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 freedom of expression in the hemisphere during 2011. Its objective is to begin a constructive dialogue with the Member States of the OAS, calling attention to the reported advances as well as the problems and challenges that have required action during this period. The Office of the Special Rapporteur has confidence in the will of the OAS Member States to promote decisively the right to freedom of expression and, to that end, to publicize their best practices, report some serious problems observed, and formulate viable and practical recommendations based on the Declaration of Principles.

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

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

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

5. In preparing this chapter of its 2011 Annual Report, the Office of the Special Rapporteur generally took into account information received until November, 2011. Information regarding incidents that occurred after the date the 2011 Annual Report went to press is available in the press release section of the websites of the Office of the Special Rapporteur (http://www.cidh.org/relatoria) and the IACHR (http://www.cidh.org).

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

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

1. Argentina

A. Progress

7. The Office of the Special Rapporteur expresses its satisfaction at the conviction of former soldiers responsible for the disappearance and murder of journalist Rodolfo Walsh, who was disappeared on March 25, 1977. According to the information received, on October 26, 2011, the Oral Criminal Federal Tribunal No. 5 of the Autonomous City of Buenos Aires convicted 16 former soldiers accused of crimes against humanity in the so-called “ESMA Megatrial,” handing down sentences ranging from 18 years to life in prison for the kidnapping, disappearance, torture and murder of 86 people. Walsh, a well-known writer, investigative journalist and activist against the dictatorship, was among the disappeared journalists.¹

8. The Office of the Special Rapporteur learned of the arrest and charging of an individual suspected of murdering journalist and community organizer Adams Ledezma Valenzuela. His death took place on September 4, 2010, in a poor neighborhood in Buenos Aires. According to the information received, on May 4 the authorities arrested Cristian David Espinola Cristaldo, alias Pichu, and charged him with committing the crime of homicide. According to the information, the crime took place because Ledezma had prevented the suspect from selling drugs to minors. Argentine journalism organizations asked the authorities to investigate fully the motives behind the murder and its possible relationship with the statement Ledezma made months before dying that he would reveal the identities of well-known persons who came to the neighborhood to buy drugs. Ledezma was a correspondent with the newspaper Mundo Villa and was working on the launch of television channel Mundo TV Villa, which was going to be carried into community homes via cable. In statements given to an Argentine newspaper in June of 2010, Ledezma announced the launch of the television channel and said he intended to do investigative journalism. The Office of the Special Rapporteur has learned that the community work Ledezma did was closely linked to his journalistic work.²

9. The Office of the Special Rapporteur takes note with satisfaction of the ruling of the Third Court of the National Criminal Cassation Chamber annulling the conviction for slander issued in 1999 against Eduardo Kimel. The criminal ruling sentenced Kimel to one year in prison, suspended, and the payment of an indemnity of 20,000 Argentine pesos to the benefit of judge Guillermo Rivarola in connection with a publication in which the journalist criticized the actions of the judge with jurisdiction to hear the case of a massacre of three priests and two seminarians in 1976. The ruling is a result of a significant decision of the Argentine State, which in 2009, following a judgment from the Inter-American Court of Human Rights, moved through law 26.551


to decriminalize crimes of slander and defamation for expression that is in the public interest. Once the law was passed, the Center for Legal and Social Studies (CELS) filed a writ of review over the ruling against Eduardo Kimel before the National Chamber of Criminal Cassation and received the aforementioned ruling to acquit. The ruling ratifies the decriminalization of expression related to matters of public interest and sets an important precedent regarding the admissibility of these kinds of complaints in Argentina.³

10. The Office of the Special Rapporteur observed with satisfaction the ruling of the Supreme Court of Justice dated March 2, 2011, reiterating the State’s obligation to adopt a government advertising policy with objective and nondiscriminatory standards. The judgment upheld a 2009 ruling of the National Chamber of Administrative Contentious Federal Appeals and as a result ordered the National State “to order government advertising to be distributed among the different publications” of Editorial Perfil and Diario Perfil, which had brought the amparo action against the Media Secretariat of the Leadership of the Cabinet of Ministers.⁴ The Supreme Court ruling cited the September 5, 2007, judgment in the case of Editorial Río Negro, S.A. against the government of the province of Neuquén according to which “the withdrawing of government advertising was an indirect restriction on the freedom of the press, as it was not based on reasonable and justified standards.”⁵ The Office of the Special Rapporteur takes note of the concern in Argentina over the placement of official advertising in the media and highlights the importance of what the Office of the Special Rapporteur ordered in the aforementioned case.

11. The Office of the Special Rapporteur takes note of the August 19, 2011, ruling of the Supreme Court of Justice of the Nation modifying the Rules of the General Archive of the Judicial Branch of the Nation to “provide journalists with free access to federal court judicial cases on subjects of public interest that are found in the General Archive.” Currently, journalists must access those documents by following a long proceeding, making their work of informing the public more difficult.⁶

12. The Office of the Special Rapporteur takes note of the government’s call for bids on 220 digital audiovisual communication service licenses through 64 public tenders. According to the information received, the process will become the largest tender of free-to-air television channels ever held in Argentina. Currently, 43 free-to-air television channels are operating in Argentina. Of the total licenses to be put up for bids, 110 will be granted to the nonprofit sector, including associations, foundations and cooperatives.⁷

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⁶ Supreme Court of Justice of the Nation. August 19, 2011. Acordada No. 15/i. Expediente No. 2625-2011. Available at: http://www.fopea.org/Inicio/La_Corte_Suprema_habilita_el_acceso_de_los_periodistas_a_causas_archivadas_de_interes_public

B. Attacks, arrests and threats

13. According to information received, on December 15, 2010, Alejandro Guerrero, a photographer with the newspaper *El Ciudadano* in the city of Rosario, Santa Fe, was arbitrarily arrested by police officers, beaten and detained incommunicado for more than six hours. According to reports, several police officers had confused Guerrero with another person shortly after he witnessed several people evicted from a public space they were occupying. The incident took place after work hours and Guerrero did not have his equipment with him. The officers arrested him and took to a police station, where they beat him. When Guerrero identified himself as a member of the media, he was threatened. On being released without charges, Guerrero filed a criminal complaint and a forensic doctor confirmed the injuries. On December 16, the provincial government of Santa Fe ordered four police officers and two junior police officers connected with the arrests be removed from their positions. In May, a first instance criminal inquiry district court ordered two police officers charged for illegal harassment and humiliation.8

14. The Office of the Special Rapporteur learned of an attack on at least one visual reporter for online media outlet *Indymedia* while he was covering a police action to disburse a student demonstration in the city of Córdoba on December 15, 2010. According to the information, a police officer knocked photographer José Fernandez’s camera to the ground. When the communicator tried to pick up his equipment, several police officers threw him to the ground and beat and kicked him. At least three other photographers were also attacked during the incident. The Police Conduct Tribunal punished one officer with suspension on finding that the police action violated freedoms of expression and the press.9

15. According to information received, on May 20, 2011, security personnel of the building where the Danish Embassy is located struck visual media reporter Julián Herr, with the magazine *El Guardián*, while he was trying to take photographs to illustrate an article on gastronomy, restaurants and embassy clubs. According to the information, although Herr had informed the embassy of the work he was doing, two members of the building’s security personnel approached him, insulted him and struck him. The attack caused damage to the photographer’s septum that required medical attention. The Danish embassy condemned the attack, dismissing the possibility of any kind of prohibition on capturing images of the diplomatic mission and denying any connection with the attackers.10

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16. On October 27, a Channel 12 vehicle that was properly identified was struck by a bullet while journalist María Gracia Marín and cameraman Raúl Vicesi collected information in the Yapeyú neighborhood in the city of Córdoba. According to the information, a young man had approached the vehicle and fired on it with a pistol, without injuring the van’s occupants.11

17. The Office of the Special Rapporteur received information on a series of attacks on and threats against journalist Mario Sánchez that started in June in the city of Centenario in the province of Neuquén. According to the information, on June 19, Sánchez’s home was burglarized and set on fire days after several bottles containing flammable liquid had been thrown into the house’s yard without exploding; on June 25, a brick was thrown into the home wrapped in a piece of paper containing the text “the one who attacks the MPN. Death;” and finally, during the closing days of June the journalist received several intimidating phone calls. Sánchez is a journalist with municipal radio station Sayhuéque and is a correspondent in Centenario for radio station AM LUS. The journalist has commented to several media outlets that he does not know the origin of the threats and has not worked on any stories related to the Movimiento Popular Neuquino (MPN) party, which governs the province. The Neuquén governor condemned the attacks, offered protection to the journalist’s family and committed to collaborating with the judicial investigation.12

18. The Office of the Special Rapporteur learned of a series of alleged acts of sabotage against a number of radio broadcasters. On September 10, unknown armed individuals damaged the equipment of community radio station FM Pajsachama, in El Retiro, Santiago del Estero province, threatening the broadcaster’s staff. The broadcaster is owned by the Peasant Movement of Santiago del Estero Peasant Way (MOCASE-VC). The broadcaster suffered an arson attack in 2008.13 On December 30, an individual with his face covered threw flammable liquid on the radio station FM Estación 93.3 in Zárate, Buenos Aires province, and set it on fire. According to the information, the fire caused near total damage; however, the broadcaster was broadcasting again shortly afterward with a lower signal strength through a piece of auxiliary equipment. The attack also affected broadcaster 100.5 which has not been able to return to broadcasting.14 On October 3, several unknown individuals cut the support cables on the radio and television antenna of Norte Visión Satelital on February 20 Hill in Salta, causing it to fall and damage the equipment of another 15 broadcasters. The broadcaster reestablished its signal shortly afterwards with low-power equipment while a new antenna was installed. On September 15, the facilities of Norte Visión...


Satelital suffered an arson attack that kept the broadcaster off the air for four hours.\textsuperscript{15} The Salta provincial government expressed its support for the broadcaster and offered help for improving the security of the broadcast equipment installed on February 20 Hill.\textsuperscript{16}

19. According to information received, presumed drug traffickers threatened to kill Gloria Seco and Claudio Ruiz, hosts with Radio Ciudad in San Ramón de la Nueva Orán, Salta province, after two programs were broadcast questioning the quickness with which the authorities released individual suspected of trafficking drugs. The Office of the Special Rapporteur was informed that on September 24, a local drug dealer warned Seco that her safety and that of Ruiz were at risk. Three days later, the threat was repeated in a phone call minutes after an interview addressing the subject. The local authorities have assigned a police detail to the radio hosts’ houses and the radio station.\textsuperscript{17}

20. According to information received, in the early morning hours of November 7, unknown individuals entered the press room of newspaper La Verdad, in the Junín locality, Buenos Aires province, and set fire to the printing press control panel. At that time, nobody was in the building. The paper had to be printed in another city for 10 days while the damage was repaired. The newspaper’s management connected the attack with articles published on drug trafficking and abuse of authority in the region.\textsuperscript{18}

21. Unknown individuals insulted journalist Jorge Lanata and threw rocks at him while he was giving a press conference in a courtyard at the Universidad de Palermo on November 4 together with several colleagues, including Magdalena Ruiz and Gabriel Michi. According to the information received, when the journalists addressed the public, insults toward Lanata were heard for his connection with the newspaper Clarín and later several rocks fell on the audience.\textsuperscript{19}

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

23. The Office of the Special Rapporteur received information on hostile comments made by senior government officials toward journalists and media. On October 31, former economy


minister and vice president-elect Amado Boudou accused newspapers Clarín and La Nación of “permanently (...) creating hostile environments” and called both media outlets “enemies of the government and enemies of Argentine interests,” in an interview given to Radio Continental on the media’s criticism of the government over efforts to decrease demand for dollars.20

C. Impediments to the distribution of newspapers

The Office of the Special Rapporteur was informed of a series of incidents in which private parties blocked the entrances and exits to buildings where the newspapers Clarín and La Nación are printed, obstructing the newspapers’ circulation. According to reports, the blockades carried out by union organizations took place on December 13 and 14, 2010, January 15, January 28, and March 27, 2011.21 While the companies claimed the protests were part of a campaign of harassment against the newspapers for their criticism of the government, the authorities expressed that the incidents were the result of an internal labor conflict. As a result of an amparo action brought by La Nación, on May 24, the Chief Justice of National Civil Court No. 64 handed down a restraining order that ordered the union organizations responsible for the blockades to “refrain from carrying out any ‘blockade’ and/or all other conduct that would imply blocking or obstructing the normal and regular entry and exit of people and goods to and from the printing facility of S. A. La Nación.”22 Similar rulings to prevent blockades on Clarín were issued in December of 2010.23 For its part, the government of the Autonomus City of Buenos Aires issued Necessary and Urgent Decree 2/11 punishing those who block or obstruct the operations of the media or attack or threaten its directors, journalists, workers or delivery persons with up to 10 days in prison and fines of up to 50,000 pesos (about US $12,000 dollars).24 In response to a request for information from this Office of the Special Rapporteur, the Argentine State reiterated its respect for freedom of expression and the press reflected in reforms like the one concluded on November 28, 2009, decriminalizing slander and defamation when matters of public interest are at issue. The State indicated that the incidents in the printing facilities of Clarín and La Nación originated from a union dispute, that the blockades did not prevent copies of the newspaper from going out for delivery, and that the State respects the right to assemble, and therefore avoids using repressive methods against social protests.25


25. On April 3, a blockade by newspaper delivery people obstructed the distribution of the newspapers *La Voz del Interior* and *Día a Día de Córdoba*. According to the information, the group of delivery people positioned themselves in the exits and entrances of the building where the newspapers are printed. Intervention by the authorities was able to lift the blockade by midday; however, according to the information received, close to 70% of the day’s edition was not distributed. The protest was based on the delivery peoples’ complaints over print run delays that made their job more difficult.\(^{26}\)

D. Prior conditioning

26. At the time this report went to press, a bill from the Executive Branch submitted in 2010 that proposes declaring the production, commercialization and distribution of newsprint to be in the public interest is still being processed in Congress.\(^{27}\) As this office indicated in its 2010 report, issues related to newsprint are of such importance for the inter-American system that Article 13 itself of the American Convention establishes 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. 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 regime must be defined by the legislative branch, with special attention given to the obligation to prevent the existence of abusive government or private sector controls. In particular, it is important to take into account that the pretext of regulating monopolies cannot end up creating a form of intervention that allows the State to affect this sector in any way other than to prevent the concentration of property and control of production and distribution of this input and to facilitate free and competitive paper production. The Office of the Special Rapporteur hopes that given its notable importance for the exercise of freedom of expression, the matter mentioned herein is resolved in keeping with international standards on the subject.

27. The Office of the Special Rapporteur was informed of concern among private sector media with regard to the absence of established standards for placing government advertisement and the increase in the budget for this advertisement, which in 2010 rose to 1.225 billion pesos, 47.7% higher than the previous year.\(^{28}\) However, with regard to this, on March 2, 2011, the


\(^{27}\) According to the bill passed in committee, the production of paper for newspapers would be considered “in the public interest,” an “equitable final price” is established for all domestic newspapers, and a regulatory body is created under the Executive Branch. Also, the bill mandates that no company that holds more than a 10% share in a print or audio-visual media company can own a company that produces newsprint. As of the publication deadline of this report, the recommendation by the Commission has not been addressed by the Chamber of Deputies. Honorable Chamber of Deputies of the Nation. Bill to declare the production, commercialization and distribution of newsprint in the public interest. File 7381-D-2010. Published in Parliamentary Proceeding No. 150. October 7, 2010. Available at: (Proyectos-Búsqueda general) http://www.diputados.gov.ar/; Inter-American Press Association (IAPA). October, 2011. *Information by Country: Argentina.* Available at: http://www.sipiapa.org/v4/det_informe.php?asamblea=47&infoid=819&idioma=us

Supreme Court of Justice had already handed down a ruling reiterating the State obligation to adopt a government advertising policy that is nondiscriminatory and uses objective standards.29

28. The Office of the Special Rapporteur was informed that radio broadcasters FM Norte and FM Futuro, in Pampa del Infierno, Chaco province, were searched and had their equipment confiscated on December 30 and 31, 2010, in compliance with an order issued by a justice of the peace in Pampa del Infierno. In addition, on December 31, Claudio Herrera - the owner of FM Norte, and Raúl Gerardo Abregu, an employee of FM Futuro, were arrested after they tried to go back to broadcasting. They were both released on January 3 and 4, 2011. The court order was based on an application of the Misdemeanor Code of the province of Chaco, which punishes those who distribute false information or information that “it is unfair to a person or institution” with jail time of up to 120 days. The action against the broadcasters took place after they insisted they knew the source of special funds received by the Pampa del Infierno Municipality.30 On February 17, a judge in Campo Largo overturned the measure issued by the judge in Pampa del Infierno and ordered the equipment returned.31

29. On September 15, National Criminal Economic Court No. 4 asked newspapers Clarín, El Cronista, La Nación and Ámbito Financiero to provide the names, addresses and telephone numbers of the journalists who had published articles in those newspapers from 2006 to the present on inflation indices in Argentina that differed from the numbers provided by government agencies. In addition, the court asked the newspapers to report if whether during that same period of time they had invoiced spaces for two people and the company being investigated by the State for publishing inflation figures that differed from the ones published by the government.32 The Office of the Special Rapporteur takes note of the important controversy sparked by this decision regarding the exercise of the right to freedom of expression. On one hand, some organizations, after emphasizing the importance of protecting the confidentiality of their source, argued that the judge in the case is investigating the crime of speculation via false news items and thus ordered certain newspapers to report if companies that had provided them with economic indicators different from the ones the government provides had paid for the publication of certain information. In this sense, they indicated that no legal provision excuses journalists from testifying as witnesses.33 On the


30 Article 59 subparagraph G) of the chapter entitled “misdemeanors against public reputation” of the Misdemeanor Code of the province of Chaco establishes that: “They will be punished with up to 20 days in jail or cash fine equivalent to up to 20 monthly minimum wages, food and transportation those G) who, through through the written, oral or televised media distribute false news items to the population on some fact or circumstance tending to be unfair to a person or institution, as long as it is not qualified as a crime.” Chamber of Deputies of Chaco. Republic of Argentina. Law 42019. Misdemeanor Code. Available at: http://legislatura.chaco.gov.ar/InformacionLegislativa/datos/constitutivo/ley/ley15060000. DOC; Argentine Journalism Forum (FOPEA). January 18, 2011. Judge uses Misdemeanor Code to order searches and arrests at two broadcasters. Available at: http://www.ifex.org/argentina/2011/01/18/pampa_del_infierno/es/


other hand, other organizations questioned the court summons. According to them, these are unnecessary investigations and summonses that should be approached by making the official inflation indices as transparent and trustworthy as possible.\textsuperscript{34} In this regard, the Office of the Special Rapporteur considers it important to recall that all investigations must respect source confidentiality as an essential guarantee for the free exercise of journalism, as well as the obligation to respect the distribution of information even when it is offensive or contrary to the interests of public servants and the obligation of the media to submit itself to strict ethical standards that can in no case be imposed by the State.

E. Access to information

30. The Office of the Special Rapporteur observes with concern that during 2011, the Chamber of Deputies neither discussed nor voted on the Access to Information Act, which had been passed by the Senate in September of 2010.\textsuperscript{35}

31. According to information received, the government of the City of Buenos Aires did not respond to a request submitted by a nongovernmental organization for information on spending on government advertising between January and May of 2011. According to the information, as of the expiration of the legal deadline to respond, the city government had not requested the deadline extension provided for in the law regulating access to public information and maintained its silence. The petitioner organization submitted an action of \textit{amparo} before the Contentious, Administrative and Tax Jurisdiction of the City of Buenos Aires.\textsuperscript{36}

32. Principle 4 of the Declaration of Principles of the IACHR establishes that, “Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.”

2. Bolivia

A. Developments

33. According to information received, on June 10 the Office of the Public Prosecutor reportedly issued Resolution 0902317 ordering the dismissal of charges against Daniel Villavicencio, of the newspaper \textit{Correo del Sur}, and independent television reporter Mario Delfín Ustarez, for the offenses of publicly instigating a crime and advocating crime. The dismissal was based on insufficient evidence. The journalists were reportedly accused of instigating acts of violence that took place in Sucre on May 24, 2008 against indigenous persons and peasant farmers.


\textsuperscript{36} Association for Civil Rights (ADC according to its Spanish acronym). July 15, 2011. \textit{Buenos Aires government does not turn over information on official advertising}. Available at: http://www.adc.org.ar/sw_contenido.php?id=836
Nevertheless, the Office of the Public Prosecutor reportedly found sufficient evidence to proceed against Roger González, director of Canal 13 Televisión Universitaria.\(^{37}\)

34. The Office of the Special Rapporteur notes that the Office of the District Prosecutor of Potosí declined jurisdiction to prosecute journalist Mario Caro Martínez, of Radio Kollasuyo, for the alleged offense of *desacato* [criminal defamation] on April 5, 2011. The criminal complaint was reportedly filed in March by Felipe Castro, the former Secretary of the Environment of the departmental government of Potosí, after the journalist published information about alleged irregularities in that secretary’s office. According to the information available, the Prosecutor’s Office declined jurisdiction on grounds that the Press Law, according to which public servants attacked in the press must bring their claims before a Press Jury and not before a regular court, is fully in force.\(^{38}\)

**B. Assaults and threats**

35. The Office of the Special Rapporteur learned of the violent death of journalist David Niño de Guzmán. According to the information received, the journalist had disappeared on the night of Tuesday, April 19, when he left his apartment after having received a phone call. His body was found on Thursday, April 21 in a riverbed in La Paz, destroyed by an explosive charge. David Niño, 42, was the News Editor at *Agencia de Noticias Fides*, a media outlet affiliated with the Company of Jesus, of the Catholic Church in Bolivia. He had worked for over 15 years with various Bolivian media, such as *Presencia, Última Hora, La Razón* and *El Diario*.\(^{39}\) The State informed the Office of the Special Rapporteur that the government of President Evo Morales had reportedly ordered an exhaustive and immediate investigation of the tragic incident.\(^{40}\) On August 8, the Office of the Public Prosecutor requested that the case be closed. It considered the journalist’s death to be a suicide, based on the examination of the evidence gathered and the forensic reports.\(^{41}\) However, the


\(^{40}\) Communication from the Permanent Mission of the Plurinational State of Bolivia to the OAS. April 28, 2011. OEA-CIDH-083-11.

companion of David Niño requested that the investigation be reopened. The Prosecutor’s Office reportedly denied the complaint; however, if there is any new evidence in the case within one year, it may be reopened.

36. The Office of the Special Rapporteur received information about several assaults carried out against journalists while they covered social protests. On April 15, in Apacheta, on the Altiplano 20 kilometers from La Paz, a group of journalists were reportedly beaten by police officers and protesters during their coverage of confrontations between teachers and the police. According to reports, police attacked cameraman Israel Gutiérrez of Red Uno; cameraman Carlos Saavedra of Bolivisión; and Henry Ponce, a photographer from the newspaper Página Siete. The first two reportedly had their equipment destroyed, and Ponce—who was allegedly struck with the butt of a rifle—was reportedly forced to turn over two photographic memory cards containing hundreds of images. The protesters, for their part, reportedly attacked cameraman Vladimir Rojas of Universal de Televisión, and photographer Juan Mamani Karita, of AP (the Associated Press), whose photographic equipment they allegedly stole and destroyed. On April 19, Vice President Álvaro García Linera apologized for the physical and verbal police attacks on the media workers.

