published their reports and account information which by law must be published.

Similarly, to prepare its annual report, Provea submitted 21 requests for information to state agencies, only three of which were answered. The Espacio Público organization submitted 84 requests for information from the State, and obtained only three answers, all of them denials. The organizations emphasized the difficulties that limited access to public information represents for monitoring government administration and compliance with human rights in the country.

On October 7, through Decree 458, the Government of Venezuela created the Strategic Center of Security and Protection of the Homeland [Centro Estratégico de Seguridad y Protección de la Patria] (CESPPA), a body with the functions of requesting, organizing, compiling and evaluating “information in the interest of the strategic level of the Nation, in connection with internal and external enemy activities, provided by all security and intelligence bodies of the State, and by other public and private institutions, in accordance with the requirements of the Political-Military Direction of the Bolivarian Revolution.” In a subsequent modification, published in Official Gazette 40,279 on October 24, the expression “in connection with internal and external enemy activities” was eliminated, and the words “Political-Military Direction of the Bolivarian Republic” were replaced by “President of the Republic.” The Decree establishes that the CESPPA “will be the guiding and articulating body of the working policies of the institutions responsible for Security, Defense, Intelligence, Internal Order, External Relations and any other bodies with an impact on the Security of the Nation, in order to provide timely and quality information to facilitate the making of strategic decisions by the President of the Republic and to neutralize potential threats to national interests [...].” The Center will be “a decentralized body of the Ministry of Popular Power of the Office of the Presidency and Oversight on the Governmental Administration [Ministerio del Poder Popular del Despacho de la Presidencia y Seguimiento de la Gestión de Gobierno]”, and will be under the Head of State. In the amendments published on October 24, the obligation of private institutions to provide information at the request of the CESPPA was removed from articles 8 and 10. Civil organizations have rejected the creation of the CESPPA due to the negative effects that it could have in terms of access to public information.

1704 Gaceta Oficial de la República Bolivariana de Venezuela Nº 40.266. October 7, 2013. Decreto Nº 458 que crea el Centro Estratégico de Seguridad y Protección de la Patria (Cesppa).
1705 Gaceta Oficial de la República Bolivariana de Venezuela Nº 40.279. October 24, 2013. Decreto Nº 458 que crea el Centro Estratégico de Seguridad y Protección de la Patria (Cesppa).
1706 Gaceta Oficial de la República Bolivariana de Venezuela Nº 40.279. October 24, 2013. Decreto Nº 458 que crea el Centro Estratégico de Seguridad y Protección de la Patria (Cesppa).
1707 Gaceta Oficial de la República Bolivariana de Venezuela Nº 40.279. October 24, 2013. Decreto Nº 458 que crea el Centro Estratégico de Seguridad y Protección de la Patria (Cesppa).
particularly, Article 9 of the Decree, which grants the director of the CESPPA the authority to declare “any fact or circumstance being processed [by CESPPA] to be ‘secret’, ‘classified’ or ‘partially redacted’”.

915. 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.” Furthermore, Principle 5 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.”

H. Impact on the media and confiscation of equipment

916. The Inter-American Commission was informed that on May 13, private TV channel Globovisión was sold. On March 11, in a letter to the employees of the channel, the executive vice-president of that media and one of its main shareholders, Guillermo Zuloaga, explained that the decision of selling it was partly due to the fact that “the political situation and the polarization had led the attacks to Globovisión to be increasingly stronger.” The businessman explained that Globovisión had converted itself into an “unfeasible” outlet, in financial, political and legal terms. “We are economically unfeasible, because our income no longer covers our cash needs. We are not even capable of sufficiently raising the salaries in order to compensate for inflation, and even less to compensate for depreciation. We are politically unfeasible, because we are in a completely polarized country and stand on the opposite side of an all-powerful government that wishes to see us fail. And we are legally unfeasible because we have a license that is about to expire, and no indication it will be renewed,” the former director of the channel said in the letter. Previously, on February 20, Globovisión issued a press release accusing the government of sentencing the channel “to death” by presumably excluding it from the new system of Open Digital Television [Televisión Digital Abierta] (TDA). The TDA project means that the television channels must change their broadcasts from analog to digital technology. According to Globovisión, on not being a part of the project and left out of the technological transition, the channel would end up compelled “to end its free to air broadcast transmissions whenever the government should declare the extinction of the analog signal. Globovisión is not capable of digital broadcasting, as it

1709 Gaceta Oficial de la República Bolivariana de Venezuela Nº 40.279. October 24, 2013. Decreto Nº 458 que crea el Centro Estratégico de Seguridad y Protección de la Patria (Cesppa).

1710 Espacio Público. October 25, 2013. Modificaron decreto que crea el Cesppa.

1711 Globovisión. March 11, 2013. Carta de Guillermo Zuloaga a los trabajadores de Globovisión: “Son mi mayor preocupación”.


was discriminated against and excluded from the official process.”¹⁷¹⁴ According to the available information, Globovisión was involved in at least eleven administrative proceedings that had been filed against it.¹⁷¹⁵

917. A consequence of the sale of the television station Globovisión was the termination of opinion shows and the departure of journalists who were independent of the government, and who directed or hosted shows critical of the government such as journalist Ana Beatriz (Nitu) Pérez Osuna.¹⁷¹⁶ Before she had to leave the TV station, journalist Pérez Osuna had urged the TV station continue to do investigations into corruption of persons close to the government and the new owners of the TV station.¹⁷¹⁷ Regarding these facts, the attorney who represents Corpomedi os GV inversiones, C.A. (Globovisión) presented a communication to the Office of the Special Rapporteur in which he expressed the “profound, absolute and categorical rejection of the false accusations” made by the journalist Pérez Osuna. Further, he indicated that the media outlet “continues being an independent channel committed to the correct exercise of freedom of expression.”¹⁷¹⁸

918. In May, the cable signal of channel ATEL Televisión de Venezuela was suspended for some TV services. According to the information received, the suspension of the signal was linked to pressure allegedly exerted by employees of the National Commission of Telecommunications (CONATEL). These pressures are said to be related to ATEL TV negotiations with Grupo Sexto Poder, which was interested in buying shares in the channel.¹⁷¹⁹ At the root of this situation, on June 6, the president and editor of Grupo Sexto Poder, Leocenis García, began a hunger strike in front of the CONATEL office as a protest against the suspension of the signal. Presumably, officials of the Bolivarian National Guard detained him and transferred him to a detention center.¹⁷²⁰ On June 7, the journalist was allowed conditioned release and restarted the hunger strike, which lasted for several days, at the office of the Organization of American States in Caracas.¹⁷²¹ On June 12, the Special Rapporteur’s Office


¹⁷¹⁷ Information presented by journalist Ana Beatriz Pérez Osuna to the Office of the Special Rapporteur.


sent a letter to the State of Venezuela requesting information on the suspension of the signal of the channel **ATEL Televisión de Venezuela** for some cable TV services, and on the detention of journalist Leocenis García.

919. Since early August, the newspapers of Venezuela, particularly local newspapers, have faced difficulties obtaining newsprint in order to print their papers, and the situation affected their circulation. The scarcity was due to the fact that for many months newsprint suppliers had not received the “non-national production” certification issued by the Ministry of Light Industry and Trade [*Ministerio de Industrias Ligeras y Comercio*] (Milco), which ended up preventing them from importing paper.\[^{1722}\]

920. According to the accounts of the press media, the periodicals *El Sol* from Maturín (state of Monagas) and *Antorcha* from El Tigre (state of Anzoátegui) were among the daily newspapers that had to pause their circulation due to the lack of newsprint.\[^{1723}\] The newspaper *Versión Final*, from Zulia state, was not published from July 27 to August 11, due to difficulties in purchasing newsprint.\[^{1724}\] According to Rogelio Díaz, spokesman of the Regional Press Block of Venezuela, by late August, five other newspapers were out of print due to the lack of paper: *El Caribazo*, *La Hora* and *El Caribe* from Nueva Esparta, and *Los Llanos* and *El Espacio* from Barinas.\[^{1725}\] On September 4, at least 12 employees of the newspaper *El Sol* from Maturín were fired after the newspaper had to make cuts in its staff because it stopped circulating in printed form.\[^{1726}\] On September 8, the newspaper *La Nación*, based on San Cristóbal, state of Táchira, reported the difficulties it was facing to obtain newsprint from its suppliers, and said that it was about to make cuts in its printed edition. The *Diario Católico* also reported difficulties to obtain paper and other materials for its production.\[^{1727}\] The *Diario de Sucre*, based on Cumaná, state of Sucre, also faced difficulties to obtaining newsprint and other materials, and did not go on to print on September 11 and 12.\[^{1728}\] On September 29, the newspaper *El Impulso* published an editorial informing its readers that starting on October 1, the format of its publication would change due to the difficulties obtaining paper. It explained in its editorial: “[i]t has been very difficult to meet the Ministry of Industry requirements to activate the currency exchange request in CADIVI. One of the steps, which are still pending, consists in obtaining a certification that the newsprint is not produced domestically. Although this is obvious, the process is taking months – wasted, costly months. The deadlines run out and commitments persist, but there is no response from the government.”\[^{1729}\]