37. On January 18, two municipal employees of the city of El Alto reportedly struck journalist Rosío Flores of El Diario of La Paz, when she sought information regarding an alleged irregular act that took place in the municipal council. Following this attack, the newspaper filed a criminal complaint of assault. On February 14, milk producers reportedly assaulted José Rocha, a photographer for the newspaper Los Tiempos, Tele C journalist Verónica Sarmiento, and Red Uno cameraman Marcelo Dalence, while they were covering a protest across from a milk processing plant in Cochabamba. In Lomas de Andalucía, Cochabamba, on March 6, alleged squatters reportedly kicked and hit with sticks and stones at least five journalists and media workers from the newspaper Los Tiempos and from the television stations Red Uno and Univalle.
38. The Office of the Special Rapporteur was informed of several assaults on journalists from state and private media on September 25 and 28, during the coverage of the indigenous march against the building of a highway that would cut through protected parkland. As stated in the reports received, at least a dozen media workers were reportedly assaulted, threatened, or intimidated, in some cases by protesters and in others by police officers. Laura Ibáñez, Franco Colchari, David Alanoca and Raúl Crespo, of the state-run Canal 7, were reportedly beaten by opponents of the Government, while Bernabé López, of the PAT television network, Ramiro Amaru, of Radio Fides and reporters from the Confederation of Indigenous Peoples of Bolivia were reportedly intimidated and physically pushed away from the scene by police. In addition, César Tamayo, of Radio Fides; Jorge Figueroa, of the Erbol network, and photographer Samy Schwartz were reportedly assaulted by protesters who attempted to block the march.48

39. The Office of the Special Rapporteur learned that journalist Carlos Torres reportedly received death threats on January 3 and January 9 in the city of Sucre. Torres is a correspondent for Radio Panamericana, and the Secretary General of the Federation of Press Workers' Unions of Chuquisaca. The intimidating messages were reportedly related to Torres’ organization of protests against two articles of the Law against Racism and All Forms of Discrimination. The journalist reported the threats to the police and the authorities promised to thoroughly investigate the calls and messages.49

40. According to information received, journalist Mónica Oblitas reportedly received numerous anonymous threats beginning in April with telephone calls, text messages, and emails, after publishing an investigative piece in the newspaper La Prensa on April 3. The article exposed the alleged sale of false forensic certificates to individuals who were the alleged victims of violent acts.50

41. The ninth principle of the IACHR’s 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


49 On January 3, the journalist received a text message that read: “Death. If you keep lying and saying that you have gathered 1 million signatures, I’m going to pay a chorro [criminal] to pump you full of lead. Watch out, liar.” The January 9 messages said: “If you’re still talking to the media about the regulations to the Anti-racism Law, you had better shut up, because your death is near;” “Death. I’m going to kill you with a cap to the head. Don’t complicate your life. It’s better you resign as a leader of the sell-out press.” La Patria. January 14, 2011. Periodista presentó denuncia en la Fiscalía por amenazas de muerte. Available at: http://www.lapatriaenlinea.com/?nota=55129; Correo del Sur. January 12, 2011. Amenazan de muerte a periodista de Sucre. Available at: http://correodelsur.com/2011/0112/34.php

state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

C. Arrests and judicial proceedings

42. On January 17, judicial authorities reportedly ordered the arrest of journalist Luis Zabala Farell, for allegedly using the radio station *La Voz del Pueblo* to incite a group of residents to attack the police post of Minero in Santa Cruz de la Sierra on January 6. According to reports, the journalist turned himself in voluntarily to the police to explain what happened and to face charges of attempted murder, public instigation to commit a crime, criminal conspiracy, and aggravated robbery; nevertheless, an investigating judge ordered his pretrial detention because he was considered to be a flight risk. On April 14, the journalist was granted conditional release, but was prohibited from speaking about the case. A court of first instance acquitted Zabala of all of the charges, and on September 26 the acquittal was affirmed on appeal.51

43. The Office of the Special Rapporteur received information about several accusations of *desacato*. On July 18, journalist Richard Romero Cossío was reportedly arrested in La Paz and charged with *desacato* for producing and selling a video entitled “The trade union dictatorship” about the Bolivian president’s background as a social leader. According to the information received, a magistrate’s court for criminal matters reportedly set the journalist’s bond at 5,000 bolivianos (US $750) and granted supervised pretrial release. The terms of release required him to report to the court once a week, and prohibited him from voicing “defamatory words that may denigrate the character of the president and other authorities.”53 The Criminal Code of Bolivia imposes a term of imprisonment ranging from one month to two years against any person who “through any medium, libels, slanders, or defames a public servant in the performance of his duties or as a result thereof.”54 In November, a bill was introduced to decriminalize the offense of *desacato*.55

44. According to the eleventh principle of the IACHR’s Declaration of Principles on Freedom of Expression “Public officials are subject to greater scrutiny by society. Laws that penalize

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offensive expressions directed at public officials, generally known as ‘desacato laws,’ restrict freedom of expression and the right to information.”

45. According to information received, on July 11, in the city of Cobija, the departmental capital, two public servants from the office of the governor of Pando reportedly confiscated 2000 copies of issue number 22 of the newspaper *Sol de Pando*, which contained information critical of the governor; they also reportedly intimidated the newspaper’s circulation manager. Legal counsel from the governor’s office reportedly explained that the two public servants had taken the copies in order to try to distribute them themselves, as both had ties to the newspaper. The publication denied the government’s version of the events, demanded that the governor’s office return the copies, and reported the confiscation to the National Ombudsman, the justice system, and journalistic organizations.

D. Legislative reforms

46. On January 5, the Government issued an executive order approving the regulations to the Law against Racism and All Forms of Discrimination, which provide for the suspension of media outlets that disseminate racist ideas. The suspension period ranges from 10 to 360 days depending on the degree and repercussions of noncompliance with the Law. The maximum period of suspension would apply only in the case of repeated recurrence, on three or more occasions. The regulations did not include the possibility of permanently shutting down a media outlet. The regulations specify that racist and discriminatory messages do not give rise to liability on the part of a medium when they are published or disseminated as part of a news report without there being any defense of or praise for acts of racism, or when they are the result of third-party expressions broadcast on live programs or programs in which there is public participation, in which case the media outlet must caution the public to refrain from using such expressions. A media outlet will not be liable when a racist expression is uttered on independent paid programming, but it has the obligation to issue a warning for the infraction and prevent it from being repeated. The regulations additionally require the media to bring their internal rules into line with the “recognition [of, and] respect for differences, and the promotion of principles, values, and standards to eradicate racist...”


The Office of the Special Rapporteur considers the progress made through this regulatory order to be essential. Also, it finds that it would be appropriate for those provisions to be given the force of law, in order to ensure their stability and status. In this respect, in its last annual report, the Office of the Special Rapporteur noted that some provisions of that Law “are of concern” and that it was necessary to create the essential legal safeguards to satisfy both the right to equality and nondiscrimination and the right to freedom of expression. In addition, the Office of the Special Rapporteur finds it important to clarify the system of penalties in order to ensure proportionality in the event that they are imposed.

The Office of the Special Rapporteur learned of the May 26 approval by a majority of the House of Representatives of the amendments to Article 82 of the Electoral System Law. The amendments repealed the provisions according to which candidates were prohibited from giving interviews to the media or expressing their opinions in “public forums, meetings, or other similar events,” and the media were prevented from disseminating any documents other than those put out by the Electoral Body, or referring to candidates positively or negatively. According to the information received, the amendment allows candidates to the Judicature Council, the Plurinational Constitutional Court, the Supreme Court of Justice, and the Agro-environmental Court to take part in interviews or events held by the media or in “public spaces,” provided that they refrain from “campaigning or propagandizing,” “directly or indirectly”; “issuing an opinion” in their favor, or for or against other candidates; or “directing or hosting radio or television programs or writing news or opinion columns in the press.” President Evo Morales proposed changing the Law, and the amendment was passed on May 27. The Office of the Special Rapporteur takes note of these important changes that respond to the need for candidates to be heard prior to elections. Notwithstanding, there are still ambiguous prohibitions like those that keep the media from “creating opinion spaces of any type with regard to the candidates.” Following the elections, journalistic

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61 Article 13(2) provides that the media are required to “promote acts of prevention and education meant to safeguard respect for the dignity and equality of all persons, through the production of their own communications products, in official and alternative languages according to the region and audience” and requires that they be disseminated, at preferential times: 1) at least 20 minutes per month on television channels; 2) at least 40 minutes per month on radio stations; 3) at least one page per month in newspapers and at least half a page per month in magazines; and 4) at least one “space” per month in digital newspapers on the Internet. (“promover las acciones de prevención y educación destinadas a precautelar el respeto a la dignidad e igualdad de todas las personas, mediante la elaboración de productos comunicacionales propios, en idiomas oficiales y alternativos de acuerdo a la región y audiencia.”). Art. 13(2), Official Gazette of the Plurinational State of Bolivia. January 5, 2011. Supreme Decree 0762 regulating the Law against Racism and All Forms of Discrimination. Available at: http://helpdesk.aduana.gob.bo:8010/publicar/documentos/CIRCULAR/gestion2011/mes1/CIR%202011-003.PDF


64 See Electoral System Law. Law No. 026 of June 30, 2010. Available at: http://bolivia.infoleyes.com/shownorm.php?id=1888. Cf. Law No. 125 of May 27, 2011. Available at: http://www.gacetaoficialdebolivia.gob.bo/normas/listadonor/10/page:2 (repealing sections (a) and (b) of Paras. II and IV of Article 82, and amending section (d))

organizations deplored the existing restrictions and the lack of information, which reportedly made it impossible to freely interview the 118 candidates for offices up for election.66

49. The Office of the Special Rapporteur takes note of the August 8 enactment of the new Telecommunications, Information Technology and Communication Law, which was passed by the Senate on July 28, and by the House of Representatives on July 22.67 According to the information received, the law provides for the allocation of frequencies among state, commercial, and community broadcasters, and the “native indigenous peoples, peasants, [and] intercultural and Afro-Bolivian communities.”68 It thus recognizes the importance of the plurality and diversity that must exist in broadcasting. Also, and consistent with the spirit of the law and with international standards, the State must establish technical mechanisms to ensure the independence and autonomy of social and community radios and channels. In this respect, in its general report on broadcasting, the Office of the Special Rapporteur has already stated, inter alia, that, “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,” that “in particular, community media are fundamental in order to guarantee effective respect for the freedom of expression and access to information of the indigenous peoples of our region,” and that, “the law must define appropriately the concept of community media, including its non-commercial and social purpose, and its financial and operating...”


independence from the state and from economic interests.”69 In addition, Article 111 of the law provides that, “in cases where the national security of the State is at risk, or there is an external threat, domestic disturbance, or natural disaster,” telecommunications and information technology operators and providers are required to provide their networks, services, broadcasts, transmissions, and reception to the State “free of charge and in a timely manner.”70 Some critics of the law have reportedly maintained that Article 111 allows for the interception of communications without a court order.71 The Special Rapporteur notes that this provision interpreted in accordance with Article 2572 of the Constitution of Bolivia establishes the judicial guarantee in question.

3. Brazil

A. Progress

50. The Office of the Special Rapporteur expresses its satisfaction at the passage of the General Public Information Act by the Senate on October 25 and its signing by President Dilma Rousseff on November 18. The act will not enter into force until May 16, 2012, in order to provide time for drafting its regulations and for Brazilian institutions to make the necessary adjustments toward compliance with the provisions of the new legislation. The bill was submitted before Congress in 2009 and was passed by the Chamber of Deputies in 2010. According to information received, among its directives, the Act establishes as a general principle that all information held by the State is public, and secrecy is exceptional. The Act eliminates perpetual secrecy for government documents, limiting the maximum time period of confidentiality for documents classified as “ultra-secret” to 25 years, with one single extension possible; it creates the category of “classified” information, that can remain secret for 15 years, and “confidential” information that can remain so for five years. Access to information on human rights violations carried out by or under the authority of public officials cannot be restricted. Any person can request access to public information, and the agency responsible must grant it immediately, free of charge, or provide a date on which the information will be turned over. The Act guarantees opportunities to appeal denials of access to information to higher instances. A Mixed Commission on Information Evaluation, comprised of ministers and representatives of the Legislative and Judicial Branches, will evaluate classification of information every four years and will be in charge of issuing final rulings on challenges to denials of access. The handling of personal information must be transparent and respect the privacy, private life, honor and image of persons. It shall be subject to a maximum period of restriction of 100 years except when consent is given by the person in question to reveal personal information or in the case of a court order, medical necessity, or statistical uses that do not reveal individual identification.


72 Article 25 provides, inter alia: “All persons have the right to the inviolability of their homes and to the secrecy of all forms of private communications, except as judicially authorized. […] Neither government authorities nor any person or body may intercept private conversations or communications through facilities that control or centralize them.” (“Toda persona tiene derecho a la inviolabilidad de su domicilio y al secreto de las comunicaciones privadas en todas sus formas, salvo autorización judicial. […] Ni la autoridad pública, ni persona u organismo alguno podrán interceptar conversaciones o comunicaciones privadas mediante instalación que las controle o centralice.”) See: Constitution of the Plurinational State of Bolivia. Available at: http://bolivia.infoleyes.com/shownorm.php?id=469
The restriction on access to personal information cannot be invoked to the detriment of an investigation into irregularities in which the person in question could be implicated. Neither can it be invoked in response to actions toward recovering relevant historical information.\(^{73}\)

51. The Office of the Special Rapporteur notes with satisfaction the application of the National Program for the Protection of Human Rights Defenders (PPDDH in its Portuguese acronym) to journalists being threatened or facing circumstances of exceptional risk. According to information received, journalist Wilton Andrade dos Santos with broadcaster Milenius FM in the municipality of Itaporanga D’Ajuda received the protection of the Protection Program after being attacked on December 17, 2010, by two unidentified individuals who threw Molotov cocktails at his home and set his car on fire. According to the information, the journalist had alleged corruption at the municipality and received death threats. According to the information received, the journalist and his family have been protected by the Program since the attack and returned to Itaporanga D’Ajuda from Brasilia on March 19 accompanied by members of the National Police trained in the Program under the auspices of the Human Rights Secretariat, the National Secretariat of Public Safety, and the Federal District Military Police, institutions that continue to follow the case.\(^{74}\)

52. The Office of the Special Rapporteur learned of the December 22, 2010, capture of a person accused of having participated in the murder of journalist Aristeu Guida da Silva, owner of the newspaper A Gazeta in São Fidélis, Rio de Janeiro state, on May 12, 1995. According to the information received, the Police arrested Isael dos Anjos Rosa in Tres Rios, Rio de Janeiro state, as a suspect in several crimes, among them the murder of the journalist. Guida da Silva was murdered after having published a series of articles on incidents of corruption in the São Fidélis municipality. Judicial investigations into the crime revealed that the murder had been ordered by the individuals denounced and that it was executed by a local extermination group.\(^{75}\)

### B. Murders

53. In 2011, the Office of the Special Rapporteur received worrying information on six cases of murders of communicators in Brazil that may be connect to the victims’ professional activities. This Office reiterates the State’s obligation to investigate the crimes, identify those suspected of having committed them, bring them to trial, and provide adequate reparations to the relatives of the victims. These actions are crucial for preventing impunity and repetition of the facts.

54. The Office of the Special Rapporteur learned of the murder of journalist Luciano Leitão Pedrosa, which took place on April 9 in Vitória de Santo Antão, Pernambuco state. According to the information received, two unidentified individuals followed the journalist to a restaurant,
where one of them shot him in the head. According to available information, the communicator was a host on the program “Ação e Cidadania” (Action and Citizenship) on TV Victória and also worked for Radio Metropolitana FM. He regularly covered police news and was known for constantly denouncing the actions of criminal groups and questioning local authorities. Family members stated that the journalist had received a number of death threats.76

55. According to information received, on May 3 the owner of Panorama Geral, Valério Nascimento, who was also a reporter for the newspaper, was murdered in the town of Rio Claro, Rio de Janeiro state. According to the information, Nascimento was found dead at the entrance to his house with several gunshot wounds. Recently, the journalist had launched a new publication, and in its latest edition he revealed a series of alleged irregularities in the public administration of the town of Bananal.77

56. On June 15, Brazilian communicator and politician Edinaldo Filgueira was murdered in the town of Serra do Mel, Rio Grande do Norte state. According to the available information, three men approached Filgueira as he was leaving work and shot him at least six times. Filgueira had been president of the Workers Party in Serra do Mel and wrote a blog on politics and the region. He had recently published an article criticizing local authorities, for which he received death threats. On July 2 and 3, authorities captured five people possibly involved in the murder and confiscated guns and ammunition that could have been used in the attack. The prosecutors responsible for the investigation have told Brazilian media that Filgueira’s publications could have been the motive for the attack on him.78

57. On July 22, journalist Auro Ida en Cuiabã was murdered in Mato Grosso state. According to information received, Auro Ida was in his car when at least one unidentified individual approached and asked the woman accompanying the journalist to get out of the vehicle. He then shot the communicator several times. José Riva, a deputy and president of the Legislative Assembly in Mato Grosso, told local media that the journalist had told him that he had been receiving threats for several weeks in connection with reports he was working on. Auro Ida was a political journalist and founder of the website Mídia News, as well as a columnist with online news outlet Olhar Direto.

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He had a long career during which he worked for the newspaper *A Gazeta*, for several radio stations and magazines, and as the communications secretary for the Cuiabá government. On October 24, the State Secretariat on Public Security in Mato Grosso called the murder a crime of passion. According to reports, the Police arrested two individuals suspected of having participated in the journalist’s murder, one of them being the perpetrator of the crime. They had allegedly been hired by the former partner of Ida’s girlfriend.

58. The Office of the Special Rapporteur was informed of the September 1 murder of Brazilian radio journalist Vanderlei Canuto Leandro. The murder took place in the city of Tabatinga, Amazonas state. According to the information received, unidentified persons riding a motorcycle fired at the journalist as he returned home that night. Vanderlei Canuto Leandro was the host of the program *Séñal Verde*, broadcast by bilingual radio station Radio Frontera, in Tabatinga, on Brazil’s border with Colombia and Peru. He was known for his allegations of alleged acts of corruption in the local municipality. This past May, the journalist filed a criminal complaint with the Public Prosecutor over the serious death threats he received, allegedly from a municipal authority.

59. On November 6, Gelson Domingos da Silva, a cameraman with TV Bandeirantes, was murdered while covering a police operation against alleged drug traffickers in the Antares favela, in Santa Cruz, city of Rio de Janeiro. According to his final recording, the cameraman was located behind a police officer participating in the operation and protected by a bulletproof vest, filming an intense firefight, when he was struck in the chest by a bullet that presumably came from one of the people the Police were pursuing. The bullet pierced the vest that he wore, and even though he was helped quickly, he died before arriving to a medical center. According to the information, the journalists and the Police were attacked in an area that minutes before had been declared safe. Likewise, the Office of the Special Rapporteur was informed of the Police’s efforts to help the wounded cameraman and protect the other journalists covering this situation of extreme risk. The authorities captured several suspects and are investigating who committed the crime.

60. Principle 9 of the Declaration of Principles of the IACHR states that, “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material

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

C. Attacks on and threats toward the media and journalists

61. On March 23, an unidentified individual fired at Ricardo Gama, wounding him in the head. According to information received, the communicator was in the Copacabana neighborhood, Rio de Janeiro, when the aggressor attacked him from an automobile. Witnesses to the attack helped Gama and took him to a hospital, where they were able to save his life. Ricardo Gama, an attorney, publishes a blog under his own name where he writes about controversial political and law enforcement topics. In posts written prior to the attack, he commented on people who provide drugs in poor neighborhoods and criticized state and local government administration. As he has recovered, Gama has continued to update his website with posts on the same topics.83

62. On January 4, the vehicle of journalist Jorge Chahad was fired on in Aguaí, São Paulo. Chahad is a press advisor to the mayor’s office and a reporter with weekly newspaper O Imparcial, where he writes on local politics and corruption.84

63. The Office of the Special Rapporteur was informed of threats and attacks suffered on January 6 by a team from RBS TV in Indaial, Santa Catarina state, while it was investigating allegations of corruption among local businessmen. According to the information, reporter Francis Silvy and cameramen Marcio Ramos and Andreu Luis were threatened with a firearm, struck and chased when they tried to interview the individuals against whom the allegations have been raised.85

64. The Office of the Special Rapporteur learned of a January 17 attack on the home of journalist Orley Antunes, director of the newspaper Morretes Noticia, in Paraná. According to the information received, unidentified individuals broke down the door of the house and tossed in a homemade bomb, which broke windows. The attack did not cause any injuries.86

65. The Office of the Special Rapporteur was informed of an attack involving shots fired at a TV Globo helicopter in Rio de Janeiro on January 24, 2011. According to the information, a


news team with the channel was covering a police operation in the city’s favelas when it was shot at. No one was injured, but the helicopter had to make an emergency landing.87

66. According to information received, journalist Víctor Soares, with Victorpress Fotojornalismo, was attacked on March 30 while covering an operation of the Federal Police in Manaos to investigate fraud in that city. An attorney suspected of participating in the scheme threatened and attacked the journalist, damaging his photography equipment.88

67. On June 3, a council member of the Paço do Lumiar municipality assaulted journalist Moreira Neto after she published articles on corruption in which the council member had allegedly participated. According to the information, the politician struck the journalist and damaged her photography equipment.89

68. According to information received, Rodrigo Rangel, a journalist and editor with the magazine Veja, was threatened and assaulted by a lobbyist in a restaurant in Brasilia on August 6. According to the information, the journalist interviewed the lobbyist to ask about allegations regarding corruption committed by public officials. The lobbyist threatened the communicator and his family, threw him against a table, struck him and took his notebook.90

69. On October 3, in Russas, Ceará state, unidentified individuals fired on the home of journalist Francisco Cidmar Ferreira Sombra, the host of political and social programs on community radio station Araibu FM.91

70. The Office of the Special Rapporteur learned of an attack on the vehicle of journalist Sergio Ricardo de Almeida da Luz. On October 5, his vehicle was struck by six shots while in front of his home in Toledo, Paraná state. According to the information, the journalist is the owner of weekly newspaper Gazeta do Oeste and was investigating an apparently unjustified increase in the personal assets of a public functionary.92


71. The Office of the Special Rapporteur learned that on March 3, a convoy of special tactical forces (ROTAM in the Portuguese acronym) vehicles of the Military Police of Goiás passed in front of newspaper *O Popular* with emergency lights and sirens on after that newspaper published information that day on a federal investigation into the existence of an extermination group involving members of that police force. According to the information received, the parade of police units was interpreted by the newspaper as an act of intimidation. According to the information, the Goiás ROTAM commander was removed from his position, ROTAM operations were suspended, and both the commander and the police officers who participated were subjected to disciplinary measures.\(^93\)

72. The Office of the Special Rapporteur learned that in January, journalist Luis Cardoso had repeatedly received death threats after publishing articles on a warrant for the arrest of the mayor of the city of Barra do Corda, in Maranhão, who had escaped the authorities. During the calls, the perpetrator of the threats warned the journalist that he knew where he lived and that he would kill him.\(^94\)

73. Principle 9 of the Declaration of Principles 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.”

D. Subsequent liability

74. The Office of the Special Rapporteur received information on an accusation submitted on June 28 to the Federal Police of São José do Rio Preto, in São Paulo state, against journalist Allan Abreu, with *Diário da Região*, for distributing information considered by law to be classified. The journalist refused to reveal the source of the information. The case originated with the journalist’s publication of two articles in May containing information from wiretaps carried out by the Police in a year-long investigation into a network of corruption. On July 18, the Federal Police of São José do Rio Preto decided for the moment to not charge the executive director of *Diário da Região*, Fabrício Carareto, who was under investigation for having authorized the publication of the articles.\(^95\)

75. Principle 8 of the Declaration of Principles of the IACHR establishes that, “Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential.”

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E. Prior conditioning

76. According to information received, the July 15 edition of the newspaper *Daqui*, in Montes Claros, Minas Gerais state, was confiscated in enforcement of a restraining order handed down by Judge Marco Antônio Ferreira of the 3ra Corte Civil de Montes Claros and requested by the mayor of the municipality. The confiscated edition published a front-page report on information on alleged acts of corruption committed by the mayor using municipal funds. The removal of the newspaper from sales points coincided with a visit that the Minas Gerais governor was making that day to the municipality. According to the information, the order to seize the newspapers was executed by that city’s police.96

77. The Office of the Special Rapporteur learned of an injunction handed down on September 2 by Appeals Court Judge Leonel Pires Ohlweiler, of the Ninth Civil Chamber of the Tribunal of Justice of Rio Grande do Sul prohibiting the newspaper *Zero Hora* and other media with the RBS group from publishing the name or image of a municipal councilperson from Dom Pedro de Alcântara on pain of receiving a daily fine of 1000 reais. The councilperson had been mentioned in articles on allegations of corruption that were being leveled and investigated by the Office of the Public Prosecutor. On appeal, the measure was overturned on September 15.97

78. According to information received, on September 6, Substitute Judge Adriana García Rabelo, with the First Instance Court of Novo Lima, Belo Horizonte metropolitan region, Minas Gerais, issued an injunction ordering magazine *Viver Brasil* to remove an article on alleged acts of corruption by the Novo Lima mayor from its print editions and the Internet. In the injunction, the judge orders the magazine “to refrain from carrying out any act that could offend the image and the honor of the petitioner in any way” and abstain from distributing the copies of editions 65 of the magazine *Viver* in the city of Novo Lima.98

79. 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.”