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1725 Instituto Prensa y Sociedad (IPYS). August 24, 2013. *Cinco diarios están fuera de circulación por falta de papel*.


to purchase paper.\textsuperscript{1730} On October 28, the private newspaper \textit{De Frente}, based on the state of Barinas, stopped circulating due to the lack of newsprint.\textsuperscript{1731}

921. In September, four radio stations of the state of Amazonas were taken off the air by the National Commission of Telecommunications (CONATEL). On September 12, the station \textit{La Voz del Orinoco 98.5 FM} was closed.\textsuperscript{1732} The Minister of Tourism of Venezuela is reported to have stated in a public event that the station was “openly calling for a rebellion,” and that it was “an illegal radio station without any type of permission, without a license, without the right to use the radio spectrum and even less to call for confrontations among the Venezuelans.”\textsuperscript{1733} Likewise, on September 13, the stations \textit{Chamanika 101.1 FM} and \textit{Deportiva del Sur 99.9 FM} were closed, allegedly due to the lack of permission to operate during the day. On September 21, the equipment of radio station \textit{Impacto 97.5 FM} was confiscated.\textsuperscript{1734} Employees of the stations alleged that the operations were due to the station’s editorial stance, and to the coverage they had made of conflicts in the region. In particular, the closings took place when the stations were covering a conflict between the national Government and the state Government regarding the management of Gran Hotel Amazonas.\textsuperscript{1735}

922. 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.”

I. Internet and freedom of expression

923. The online newspaper \textit{Diario de Cuba} informed on its website that since January 14, the users of CANTV, a State telecommunications company of Venezuela, were having difficulties accessing it. Customers of other private Internet providers also warned the publication about problems of accessing it.\textsuperscript{1736}


\textsuperscript{1731} Instituto Prensa y Sociedad (IPYS). October 30, 2013. \textit{Barinas: Por falta de papel dejó de circular diario local}.

\textsuperscript{1732} Instituto Prensa y Sociedad (IPYS). September 13, 2013. \textit{Conatel incauta equipos y saca del aire a tres emisoras en el estado Amazonas}.

\textsuperscript{1733} Reportero 24. September 14, 2013. \textit{AMAZONAS: Gobierno la cierra emisora de radio por llamar “a la rebelión”}; La Patilla/EFE. September 13, 2013. \textit{Gobierno cierra emisora Voz del Orinoco por “llamar a la rebelión”}.


\textsuperscript{1735} Espacio Público. September 30, 2013. \textit{Cierran y confiscan equipos de tres emisoras en el estado Amazonas}; La Patilla/EFE. September 13, 2013. \textit{Gobierno cierra emisora Voz del Orinoco por “llamar a la rebelión”}.

924. Starting on March 10, the web portal Radionexx, an internet radio station based in Miami, USA, lost access to the Venezuelan users of the CANTV Internet service, the State phone company and main provider of internet services of the country.\textsuperscript{1737}

925. On April 14, there was a nationwide momentary interruption of Broadband Internet Access (BIA), which is provided by the State telecommunications company CANTV, the main provider of the country. Furthermore, starting on that date, access from abroad was blocked to the web page of the National Electoral Council (CNE), the country’s main electoral body. The Vice-President of the Republic and Minister of Science and Technology, Jorge Arreaza, explained that the measures were taken to protect the webpage of the National Electoral Council immediately after receiving threats of hackers from abroad: “A group of hackers from abroad announces a possible hack of the CNE webpage. The coordination with the CNE is immediately taking place, and to protect the webpage, it is decided to prevent the access from abroad; while national access remains. Any Venezuelan may have access to the CNE webpage after the issuance of the bulletin, and will have access to the electoral results.”\textsuperscript{1738}

J. Other relevant situations

926. On January 6, employees presumed to be part of the National Bolivarian Intelligence Service [Servicio Nacional de Inteligencia Bolivariano] (Sebin) burst into a house and confiscated the computers of a citizen accused of publishing information on the health of the President on Twitter.\textsuperscript{1739}

927. The Inter-American Commission became aware of the decision of the National Electoral Council of April 5, 2013, to file an administrative inquiry procedure on electoral propaganda against the organization A.C. Ciudadanía Activa.\textsuperscript{1740} The inquiry was about the dissemination, on April 4, of a message entitled “Vote as You Please” [“Vota Como Quieras”], promoting voting during the presidential elections scheduled for April 14.\textsuperscript{1741} The investigation aimed at determining “those potentially responsible for the unlawful administrative act pursuant to Article 75, item 6\textsuperscript{1742} of the Organic Act of Electoral Processes, and Article 204 item 6\textsuperscript{1743} of the General Regulation of the Organic Act of Electoral Processes.”

\textsuperscript{1737} Instituto Prensa y Sociedad (IPYS). March 10, 2013. Venezuela: Bloquearon acceso a portal de estación de radio por Internet.


\textsuperscript{1742} Consejo Nacional Electoral. Ley Orgánica de Procesos Electorales [“Organic Act of Electoral Processes”]. “Article 75. Electoral advertising will not be allowed that: [...] 6. Is contracted or undertaken by private individuals or legal entities other than those authorized by the candidates”

\textsuperscript{1743} Consejo Nacional Electoral. Reglamento General de la Ley Orgánica de Procesos Electorales [“General Regulation of the Organic Act of Electoral Processes”]. “Article 204. Electoral propaganda is not allowed that: [...] 6. Is contract or undertaken by private individuals or legal entities other than those authorized in conformity with the present Regulation.”
Processes, regarding the prohibition of electoral advertising contracted or undertaken by private individuals or juridical entities, other than the advertising authorized by the candidates (…).” Within the context of the administrative procedure, the National Electoral Council prescribed a preventive measure to suspend the dissemination of the message in the social media while the administrative inquiry was being solved. According to the letter of notification sent on April 5 to Globovisión, the preventive measure was prescribed pursuant to Article 90 of the Organic Act1744 and to Article 227 of its Regulations,1745 and orders “the express prohibition of its subsequent dissemination in any other media outlets, while the present Administrative Inquiry is being definitively resolved.”1746 For its part, the organization Ciudadanía Activa indicated that the institutional messages comply with the Organic Act of Electoral Processes inasmuch as they “promote participation and reinforce in the citizens their right to the full exercise of voting without any fear that might encroach upon their free elections.” They do not call for voting on any particular candidate. The organization announced its intention to present an appeal of constitutional protection and an interim protective measure to the Supreme Court of Justice.1747 On April 10, 2013, the Special Rapporteur’s Office sent a letter to the Government of Venezuela, in conformity with article 41 of the American Convention on Human Rights, requesting information on the procedure of administrative inquiry filed against the organization Ciudadanía Activa. On April 19, the Special Rapporteur’s Office accepted a request of deadline extension from the Government of Venezuela for answering its initial request.

928. In its observations on this Report, sent to the IACHR in a communication dated December 20, 2013, the State of Venezuela indicated that the Commission “engages in generalization” and “from 1998 to the present has not been able to demonstrate that there exists even a single case of violation of freedom of expression before the Inter-American Court of Human Rights”. According to the State, “the demonstration that there in fact exists full freedom of expression in Venezuela is that no newspaper has been closed or censored, not even during the days of the coup of April 11, 2002, and not one single journalist has been detained for having exercised his or her right. Such freedom of expression

1744 Consejo Nacional Electoral. Ley Orgánica de Procesos Electorales [“Organic Act of Electoral Processes”]. “Article 90: The National Electoral Council, in the course of the administrative procedure, including its initial act, in the fulfillment of its functions or at the request of a party, may prescribe the following preventive measure: Order the media outlet, in accordance with the case, to suspend or immediately withdraw electoral advertising that violates the obligations established by this Act.

Once the preventive measure is agreed on, the alleged violator and other parties involved in the procedure that may be directly affected by the measures, may oppose them orally or in writing within five working days after the date of its notification. In the case of an appeal, a period of five working days will be granted for bringing any elements they consider pertinent for their defense, along with a period of five working days for presenting the proofs. After this period, the decision will be reached through a well founded decision within the next five working days.”

1745 Consejo Nacional Electoral. Reglamento General de la Ley Orgánica de Procesos Electorales [“General Regulation of the Organic Act of Electoral Processes”]. “Article 227. The National Electoral Council, in the course of an administrative procedure, including its initial act, in the fulfillment of its functions or under the request of a party, may agree, among other preventive measures, to suspend or withdraw electoral advertising from social media outlets that would presumably violate the obligations established by the Law.

The Commission of Political Participation and Funding may order the suspension or withdrawal of electoral advertising that presumably violates the obligations established by this Regulation, when they are regional social media outlets.”


exists in Venezuela that the complaints that the Commission receives are all based on reports that have appeared in the Venezuelan press.\textsuperscript{1748}