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F. Legal reforms

80. The Office of the Special Rapporteur learned that on November 30, the Senate passed in an initial vote proposed constitutional amendment PEC 33/2009 reestablishing the requirements that a higher education diploma must be had as a requirement for exercising the profession of journalist. The measure passed despite the fact that on June 17, 2009, the Supreme Federal Tribunal ruled that the requirement for journalists to have a diploma as a condition for the exercise of journalism activity was unconstitutional. Based expressly on the inter-American standards in force, the Tribunal found that the provision is contrary to Article 13 of the American Convention on Human Rights. Nevertheless, the new proposal was passed by the Chamber of Deputies and now by the Senate. The amendment must go to a second vote by the full Senate, but as of the publication deadline for this report, the vote had not yet been scheduled. If the Senate passes the proposal in the second vote, it will be sent once again to the Chamber of Deputies.

81. Principle 6 of the Declaration of Principles of the IACHR establishes that, “Every person has the right to communicate his/her views by any means and in any form. Compulsory membership or the requirements of a university degree for the practice of journalism constitute unlawful restrictions of freedom of expression. Journalistic activities must be guided by ethical conduct, which should in no case be imposed by the State.”

4. Canada

82. The 2010 Annual Report of the Office of the Special Rapporteur contained information about the imposition of significant limitations on the exercise of freedom of expression and the excessive use of police force against peaceful participants in the G20 Summit in Toronto, on June 26 and 27, 2010. With respect to this matter, the Office of the Special Rapporteur takes note of the report of the House of Commons Standing Committee on Public Safety and National Security of the Canadian Parliament on the events that occurred in Toronto, as well as the reports of the Ombudsman of Ontario and the Canadian Civil Liberties Association (CCLA) and the National Union of Public and General Employees (NUPGE). The Canadian Parliament report recommended a public, independent, and exhaustive judicial investigation, “with sufficiently broad terms of reference to allow it to investigate all levels of government, all decision making processes and all the events that
occurred that led to property damage, civil rights violations, and bodily harm,” and with the power to make recommendations stemming from its findings to ensure similar events are never repeated.104 The report of the Ombudsman of Ontario established that the Ministry of Community Safety and Correctional Services, based on the Public Works Protection Act, implemented and used Regulation 233/10 to reinforce security during the G20 Summit. The Ombudsman considered the regulation to be unconstitutional and maintained that it should never have been enacted.105 According to the Ombudsman, the effect of the regulation was to limit freedom of expression, and to grant police the power to make arrests without just cause and conduct unreasonable searches. The Ombudsman further noted that the public was not duly informed of the enactment of Regulation 233/10, and therefore many people were arrested simply for exercising their rights, unaware of the limits imposed by that regulation.106 Among other recommendations, the Ombudsman proposed that the Public Works Protection Act be revised or replaced, and that the powers granted to the police under this law be reviewed.107 The Ministry of Community Safety and Correctional Services of Ontario reportedly agreed to comply with all of the Ombudsman’s recommendations.108 Finally, the CCLA and NUPGE report concluded that the majority of the arrests made during the G20 Summit were “arbitrary and excessive” and recommended a joint federal/provincial public inquiry and improvements to police policy and police training.109

83. The Office of the Special Rapporteur recognizes the Canadian government’s efforts in providing the Commission with detailed information regarding the security services’ response to the 2010 G20 protests and the actions undertaken by the government to review this response. The Office of the Special Rapporteur takes note of the many proceedings initiated, both ex officio and in response to formal complaints, at the municipal, provincial and federal levels of government to examine the policing of the G20 summit. The Rapporteurship will continue to monitor these proceedings with great interest. The Rapporteurship further notes that, based on the government’s explanation of the scope of the “unlawful assembly” prohibition in Section 63 of Canada’s Criminal Code,110 it continues to share the UN Human Rights Committee’s concern regarding the practical implementation of this provision111 and its potential chilling effect on social protest.

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“the “common purpose” of the assembly does not have to be unlawful in and of itself, nor is there a requirement to show that an individual member of the assembly intended to commit an offence. Thus, an individual member of the assembly can be found guilty of the offence of unlawful assembly if the prosecution shows beyond a reasonable doubt that the person was aware that certain individuals conducted themselves in a manner as to cause, in the vicinity of the assembly,
84. The Office of the Special Rapporteur recognizes the October 19 decision of the Supreme Court of Canada in the case of *Crookes v. Newton*, which considered whether a person may be liable for defamation if his or her website links to another site containing content that defames (or is alleged to defame) someone’s character. In order to establish defamation, it must be shown that there was publication, and the Court was asked to consider whether creating a link constituted publication. The Court held that it does not, arguing that doing so would create “a presumption of liability for all hyperlinkers,” which would “seriously restrict the flow of information on the Internet and, as a result, freedom of expression.” Therefore, “only when a hyperlinker presents content from the hyperlinked material in a way that actually repeats the defamatory content, should that content be considered to be ‘published’ by the hyperlinker.”¹¹² The Office of the Special Rapporteur recalls that, “No one who simply provides technical Internet services such as providing access, or searching for, or transmission or caching of information, should be liable for content generated by others, which is disseminated using those services, as long as they do not specifically intervene in that content or refuse to obey a court order to remove that content, where they have the capacity to do so (‘mere conduit principle’).”¹¹³

85. The Office of the Special Rapporteur also took note of the decision of the Superior Court of Justice of Ontario on a motion brought in the case of *Morris v. Johnson*. The case involves a defamation suit brought by the former mayor of the municipality of Aurora based on comments posted on a local Aurora blog which criticized her work in office. As part of her lawsuit, she brought a motion asking the Court to order the known parties to reveal identifying information about an anonymous blogger(s). The Superior Court found that the former mayor is not entitled to the identifying information she was seeking because she had not established a *prima facie* case of defamation. As the former mayor had not laid out the particular statements she alleged were defamatory, the Court held that they could not determine whether her case was, on its surface, sufficient to establish defamation. The Court also noted that the bloggers in this case had a reasonable expectation of anonymity since they did not have to identify themselves in order to participate in the blog. The Court concluded that, “[i]n the circumstances of this case, where the Plaintiff has not established a *prima facie* case, the public interest favouring disclosure clearly does not outweigh the legitimate interests in freedom of expression and the right to privacy of the persons sought to be identified.”¹¹⁴

86. According to information received, on December 31, 2010, a judge of the Supreme Court of British Columbia ordered Elaine O’Connor, a reporter from the newspaper *The Province*, to identify a confidential source in order to determine the intent or malice with which that source had...

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acted. The source had been used in an article on the alleged excessive spending of a former legislator during an electoral campaign. The judge ruled that the confidentiality of the source must be protected if the motivation for providing information to a journalist is civic duty or the protection of the integrity of the government, but not if that action arises from an interest in gaining an advantage in a family dispute or a plan to personally defame or discredit an elected politician. In the judge’s opinion, knowing the identity of the source is relevant in determining the state of mind under which he or she acted. Two prior judgments of the Supreme Court of Canada, issued in 2010, had held that, “The public’s interest in being informed about matters that might only be revealed by secret sources (...) is not absolute. It must be balanced against other important public interests, including the investigation of crime. In some situations, the public’s interest in protecting a secret source from disclosure may be outweighed by other competing public interests and a promise of confidentiality will not in such cases justify the suppression of the evidence.”¹¹⁵

87. The Rapporteurship recalls that principle 8 of the IACHR’s Declaration of Principles on Freedom of Expression establishes that: “Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential.”

88. Finally, the Rapporteurship has received information about alleged difficulties in exercising the right to access to public information in Canada. According to a study published by the Canadian Journalists for Free Expression (CJFE), 44% of requests for access at the federal level were not adjudicated within the 30-day time period established under the Access to Information Act,¹¹⁶ and the average length of time for a decision on a request is 395 days.¹¹⁷ Additionally, according to the report, applicants receive all of the requested information in only 15% of cases decided.¹¹⁸

89. The Rapporteurship recalls that, in accordance with principle 4 of the IACHR’s Declaration of Principles on Freedom of Expression, “Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.”

5. Chile

90. On the subject of social protest and with regard to the student demonstrations carried out in Chile during 2011, a thematic hearing was held during the 143rd period of sessions. During that hearing, the petitioners alleged abusive use of force by police and documented their statements with a series of videos and testimony from students.¹¹⁹ For its part, the State indicated that although some violence had taken place in the context of the demonstrations in Chile, it


¹¹⁹ With regard to the hearing, the IACHR issued Press Release 87/11: IACHR Expresses Concern for Violence Against Student Protests in Chile. August 6, 2011. Available at: http://www.cidh.oas.org/Comunicados/English/2011/87-11eng.htm
guaranteed the full exercise of social protest, manifested by the authorized participation of 2 million people in protest marches during 2011, of which only some had been arrested.120

91. With regard to these facts, both in the hearing and in its communications with the State, the IACHR took note of the broad-based social participation in the demonstrations that took place in 2011 and the existing guarantees that project the freedom to hold protests, but it expressed its profound concern for the acts of violence that were reported, some of which were very serious.121 In this regard, the Commission recalled that the rights to assembly, demonstration and freedom of expression are fundamental rights guaranteed in the American Convention on Human Rights. Given the importance of these rights for the consolidation of democratic societies, the Commission has found that any restriction on them must be justified by imperative social interest. In this sense, the Commission indicated that the State can place a reasonable limitation on demonstrations in order to ensure they are carried out peacefully and it may disburse demonstrations that become violent, as long as the limitations are guided by the principles of legality, necessity and proportionality.

92. For their part, the actions of State agents must not provide a disincentive to the rights to assembly, demonstration and free expression, meaning that the clearing of a demonstration must be justified according to the duty to protect persons. Security operations implemented in this context must involve measures that are the safest and least damaging to the fundamental rights in question. The use of force in public demonstrations must be exceptional and applied only in circumstances where it is strictly necessary according to well-known international principles. Security operations carried out by the authorities must always take the higher interests of the child into consideration and take all necessary measures to ensure children are protected against all types of violence.

93. The Office of the Special Rapporteur expresses its concern over a series of attacks on and arrests of communicators carried out during police actions in the course of the large demonstrations that took place in 2011. On February 2, a journalist with online newspaper El Mostrador, Jorge Molina Sanhueza, was arrested while he was filming confrontations between Carabineros (Chile’s militarized police force) and people demonstrating against an increase in public transportation fees. According to the information, the police arrested Molina without explaining their reasons and took him to the capital’s First Precinct, where he remained for four hours until he was released with a citation from the Office of the Public Prosecutor for alleged “disturbances.”122 On February 25, Carabineros arrested journalist Patricio Mery, director of online news site Panorama News, while he was covering a demonstration against a thermoelectric energy project.123 The Office

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120 The State representative said that these numbers represent an improvement over previous years. Audio and video of the thematic hearing. Available at: http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=123&page=2

121 With regard to the hearing, the IACHR issued Press Release 87/11: IACHR Expresses Concern for Violence Against Student Protests in Chile. August 6, 2011. Available at: http://www.cidh.oas.org/Comunicados/English/2011/87-11eng.htm


of the Special Rapporteur learned of the January 13 arrest of photographer Marcela Rodríguez, with online newspaper Mapuexpress, during a demonstration in Temuco against a hydroelectric project. In a hearing held on June 22, the Office of the Public Prosecutor declined to press charges because the alleged crime did not affect the public interest.124

94. On September 8, Carabineros arrested journalist Raúl Flores Castillo, director of online media outlet Dilemas, while he was covering a day of protests in Santiago. According to the information received, he was arrested while photographing a demonstration and although he identified himself as a journalist, he was placed in a police vehicle where the images and audio he had recorded were erased. He remained in detention for six hours.125 On September 29, Carabineros arrested and beat journalist Nicolás Salazar, with the media outlets of the student Federation of the Universidad de Concepción Metiendo Ruido, while he was attempting to use a camera to record police officers as they entered the university. According to the information, the police beat and arrested Salazar, knocking down his camera and removing its battery.126 On August 4, police officers arrested Ítalo Retamal and Dauno Tótoro, producers with CEIBO Producciones, while there were recording confrontations between police and demonstrators in Santiago. According to the information, both communicators were arrested with violence, but as was recorded in a video of the incident, when the Carabineros tried to put them in a police vehicle, other journalists and protesters were able to pull them away and free them in the midst of a struggle and deployment of teargas.127

In the early morning hours of August 25, Carabineros tried violently to break into the facilities of community television channel Señal 3 in La Victoria, Santiago. According to the information received, neighbors and the channel’s employees prevented the police from entering. During the struggle, recorded in a video, several people were struck and the broadcaster’s equipment was damaged.128 On September 11, in a March in remembrance of the 1973 coup d’état, an Argentine public television news team was attacked by masked individuals while covering clashes between demonstrators and police.129 On October 6, Carabineros arrested and assaulted Panorama News

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director Patricio Mery while he was covering the arrest of a demonstrator. According to the information received, Mery repeatedly identified himself as a journalist. Upon his arrest, Mery was handcuffed, threatened and struck by a Carabinero. Two and a half hours later, he was taken to a hospital. On October 6, a Carabinero wearing a helmet head butted Gonzalo Barahona, a cameraman with Chilevisión, while he and a journalist from that channel, Luis Narváez, were reporting on demonstrations in Santiago. Narváez tried to get the attacker’s identification; he was arrested by the police and taken away in a police vehicle.

95. The Special Rapporteur emphasizes that Principle 9 of the Declaration of Principles 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.”

96. The Office of the Special Rapporteur learned of a bill seeking to regulate the exercise of social protest in such a way that it would conflict with inter-American standards on the subject. Nevertheless, as of the publication deadline of this report, the bill had not moved forward in the legislative chambers.

97. The Office of the Special Rapporteur was informed of the charges filed against Marcelo Núñez Fuentes, director of community broadcaster Radio Tentación in Paine on May 10 and against communicator Mireya Manquepillán Huanquil with radio station Kimche Mapu in Puquiñe Lumaco on November 15. They are accused of having violated Article 36(b) of the General Telecommunications Act, which establishes prison sentences for broadcasting operations that do not have the corresponding licenses. According to the information, Núñez rejected the Office of the Public Prosecutor’s offer to suspend the prosecution if he accepts the charges, does not return to broadcasting, and donates his equipment to communication schools. The plaintiffs and their...continuation
defense attorneys have argued that currently, many radio broadcasters could be charged, as regulations at the time of the events have not been established under the Community Citizen Radio Broadcasting Services Act (Law 20,433), passed on May 4, 2010. The case originated on November 9, 2010, when police authorities raided community radio stations Tentación and Radio 24, in Paine in the Santiago metropolitan area.  

98. The Office of the Special Rapporteur insists that laws on radio broadcasting must be adjusted to international standards and must be enforced through the use of proportional administrative penalties, not through the use of criminal law.

99. In the same sense, in its 2010 annual report, the Office of the Special Rapporteur expressed that “a restriction imposed on freedom of expression for the regulation of radio broadcasting must be proportionate in the sense that there is no other alternative that is less restrictive of freedom of expression for achieving the legitimate purpose being pursued. Thus, the establishment of criminal sanctions in cases of violations of radio broadcasting legislation does not seem to be a necessary restriction.” The Office of the Rapporteur recalls that legal recognition of community radio broadcasters is not sufficient if there are laws establishing discriminatory operating conditions or disproportionate penalties, such as use of criminal law.

6. Colombia

100. The Inter-American Commission on Human Rights has received information concerning the situation of the right to freedom of expression in Colombia, which included data supplied by civil society and by the State. On December 27, 2011, the Colombian State addressed memorandum MPC/OEA No.1829 to the IACHR, forwarding note DIDHD.GAIID No. 79338/1665, dated December 23, 2011 from the Office of the Director of Human Rights and International Humanitarian Law, part of the Ministry of Foreign Affairs, in which reference is made to the situation of freedom of expression in Colombia and information is provided regarding the specific cases reported to the IACHR and presented in this report.

A. Gains

101. The IACHR takes note of the passage by the Congress of the Republic of Colombia of Law No. 1426, signed by President Juan Manuel Santos on December 29, 2010, according to which in the future the limitations period for homicides of journalists, human rights defenders, and members of trade unions is extended from 20 to 30 years. In 2011, the limitations period expires in at least seven cases of journalists.
102. According to the information received, the Attorney General of Colombia, Viviane Morales Hoyos, announced that the department that handles crimes against journalists within the National Unit of Human Rights and International Humanitarian Law will be strengthened with the aim of expediting investigations into the threats that have been made against journalists. According to the information received, that department will take charge of all the cases that different offices of the Public Ministry currently handle independently. In 2010, the Office of the Attorney General had recorded some 50 complaints of threats against journalists.\textsuperscript{141}

103. Politicians Ferney Tapasco González and Dixon Tapasco Triviño were said to have been the subject of an order for preventive detention without the benefit of release in March 2009 for the assassination of journalist Orlando Sierra, assistant director of the daily newspaper \textit{La Patria}, which occurred on January 30, 2002. In its observations to the IACHR, the State reported that on July 25, charges were brought against three persons, “among them Mr. Francisco Ferney Tapasco González, who is currently incarcerated serving the sentence he was given upon his conviction for the crime of aggravated conspiracy to commit crime. However, the prosecutor dropped the case against Mr. Dixon Ferney Tapasco Triviño.”\textsuperscript{142} In its report, the State commented that “three persons have thus far been convicted” of the murder of journalist Orlando Sierra.\textsuperscript{143}

104. The IACHR learned that the Office of the Attorney General ordered the preventive detention, without benefit of release, of Jaime Arturo Boscan Ortiz, allegedly responsible for the assassination of journalist Jaime Rengifo Ravelo in 2003 in Maicao, department of Guajira.\textsuperscript{144}
105. In its observations to the IACHR, the State wrote that “the Human Rights and International Humanitarian Law Unit of the Office of the Attorney General of the Nation currently has 49 assigned cases involving crimes committed against journalists: 39 are active cases involving a total of 106 suspects, 67 persons charged and 58 in detention pending trial. Thus far, 18 convictions have been won, involving 26 persons.”

106. According to the information received, on February 24, the 23rd Municipal Court of Bogotá absolved journalist Claudia López of the criminal offenses of injuria (libel) and calumnia (slander). She was facing a complaint lodged by former president Ernesto Samper, who alleged that a column of hers published in the newspaper El Tiempo had been injurious to his honor. The judges in the case absolved her, and in so doing referenced the inter-American doctrine and case-law.

107. The IACHR learned of the decision of the 16th Criminal Law Judge of Bogotá in September 2011, who had exonerated journalists Darío Arizmendi Posada, Clara Elvira Ospina, Vicky Dávila, Juan Carlos Giraldo, and Héctor Rincón Tamayo, who had been sued by former presidential adviser José Obdulio Gaviria for the criminal offenses of calumnia and injurias after the publication of articles in June 2009.

108. The Commission recognizes the importance of the issuance of Law No. 1474 of July 12, 2011, “by which provisions are issued aimed at strengthening the mechanisms for preventing, investigating, and punishing acts of corruption and effective government oversight,” in which rules are established on expenditures for official publicity.

B. Assassination

109. On June 30, 2011, journalist Luis Eduardo Gómez was assassinated in the municipality of Arboletes. He was engaged in independent work for daily newspapers such as El Heraldo de Urabá and Urabá al Día, where he covered issues related to tourism and the environment. Luis Eduardo Gómez was known for his investigations into the management of the public resources by the local government, giving impetus to the investigation into the death of his son, and his demands that the State make gains in that investigation, as well as his role as a witness before the Office of the Attorney General in cases of infiltration of paramilitaries in the police in the region. In a communication to the Office of the Special Rapporteur, the Colombian State expressed that it “laments and rejects the homicide that took the life of Mr. Gómez, and...”
C. Attacks on and threats against media and journalists

110. In mid-February, unknown persons were reported to have thrown an incendiary bomb at the home of Rodolfo Zambrano, a journalist with the newspaper Magangué Hoy, in Magangué, which caused harm to the façade of the home. According to the information received, at the time of the attack several of his family members were in the home; none suffered any injury.151

111. The IACHR received information concerning the attack with sticks and stones suffered on March 18 by CM& correspondent Ana Mercedes Ariza, and cameraman Armando Camelo by populations in a mining zone in the municipality of California, Santander. Days later the authorities detained four suspects in the attacks which were taped on the video equipment of Cameo.152

112. On May 26, 2011, Héctor Rodríguez, a journalist with the radio station La Veterana in Popayán, Cauca, was said to have been attacked by two unknown persons who were said to have shot a firearm when he was entering his workplace. He did not suffer any injury, due to the intervention of police bodyguards who were said to have accompanied him for three months due to the situation of risk he faced.153

113. The IACHR learned of a large number of cases of threats against journalists. On December 2, 2010, journalist Ramón Sandoval Rodríguez received several calls to his cell phone; in one of those calls he was told: “the cup has spilled. You should shut up and leave Sabana de Torres, or assume the consequences. You are not the first dog we’ve killed in this town.” Sandoval relates the threat by presenting information he has published about the alleged acts of corruption in the municipal administration.154 In addition, according to the information received by the Office of the Special Rapporteur, on February 17, 2011, several Colombian non-governmental organizations received an email purportedly sent by the self-styled “Bloque Capital de las Águilas Negras” (“Capital Bloc of the Black Eagles”), which announced: “the time has come to exterminate and annihilate all those persons and organizations who pass themselves off as defenders of human


152 According to the information received, journalists were collecting different versions concerning the decision of a foreign company to postpone a mining project when the neighbors lashed out against the team of journalists with sticks and stones, as they were upset by the delay in the project. Both journalists were assisted by the Police and taken to a hospital. Vanguardia. March 19, 2011. Periodista agredida está bajo pronóstico reservado; Knight Center for Journalism in the Americas. March 19, 2011. Periodista y camarógrafo hospitalizados tras agresión de pobladores con piedras y palos en Colombia; RCN. March 18, 2011. Capturadas cuatro personas por agresión a equipo periodístico en Santander.

153 The bodyguards along with other police from the local post (CAI: Comando de Atención Inmediata) are said to have pursued the assailants, one of whom was said to have been wounded in the exchange of gunfire and taken to a clinic, while the other assailant was said to have been detained and brought before the Departmental Office for Criminal Investigation of the National Police (SIJIN). Rodríguez notes that he had received threats since he reported on his new program “En Línea FM Noticias” on the involvement of members of the FARC in the elections for mayor of Patía, in southern Cauca. Fundación para la Libertad de Prensa (FLIP). May 26, 2011. Atentado contra periodista Héctor Rodríguez en Popayán – Cauca; El Tiempo. May 26, 2011. Farc podrían estar tras atentado a periodista en Popayán.

rights, and even more so those who infiltrate as international NGOs, journalists...”

Next the message mentioned persons and entities among which were included the Federación Colombiana de Periodistas (“FECOLPER”) and the journalists Eduardo Márquez González, Claudia Julieta Duque, Daniel Coronell, Hollman Morris, and Marcos Perales Mendoza. According to what was reported, on February 18 representatives of various journalists’ organizations held a meeting in Bogotá with the Committee on Regulation and Evaluation of Risks, which addressed the threat received, and at which possible measures for ensuring the security of persons in danger were discussed.

On March 14 once again an alleged threat from the “Bloque Capital de las Águilas Negras” was circulated reiterating the warnings. In this respect, the Office of the Special Rapporteur consulted the State on the measures adopted to ensure the lives and integrity of the persons threatened, in a note sent March 4. In its response of April 13, 2011, the State conveyed to the Special Rapporteurship its repudiation of the threats made against the journalists, reiterated its commitment to defend freedom of expression, highlighted the operation of the Protection Program of the Ministry of Interior and Justice, and noted that measures have even been put in place to protect journalists in zones of violence and in dangerous missions. In its communication, the State recalled that the number of journalists who were beneficiaries of the Program had increased from 14 in the year 2000 to 175 in 2010, while total deaths of journalists have been reduced from 27 from 2001 to 2003 to two from 2008 to 2010. The State explained that the cases of threats mentioned in the communication of March 14 “have been made known to the respective judicial authorities so that they may further the respective investigations.” Finally, it indicates that in the case of journalists Hollman Morris and Claudia Julieta Duque, measures have already been implemented on their behalf in the context of the Protection Program mentioned above.

114. The IACHR learned that in late March three pamphlets circulated in the department of El Cauca attributed to the “Águilas Negras, Rastrojos, and Autodefensas Unidas de Colombia-AUC,” in which they declared the “11 journalists and 11 community radio stations” are “permanent military targets.” In addition, in August journalist Mary Luz Avendaño, correspondent for the newspaper El Espectador, in Medellín, had been forced to leave the country given her elevated risk, even though she was receiving protection from the Municipal Police. The risk was said to have

155 Anonymous email originating from the email address fenixaguilasnegrass@gmail.com, February 16, 2011. In files of the Office of the Special Rapporteur for Freedom of Expression.

156 Círculo de Periodistas de Caldas. February 18, 2011. FECOLPER rechaza amenaza de muerte contra su presidente Eduardo Márquez; Fundación para la Libertad de Prensa (FLIP)/IFEX. February 18, 2011. Circula panfleto que amenaza a FECOLPER y cuatro periodistas; Reporters Without Borders. February 18, 2011. Apoyo a cinco periodistas declarados “objetivos militares” en un mail atribuido a las “Águilas Negras”.

157 Telephone interview by the IACHR with representatives of Colombian organizations of journalists. February 22, 2011.


originated after the publication of articles on violence between bands of drug traffickers and the collusion of members of the Police, due to which she is said to have received several threatening phone calls as of June 22, 2011.\footnote{Fundación para la Libertad de Prensa (FLIP). June 25, 2011. \textit{Grave amenaza contra la vida de periodista de El Espectador en Medellín}; El Espectador. August 23, 2011. \textit{Periodista de El Espectador se ve obligada a salir del país}.} Indeed, with the information received, on September 29 an alleged member of a criminal band was said to have called the radio station Radio Guatapuri, in the city of Valledupar, to warn that they had been ordered to attack a series of persons in that city, including journalist Ana María Ferrer, who worked with the television program “La Cuarta Columna” on Channel 12 in Valledupar.\footnote{According to the information provided, the alleged paid gunman had indicated that the order to assassinate Ferrer was due to information that she disclosed on a functioning criminal group. She is also the director of communications of the Committee to Monitor and Evaluate the Investment of Coal Royalties from Cesar. In that function she is said to have written numerous articles regarding alleged mismanagement of funds from the mining industry. Police authorities are said to have initiated an investigation and to have offered her measures of protection. Committee to Protect Journalists (CPJ). October 5, 2011. \textit{Periodista provincial recibe amenazas en Colombia}; Fundación para la Libertad de Prensa (FLIP). October 4, 2011. \textit{Confiesan plan para asesinar a una periodista en Valledupar, Cesar}; Committee to Monitor and Evaluate the Investment of Coal Royalties from Cesar. Website: http://www.comitederegaliascesar.org/Comite/Publico/ComiteEsp.php}

115. In the last week of May unknown persons broke in, through a window, to the apartment of journalist Gonzalo Guillén while he was outside the country and were said to have stolen an external hard drive with 1,000 gigabytes and a laptop computer. The equipment stolen contained data from journalistic investigations over the last 15 years. Among the information stolen is said to be documentation on issues such as extrajudicial executions, expenditures of the State that are kept secret, and corruption in State security agencies. He asked the Office of the Attorney General to conduct an investigation.\footnote{Letter from Gonzalo Guillén to the Attorney General, Viviane Morales. June 2, 2011. Archive of the Office of the Special Rapporteur for Freedom of Expression; El Espectador. July 2, 2011. \textit{Un expresidente me entregó el libreto de la Operación Jaque}; Federación Colombiana de Periodistas (FECOLPER). August 8, 2011. \textit{Ciento catorce ataques contra periodistas durante el primer trimestre del 2011; grupos paramilitares el mayor depredador de la prensa}.} The Office of the Special Rapporteur requested information from the Colombian State in the wake of these events and the threats that Guillén was said to have received.\footnote{Communication from the Office of the Special Rapporteur to the Colombian State of July 8, 2011, with respect to: “Situation of journalist Gonzalo Guílén.” In files of the Office of the Special Rapporteur.} In its response of August 4, 2011, the State reported that journalist Guillén has been a beneficiary of the Ministry of Interior and Justice’s Protection Program since July 2007, and that he currently has a mobile protection scheme. He also reported that with respect to the larceny of the journalistic information from Mr. Guillén’s residence, the Office of the 113\textsuperscript{th} Local Prosecutor’s Office (Fiscalía 113 local) is pursuing an investigation into the alleged offense of aggravated larceny \textit{(hurto calificado y agravado)}, which is in the inquiry stage to determine who the person or persons responsible might be.\footnote{Ministry of Foreign Affairs of the Republic of Colombia. Communication DIDHD.GAPDH No. 46620/2034. August 4, 2011. In files of the Office of the Special Rapporteur.} As of the preparation of this report, no progress had been reported in that investigation.

D. Espionage against and harassment of journalists by the DAS

116. In its 2009 and 2010 reports, the IACHR reported the information that it had received on illegal activities involving espionage, harassment, and discrediting of journalists, and even death threats against journalists, which were carried out by the Administrative Department of Security (DAS: Departamento Administrativo de Seguridad) from 2002 to 2008. In its annual report
last year the Commission followed up, in particular, on the cases of some of the most besieged journalists: Daniel Coronell, Claudia Julieta Duque, Carlos Lozano, and Hollman Morris.168

117. During 2011, the IACHR continued following up on the judicial proceedings under way in relation to the illegal activities of espionage and harassment of the above-mentioned journalists. The information received by the Office of the Special Rapporteur indicates that there has yet to be any criminal conviction related specifically to the unlawful acts directed against these journalists. At the same time, the IACHR takes note of the significant progress in the investigation into some of these cases. In the case of journalist Claudia Julieta Duque, for example, the Office of the Third Prosecutor of the National Unit for Human Rights and International Humanitarian Law of the Office of the Attorney General found documents in the offices of the DAS that include information on Ms. Duque updated as of November 2008. Duque has been the target of repeated threats that may have caused her extreme suffering and she is the beneficiary of precautionary measures granted by the IACHR in November 2009. In August 2011, after publishing an article in the Washington Post on the abuses of the DAS and U.S.-Colombian relations169, Duque was possibly targeted by stigmatizing accusations by former President Álvaro Uribe.170 Former President Uribe also potentially made stigmatizing statements against the Washington Post correspondent in Colombia, Juan Forero, for the publication of an article on alleged gross irregularities said to have been committed by his administration.171 The press organizations expressed reasonable concern over the possible consequences of those statements.172

118. The Colombian State wrote that it had complied with all the protection measures ordered by the IACHR in the case of journalist Claudia Julieta Duque Orrego, who on November 26, 2004, “filed a criminal complaint with the Human Rights and International Humanitarian Law Unit of the Office of the Attorney General of the Nation owing to the threats allegedly made against her since 2001.” According to the information reported by the State, the journalist said “that she was the victim of an abduction committed in the course of a criminal practice known as the ‘millionaire’s walk’ or the ‘millionaire’s tour’; and that she had been stalked and harassed and her e-mails intercepted by members of State Security agencies (DAS) because of her investigations into and her documentary on the killing of journalist Jaime Garzón.” In its observations on the IACHR’s draft report, the State commented that the investigative work conducted by the Human Rights and International Humanitarian Law Unit of the Attorney General’s Office had “succeeded in implicating State agents in the commission of the crime and is currently focusing on establishing the identity of the agents in order to prosecute them in the Colombian courts. Thus far the investigation has not determined whether any high-ranking government officials had knowledge of or participated in the crimes committed against the journalist.” The State underscored the measures that the Prosecutor on the case had taken to ensure the journalist’s life and personal safety, “and compliance with the

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orders of the Inter-American Commission on Human Rights regarding the precautionary measures for the journalist and her daughter.173

E. Judicial Actions

119. On May 25, 2011, the Constitutional Court of Colombia issued Judgment C-442-11, by which it found that the judges who sit in cases regarding *injurias* and *calumnias* should narrowly interpret these definitions of criminal conduct so as to favor an “expansive interpretation of the freedom of expression” (“la vis expansiva de la libertad de expresión”), which enjoys a privileged place in the Colombian legal order. It noted that “only willful conduct is subject to sanction,” i.e., that the attribution of certain conduct to a certain person must be done knowingly and with the intent of producing harm. Finally, it reiterated the importance of abiding by the inter-American standards of freedom of expression.174

120. Despite the judgment mentioned in the previous paragraph, on September 12, 2011, the director of the newspaper *Cundinamarca Democrática*, Luis Agustín González, was said to have been found guilty of the crimes of *injuria* and *calumnia* by the first criminal law judge of Fusagasugá. He had been sued by former governor Leonor Serrano de Camargo, who considered publication of an editorial in 2008 calling into question Serrano’s candidacy for the Senate to harm her honor and good name, for which she was seeking 50 million Colombian pesos in compensation (equivalent to US $26,000 dollars).175

F. Regulation of the press during electoral periods

121. The IACHR takes note of Decree 3569 of 2011, “by which provisions of law are issued for preserving public order during the period of elections of Territorial Public Authorities and Legislative Bodies and other provisions are issued.”176 This new decree preserves, in general, the language of Decree 1800 of 2010,177 with respect to which the IACHR expressed concern in its 2010 Annual Report.178

122. In this respect, the IACHR observes first that Decree 3569 maintains the prohibition, on election-day, of “all types of publicity, statements, communiqués, and interviews for political-electoral purposes” by any means of communication.179 Second, with respect to the “information on

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election results,” Decree 1800 of 2010 established that on election day, while the election is taking place, the media “may only provide information on the number of persons who have voted...” The wording of the relevant article has been modified in Decree 3569 of 2011, eliminating the word “only” to establish that the media “may provide information on the number of persons who have voted...” Finally, the foregoing decree established that “as regards public order, the media shall broadcast, on election day, only information confirmed by official sources.” Decree 3569 of 2011 strikes out the word “only,” providing that “in respect of public order, on election-day the media shall broadcast the information confirmed by official sources.”

123. The IACHR reiterates what it indicated in its 2010 Annual Report to the effect that during electoral periods there may be special restrictions on the right to freedom of expression, yet that constitutional and international guarantees must be strictly respected, particularly those enshrined in Article 13(2) of the Convention. According to this provision, the exercise of the right to freedom of expression “shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: (a) respect for the rights or reputations of others; or (b) the protection of national security, public order, or public health or morals.” In application of this provision, the IACHR and the Court have already indicated that any restriction must be established in a law both materially and formally and that the restrictions must be clear and precise in scope. In that sense, the IACHR notes that in this case general restrictions were established relying on administrative provisions that are not compatible with the conditions noted above.

G. Right of Access to Information

124. The IACHR takes note of the approval, by the Congress of the Republic, of the bill “by which provisions of law are issued to strengthen the legal framework that allows the agencies engaged in intelligence and counter-intelligence activities to perform their constitutional and statutory mission, and issuing other provisions.” According to the information received, the provision of law approved is under prior review by the Constitutional Court, which is called for as a statute of constitutional rank (ley estatutaria).

125. The IACHR expresses concern about some aspects of said law on intelligence and counter-intelligence that could disproportionately affect the right of access to information. First, the provision adds to the Criminal Code the crime of “Revelation of a secret by a private person,” which provides: “One who makes known a confidential public document shall be subject to imprisonment

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185 Report on Conciliation of Bill No. 263 of 2011. Senate, Bill No. 195 of 2011 of the House, “By which provisions of law are issued to strengthen the legal framework that enables the agencies that conduct intelligence and counter-intelligence activities to carry out their constitutional and statutory mission, and other provisions are issued.” June 14, 2011.
186 The Constitution of Colombia establishes at Article 153: “The approval, amendment, or derogation of leyes estatutarias will require the absolute majority of the members of Congress and shall be done in a single legislature. This process shall include a prior review by the Constitutional Court of the constitutionality of the proposed legislation. Any citizen may come forward to defend or challenge it.”
of five to eight years, unless it is done pursuant to a constitutional or statutory duty.” Nonetheless, in Chapter VI (Confidentiality of Intelligence and Counter-intelligence Information) the law provides: “The mandate that it be confidential is not binding on journalists or the media when they are performing their journalistic function of serving as a check on governmental power, in the context of the self-regulation of journalism and the constitutional case-law; they in any event are obligated to keep their sources confidential.” The IACHR recalls in this regard that the public authorities and public servants have the exclusive responsibility of protecting the confidentiality of any secret information legitimately under their control. Other individuals, including journalists and representatives of civil society, should never be subject to sanctions for the mere publication or subsequent dissemination of this information, independent of whether it has been leaked, unless they commit fraud or another offense in order to obtain the information. The IACHR further recognizes the partial protection that the law grants for whistleblowers and recalls that whistleblowers who in good faith disclose information on statutory violations, gross cases of mismanagement of public agencies, grave threat to health, safety, or the environment, or a violation of human rights or humanitarian law should be protected from statutory, administrative, or labor sanctions.

126. In its observations on this report, the State wrote that “with regard to freedom of information and the intelligence and counterintelligence services provided by the Colombian State (…), the statutory law on intelligence and counterintelligence meets the specifications set by the Constitutional Court for classifying certain information: (i) clearly and precisely stated terms; (ii) a written explanation of the rationale and proportionality of the decision to deny access to certain information; (iii) the time period that the information will be kept classified; (iv) the system for custodianship of that information; (v) the checks on such decisions, and (vi) the existence of judicial remedies and actions by which to challenge a decision to classify certain information.” The State underscored the fact that “the law does not violate either freedom of the press or freedom of expression.” It also observed that paragraph 4 of Article 33 provides that “the classification period is not binding upon either journalists or the communications media when they are engaging in watchdog journalism, following the rules by which the media and journalists regulate themselves and provided they are acting in accordance with constitutional jurisprudence; in all events, journalists and the media would be required to guarantee the confidentiality of their sources.” For the State, this provision elevates the Constitutional Court’s jurisprudence on the subject to the rank of statutory law. That jurisprudence holds that “classification is not binding upon the media, who are liable only if they reveal their sources.” In its observations, the State explained that the justification for the provision, “as the Court itself has explained, is that the responsibility of the media is to serve as the watchdog of public power. This function could not be properly performed if the media were limited to the information provided to them.” The State explained that the “exception to the classification principle is made for journalists but not for all organizations in civil
society, since the general principle of intelligence is that it must be kept confidential because it has a close bearing on national security and defense. However, lawmakers were of the view that because of the watchdog function that the media perform, journalists must be allowed to use classified information without committing a crime. On the other hand, if any organization in civil society was allowed to use classified information without committing an offense, no matter how many mechanisms were instituted to keep that information secure any person could gain access to that information by unlawful means and publish it, thereby jeopardizing national security, national defense, international relations and other national interests.” The State observed that the Constitutional Court has sanctioned the creation of the classified information system “to ensure protection of the fundamental rights of third parties that may be disproportionately affected if certain information is made public and given the need to keep certain information confidential in order to safeguard national security and defense.” The State added that “public officials who have access to this information are thus obligated not to disclose it; if they disclose such information they will face criminal and disciplinary consequences.” It also pointed out that the Constitutional Court held that “disclosure [of classified information] shall have criminal and disciplinary consequences only for the official who discloses the information.”

127. Furthermore, in 2011 the IACHR received information on the exercise of the right of access to information by groups of small farmers in the department of Atlántico. The various groups of small farmers requested information from the Colombian Rural Development Institute (“INCODER” Instituto Colombiano de Desarrollo Rural) with respect to the implementation of agrarian programs in their respective subdivisions, including programs in training, social services, physical infrastructure, rural housing, adaptation of lands, technical assistance, financing, and legal support. On several occasions the groups of small farmers have pursued the special constitutional remedy known as acción de tutela after receiving responses from INCODER to their filings in exercise of their right to petition that they considered unsatisfactory. Those actions were resolved favorably in the cases of the subdivisions of Los Guayacanes of the municipality of Repelón, Banco Totumo of the municipality of Repelón, and Maramara of the municipality of Baranoa. The judicial rulings in these cases, considering the “generic and incomplete nature of the response” from INCODER, order “INCODER to address each and every one of the petitions filed, making a clear pronouncement on them … without the use of evasive or elusive language, so as to consider the subject matter of the petition and be in keeping with what is requested” within 48 hours. INCODER was said to have challenged the judicial decisions in three of these cases; in the case of the subdivision of Los Guayacanes, the ruling in the tutela action was already upheld on appeal.

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197 Twelfth Civil Court of Barranquilla. Tutela Action 2011-00230. Motion to Appeal (Recurso de Impugnación). September 1, 2011. See also information sent by the Colectivo Mujeres al Derecho to the Rapporteurship on “events that constitute violations of the right of access to information of women and rural communities in the departments of Atlántico Continued...
128. The IACHR recalls that principle 4 of the Declaration of Principles on Freedom of Expression establishes that “Access to information held by the state is a fundamental right of every individual” and recognizes as a good practice the judicial response of guaranteeing the exercise of this right in the cases mentioned. At the same time, and without prejudice to the possible rulings on first and second appeal in these proceedings, the IACHR expresses its concern given indicia of the repeated failure of INCODER to respect the right of access to information.

7. Costa Rica

129. The Office of the Special Rapporteur was pleased to receive two judgments from the Constitutional Chamber of the Supreme Court of Costa Rica that strengthen the right to access to public information and freedom of expression. Judgment No. 03320 of March 18, 2011 ordered the Ministry of Labor to provide the newspaper El Financiero with a list of companies and individuals to whom warnings had been issued for failing to pay minimum wage to its employees between August and December 2010. According to the information received, the Ministry of Labor had refused to give this information to journalist Alejandro Fernández of El Financiero. Nevertheless, the Constitutional Chamber ruled that “the requested information is of clear public interest, in that it refers to violations for the failure to pay minimum wage.”

130. On March 29, 2011, the Constitutional Chamber handed down Judgment No. 04160, which found that a decision made by the Board of Governors of the University of Costa Rica on February 1, 2011 amounted to a threat to freedom of expression and a violation of academic freedom. The decision was to prevent James Watson, Nobel Laureate in Medicine, from giving a conference on genetics and DNA at the university because in the past he had made discriminatory statements against various minorities. According to the information received, James Watson was ultimately able to give the conference, and the University Board of Governors subsequently acknowledged that the prohibition of this academic activity had been inordinate. The Constitutional Chamber found that the actions of the university authorities amounted to a “threat to violate freedom of expression and academic freedom, given that the decision of the University Board of Governors to request the suspension of a conference was a way to silence a priori the speaker’s expressions of thought, ideas, opinions, beliefs, convictions, or value judgments, which constitutes prior censorship.”

...continuation

and Magdalena, Colombia, by the Colombian State,” received on August 8, 2011 and September 30, 2011. In the files of the Office of the Special Rapporteur.

198 Superior Court, Judicial District of Barranquilla. Tutela Action on appeal. Abelardo Prenth Norieg (sic) and Sergio Rafael Cabarcas Torrenegra. October 4, 2011.


On June 27, the full session of the Legislative Assembly of Costa Rica resolved, by a majority, to table the Freedom of Expression and Press Act bill when it rejected a motion to keep the initiative on the parliamentary agenda for four more years, a decade after it was first introduced to Congress. The bill proposed reforms to the Criminal Code that would introduce the doctrine of actual malice by establishing that statements alleged to be libelous, slanderous, or defamatory are only punishable when they have been “made with reckless disregard for the truth or knowledge of their falsehood.” The bill excludes the offense “when it involves the publication or reproduction of information or value judgments on matters of public interest that are offensive to honor or public credit, that have been voiced by other collective communications media, news agencies, public authorities, or private individuals with authorized knowledge of the facts, provided that the publication indicates the source of the information.” The initiative also would have incorporated professional secrecy for journalists, as well as the conscience clause, into Costa Rican law. The original version of the bill, introduced in 2001 by media directors, was tabled in 2005 upon the expiration of the four-year term. In that year, a special joint committee again took up the text of the bill, passed it, and forwarded it to the full legislature; however, it was never voted on.

The Office of the Special Rapporteur learned that two cameramen from Channels 7 and 6 were assaulted by police on December 30, 2010, while they were covering a police operation in a neighborhood in southern part of San José. According to reports, one of the reporters was held down and hit by a police officer while the other was assaulted with a metal baton. Costa Rican Police authorities considered the actions of their subordinates to be “abusive,” “excessive,” and unacceptable, and announced that the officers involved would be subjected to disciplinary proceedings.

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.”

On July 19, the Constitutional Chamber of the Supreme Court of Costa Rica rejected on the merits a writ of *amparo* [petition for a constitutional remedy] filed by the newspaper *Extra* against the Honor and Ethics Tribunal of the Association of Journalists. According to what this Office of the Special Rapporteur has learned, the Honor and Ethics Tribunal issued a communiqué condemning the graphic content of a report on a traffic accident and joined “many people” in protesting this publication. The newspaper *Extra* alleged that the Honor and Ethics Tribunal infringed its right to a defense and to freedom of expression by joining in the protests of one segment of the public and by issuing a decision without providing the paper with an opportunity to defend itself, which reportedly resulted in financial harm. The Constitutional Chamber held that the decision of the Honor and Ethics Tribunal of the Journalists’ Association “is not punitive in nature” and is “a mere

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expression of disagreement (…) stemming from the protest of many people who are displeased with the graphic content” of the report. Therefore, in the opinion of the Constitutional Chamber, “the appellee is not required to give notice to the appellant of its intentions, or of its way of thinking, with respect to the publications regarding the traffic accident.”

In relation to the same case, on August 26, 2011, the Constitutional Chamber of the Supreme Court dismissed three amparo petitions filed by the Association of Journalists against the newspaper Diario Extra, the television station TV Extra 42, and the newspaper La Prensa Libre, all of which are owned by the Extra Group. According to reports, the three media outlets released news items critical of the Honor and Ethics Tribunal of the Association of Journalists without consulting with representatives of that organization with regard to their position. The Honor and Ethics Tribunal requested the right of reply or correction, but the media outlets did not acquiesce. In view of this situation, the Honor and Ethics Tribunal filed a writ of amparo before the Constitutional Chamber, which was dismissed because the petitioners failed to describe in detail how the publications had affected their honor and reputation, or which information was false or inaccurate.  

8. Cuba

The IACHR learned of a hunger strike being staged by journalists Pedro Argüelles Morán and Albert Santiago Du Bouchet Hernández, both members of the “Group of 75” dissidents detained in 2003 and the subject of IACHR Case 12,476 (Oscar Elías Biscet et al.). Argüelles Morán had allegedly gone on a hunger strike to protest the pressure being exerted by the authorities to get him to leave the country if they released him. He went off his hunger strike when the authorities promised that he and ten other dissidents being held could remain in Cuba once released. For his part, Du Bouchet Hernández’ hunger strike had allegedly lasted 23 days, and was to honor the first anniversary of the death of dissident Orlando Zapata and to call attention to his own imprisonment and that of other political prisoners. 

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204 The Honor and Ethics Tribunal of the Association of Journalists of Costa Rica ruled in the following terms: “The Honor and Ethics Tribunal of the Association of Journalists of Costa Rica joins the protest of many people over the content, especially the graphic content, of the article in the newspaper Diario Extra on the accident in which soccer player Dennis Marshall and his wife lost their lives on the highway to Limón. This tribunal condemns such action in view of Article 20(d) of Organic Law No. 4420 of the Association of Journalists, as said media outlet has crossed the line of acceptable reporting on accidents by disregarding ethics and failing to respect human suffering and the sentiments of the relatives. Neither the editors nor the owners of the media, nor the journalists, should consider themselves the owners of the information; it should not be treated as merchandise, but rather as a fundamental right of the citizens.” Association of Journalists of Costa Rica, Honor and Ethics Tribunal. June 30, 2011. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Supreme Court of Costa Rica. Constitutional Chamber. July 19, 2011. Judgment 09319. Available at: [http://200.91.68.20/scj/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&nValor1=1&nValor2=518466&strTipM=T&strDirSel=directo](http://200.91.68.20/scj/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&nValor1=1&nValor2=518466&strTipM=T&strDirSel=directo); Association of Journalists of Costa Rica. August 10, 2011. Sala rechaza amparo de la Extra. Available at: [http://www.colper.or.cr/comunicados/sala.htm](http://www.colper.or.cr/comunicados/sala.htm); La Nación. June 24, 2011. Diario Extra recibe fuertes críticas por portada sobre muerte de jugador. Available at: [http://www.nacion.com/2011-06-24/ElPaís/diario-extra-recibe-fuertes-criticas-por-portada-sobre-muerte-de-jugador.aspx](http://www.nacion.com/2011-06-24/ElPaís/diario-extra-recibe-fuertes-criticas-por-portada-sobre-muerte-de-jugador.aspx)


206 This section corresponds to the section on freedom of expression in Cuba in Chapter IV, Volume I, of the IACHR 2011 Annual Report. This section was assigned to the Office of the Special Rapporteur for Freedom of Expression.

The Office of the Special Rapporteur for Freedom of Expression received information to the effect that temporary arbitrary detentions were still being made and could last hours or even a few days. The victims were persons identified as opponents of the regime and the idea was to prevent them from participating in political activities or to respond to demonstrations or the circulation of messages critical of the Government. According to the information received, another common practice is to stage acts of censure in front of the homes of political dissidents, as a way to harass them and prevent them from going out in public. These events, during which government slogans are yelled and patriotic anthems and revolutionary music are played full blast, tend to be accompanied by arrests and attacks on the members of the opposition. According to the reports received, Cuban dissident organizations reported between 2,668 and 2,784 arrests between January and September 2011, averaging at least 333 detentions a month in the first eight months of 2011. However, the dissident organizations reportedly saw a sizeable increase in arrests in September, with between 486 and 563 persons taken into custody. According to reports received, 80 persons were allegedly either convicted or tried on political grounds; 63 of these were reported to be in prison. The increase in arrests prompted a public communiqué from the British Embassy in Cuba, in which the diplomatic mission called upon the State to allow peaceful protests and expressed concern over the short-term detentions of political and human rights activists, and the aggressive treatment against opposition organizations like the Damas de Blanco [Ladies in White].

According to information the Commission received, at least a dozen journalists who collaborated with the independent news agency Hablemos Press had reportedly been taken into temporary custody or attacked in the days before and during the Sixth Congress of the Cuban Communist Party, held in Havana April 16 – 19, 2011. On April 15, the Hablemos Press correspondent in Guantánamo, Enyor Díaz Allen, had allegedly been attacked by two persons who started by yelling pro-government slogans at him and then fractured one of his arms and inflicted a head injury on him. He was later allegedly detained by the Police, treated in a hospital and then jailed for four days. Raúl Arias Márquez and Elier Muir Ávila, correspondents in the provinces of Morón and Ciego de Ávila, were detained in Márquez’ home on April 5 and 6 by Police and State Security agents. They had reportedly been warned that they would be jailed if they continued to practice their journalistic activities. On March 31, State Security agents allegedly arrested the Hablemos Press correspondent Idalberto Acuña Carabeo at his home in Havana when he refused to turn over photographs he had taken just hours earlier at a protest at the Central de Trabajadores de Cuba (CTC). On April 16, a group of police and State Security agents had allegedly kept the Hablemos Press correspondent in Mayabeque province, Luis Roberto Arcía Rodríguez, trapped inside his home for 12 hours to prevent him from going to Havana to cover the Communist Party Congress.
Congress.\textsuperscript{213} Something similar happened on April 16, when the home of the Hablemos Press correspondent in Melena del Sur, Sandra Guerra Pérez, was surrounded for two days by some 20 police and State Security agents to prevent her from travelling to Havana.\textsuperscript{214} On April 15, two State Security agents showed up at the offices of Hablemos Press in Havana, to warn journalists Robert de Jesús Guerra Pérez, Magaly Norvis Otero Suárez, Ignacio Estrada Cepero and José Alberto Álvarez not to go outside while the Communist Party Congress was in session or they would be jailed.\textsuperscript{215}

138. According to the information received, journalist and political dissident Guillermo Fariñas has reportedly been held in custody for hours on several different occasions since December 2010. In December, the State refused to give Fariñas authorization to travel to Strasbourg, France, to receive the Sakharov Prize, which the European Parliament awards each year for freedom of conscience.\textsuperscript{216} On January 27, Fariñas was allegedly arrested twice within 24 hours, along with other dissidents, accused of making a “public scandal” for their participation in anti-government protests.\textsuperscript{217} On February 23, Fariñas was detained yet again, together with another 46 activists in Santa Clara, who were attempting to mark the first anniversary of the death of another dissident, Orlando Zapata. Fariñas was released 27 hours later. In addition to being detained, some 200 Government sympathizers had allegedly surrounded the women of the opposition group known as “Damas de Blanco” [Ladies in White] to hurl insults and slogans in support of the government. On April 6, Fariñas was arrested yet again, along with a dozen activists from the Foro Antitotalitarío and the Santa Clara Central Coalition, after showing up at a prison to protest the arrest of various members of the opposition who had been detained just moments earlier. The authorities kept Fariñas under house arrest and took away his passport.\textsuperscript{218} Fariñas and another 26 dissidents were reportedly detained on September 15 in Santa Clara, as they were preparing for a demonstration. Fariñas and the others were released some hours later.\textsuperscript{219}

139. On November 1 2011, Guillermo Fariñas was detained again when he tried to access the provincial hospital “Arnaldo Millán Castro” to know about the health situation of Alcides Rivera, a dissident who was hospitalized by a hunger strike he initiated a month ago. A group of security men impeded his way to the hospital. He was beaten, handcuffed and was transferred in a police car to the police unit. He was released on November 3, 2011.


\textsuperscript{216} Europa Press. December 14, 2010. \textit{Guillermo Fariñas no logra el permiso para salir de Cuba}. [Guillermo Fariñas not given permission to leave Cuba]; \textit{El Mundo}. December 13, 2010. \textit{Fariñas responsabiliza a Fidel y no a Raúl por no dejarle recoger el premio Sájarov}. [Fariñas blames Fidel, not Raúl for not allowing him to go to receive his Sakharov Prize]


\textsuperscript{218} La Voz de Galicia. April 7, 2011. \textit{El opositor cubano Fariñas, en arresto domiciliario tras otra detención}. [Cuban dissident Fariñas under house arrest after being detained again]; EFE News Service. April 7, 2011. \textit{Disidente cubano Guillermo Fariñas, de nuevo preso}. [Cuban dissident Fariñas jailed again]

\textsuperscript{219} Europa Press. September 19, 2011. \textit{Arrestan a unos 150 opositores cubanos en los últimos días}. [Some 150 members of Cuban opposition arrested in recent days]; EFE News Service. September 16, 2011. \textit{Más de 20 opositores fueron detenidos en Cuba}. [More than 20 members of Cuban opposition arrested in Cuba]
140. As the detentions increased and the harassment of political and human rights activists was heating up, various leaders of dissident groups were allegedly arrested. According to the information received by the Office of the Special Rapporteur, on September 9, former political prisoners Ángel Moya Acosta, José Daniel Ferrer and Raúmvel Vinajera were reportedly detained again in Palma de Soriano, in eastern Cuba. On September 15, opposition leaders and former political prisoners Librado Linares García and, again, Ángel Moya Acosta, were detained, as was the leader of the Central Opposition Coalition, Idania Yánez Contreras. The arrests were allegedly made as the activists were preparing for the march called “Boitel and Zapata Live,” which would go through a number of Cuban cities. On September 27, leaders of the Red Cubana de Comunicadores Comunitarios [Cuban Network of Community Journalists], Martha Beatriz Roque and Arnaldo Ramos Lauzarique were detained, as was Berta Soler, one of the founders of the Damas de Blanco [Ladies in White] and wife of former political prisoner Ángel Moya Acosta. The three were detained as they were on their way to a police station to intercede for a number of persons previously arrested; they were reportedly beaten as they were being transported in police vehicles.

141. The IACHR received information concerning detentions, acts of aggression and harassment against the Damas de Blanco, an organization made up of women related to political prisoners. According to the report received, on September 9, at least 22 women from the Damas de Blanco were allegedly detained for several hours in Havana and Santiago, while they were participating in a celebration marking the feast of Our Lady of Charity, also known as Our Lady of Cobre. On September 24, several dozen Ladies in White met at a member’s home to organize a peaceful march and attend mass at the Church of La Merced, in Havana. However, between 200 and 300 people had gathered outside the house to yell pro-government slogans and prevent the group of women from leaving the house. When the members of the Ladies in White attempted to get the peaceful march underway, there was reportedly a struggle with the pro-government demonstrators; a number of the women were beaten. On October 22, 11 Ladies in White were allegedly detained and beaten in Palma Soriano, as they were attempting to attend mass at the cathedral in Santiago. According to the information received, the activists were released some hours later.

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142. The information received states that on April 7, Spanish journalist Carlos Hernando, collaborator with the Intereconomía press group and the creator of a documentary on Guillermo Fariñas was allegedly detained and expelled from the country by Cuban authorities, who accused him of “counter-revolutionary activity”. In the first week of September, Cuban authorities reportedly took away the press credentials of Mauricio Vicent, who for 20 years had been the Spanish newspaper El País correspondent in Cuba. Without his press credentials, he cannot practice journalism in Cuba. The International Press Center, part of the Ministry of Foreign Affairs, had allegedly justified the decision by pointing to Vicent’s coverage, which it claimed conveyed “a biased and negative image” of Cuban reality.

143. In 2011, the Internet was well out of reach of the majority of the population, owing to the high cost of internet service, the slow connection speeds, and restrictions that limit or obstruct the connection. The situation reported in the 2010 report has not changed in any significant way.

144. In February 2011, the government announced that Cuba would be connecting to a submarine fiber optic cable installed in cooperation with Venezuela, which would increase Internet data transmission speed by 3,000 times, and would increase the percentage of persons with access to the net, whereas just 3% of the population has access at the present time; it would also lower the cost of international calls. However, thus far there are no reports that the fiber optic cable has been made accessible to the general public; the high rates and usage and connection restrictions reported in previous years still persist.

145. Resolution 179/2008 reportedly was still in effect in the Cuban legal system in 2011. That resolution establishes a set of “Regulations for public internet service providers that offer internet services in hotels, post offices and other entities in the country, and where internet search engines and national and international e-mail services are offered to natural persons.” One provision that called the IACHR’s attention was the following requirement for providers: “take the measures necessary to block access to sites whose content is inimical to social and moral interests and good conduct; as well as the use of applications that affect the integrity or security of the State.” That same provision states, *inter alia*, that: “providers shall observe the orders issued by the institutions charged with the country’s defense in the event of emergency situations, and perform

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226 El Mundo. April 8, 2011. *Carlos Hernando: “Se me ha pasado pero han sido momentos muy difíciles”*. [Carlos Hernando: It happened, but there were some very difficult moments]; Intereconomía. April 7, 2011. *Carlos Hernando detenido por “contrarrevolucionario”*. [Carlos Hernando detained as counterrevolutionary]


228 There are two webs in Cuba: one domestic, with limited access to information resources, and the other international. The average hourly cost of connecting to the domestic network is close to US$1.63, while the average hourly cost of connection to the international network is US$5.48, in an economy where the average monthly salary is US$20. In January the government reportedly announced an improvement in satellite connections that would increase connectivity by 10%. Reporters Without Borders. 2010. *Internet Enemies: Cf. Inter-American Press Association (IAPA)*. April 2011. *Country reports: Cuba*.


the immediate functions necessary to secure the defense and security of the State.” Under Article 21 of that resolution, when a service provider fails to comply with these regulations, it may have its license and any contracts signed temporarily or permanently suspended.

146. Resolution 55/2009, which took effect in June 2009, remained in effect in 2011. That resolution established the same regulations referenced in the preceding paragraph, but this time for the so-called Internet Service Providers for Storage, Hosting, and Applications. According to this resolution, the regulations include those Cuban legal persons who have received an operating license as a Public Service Provider for Internet Access, including those that rent physical space so that the client can place its own computer there; those who provide the site-hosting service, applications, and information; and those who provide applications services to third parties.

147. Here, the IACHR must reiterate that the Internet “is an instrument with the capacity to fortify the democratic system, assist the economic development of the region’s countries, and strengthen full enjoyment of freedom of expression. The technology of the Internet is without precedent in the history of communications and it allows rapid access of and transmission to a universal network of multiple and varied information. Maximizing the population’s active participation through the use of the Internet furthers the political, social, cultural, and economic development of nations by strengthening democratic societies. In turn, the Internet has the potential to be an ally in the promotion and dissemination of human rights and democratic ideas and a major tool in the actions of human rights organizations, because of its speed and breadth which allow it to immediately transmit and receive information on situations affecting fundamental rights in different regions.”

9. Ecuador

148. The Office of the Special Rapporteur views positively the importance placed upon the hearing on the Situation of the Right to Freedom of Expression in Ecuador held at the Inter-American Commission on Human Rights (IACHR) in Washington, D.C. on October 25, 2011. It was attended by high-ranking officials of the Ecuadorian State and members of various civil society organizations. This office found it to be a productive hearing, at which both the state and civil society had the opportunity to express their positions, concerns, and criteria with respect to the situation of freedom of expression in the country. The information obtained as a result of the hearing is set forth in the corresponding sections of this report.

A. Assaults and attacks on media or journalists

149. The Office of the Special Rapporteur received information that Guido Manolo Campaña, the sports writer for the newspaper El Universo of Guayaquil, was apparently kidnapped, beaten, and threatened on December 2, 2010, while doing research in the coastal area of Esmeraldas. According to that information, the journalist was investigating a case of identity theft allegedly perpetrated by a soccer player. The reporter received documents in the town of Muisne that would prove the allegation, but upon his return by bus to the city of Esmeraldas, two armed men in a pickup truck intercepted the bus. They pointed their weapons at the journalist and took him to an unknown location where they bound his hands and feet, beat him, threatened to kill him, and interrogated him about the facts he was investigating and the sources who had provided the information. The kidnappers allowed Campaña to answer a phone call from the newspaper on his

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cell phone, and forced him and his editors to promise not to publish the information. Police and judicial authorities in Esmeraldas launched an operation to try to find the journalist, but early that night he was released in an Esmeraldas neighborhood. The kidnappers had destroyed his camera, tape recorder, cell phone, and notes and documents he had gathered. The newspaper published the investigation days later.234

150. According to information received, at least five shots were fired on May 7 in the city of Manta at the exterior of the building where the Ediasa publishing group is headquartered. Ediasa owns the newspapers El Diario and La Marea, as well as the television channel Manavisión. The media company reported the act so that a police investigation would be opened.235

151. The Office of the Special Rapporteur was informed that on December 17 a group of armed police officers entered and searched the Quito offices of the magazine Vanguardia, and reportedly confiscated some 40 computers and searched journalists and their personal belongings for weapons. According to information provided to the Office of the Special Rapporteur, the Police entered with a warrant for the preventive seizure of assets because the magazine allegedly owed $14,000 in rent payments on the property. The warrant allowed for a three-day period in which to make the payment, but the police executed it immediately. The magazine’s director, Juan Carlos Calderón, is co-author of the book El Gran Hermano [Big Brother], and has been sued in civil court by President Correa, who requested compensation of $10 million from the two journalists who wrote the book.236 Days after the search, a supervisory criminal court in Guayas ordered that the magazine’s representatives be allowed to copy the hard drives of the computers in order to recover journalistic material; nevertheless, on December 24, the court-appointed bailees in possession of the equipment reportedly refused to comply with the judge’s order, alleging that they had not been notified.237

152. On March 24, inhabitants of the El Topo indigenous community prevented a group of journalists from covering a public assembly, and assaulted the journalists. According to the information received, journalists David Torres, of Gama TV; Washington Benalcázar, correspondent from the newspaper El Comercio in Imbabura; Christian Tinajero, of Ecuavisa and Enrique Portilla of RTS went to the community to report on the arrest and punishment of an alleged criminal. The

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reporters were allowed to listen to part of the assembly, and then were asked to leave. When they withdrew, a group of residents reportedly followed them and attacked them with rocks and nettle branches.238

153. On May 10, 2011, after testifying at a hearing in a case against former Police Hospital director César Carrión about events that took place on September 30, 2010, journalist Holger Guerrero was verbally attacked by journalists and Carrión sympathizers.239

154. The Office of the Special Rapporteur was informed that in July 2011, journalist Emilio Palacio reportedly shouted “I do not give declarations to fascists” at a reporter from the official state channel Ecuador TV and asked him to leave the place where he was making his statements. The journalist from Ecuador TV indicated that Mr. Palacio reportedly had lowered the microphone when he realized that he was from that media outlet.240

155. According to the information received, on September 20, 2011, there was a confrontation between public servants and followers of the President, on one hand, and the directors of the newspaper El Universo and their followers, on the other hand. The run-in reportedly occurred because the latter were not permitted to enter the room where a hearing was going to be held in the case President Correa had brought against that newspaper, and the directors reportedly verbally assaulted a member of the presidential staff who blocked their way.241

156. The Office of the Special Rapporteur reiterates the importance of creating a climate of respect and tolerance toward all ideas and opinions, and recalls that principle 9 of the IACHR’s 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.”

B. Legal proceedings and arrests

157. The Office of the Special Rapporteur is concerned about the consistent tendency of high-ranking public officials to rebuke, arrest, and prosecute citizens who criticize them at public events. On February 25, Marcos Luis Sovenis shouted “fascist” when President Rafael Correa was traveling through the town of Babahoyo. According to Sovenis, at least seven officers who were

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240 Statement of Emilio Palacio. July 21, 2011. Available at: [http://www.youtube.com/watch?v=ur_09xDsd5A](http://www.youtube.com/watch?v=ur_09xDsd5A);

accompanying the president forced him into a vehicle, where they threatened and assaulted him. Sovenis filed a complaint before the Office of the Public Prosecutor on March 2 denouncing the actions of members of the presidential escort, and President Rafael Correa announced that he would file a criminal complaint against Sovenis alleging desacato [insult].

158. On April 12, an individual named German Ponce was arrested in the town of Salcedo for having allegedly insulted the President as the presidential motorcade passed by. He was arrested for this act, and the Flagrant Offenses Prosecutor of Cotopaxi requested 30 days of pretrial detention, which the judge granted based on Article 230 of the Criminal Code, offenses against the government, under the chapter on rebellion and attacks on public servants. Ponce was released after 72 hours in custody, after making a public apology. Even so, according to the information received, the case against him is going forward.

159. The Office of the Special Rapporteur also learned that on April 13, days prior to the referendum called by the government, President Rafael Correa reportedly ordered the arrest of Irma Parra, who allegedly made an obscene gesture at the leader in Riobamba. Parra insisted before the media that she only made a “NO” sign with her hand to express her opposition to the referendum. After several hours in custody, she apologized to the president and was released. President Correa justified Parra’s arrest based on the need to respect the integrity of the president.

160. The Office of the Special Rapporteur received information concerning the arrest of indigenous leader José Acacho, former director of the community radio station La Voz de Arutam,
on February 1. He was accused of violating the terms of his conditional release in a case in which he was accused of sabotage and terrorism because of messages he reportedly broadcast on that station during a day of indigenous protests, on September 30, 2009. According to reports, on February 8, the Provincial Court of Pichincha granted a writ of habeas corpus in Acacho’s favor and ordered his release.248

161. Official Letter No. 05303 from the Office of the Attorney General contains the Ecuadorean State’s response to the questions posed to it at the Public Hearing on the Situation of the Right to Freedom of Expression in Ecuador held at the IACHR’s headquarters in Washington, D.C. on October 25, 2011. In that letter, the Ecuadorean State addressed the concern raised at the hearing with respect to the use of the offense of sabotage and terrorism as a vaguely defined criminal offense that could infringe upon the freedom of expression of individuals who engage in social protest. The State indicated that those offenses are enshrined in Articles 156-166 of the Criminal Code and that “they do not aim to limit the right to freedom of expression, impose prior censorship, curtail social protest, or impose any other unlawful limitation of rights.” To the contrary, according to the State, they “pursue the preservation of the general welfare and other rights inherent to the individual” and do not constitute a vague criminal statute.249

162. The Office of the Special Rapporteur observes with concern the increased use of criminal desacato and insult laws and civil provisions that could lead to the imposition of disproportionate penalties against persons who publicly express criticism of the highest ranking public dignitaries in Ecuador.

163. On April 27, journalist Wálter Vite Benítez was arrested in Esmeraldas when a judgment became final that sentenced him to a year in prison and a $500 fine for the offense of criminal defamation against the mayor of that town, who had filed a complaint against him in 2008. According to information provided to the Office of the Special Rapporteur, the mayor was apparently offended by critical remarks made by Vite on an opinion program on Radio Iris. The journalist alleges that he never specifically mentioned the mayor of Esmeraldas.250 The journalist went on a hunger strike from the time of his arrest, and was later transported to the Delfina Torres de Concha Hospital, where he remained at the time of his release on May 18, 2011. His release was ordered when a motion to set aside the warrant for his arrest and incarceration was admitted based on the expiration of the criminal statute of limitations, according to which the judgment


should have been handed down prior to November 18, 2010. The plaintiff appealed this decision, and the appeal was admitted.\textsuperscript{251}

164. According to information received, on March 21 the President of the Republic filed a criminal complaint before the 15\textsuperscript{th} Criminal Court of Guayas alleging the criminal defamation offense of “serious calumnious and non-calumnious defamation” [injuria calumniosa y no calumniosa grave] against the corporation \textit{El Universo} (the publisher of the newspaper) and its board members Carlos Nicolás Pérez Lapentti, Carlos Eduardo Pérez Barriga and César Enrique Pérez Barriga, as well as against Emilio Palacio, the editor of \textit{El Universo}’s opinion section. The President asked the trial court judge to sentence the four defendants to three years in prison with an indemnization of $50 million, as well as an additional $30 million indemnization to be paid by the newspaper’s parent company.\textsuperscript{252} The case stemmed from a column of Palacio’s, published on February 6, 2011, entitled \textit{No a las mentiras} [“No to Lies”].\textsuperscript{253} In the course of the proceedings the Fifteenth Court of Criminal Guarantees of Guayas commissioned to be surrendered as evidence more than 27 reports and expert opinions. The information requested included: payroll lists and reports on the payments to each of the defendants in all of the places they have worked; a list of assets of the company and of each of the individual defendants; income tax returns; details on the shareholdings and partners in the company; reports on payments, benefits and the financial position of the company; purchases and investments abroad; and detailed information on the foreign travel of each of the defendants over the past five years.\textsuperscript{254} The defendants, for their part, complained of irregularities in the proceedings.\textsuperscript{255}

165. On July 7, 2011, newspaper columnist and opinion editor Emilio Palacio of \textit{El Universo} reportedly submitted his irrevocable resignation in order to “prevent the company from going bankrupt.” He made his decision public in an open letter on July 11, 2011, in which he again assumed all responsibility for the publication of the article that had given rise to the lawsuit.\textsuperscript{256}


According to the information received, the president made clear that the case would continue in spite of the journalist’s resignation.257

166. The information received by the Office of the Special Rapporteur indicates that, in view of the defamation suit brought by the president against *El Universo*, the paper’s employees announced a peaceful sit-in in the city of Guayaquil to express their support for the company. In addition, in his *Enlace Ciudadano* program No. 229 of July 16, 2011, President Correa reportedly called his sympathizers to a demonstration in support of his criminal complaint.258 Thus, the Office of the Special Rapporteur was informed that on the scheduled hearing date, the demonstrators convened by the president appeared.259

167. On July 20, 2011 the judgment of first instance260 was handed down by an interim judge in Ecuador against *El Universo*, three members of its Board of Directors, and journalist Emilio Palacio. The judgment sentenced the board members and the journalist to three years in prison for the offense of “calumnious defamation” [*injurias calumniadas*] of an authority, and ordered them to pay a total of US $40 million in compensation to President Rafael Correa. This was broken down as US $30 million to be paid jointly by the convicted individuals, and US $10 million by the newspaper’s parent company. The defendants were additionally ordered to pay US $2 million in attorneys’ fees to the president’s attorneys. The conviction was based on Articles 489, 491, and 493 of the Ecuadorean Criminal Code.261 Notice was subsequently given on September 23, 2011 of...
the appeal judgment handed down by the Second Chamber for Criminal and Traffic Matters of the Provincial Court of Guayas, which affirms in its entirety the criminal conviction and civil judgment against journalist Emilio Palacio, three members of the Board of Directors of El Universo de Ecuador, and the newspaper itself.262

168. The information received indicates that both the lower court’s judgment and the appeal judgment convict the three members of El Universo’s Board of Directors in their capacity as “accomplices.”263 In particular, the judgment of the 15th Court of Criminal Guarantees held that “matters concerning so-called press offenses […] involve not only the person who writes the defamatory article but also […] the owner or directors of the medium become accomplices or necessary cooperators in the offense, because without their assistance the publication of the defamatory article would not have been possible.”264

169. The Office of the Special Rapporteur was informed that on September 26, 2011 the Second Criminal Chamber of the Provincial Court of Guayas responded to a request from President Correa to clarify and expand upon the judgment. The request asked the court, among other things, to clarify the declaration of abandonment of the motions to vacate and appeal by some of the interested parties, who were neither present nor represented at the hearing on the motion. The Provincial Court of Guayas ruled that journalist Emilio Palacio Urrutia’s motion to vacate and appeal...
had been abandoned, and ordered the lower court judge to enforce the judgment against him.265 When this report went to press, the case was awaiting a decision on cassation.

170. According to the information received by the Office of the Special Rapporteur, on February 28, 2011 President Rafael Correa filed suit for non-pecuniary damages in the Fifth Civil Court of Pichincha against investigative journalists Juan Carlos Calderón and Christian Zurita for the 2010 publication of the book *El Gran Hermano* [Big Brother].266 In the book, the journalists make reference to contracts awarded by the state to companies tied to Fabricio Correa, the president’s brother. The president claims that he never had knowledge of the contracts, and that as soon as he found out about them he terminated them unilaterally. The president alleges in his lawsuit that the book contains “false facts” that tarnish his good name, and he seeks damages in the amount of US $10 million from the book’s authors. At the time of this writing, the case was still pending.267

171. In 2008, journalist Freddy Aponte was convicted of criminal defamation for having called the mayor of Loja a “thief.” Aponte served a six-month prison sentence, but stated that he did not have the US $55,000 he was supposed to pay as compensation. In August of 2011 he was convicted by a trial court and sentenced to five years in prison for the offense of “fraudulent insolvency.” At the time of this writing, the case was on appeal. The journalist has reiterated that he does not have the funds to pay the compensation. This is one of several cases that the mayor of Loja has brought against Aponte in recent years.268

172. The Office of the Special Rapporteur learned of a criminal case alleging defamation offenses [*injurias calumniosas y no calumniosas graves*] brought by prosecutor Gloria Alexandra Bravo Cedeño against journalists and media executives Pedro Eduardo Zambrano Lapentti, José Childérico Cevallos Caicedo, Paúl Julio Jefferson Bernal, Freddy Antonio Solórzano Catagua, Evelina Amarilis Zambrano Vera, and attorney Edison Nevi Cevallos Moreira.269 The media outlets allege that the defendants limited themselves to repeating the complaint or opinion of a private citizen, and that

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she is the party against whom the accusation should be made.270 On May 14, a group of alleged pro-government sympathizers had verbally assaulted Jaime Ugalde, editor of the media group Ediasa, while he was traveling around the town of Portoviejo. According to reports, individuals with banners for the pro-government movement Alianza País insulted Ugalde from a pickup truck, while another vehicle blocked his way for several minutes. Moments earlier the president’s Saturday radio program, Enlace Ciudadano had been held in the neighboring town of Manta, in which the president expressed his support for Prosecutor Bravo Cedeño’s lawsuit against the journalists and executives of Ediasa.271

173. According to the information received by the Office of the Special Rapporteur, on November 24 the 14th Court of Criminal Guarantees of Pichincha convicted Mónica Chuji, an indigenous leader and former Secretary of Communications, of the offense of criminal defamation. She was sentenced to one year in prison and ordered to pay a fine of a US $100,000. The case was based on statements given to the media in which she criticized a public servant, and reportedly stemmed from an interview published in an Ecuadorian newspaper on February 6, 2011, in which Chuji said that Vicilio Alvarado, the Minister of Public Administration, was a “nouveau riche” who had gotten rich during his time in government.272 The Office of the Special Rapporteur was informed that, after the judgment was handed down, Minister Alvarado reportedly announced that he had decided to “forgive” Chuji through the concept of a “pardon.”273 Nevertheless, the indigenous leader reportedly indicated that she would appeal the decision. The Office of the Special Rapporteur was informed that on December 7, 2011, the 14th Court of Guarantees dismissed the case at the request of the plaintiff, rendering moot the sentence and Chuji’s grounds for appeal.274

174. President Correa reportedly requested to lift the legislative immunity of opposition Assemblyman Galo Lara, for purposes of bringing a case against him for criminal defamation. The president’s request allegedly stemmed from a statement broadcast on channel RTU during the 119th legislative session, in which the assemblyman asserted, “There is no agreement for democracy, only for buying consciences, Mr. President; here there is solid opposition to the regime led by Rafael Correa, who commands and protects the corruption from Carondelet.” President Correa accused Lara of having committed the criminal defamation offenses [injuria calumniosa y no calumniosas] defined in Articles 489, 490 and 494 of the Criminal Code. Accordingly, he requested—pursuant to Article 128(2) of the constitution—that the National Court of Justice (CNJ) ask the National Court of Criminal Guarantees of Pichincha to hold a hearing against the assemblyman to determine whether to lift his legislative immunity.


Assembly for authorization to open a criminal case against the assemblyman. On November 10, the Second Criminal Chamber of the CNJ issued an official letter to Fernando Cordero, President of the National Assembly, requesting to lift Assemblyman Lara’s immunity. A response to the request must be provided at a plenary session of the National Assembly by December 10, 2011. In the event that there is no response by that deadline, it will be understood to have been granted under the terms of Article 128 of the constitution. At the time this report went to press, the Special Rapporteur was informed that the National Assembly had denied the request to lift Assemblyman Lara’s immunity.

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

176. The Inter-American Court has also examined, in specific cases, the disproportionate nature of desacato laws and the prosecution of individuals for this offense. For example, in the case of Palamara Iribarne v. Chile, the Inter-American Court examined the case of a civilian employee of the Chilean Armed Forces who had made critical statements in the media about the operation of the military criminal justice system. As a result, Palamara Iribarne was prosecuted for the offense of desacato. In the opinion of the Inter-American Court, in this case “by pressing a charge of

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276 Article 128.- Assembly persons shall enjoy parliamentary immunity from legal proceedings by the National Court of Justice during the performance of their duties; they shall not be held civilly or criminally liable either for the opinions they give or for the decisions or actions they carry out in the performance of their duties, inside or outside the National Assembly.

To file criminal proceedings against an Assembly person, prior authorization from the National Assembly shall be required, except in those cases that are not related to the performance of their duties. If the petition filed by the competent judge requesting authorization for trial proceedings is not answered within a term of thirty (30) days, it shall be construed as granted. During the periods of recess, the time-limits indicated above shall be suspended. Assembly persons can only be arrested and imprisoned in case of a felony or final judgment of conviction [...] (“Las asambleístas y los asambleístas gozarán de fuero de Corte Nacional de Justicia durante el ejercicio de sus funciones; no serán civil ni penalmente responsables por las opiniones que emitan, ni por las decisiones o actos que realicen en el ejercicio de sus funciones, dentro y fuera de la Asamblea Nacional. // Para iniciar causa penal en contra de una asambleísta o de un asambleísta se requerirá autorización previa de la Asamblea Nacional, excepto en los casos que no se encuentren relacionados con el ejercicio de sus funciones. Si la solicitud de la jueza o juez competente en la que pide la autorización para el enjuiciamiento no se contesta en el plazo de treinta días, se entenderá concedida. Durante los periodos de receso se suspenderá el deceso del plazo mencionado. Solo se les podrá privar de libertad en caso de delito flagrante o sentencia ejecutoriada”).

contempt, criminal prosecution was used in a manner that is disproportionate and unnecessary in a democratic society, which led to the deprivation of Mr. Palamara-Iribarne’s right to freedom of thought and expression with regard to the negative opinion he had of matters that had a direct bearing on him and were closely related to the manner in which military justice authorities carried out their public duties during the proceedings instituted against him. The [Inter-American] Court believes that the contempt laws applied to Palamara-Iribarne established sanctions that were disproportionate to the criticism levelled at government institutions and their members, thus suppressing debate, which is essential for the functioning of a truly democratic system, and unnecessarily restricting the right to freedom of thought and expression.”278

177. In the case of Tristán Donoso v. Panama, the Inter-American Court underscored the positive fact that, subsequent to Tristán Donoso’s conviction of criminal defamation for speaking out against a high-ranking government figure, Panama did away with penalties for desacato and other restrictions on freedom of expression.279

178. In addition, in the case of Herrera Ulloa, in its examination of the use of criminal law against persons who express critical opinions or circulate information that implicates the highest-ranking public servants, the Inter-American Court held:

In a democratic society public servants are more exposed to scrutiny and the criticism of the public.280 This different threshold of protection is due to the fact that they have voluntarily exposed themselves to a stricter scrutiny. Their activities go beyond the private sphere to enter the realm of public debate.281 This threshold is not based on the nature of the individual, but on the public interest inherent in the actions he performs.282

179. In the same vein, in the case of Palamara Iribarne, the Court found that:

It is logical and appropriate that statements concerning public officials and other individuals who perform public services are afforded, as set forth in Article 13(2) of the Convention, greater protection, thus allowing some latitude for broad debate, which is essential for the functioning of a truly democratic system.283

180. In this respect, in a democratic society, public officials and those who aspire to be public officials have a distinct threshold of protection that exposes them to a greater degree of scrutiny and public criticism. This is justified by the public interest nature of the activities they engage in, as they have exposed themselves voluntarily to heightened scrutiny, and because they


283 I/A Court H.R. Case of Palamara Iribarne, Judgment of November 22, 2005. Para. 82.
have an enormous capacity to call information into question through their power to appeal to the public.284

181. Also, the Inter-American Court has indicated 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.”285

182. In Official Letter No. 05303 from the Office of the Attorney General, which contains the State’s response to the questions posed to it at the Public Hearing on the Situation of the Right to Freedom of Expression in Ecuador held at the IACHR’s headquarters in Washington, D.C. on October 25, 2011, the Ecuadorian State addressed the scope of the doctrine and the decisions of the Inter-American Court of Human Rights and the Commission within the framework of the new Constitution of 2008. The State begins by indicating that “The Ecuadorian State considers the doctrine and the case law of the Inter-American System to be a secondary source of public international law.” Nevertheless, it indicates that once a State accepts the jurisdiction of the Court, it is required to enforce the Court’s decisions in its particular cases. In this respect, the State highlighted that the Constitutional Court of Ecuador has applied the inter-American case law in multiple judgments as an “auxiliary sources.” In terms of the force and hierarchical status of international human rights standards, the State indicated that “international human rights law, having the same hierarchical status as the Constitution in benefit of the validity of human rights, is applied as a secondary source of international law. In this context, and because the Ecuadorian State has agreed to be bound by the decisions of the Inter-American Court, the Constitution of the Republic, beginning with its preamble, establishes guidelines that guarantee the rights enshrined in the American Convention and confer constitutional status upon the reports and judgments of the Inter-American Commission and the Inter-American Court of Human Rights, respectively.” The State reported that the Constitution of Ecuador establishes expressly that “international human rights instruments enjoy constitutional status insofar as they best favor the full validity of rights [...] they shall be directly and immediately enforced.” The State concluded that the rights enshrined “in international human rights instruments are enforceable against any public servant,” and that public servants “are responsible for implementing the standards of the Inter-American System for the Protection of Human Rights.”286

183. With respect to criminal law provisions that existed prior to the Constitution, such as criminal defamation [injuría], the State indicated that Article 289 of the Criminal Code protects people’s right to honor in general. In addition, it maintains that the type of protection of honor and dignity “provided for in the criminal law is set forth in Chapter Six of the Constitution, which


establishes the rights to liberty. Those rights are understood as moral integrity; the right of all persons wronged by information disseminated by the media without evidence or based on inaccurate facts, to the appropriate correction, reply, or response, which shall be immediate, mandatory, and free of charge, in the same space or time slot; and the right to honor and to one’s good name. Finally, it establishes that ‘the Law shall protect the image and voice of the individual.’” The State additionally considered that the protection of honor is provided for in general bodies of law, under which those provisions could be subject to (i) constitutional challenge, or (ii) repeal or the enactment of a new body of law by the National Assembly pursuant to Article 52 of the Organic Law on the Legislature.287

184. In reference to the issue of protecting the honor of all citizens from the statements of public servants, the Ecuadorean State indicated that Article 489 of the Criminal Code generally protects the right of all persons to their honor, by establishing the offense of criminal defamation [injurias]. However, the State indicated that Article 493 of the Criminal Code establishes special protection when the criminal defamation is directed toward public servants. The State further noted that Title III of the Criminal Code, entitled “crimes against public administration,” provides special protection reserved for the honor of the authorities, and that the articles that are currently the subject of a constitutional challenge before the Constitutional Court are included in this title.288

185. In this respect, the State underscored that “Two constitutional challenges that were consolidated are currently pending before the Constitutional Court of Ecuador […] seeking to eliminate Articles 230, 231, 232 and 233 of the Criminal Code, which are part of the crimes against public administration.” The State indicated that in this case the Office of the Attorney General, in its capacity as the State’s legal representative, maintained that “in spite of the fact that it does not agree with the plaintiffs’ arguments, it does not object to the elimination of those offenses, while preserving the general protection of the right to honor through the offense of criminal defamation [injurias].” The Ecuadorean State concluded that “The criminal laws that protect the honor of public servants could be eliminated through a declaration of unconstitutionality by the Constitutional Court of Ecuador, keeping only those provisions that guarantee the protection of the honor of all citizens in general.”289

C. Presidential broadcasts and government interruptions of news programs

186. According to the information received, mandatory government broadcasts have been ongoing in Ecuador in recent years, in addition to the programs Enlace Ciudadano [Citizen Connection] and Diálogo con el Presidente [Dialogue with the President].290


187. During 2011, a new way of employing the power to conduct mandatory presidential broadcasts has been pioneered. As mentioned below, the government has made use of this power to order certain media outlets to publish the government’s opinion regarding their editorials or news articles. In effect, according to information received, during 2011 there have been repeated governmental interruptions of critical news programs by presidential radio and television broadcasts that transmit the official message only on the station broadcasting the information or opinion that the government objects to. According to the reports received by the Office of the Special Rapporteur, on January 18, 25, and 31, the government interrupted the signal of the Teleamazonas channel to insert messages during the morning program “Los Desayunos 24 Horas,” hosted by journalist María Josefa Coronel. The presidential broadcasts, which only affected Teleamazonas, criticized Coronel’s responses to the government messages and her opinions and interviews that questioned the referendum and plebiscite advocated by President Rafael Correa, which sought to make legal and constitutional changes.\(^{291}\) On February 10, a presidential speech interrupted the interview and opinion program “En Contacto Directo” on the Ecuavisa network for ten minutes. According to reports, the guest on the program that day was former President Lucio Gutiérrez, and the message from the government criticized the former president’s administration.\(^{292}\) On February 15, a presidential broadcast reportedly interrupted the signals of the Radio Quito and Platinum radio stations of the Ecuadorradio network for 15 minutes, in order to call into question Fabio Chambers, who had been interviewed the previous day by journalist Miguel Rivadeneira. Chambers was the auditor in charge of investigating the contracts entered into between the state and the president’s brother, Fabricio Correa. The government message criticized the colloquial tone of the interaction between the journalist and the interviewee.\(^{293}\) The following day, February 16, the government inserted a message that was nearly 10 minutes long into the news and opinion program on Radio Democracia hosted by journalist Gonzalo Rosero, for purposes of refuting opposition assemblyman Galo Lara, who had been interviewed on the show the previous day.\(^{294}\) On February 28 and on March 2, the government reportedly dedicated two other presidential broadcasts—which were only on the Ecuavisa station—to refuting remarks made by journalist Alfredo Pinoargote, of the news program “Contacto Directo,” and an interview conducted on February 27 with the mayor of Guayaquil, Jaime Nebot, in which reforms that were to be approved by the referendum were called into question.\(^{295}\) On March 28, the government disputed journalists Juan Carlos Calderón and


Cristian Zurita, authors of the book “El Gran Hermano” [“Big Brother”] on a national television network. According to the information received, the official message denied that President Rafael Correa had any knowledge of the contracts that his brother Fabricio had been awarded by the state. The broadcasts stressed that the journalists should retract their assertions. That same day, the journalists presented the second edition of their book and dismissed the possibility of any retraction. On April 3, the government aired a second official broadcast related to the same issue.

The government had also reportedly warned the Ecuavisa network that it was risking sanctions for having displayed the text “Government Broadcast” while an official message was being broadcast on February 17. According to the information received, National Communications Secretary Fernando Alvarado sent a note to Fabián Jaramillo, the Superintendent of Telecommunications, in which he indicated that the station had “arbitrarily” altered the content of the government message by including that text since, according to Alvarado, licensees of state broadcasting frequencies are required to air the messages in their entirety, without altering, editing, or modifying in any way the audiovisual materials delivered to them. According to reports, the station’s executives agreed to rebroadcast the message without any alteration.

According to the information received by the Office of the Special Rapporteur, on June 29, 2011 the program “La Mañana en 24 Horas” on the Teleamazonas television station was interrupted by a national broadcast link-up directed at that channel only. In it, the program’s interviewer, Jeannette Hinostroza, was accused of having a conflict of interest because she interviewed Assemblyman Galo Lara, who had denounced irregularities in the Ministry of Economic and Social Inclusion concerning life insurance and the non-payment of a “human development” bonus to beneficiaries. The 12-minute link-up disparaged the interviewer because her husband’s father was the owner of an insurance company, and it attempted to discredit the assemblyman for having been named a defendant in some lawsuits.

At the public hearing held on October 25, 2011 at the IACHR, the government of the Republic of Ecuador indicated that it is respectful of freedom of expression, but not of the right to make false accusations, lie, or offend, which it would respond to under the laws currently in force. The state indicated that during President Correa’s administration the number of Internet users

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has doubled, and an increase in the allocation of frequencies has been verified. It further emphasized that the government’s decision to create public media has reportedly become a threat to the large media outlets, which have used every possible resource to combat this state decision. Moreover, the state asserted that in Ecuador prior censorship does not come from the state but rather from the media owners themselves toward their own journalists.  

191. For its part, Fundamedios indicated at that hearing that journalists and the media both have been subject to constant disparagement, insults, accusations, and stigmatizing speech from high-ranking government officials, and particularly by the head of state. It stated that most of the attacks come from public servants through their use of stigmatizing speech, as well as administrative, legislative, and judicial decisions.  

192. After the hearing, the government issued at least two official speeches on radio and television questioning the people who had participated in the hearing, particularly about Cesar Ricaurte, the director of the organization Fundamedios.  

193. On November 3, 2011, the Inter-American Commission on Human Rights requested information from the State of Ecuador with respect to the aforementioned state’s radio and television broadcasting. In particular, the IACHR requested information about alleged offensive, stigmatizing, and threatening messages conveyed through social networks against the representatives of the organization Fundamedios.  

194. The state sent its response to the request for information on November 18, 2011. In that response, the state made some clarifications about the situation of the media in Ecuador, and answered the questions posed by the IACHR. The State indicated that there are significant private media powers in Ecuador that act against the government and manipulate freedom of expression in the country. It stressed that the greatest concentration of media is found in the private sector and that those private media “are aligned with Fundamedios.” Additionally, the state considered that “freedom of expression is in a troubled state in the Republic of Ecuador,” and therefore limitations should be placed not on public servants, but rather on the “private media that misinform, lie, and restrict freedoms, since they represent important national and international sectors that seek to destabilize democracy in the country.”  

195. In response to the IACHR’s questions, the state maintained that the purpose of the presidential speech aired on November 1, 2011—which referred to Fundamedios Director César Ricaurte—was to properly inform the Ecuadorian public about events that are not published in the privately-owned media. The state alleged that the private media impose a kind of media censorship that prevents the Government from adequately communicating matters of public interest. It


emphasized that broadcasting mandatory presidential speeches is a power granted to the state under Article 59 of the Broadcasting and Television Act to report on the activities of government bodies—in this case, the activities surrounding the visit of several public servants to the October 25, 2011 hearing at the IACHR and the arguments made at the hearing. The state also indicated that the speech was aired in accordance with the requirements of the regulations to the Broadcasting and Television Act, stressing that such broadcasts are not limited in duration when they are requested by the President of the Republic.  

196. With respect to the verification of the information broadcast in the presidential speech and the possibility of recourse for affected parties to dispute the statements made in such broadcasts, the state indicated that the presidential broadcasts are informational forums in which no accusations of any kind are made, and that they contain “completely objective” facts with clearly verifiable sources. As such, in the state’s opinion, it was not appropriate to request “a forum for clarifications within the same compulsory programming system.” Nevertheless, the state indicated that “it has made corrections to its official programming, as requested under the protection of Ecuadorean law, when the information aired has been inaccurate, and it is willing to do so at any time.”

197. The Office of the Special Rapporteur is grateful to the State of Ecuador and to the civil society organizations for the information they submitted, and once again it acknowledges the importance granted to the October 25 hearing, which was attended by high-ranking officials of the Ecuadorean State.

198. In addition, the Office of the Special Rapporteur has acknowledged the authority of the President of the Republic and other high-ranking government officials to use the media for purposes of informing the public of significant issues of public interest that must be reported urgently through the independent media. Indeed, the Inter-American Court has held that “making a statement on public-interest matters is not only legitimate but, at times, it is also a duty of the state authorities.”

199. Nevertheless, the exercise of this authority is not absolute. The information that governments transmit to their citizens through mandatory presidential broadcasts must be strictly necessary in order to address an urgent need for information regarding issues of clear and genuine public interest. They must be aired for the period of time strictly necessary for the conveyance of such information. In this respect, both the IACHR and its Office of the Special Rapporteur, as well as some national bodies of States parties to the American Convention, applying international standards, have indicated that “not just any information justifies the interruption by the President of

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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.” Principle 5 of the Declaration of Principles explicitly establishes that, “Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”

200. The Office of the Special Rapporteur also recalls, as the Inter-American Court of Human Rights has established, that state authorities are not only justified in speaking out on matters of public interest but also have the duty to do so on certain occasions. However, in making such statements the authorities are subject to certain restrictions such as having to verify in a reasonable manner, although not necessarily exhaustively, the truth of the facts on which their opinions are based. It must do so with a greater degree of diligence than that used by private parties, given the high level of credibility the authorities enjoy and with a view to keeping citizens from receiving a distorted version of the facts. Furthermore, they should bear in mind that, as public servants, they are guarantors of the fundamental rights of the individual and, therefore, their statements cannot disregard such rights. This duty of special care is particularly heightened in situations involving major social conflict, public disturbances, or social or political polarization, precisely because of the risks entailed for certain people or groups at a given time.

201. The Inter-American Court has also held that risky situations can be exacerbated if they are “the object of an official discourse that may cause, 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.”

D. Disparaging Statements

202. The Office of the Special Rapporteur learned of several disparaging statements made by senior state authorities against media outlets and reporters critical of the government. According to the information received by the Office of the Special Rapporteur, these statements are common. Some examples are cited below. According to reports, on February 2, during a discussion held with the press at the Carondelet Palace, President Rafael Correa characterized the Teleamazonas television channel as a “corrupt” station because of the manner in which it had expressed its opposition to the referendum called by the government. In response to a question posed by the journalist who was interviewing him, the president reportedly stated: “(...) no doubt, there is a corrupt press. And if the shoe fits, wear it! And a large part of that corruption is at Teleamazonas.”

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203. On February 12, during his Saturday program *Enlace Ciudadano*, President Rafael Correa reportedly characterized media outlets critical of his administration as “assassins of ink.” On February 28, Communications Minister Fernando Alvarado repeated the same description when calling into question articles published by various critical media. On another edition of *Enlace Ciudadano*, on February 26, President Correa reportedly reiterated his stigmatizing remarks by calling critical journalists and media outlets “corrupt,” “sensationalist,” and “manipulative,” and stated that the newspaper *El Universo* is a “conspiratorial” and “irresponsible” newspaper after it published information on possible changes to the police structure. One week later, according to reports, the president reportedly called several private media outlets “manipulators,” “mediocre,” “corrupt,” “conspiratorial,” and “hit men with ink.” He reportedly repeated similar expressions on the *Enlace Ciudadano* of July 2, 2011.

204. The information received also notes multiple statements against non-governmental organizations critical of the government. According to that information, on the program *Enlace Ciudadano* on June 25, President Correa alleged that two nongovernmental human rights organizations (Fundamedios and Participación Ciudadana) receive financing from USAID, implying that they serve the interests of others. Fundamedios has maintained that there are no limitations on the financing of NGOs with international funds, that these kinds of statements are intended to be disparaging, and that in any case, it has not received such support. According to the information received, on June 28, 2011, Communications Secretary Fernando Alvarado issued an “Open Letter to Fundamedios,” which was reprinted by various newspapers around the country, stressing that the actions of this non-governmental organization—which are limited to reporting events relating to issues of freedom of expression, and the content of which has not been refuted by the authorities—more closely resembled “political strategies and military tactics designed to create confusion or promote public opinion trends favorable to the interests of some of its financial backers.” It further indicated that the institution “receives direct funding from USAID” and from the National

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315 On this same occasion, defending two of his ministers in an alleged corruption case, the president reportedly stated: “The corrupt ones are not in the citizens’ revolution; the corrupt ones are in the press. The shameless crooks that have always wanted to run this country.” Office of the President of the Republic of Ecuador. February 12, 2011. *Enlace Ciudadano* 208. Available at: http://www.presidencia.gob.ec/index.php?option=com_remository&Itemid=90&func=showdown&id=788


Endowment for Democracy (NED). Likewise, the state-owned newspaper *El Telégrafo* announced that journalist Emilio Palacio and the executive director of *Fundamedios*, Cesar Ricaurte, had taken part in an event in Washington organized by the NED, an entity that—according to the newspaper—is tied to the CIA.

205. In relation to these events, the Office of the Special Rapporteur expresses its concern over the statements of public servants that could stigmatize journalists, media outlets, or nongovernmental organizations that publicize information critical of the state’s actions. In this respect, public servants have the duty to ensure that their statements do not infringe upon the rights of those who contribute to public deliberation by expressing and disseminating their thoughts, such as journalists, media outlets, and human rights defense organizations. They must also bear in mind the context in which they express themselves, in order to ensure that their statements do not amount to, in the words of the Court, “a form of interference with or pressure impairing the rights of those who intend to contribute to public deliberation by means of expression and dissemination of [their] thought.”

206. As the Office of the Special Rapporteur has stated on prior occasions, 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.

E. Constitutional amendment and legislative proposals

207. During 2010, the government advanced a legislative reform bill that had as one of its main objectives the creation of an administrative body with jurisdiction to regulate the content of all media, establish the grounds for liability and the applicable sanctions, and serve as an authority on enforcement of said laws. The Office of the Special Rapporteur intervened on two occasions to point out the problems raised by this bill. President Rafael Correa decided to include a question on this issue in the referendum held on May 7, 2011. He also decided to include in that referendum a question aimed at barring the directors, owners, or shareholders of media outlets from having financial interests in any other sector of the economy besides communications. The questions in the popular referendum related to freedom of expression were as follows:

*Question 3. Do you agree with prohibiting private financial institutions, as well as national private communications companies, their directors, and main shareholders, from being owners or shareholders of companies outside the financial or communications fields, respectively, amending the Constitution as established in attachment?*

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326 According to Schedule 3 to Question 3 of the Referendum, Article 312 of the Constitution of Ecuador would be amended to read: "The institutions of the private financial system, as well as private national communications companies, would..."
Question 9. Do you agree with having the National Assembly, without delay, within the period of time set forth in the Organic Law on the Legislature, issue a Communications Act creating a Regulatory Council to regulate the dissemination of television, radio, and print media content containing messages that are violent, explicitly sexual, or discriminatory, and establishing criteria for the subsequent imposition of liability against the issuing media or journalists?327

208. After the votes were counted, the questions obtained a majority of 47,187% and 44,964%, respectively, against a minority of de 41,886% and 42,044%, respectively.328

209. The Office of the Special Rapporteur provided its opinion regarding the pending draft Communications Law on three occasions through letters to the National Assembly.329 The points addressed by the Office of the Special Rapporteur are still under debate. Among other issues, the Office of the Special Rapporteur indicated that the establishment of a media registry without any distinctions, in which “the medium’s editorial line” must be registered, could constitute an excessive and unnecessary requirement that could have disproportionate effects on certain media and a chilling effect on certain speech. The registration of “editorial and news policies,” as the Office of the Special Rapporteur stated, could give rise to a similar effect.

210. The Office of the Special Rapporteur also found that the grounds for liability provided in the bill are drafted in ambiguous terms that refer to conduct to which it would be particularly difficult to apply the elements of the criminal offense. This grants excessive discretion to the body in charge of enforcing these provisions (the Communication and Information Council), which could be incompatible with the American Convention.330

211. Furthermore, the Office of the Special Rapporteur has called attention to the fact that the single punitive administrative system in the draft bill covers all media, without making relevant distinctions. In particular, what is lawful in the limited sphere of broadcasting given the use of a public good such as open radio and television frequencies, may not be lawful when applied to...continuation

their board members and principal shareholders, may not hold, directly or indirectly, shares or interests in companies unrelated to the financial or communications business, as the case may be. The respective oversight bodies shall be in charge of regulating this provision.” (“Las instituciones del sistema financiero privado, así como las empresas privadas de comunicación de carácter nacional, sus directores y principales accionistas, no podrán ser titulares, directa ni indirectamente, de acciones y participaciones, en empresas ajenas a la actividad financiera o comunicacional, según el caso. Los respectivos organismos de control serán los encargados de regular esta disposición”). In addition, the twenty-ninth transitional provision of the Constitution shall would read as follows: “The shares or interests held by institutions of the private financial system, as well as private national communications companies, their board members and principal shareholders, in companies not related to the sectors in which they participate, shall be alienated within one year of the enactment of this amendment by referendum.” (Las acciones y participaciones que posean las instituciones del sistema financiero privado, así como las empresas de comunicación privadas de carácter nacional, sus directores y principales accionistas, en empresas distintas al sector en que participan, se enajenarán en el plazo de un año contado a partir de la aprobación de esta reforma en referendo”). Office of the President of Ecuador. Available at: http://www.presidencia.gob.ec/pdf/final_preguntas.pdf

327 Office of the President of Ecuador. Available at: http://www.presidencia.gob.ec/pdf/final_preguntas.pdf

328 National Electoral Council. Resultados Votación Total. Available at: http://app2.cne.gob.ec/ resultados/resultadosn.aspx?prv=0. With regard to question 3: 5,226% of the ballots were blank and 5,701% were invalid, and with respect to question 9: 7,73% of the ballots were blank and 5,262% were invalid.


330 The Office of the Special Rapporteur has called attention, for example, to the obligations to differentiate between opinion and news (Article 28), not to disseminate information “without proof” (Article 20), and not to publish information that “[...] endangers human rights” (Article 102 g).
In this respect, the Office of the Special Rapporteur has recalled that only in the case of radio spectrum regulatory authorities is it admissible to establish administrative oversight over the exercise of some aspects of freedom of expression. Additionally, the Office of the Special Rapporteur has indicated that in any case it must be an administrative authority that is fully independent and autonomous, and its punitive powers must be limited to the exercise of police powers for the irregular use of frequencies granted. It must also meet all of the due process requirements inherent in every punitive system, including the opportunity for judicial review.

212. With respect to penalties, the Office of the Special Rapporteur has maintained that the imposition of a penalty for the abuse of freedom of expression or the satisfaction of the right of correction is the responsibility of judges. Nevertheless, in certain cases, as previously stated, media that use frequencies on the electromagnetic spectrum can be subject to administrative controls for the misuse of those frequencies. In any case, when this occurs, the media have the right to an effective judicial remedy for the review of the administrative decision.

213. At the time of this writing, the National Assembly of the Republic of Ecuador was debating the draft Communications Law.

214. In addition, according to the information received by this Rapporteurship, on October 14, 2011, the President of the Republic introduced two new legislative bills to the Ecuadorian National Assembly for its consideration: the draft of the Telecommunications and Postal Services Act, and the draft of the Comprehensive Criminal Code Act. At the time of this writing, those bills had not yet been debated in the Assembly. According to the information received, the bills have reportedly heightened the tension between the President of the Republic and the media.

215. In its 2009 and 2010 Annual Reports, the Office of the Special Rapporteur had congratulated the government of Ecuador on the drafting of a Criminal Code initiative “that would eliminate, inter alia, the offenses of insulting public servants, desacato, and certain types of defamation [injuria].” The Office of the Special Rapporteur considered this positive development as


an initiative that takes account of the inter-American doctrine and case law on the criminal offense of desacato.\textsuperscript{335}

216. The Office of the Special Rapporteur takes a positive view of the fact that the recently introduced draft of the Comprehensive Criminal Code Act establishes penalties for those public servants who arbitrarily infringe upon freedom of expression.\textsuperscript{336} However, the draft of the Comprehensive Criminal Code Act prescribes prison terms of up to 3 years for persons who make accusations against authorities that amount to calumnious and non-calumnious defamation \textit{injurias calumniosas o no calumniosas},\textsuperscript{337} it prohibits the defense of exceptio veritatis\textsuperscript{338} and it imposes criminal liability against foreign authors or facilitators of “defamatory” articles that are reprinted in Ecuador,\textsuperscript{339} as well as against those responsible for publishing or reprinting such information.\textsuperscript{340}

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\begin{itemize}
\item[\textsuperscript{337}] “Article 91. - Violation of freedom of expression and worship. - Any public or private authority that, through arbitrary or violent means, restricts the free expression of thought shall be punished by a term of imprisonment ranging from three to five years” (“La autoridad pública o privada que por medios arbitrarios o violentos, coartare la facultad de expresar libremente el pensamiento, será sancionada con pena privativa de libertad de tres a cinco años”).
\item[\textsuperscript{339}] “Article 123. - Defamation published abroad. - Defamatory statements, whether calumnious or not, published in foreign media may result in the prosecution of the persons who send such articles, or order their placement, or contribute to the introduction or distribution of such media in Ecuador” (“Las injurias, calumniosas o no, publicadas en órganos de publicidad del extranjero, podrán ser perseguidas contra las personas que hubieren enviado los artículos o la orden de insertarlos, o contribuido a la introducción o a la distribución de tales órganos en el Ecuador”).
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among other provisions. In contrast to the current proposed bill, the previously drafted provisions were consistent with the Inter-American standards on freedom of expression and would prevent the occurrence of some of the acts reported herein.341

217. In its response to the questions posed to it at the Public Hearing on the Situation of the Right to Freedom of Expression in Ecuador held at the IACHR’s headquarters in Washington, D.C. on October 25, 2011, the Ecuadorean State addressed the concern that individuals who offend the honor of a public servant could be prosecuted under the regulations to the new draft Comprehensive Criminal Code. The State indicated that it could not make a conclusive statement on the issue, as it dealt with a bill introduced to the legislature that “is not binding in nature, and does not give rise to rights or obligations for or against any person; nor is it even a mere expectation, given that the content of a law can change substantially in the debate process.” The State emphasized that “Any provision enacted following the appropriate procedures will be consistent with a reading of the Ecuadorian legal system as a whole.”342

F. Communications Media

218. According to the information provided to the Office of the Special Rapporteur, on April 3 police officers in the town of Macas, in the province of Morona-Santiago, closed the radio station La Voz de la Esmeralda Oriental Canela, cutting cables and confiscating transmission equipment in compliance with a shutdown order from the National Council of Telecommunications (CONATEL). Since September, CONATEL had refused to renew the license for the frequency on which the station was operating, awarded ten years earlier, alleging noncompliance with technical requirements.343 The owner of the station, Wilson Cabrera, maintained that the shutdown occurred...

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"Article 125.- Reproduction of defamatory publications.- Persons who reproduce defamatory articles, images, or symbols, are also liable for defamation in any of its forms. Neither in this case, nor in the case of the previous article, may it be alleged as grounds for justification or excuse that such articles, images, or symbols are only reproductions of publications made in Ecuador or abroad” (“Son también responsables de injurias, en cualquiera de sus clases, los reproductores de artículos, imágenes o emblemas injuriosos, sin que en este caso, ni en el del artículo anterior, pueda alegarse como causa de justificación o excusa que dichos artículos, imágenes o emblemas no son otra cosa que la reproducción de publicaciones hechas en el Ecuador o en el extranjero”).


343 Article 9 of the Law of Radio and Television of Ecuador establishes that “the concesión of the same channel or channels will be renewable successively for the same periods without other requirements apart from the confirmation of the Superintendent of Telecommunications, based on the regular technical and administrative controls that it applies, to ensure that the station carries out its activities in observance of the Law and its regulations. To obtain this renewal it is not necessary to enter into a new contract. The Superintendent cannot suspend the operation of the station during this process.” (“concesión será renovable sucesivamente con el o los mismos canales y por períodos iguales, sin otro requisitos que la comprobación por la Superintendencia de Telecomunicaciones, en base a los controles técnicos y administrativos regulares que lleve, de que la estación realiza sus actividades con observancia de la Ley y los reglamentos. Para esta renovación no será necesaria, la celebración de nuevo contrato. La Superintendencia no podrá suspender el funcionamiento de la estación durante este trámite”). Nevertheless, the law does not Estabilize the technical and administrative requirements that should be

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while an appeal was still pending, without any prior notice and based on incorrect grounds by CONATEL.344

219. In public statements, the State indicated that it made the decision not to renew the license of the radio station “due to the fact that in administrative proceedings against these stations, the recommendations of the Comptroller General were not heeded” and emphasized that “when the station was inspected, it was operating within the parameters authorized in the contract, and it was considered that its activities were being carried out in observance of the Law and Regulations; however, in the administrative proceedings brought against this station from 2000 to 2010, various sanctions were discovered for failure to comply with the recommendations made by the Comptroller General in the general report of the National Council of Radio Broadcasting and Television, which are binding upon public entities.”345 In particular, in its Resolution No. RTV-545-17-CONATEL-2010,346 CONATEL decided not to renew the concesión “for having operated a radio station without the required authorization from a competent authority in application of the observations of the Comptroller General of the State [...] and Article 11(c) of the General Regulations to the Law of Radio Broadcasting and Television347; and in compliance with Article 67(a) of the Law of Radio Broadcasting and Television348 and to declare that the concession has ended

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observed, and these are set out in broad and ambiguous terms. Similarly, in this case, the procedures established in Article 71 of the same law, regarding the imposition of sanctions, were not observed. Among these procedures is the minimum guarantee that “the Superintendent will give prior notice to the concession holder, letting the person know of any infractions received, in order that the holder may present proof that the law has been followed within a period of eight days.” (‘La Superintendencia notificará previamente al concesionario haciéndole conocer la falta o faltas en que hubiere incurrido, para que, en el término de ocho días, presente las pruebas de descargo que la Ley le faculta’). Law of Radio and Television Frequency. Supreme Decree No. 256-A. Available at: http://www.conatel.gob.ec/site_conatel/index.php?option=com_content&view=article&id=586:marco-regulatorio-sector-radio-difusion-y-television&catid=48:normas-del-sector&Itemid=103


347 Article 11: “Without prejudice to Article 10 of the Law of Radio and Television Frequency, radio and television frequencies will not be granted in the following cases: c) to natural or legal persons who have established radio or television frequencies without prior authorization from CONATEL or the Superintendent of Telecommunications.” (Sin perjuicio a lo establecido en el Art. 10 de la Ley de Radiodifusión y Televisión no se concederá frecuencias de radiodifusión o televisión, en los siguientes casos: c) A personas naturales o jurídicas que sin autorización del CONATEL o de la Superintendencia de Telecomunicaciones, hayan puesto en funcionamiento estaciones de radiodifusión o televisión”). General Regulations for the Law of Radio and Television Frequencies. Decree No. 3398. Available at: http://www.conatel.gob.ec/site_conatel/index.php?option=com_content&view=article&id=586:marco-regulatorio-sector-radio-difusion-y-television&catid=48:normas-del-sector&Itemid=103

348 Article 67(a) of the Law of Radio and Television Frequencies states that the “concesión de un canal o frecuencia para la instalación y funcionamiento de una estación de radiodifusión y televisión, termina: a) Por vencimiento del plazo de la concesión, salvo que el concesionario tenga derecho a su renovación, de acuerdo con esta Ley”). Law of Radio and Television Frequency. Supreme Decree No. 256-A. Available at: Continued...
because the period of its contract has expired. CONATEL later dismissed the extraordinary motion for reconsideration that was filed to challenge this decision.349

220. The Office of the Special Rapporteur reminds the State that decisions that are so sensitive for freedom of expression such as those dealing with the closure, revocation, or extinction of broadcasting concessions and permits, must be the result of a specific, open administrative proceeding, in which due process and legitimate defense are fully guaranteed as prior conditions for the adoption of a decision, and in which it is demonstrated that whoever is utilizing the spectrum neither has nor has the possibility of having the right to such use or has incurred in one of the legal causes that give rise to the decision.350 In this same respect, it is appropriate to recall that “The criteria that should guide the assignation of licenses must be clearly and precisely provided for in the relevant laws, in such a way as to protect petitioners from arbitrary action. The procedures must be transparent, clear and have predetermined deadlines. Likewise, the requirements for obtaining a license should be set forth in clear and precise laws that prevent discriminatory political factors that could, for example, affect assignation on account of the political, religious or other ideas of the person requesting the license.” On this point, principle 13 of the IACHR’s Declaration of Principles on Freedom of Expression maintains that, “The exercise of power […] by the state […] [and] the concession of radio and television broadcast frequencies […] 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.”351 The Office of the Special Rapporteur additionally recalls that principle 12 of the IACHR’s Declaration of Principles on Freedom of Expression establishes that, “The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals.”

221. In addition, this Office of the Special Rapporteur has been informed that, “According to the Radio and Television Frequency Audit Commission, the media landscape in Ecuador is largely dominated by eight main groups.”352 One such group was the so-called “Isaías Group,” which has been state-run since July 8, 2008.353

222. In this respect, the information received indicates that part of the media considered “private” are reportedly being classified by the government as “seized” private media, in spite of the fact that they are administered and used directly by the state. According to that information, in

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recent years the government has reportedly created a media network and has become one of the key actors in the administration and ownership of communications media in Ecuador.  

223. This Office of the Special Rapporteur recalls that principle 12 of the IACHR’s Declaration of Principles on Freedom of Expression states that, “Monopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people’s right to information. In no case should such laws apply exclusively to the media. The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals.”  

224. In Official Letter No. 05303 from the Office of the Attorney General, which contains the Ecuadorean State’s response to the questions posed to it at the Public Hearing on the Situation of the Right to Freedom of Expression in Ecuador, the Ecuadorean State discussed the anti-monopoly rules that are in effect in Ecuador with respect to the media for purposes of maintaining democratic debate. The State indicated that the third section of the Constitution of the Republic provides for “equal access to the use of radio spectrum frequencies for the management of public, private and community radio and television stations,” and prohibits the “direct or indirect oligopolistic or monopolistic ownership of the media and use of frequencies.” The State underscored that the 2009 Frequency Audit Report of the Frequency Audit Commission considered that the “concentration of radio and television frequencies in Ecuador, in clear violation of the constitutional provisions currently in force, is the result of the sale of corporate assets, that is, frequencies, by private licensees, both natural persons and legal entities, in a true process of improper appropriation of public goods, apparently justified,” and that therefore it was necessary to democratize the media, which the State considered to be in the “imperative public interest of the Ecuadorean State.”  

225. The State indicated that this was the basis for enacting the Twenty-third Amendment and Repeal Provision of the Organic Law for the Regulation and Control of the Market, which “restricts shareholdings in companies other than communications companies for those persons who possess more than 6% of the stock or shares of a national media outlet.” It additionally stated that the second debate of the Communications Act before the National Assembly of Ecuador aims to “develop the constitutional precepts” previously mentioned. The State stressed that it considered it “improper to discuss a legislative bill whose text has not yet been determined.”

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226. The State noted that its Constitution incorporated the right to communication into the legal system as a fundamental economic, social, and cultural right in addition to the rights to freedom of expression, information, and opinion. The State underscored that the structural change is meant to decentralize ownership of the “frequency licenses held by the private/commercial sector [...] to the detriment of the public and community sectors.” The State emphasized that the principles contained in Articles 1, 2, 3, 4, 25 and 26 of the Draft Communications Act “promote access to a democratic, inclusive, participatory, pluricultural, and intercultural debate.”

10. El Salvador

A. Progress

227. According to information received, the San Salvador Trial Court for Organized Crime Matters convicted three individuals on March 9 for their direct involvement in the September 2, 2009 murder of Christian Poveda, a Franco-Spanish documentary filmmaker. The sentences handed down by the court range from 20 to 30 years in prison. According to what the Office of the Special Rapporteur learned, two individuals were convicted as the direct perpetrators and masterminds of the crime against Poveda, and one person was convicted as an accomplice. In the same trial, eight other people accused of participating in the crime were given lesser sentences of four years in prison for having belonged to gangs or illegal groups, and 20 suspects were acquitted. In 2008, the journalist had produced the documentary “La Vida Loca,” which depicts the daily life of gangs in El Salvador. The individuals who killed Poveda were members of one of the groups he had filmed.

228. The Office of the Special Rapporteur expresses its satisfaction at the enactment of Access to Public Information Act by the Legislative Assembly of El Salvador on March 3. According to the information received, the Act entered into force on May 5, and citizens will be able to use it to request information beginning in January 2012, after the public institutions take the necessary actions to put it into practice. The Act had originally been passed by the Legislative Assembly on December 2, 2010, but the President remanded it with remarks that were then partially accepted by Congress. The Access to Public Information Act recognizes the right of every citizen to request and receive truthful and timely information generated by, managed by, or in the possession of the State. The law establishes the criteria for defining the concepts of public, confidential, and classified information; it creates administrative structures within state agencies to receive and process requests for information, and it defines the procedures for appealing denials. It also creates the Institute for Access to Public Information, which oversees the defense and enforcement of the right.

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to access to information, and is composed of five members selected by the President of the Republic from short lists presented by civil society organizations. Journalistic and civil society organizations have called into question the content of the regulations, asserting that they establish grounds for the classification of information that would limit the enforcement of the law (Article 29 of the regulations); they also take issue with the fact that Article 73 grants the President the power to veto the short lists of candidates presented by civil society for membership in the Institute for Access to Public Information. Article 29 of the regulations establishes the following grounds for classifying information: “National Security and/or Political Security”, “national interests, especially if they pertain to public health, or international affairs, and the economic or trade interests of the country”; or when “the proper performance of the duties of the requested body is affected”, particularly in judicial investigations and proceedings, or deliberations leading up to the adoption of resolutions, measures, or policies.

229. On September 8, the Legislative Assembly approved an amendment to the Criminal Code that replaces prisons sentences for crimes against honor with monetary penalties, and establishes criteria for a balancing test in situations where there is a conflict between the rights to information and freedom of expression and rights to honor, privacy, and image. In addition, the bill introduces an amendment according to which the dissemination of allegedly defamatory, libelous, or slanderous messages is understood as legitimate when it “satisfies the function of the free flow of information in a democratic society; when the facts refer to a person with some kind of public relevance, and its disclosure is of general interest; and when it refers to facts made public by individuals engaged in the practice of news reporting, who disclose it without having knowledge of the falsehood of the information, and having diligently verified the sources.” On September 30, Salvadoran President Mauricio Funes remanded the bill to Congress with partial remarks referring to six of the proposed reforms. At the time of this writing, the Legislative Assembly has not made a decision with respect to the matter.


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

The Office of the Special Rapporteur learned that on July 22, 2011 the Third Criminal Chamber of the First Central Division dismissed a lawsuit alleging criminal defamation against three directors and a journalist from the newspaper *La Prensa Gráfica*, which had been filed by a member of the military referred to in an article published on November 30, 2010. The case arose when *La Prensa Gráfica* published that unidentified sources from the United States Drug Enforcement Administration (DEA) and the National Civilian Police of El Salvador reportedly revealed the names of two members of the military—one active and one retired—under investigation for alleged ties to organized crime. According to the information received, the Sixth Trial Court of San Salvador had ruled the claim inadmissible at the first instance, as it failed to find criminal intent in the publication, and considered that the matter involved the conveyance of information from third parties. Subsequently, the Third Criminal Chamber dismissed the motion for appeal.

B. Assaults and threats against journalists and the media

The Office of the Special Rapporteur learned of the murder of press photographer Alfredo Hurtado, which occurred on the night of April 25 on the highway between Ilopango and San Salvador. According to the information received, the journalist was on his way to work when two armed men boarded the bus he was riding and shot him several times. The murderers did not steal any of his belongings, and reportedly escaped to an area in which criminal groups are known to operate. Hurtado was working as a night cameraman for the news program Teleprensa, of *Canal 33*, … continuation


...and had more than 20 years of experience. He reported daily on criminal acts and information surrounding acts of gang violence. The Salvadoran police authorities have suggested several theories on the motive for the murder. Spokespersons from the company where he worked and Salvadoran journalism organizations do not rule out the possibility that the crime could be related to his professional activities as a cameraman.\(^{368}\)

233. The Office of the Special Rapporteur urges the Salvadoran authorities to investigate the motive for the murder, prosecute and properly punish the perpetrators, and guarantee fair reparations for the victim’s relatives. It is essential that the necessary measures be taken to prevent these acts of violence from being repeated, and to counter their serious impact on all of society’s right to freedom of expression.

234. The Office of the Special Rapporteur was informed of several threats reportedly received by the \textit{Victoria} community radio in the department of Cabañas during the first half of the year. On January 11, an anonymous note reportedly warned the station’s staff to leave their jobs or they would be killed. “The question is who will be the third one,” said the note, in reference to two environmental activists who had been murdered in December of 2010.\(^{369}\) On April 30, and May 2, the station again received threatening messages signed by an organization that called itself the “Extermination Group.” Members of the station believe that the threats are the consequence of pro-environmental positions expressed on the radio, and its criticism of mining projects.\(^{370}\)

235. According to the ninth principle of the IACHR’s Declaration of Principles on Freedom of Expression, “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.”

11. United States

A. Positive developments

236. On December 21, 2010, the Federal Communications Commission (FCC) declared network neutrality, by enacting a series of rules to ensure equal access rights to the Web for providers and consumers, to prevent providers from regulating traffic, and to ensure that users can


access content of their choice without being blocked. According to the FCC, “The Internet has thrived because of its freedom and openness – the absence of any gatekeeper blocking lawful uses of the network or picking winners and losers online. Consumers and innovators do not have to seek permission before they use the Internet to launch new technologies, start businesses, connect with friends, or share their views.” According to the information received, the rules require all broadband providers to publicly disclose their network management practices, restrict the blocking of Internet content and applications, and refrain from engaging in unreasonable discrimination in transmitting lawful content. The FCC explained that the decision was necessary in view of evidence of acts by providers that posed potential risks to the openness of the Internet, by blocking or discriminating against certain content and applications without making those practices transparent to consumers. It also cited the fact that providers may have financial interests in services that could compete with other online services and content. According to the FCC, the purpose of these rules is to ensure that consumers are able to continue making their own decisions about the applications, services, and content that they access and use, create, or share with others. In the FCC’s view, this openness promotes competition and reinforces a virtuous circle of investment and innovation.

237. On December 17, 2010 the U.S. House of Representatives and the U.S. Senate passed the Local Community Radio Act, which makes it easier to obtain frequency licenses and opens space on the dial to more stations by reducing the required distance between one frequency and another to prevent interference. According to the information received, the reform not only will allow new stations to emerge in rural areas—where the regulations on distance between frequencies was not justified, due to the lower density of stations—but also will make it possible for new radio stations to emerge in urban areas. President Barack Obama signed the law on January 7, 2011.

238. The Office of the Special Rapporteur notes with satisfaction that the masterminds of the murder of journalist Chauncey Bailey were tried and convicted. In 2007, journalist Chauncey Bailey, the then-Editor in Chief of The Oakland Post, was shot to death after investigating alleged financial irregularities at a local bakery in Oakland, California. A few days after the incident, the perpetrator of the murder, Devaughndre Broussard, confessed. The masterminds of the murder, Yusuf Bey IV and Antoine Mackey, were found guilty by a jury on June 9, 2011 and sentenced to life in prison on August 26 for having ordered the journalist’s murder. After his death, local media


workers organized an *ad hoc* coalition called “The Chauncey Bailey Project,” in order to establish the facts of the murder and finish the investigative journalism story that Bailey had begun. It reportedly played an important role in the investigation leading to the eventual conviction of the perpetrators. According to reports, Chauncey Bailey was the first journalist to be killed in the United States because of his work since 1976.

239. The Office of the Special Rapporteur learned that the Hawaii state legislature approved a two-year extension of a law that protects journalists and bloggers from revealing their sources or their work-related notes and documents. This law, called the “Shield Law,” was originally enacted in 2008 and will now be in effect until 2013.378

240. On March 2, the Department of State released documents concerning the policies of the administration of former President George W. Bush with respect to the detention of “enemy combatants” at Guantánamo Bay and the “significant risks” to the general public if the detainees were released. The information was turned over to the organization Judicial Watch after it filed a Freedom of Information Act (FOIA) request in 2009.379

B. Actions in response to leaks of classified government information

241. On May 23, in the case brought by the Department of Justice against Jeffrey Sterling, a former Central Intelligence Agency (CIA) agent accused of leaking classified documents,380 *New York Times* reporter James Risen was subpoenaed by the federal district court in Alexandria, Virginia at the request of the Department of Justice to testify against Sterling and reveal the sources of information used in his book.381 According to the information received, the


381 Reporters Without Borders. May 26, 2011. *Department of Justice wants reporter to betray source but spares one of its own whistle-blowers.* Available at: http://en.rsf.org/united-states-department-of-justice-wants-26-05-Continued...
journalist, who had included information from an anonymous source in his book *State of War*, invoked his right to maintain the confidentiality of the source under the First Amendment of the Constitution. In July, the judge ruled that Risen’s testimony was covered by reporter’s privilege. According to the information received, on October 19th, the Department of Justice appealed the disposition of the subpoena to a federal court of appeals, which will decide whether to uphold the protection of Risen’s privileged sources. [382]

242. In December 2010, the press reported, based in part on statements by the U.S. Attorney General, that the Justice Department was investigating the publication of classified government information by the organization WikiLeaks with a view to prosecuting its founder, Julian Assange. [383] In addition, on December 14, 2010, the Department of Justice obtained a court order against the parent company of the social networking site Twitter directing it to turn over information on WikiLeaks account users and the accounts of individuals allegedly associated with that group, including founder Julian Assange and Icelandic parliamentary representative Birgitta Jónsdóttir. The requested information included: subscriber names or user names; email, residential, and business addresses; connection records and duration times; data transfer volume; source and destination of the communication; and sender and receiver Internet protocol (IP) addresses, as well as telephone numbers and means of payment. [384] The objections filed by the affected parties were denied by a federal court on November 10, 2011. [385]

243. Principle 4 of the IACHR’s Declaration of Principles on Freedom of Expression establishes that, “Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.”

244. As the IACHR and UN Special Rapporteurs have already indicated, [386] 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...

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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. 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.387

245. With regard to the disclosure of classified information that could affect legally protected rights or interests, the IACHR and UN Special Rapporteurs maintained in the same Joint Statement that ethical codes for journalists should provide for an evaluation of the public interest in obtaining such information. Self-regulatory mechanisms for journalists have played an important role in fostering greater awareness about how to report on and address difficult and controversial subjects. Special journalistic responsibility is called for when reporting information from confidential sources that may affect valuable interests such as fundamental rights or the security of other persons. Such codes can also provide useful guidance for new forms of communication and for new media organizations, which should likewise voluntarily adopt ethical best practices to ensure that the information made available is accurate, fairly presented and does not cause substantial harm to legally protected interests such as human rights.388

246. Finally, the Office of the Special Rapporteur recalls that Principle 8 of the IACHR’s Declaration of Principles on Freedom of Expression states that, “Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential.”

C. The right to access to information

247. The Office of the Special Rapporteur learned of an order issued on July 5 directing The Daily, a digital newspaper, to take down a video of the deposition of Tony Hayward, CEO of British Petroleum, relating to the oil spill in the Gulf of Mexico in 2010. The Daily refused to comply with the order, citing the “there is tremendous public interest in the complete disclosure of all of the surrounding facts” with respect to the oil spill. The judge handling the case lifted the order on July 11.389

248. The Office of the Special Rapporteur received information regarding a federal judge’s refusal, on August 1, to hold the Central Intelligence Agency (CIA) in contempt of court for


destroying approximately 92 videotapes of detainee interrogations, including tapes that allegedly depicted prisoners being waterboarded. The ruling, by a judge from the US district court for the Southern District of New York, arose out of a 2007 motion by the ACLU for the CIA to produce the videotapes. According to the information received, the judge requested that the CIA publish its document-destruction policies and ordered the CIA to pay attorneys’ fees.³⁹⁰

249. Principle 4 of the IACHR’s Declaration of Principles on Freedom of Expression establishes that, “Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.”

D. Assaults and arrests of journalists covering public protests

250. The Office of the Special Rapporteur received information concerning restrictions on freedom of expression in the context of a series of social protests beginning last September 17. Members of a political movement called “Occupy Wall Street” began to camp in Zuccotti Park, a private park in New York City, on September 17 in protest of political and economic policies. When on September 24 protesters marched, allegedly without a permit,³⁹¹ videos circulated on news outlets and social media sites showing police using physical force on various protesters.³⁹² According to reports, those detained included at least one professional journalist, as well as numerous citizen journalists and passersby who attempted to document the protests and arrests with audio and video recording devices.³⁹³ Subsequently, similar protests to “Occupy Wall Street” occurred in other cities, resulting in significant numbers of arrests within the framework of social protests.³⁹⁴

251. With regard to those protests, the Office of the Special Rapporteur was informed of arrests and assaults on some journalists and media workers. According to the information received,


at least three journalists have reportedly been assaulted since this past October by police officers, and two others by people taking part in the demonstrations. In addition, at least a dozen journalists have reportedly been arrested in spite of having identified themselves as reporters.

252. According to reports, journalist Dick Brennan of the Fox 5 station and his cameraman Roy Isen were assaulted on October 5 in New York City while covering the Occupy Wall Street demonstrations.395

253. The Office of the Special Rapporteur learned of alleged attacks against Scott Campbell, an independent journalist, on November 7 in Oakland. According to reports, police officers allegedly shot a rubber bullet at Campbell without any provocation or warning. Campbell disclosed the video that recorded the attack.396

254. Other reports indicate that on October 28, reporter John Huddy of the Fox 5 station was allegedly assaulted by a protester while covering the Occupy Wall Street demonstration in New York,397 and on November 10, cameraman Randy Davis of station KGO was reportedly beaten severely by protesters in Oakland who prevented him from capturing images of a crime that had occurred minutes earlier. The assailants reportedly beat the journalist until other protesters intervened to protect him.398

255. With respect to the arrests, according to the information available, journalist John Farley of station WNET/Thirteen blog MetroFocus, was detained for 8 hours on September 24 in New York while he was interviewing two youths who had allegedly been assaulted. According to reports, the police detained him because he did not have the press credentials given out by the police themselves.399 Kristen Gwynne, a journalist from Alternet, was arrested on October 1 on the

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256. The Office of the Special Rapporteur also learned of the arrest of Jonathan Meador, of the weekly Nashville Scene, on October 29 in Nashville, Tennessee, as he was recording video of the forced removal of the demonstrators from the “Occupy Nashville” group. According to the information received, Meador told authorities repeatedly that he was a journalist. Information was also received that student journalist Malina Chavez-Shannon of Middle Tennessee State University was reportedly arrested while photographing the arrest of protesters. According to reports, the judge in her case dropped and expunged all the criminal charges filed against the protesters. The arrests had reportedly been the result of new restrictions on the right to demonstrate in Tennessee. Those restrictions were challenged and are reportedly no longer being enforced following the issuance of a temporary restraining order by a federal judge.

257. The Office of the Special Rapporteur learned of the arrest of Ian Graham, a photographer from RVA Magazine, on October 31 in Richmond. According to reports, the journalist was arrested and charged with “trespassing after having been forbidden to do so,” after he questioned an order to remain in a designated “press area” while covering the eviction of the


“Occupy Richmond” group. The journalist was ordered to appear in court and, through his attorneys, has challenged the constitutionality of his arrest.406

258. The Office of the Special Rapporteur was also informed that Susie Cagle, a freelance reporter and cartoonist for *Alternet*, *Truthout* and *Citizen Radio*, was arrested and charged with “presence at the scene of a riot” on November 3 in Oakland. According to reports, Cagle identified herself as a journalist at the time of her arrest, but was held for some 15 hours and ordered to appear at a hearing at the end of November.407

259. According to the information received, *Milwaukee Journal Sentinel* photographer Kristyna Wentz-Graff was reportedly arrested on November 2 in Milwaukee while photographing a demonstration near the University of Wisconsin, with her official press credential visible. The journalist was released, presumably without charges.408

260. The Office of the Special Rapporteur was informed that during the night of November 15, 2011, at least seven journalists were arrested while covering the eviction of protesters from Zuccotti Park in New York, even though they had official credentials. The journalists in question were: Julie Walker of NPR;409 Patrick Hedlund and Paul Lomax of DNAinfo.com;410 Doug


Higginbotham, freelance cameraman for TV New Zealand; Jared Malsin of The Local; Karen Matthews and Seth Wenig of the Associated Press, and Matthew Lysiak of the New York Daily News.

261. Some journalists reported having been assaulted or pushed by police. According to reports, the mayor of New York stated at a press conference that the media were prohibited from entering the protest site, in order to “keep the situation from worsening” and “to protect the media.”

262. The American Declaration of the Rights and Duties of Man, the Declaration of Principles on Freedom of Expression, and the First Amendment to the Constitution of the United States provide broad protection for the exercise of freedom of expression. The protection and guarantee of this right requires authorities to ensure the necessary conditions for journalists to be able to cover noteworthy events of interest to the public, such as the social protests mentioned in the preceding paragraphs. The disproportionate restrictions on access to the scene of the events, the arrests, and the criminal charges resulting from the performance of professional duties by reporters violate the right to freedom of expression. It is incumbent upon the authorities to reestablish guarantees and ensure full respect for the right to freedom of expression.

263. The Office of the Special Rapporteur received information that in September an agency within the Department of Health and Human Services reportedly removed a database of...continuation

obstructed from covering OWS protests. Available at: http://cpj.org/2011/11/journalists-obstructed-from-covering-ows-protests.php


medical malpractice sanctions from its website. According to the information received, *Kansas City Star* newspaper reporter Alan Bavley used the database to write about the alleged malpractice of a neurosurgeon. He subsequently received a letter, dated September 1, from the Health Resources and Services Administration warning him that he could be fined up to $11,000 for violating confidentiality. The Administration also shut down the database, alleging the need to protect the confidentiality of the information contained therein. According to the reports, the federal government reopened public access to the database on November 9, but made its use subject to new restrictions. The information cannot be used to identify doctors or entities; individuals must return, erase, or destroy copies of the information requested of the Administration; and the information may not be disclosed to third parties unless it is part of a strictly statistical analysis.416

264. The Office of the Special Rapporteur learned of the March 2 judgment of the United States Supreme Court in the *Snyder v. Phelps* case, which held that the right to freedom of expression provided for in the Constitution protects the protests of a religious group opposed to homosexuality near the funerals of soldiers fallen in combat. In the Court’s opinion, these protests are matters of public interest and are protected by the freedom of expression enshrined in the First Amendment of the Constitution.417 According to the Court, “[f]reedom of [s]peech is powerful. It can stir people to action, move them to tears of both joy and sorrow, and—as it did here—inflict great pain. On the facts before us, we cannot react to that pain by punishing the speaker. As a nation we have chosen a different course—to protect even hurtful speech on public issues to ensure that we do not stifle public debate. That choice requires that we shield Westboro [Baptist Church] from tort liability for its picketing in this case.”418

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417 According to the information received, the case arose based on the pickets that the Westboro Baptist Church of Topeka, Kansas has organized over the past 20 years to express their belief that God hates the United States for its tolerance of homosexuality. According to reports, the members of the congregation went to the funeral of a soldier fallen in combat, at a distance of some 300 meters, in a public place, peacefully and under police surveillance. They reportedly sang religious hymns and displayed signs with messages such as, “Thank God for Dead Soldiers,” “You’re Going to Hell,” “God Hates You,” and “Thank God for IEDs.” The specific case arose from a civil suit filed by Albert Snyder, the father of the fallen soldier, against Pastor Fred Phelps, his daughters, and the Westboro Baptist Church. Fred Phelps and six other people had traveled to Maryland to attend the funeral of Matthew Snyder, son of Albert Snyder, who was killed in Iraq in March of 2006. The members of the congregation notified the church that they were arriving, positioned themselves to protest in a public place 300 meters from the church, and complied with police instructions. Albert Snyder sued them for defamation and intentional infliction of emotional distress, among other claims. A jury in the United States District Court for the District of Maryland agreed with Snyder and awarded him a total of $2.9 million in compensatory damages and $8 million in punitive damages. The District Court reduced the amount of punitive damages to $2.1 million, but left the rest of the verdict intact. Subsequently, a Court of Appeals reversed the judgment, holding that the religious congregation’s speech was protected by the First Amendment of the United States Constitution. That position was later affirmed by the Supreme Court. United States Supreme Court. March 2, 2011. *Snyder v. Phelps*. 131 S. Ct. 1207 (2011). Available at: [http://www.supremecourt.gov/opinions/10pdf/09-751.pdf](http://www.supremecourt.gov/opinions/10pdf/09-751.pdf). See Time. March 3, 2011. *Why the Supreme Court ruled for Westboro*. Available at: [http://www.time.com/time/nation/article/0,8599,2056613,00.html](http://www.time.com/time/nation/article/0,8599,2056613,00.html)

12. Guatemala

265. The IACHR was pleased to learn that the State and civil society organizations agree on the need to protect, consolidate, and reinforce the Historical Archives of the National Police, and that they share the aspiration to turn the National Police Historical Archives Recovery Project into a state project. This evidences the government’s willingness to guarantee the right to access to information. According to the information received, the Police Archives—discovered by chance in 2005—provide a record of the activities of the National Police of Guatemala over 15 years, between 1982 and 1997. They contain some 80 million pages, or 7,900 linear meters of documents. The work of preserving and systematizing the information contained therein has provided useful support to 124 judicial searches for persons who disappeared during the internal armed conflict (1960-1996). It has made it possible to put together 1260 investigation files relating to possible human rights violations, and to build 166 specific cases. The Police Archives have proven to have evidentiary value in the court cases that have resulted in convictions against the direct perpetrators of gross human rights violations. The IACHR notes the concern of the State and of civil society about the need to strengthen the National Police Historical Archives Recovery Project legally and institutionally. This is necessary to ensure its financial sustainability, the opportunity for any person to access the information preserved therein, the technical capacity of the personnel in charge of the project, and the proper preservation and systematization of the stored information. It will thus be possible to know the historical truth, establish the facts surrounding human rights violations, and support court cases that make it possible to serve justice, make victims whole, and take measures to prevent the repetition of such acts.419

266. The Office of the Special Rapporteur condemns the crime committed against journalist Yensi Ordóñez, who was found murdered on May 19 in the town of Nueva Concepción, in the department of Escuintla. According to available information, Yensi Ordóñez’s body was found inside her vehicle with stab wounds to her chest and neck. The journalist had apparently received threats from unknown sources because of her reporting. Reports also indicate that she had been the victim of extortion. The journalist, who was 24 years old, worked with the local Canal 14 news channel, where she also worked as the host of musical and variety shows. In addition, Ordóñez was a teacher at a grade school in the town of El Reparo, in Nueva Concepción. The Office of the Special Rapporteur urges the Guatemalan authorities to investigate the motive for the murder, prosecute and properly punish the perpetrators, and guarantee fair reparations for the victim’s relatives. It is essential that the necessary measures be taken to prevent these acts of violence from being repeated, and to counter their serious impact on all of society’s right to freedom of expression.420

267. According to the ninth principle of the IACHR’s Declaration of Principles on Freedom of Expression, “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

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419 See, Hearing on the protection and guarantee of access to the Historical Archives of the Guatemalan National Police, held before the IACHR on October 24, 2011, during the 143rd Period of Sessions.

The Office of the Special Rapporteur received information concerning the persistence of assaults and threats against journalists in Guatemala during 2011. According to the information received, organizations advocating human rights and freedom of expression documented at least 15 acts involving attacks on the lives and personal safety of media workers during the first half of the year. Eleven of the reported assaults reportedly took place outside the capital. In 2010, 10 assaults were documented during the entire year.421

The Office of the Special Rapporteur observes with concern the threats received by media outlets from alleged drug trafficking gangs. On December 27, 2010, individuals who identified themselves as members of the criminal group “Los Zetas” reportedly delivered a message addressed to President Álvaro Colom to three stations in Cobán, in Alta Verapaz. They demanded that it be broadcast within an hour, warning that otherwise they would burn down the stations and kill their relatives of the station employees. The incident occurred in the context of a government offensive against organized crime.422 Subsequently, on May 21, 2011, police detained three subjects who were attempting to hang several banners in the city of Quetzaltenango. The banners contained messages to the media, telling them to stop publishing articles about events related to drug trafficking. They also warned the press to tone it down: “before the war is with you. Anyone who informs is not a traitor, sincerely, Z-200.” The arrest of the subjects and the seizure of the banners took place days following the massacre of 29 peasant farmers in the department of Petén on May 15.423

Journalist Óscar de León, a correspondent for the television news program Guatevisión in the department of Quetzaltenango, was reportedly threatened and harassed on several occasions at the beginning of 2011. According to reports, de León began to receive threatening phone calls and text messages on January 13, after receiving an anonymous briefcase containing complaints against a local police authority and then trying to confirm them. On January 29, unknown persons reportedly fired shots at his vehicle on three occasions. Although the journalist did not make the investigation public, its content leaked and became public knowledge. The authority referred to in the accusation filed a complaint alleging defamation against León.424

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Also in Retalhuleu, Guatevisión TV correspondent Jorge Tizol was reportedly threatened on his Facebook page days after releasing, on April 12, a video in which three men were beating a driver who refused to buy a product they were selling on the street.\footnote{The message against the journalist (posted to his page on the social networking site Facebook) warned him not to leave the house, because if he did, he would get a beating “until you’re unconscious, if you even come back.” Noticias.Com. April 18, 2011. Amenazan por Facebook a periodista que cubrió captura de supuestos universitarios. Available at: http://noticias.com.gt/nacionales/20110418-amenazan-facebook-periodista-captura-supuestos-universitarios.html; Cerigua. April 15, 2011. Amenazan a periodista en Retalhuleu. Available at: http://cerigua.org/la1520/index.php/geografica/68-retalhuleu/index.php?option=com_content&view=article&id=2365:amenazan-a-periodista-en-retalhuleu&catid=48:libertad-de-expresion&Itemid=10; Regina Pérez, Cerigua. “Intimidaciones y autocensura obstaculizan libertad de prensa en Guatemala”. Vistazo Especial, May 3, 2011. Year 12 No. 2. 2\textsuperscript{nd} Week of May, 2011. p. 1. Available at: http://www.cerigua.org/servicios/boletines/vz-021211.pdf}


272. On April 9, Vasni Vásquez, a journalist from the program “Q´rollo”, which is broadcast on the Internet, was reportedly arrested for his alleged involvement in a kidnapping. The reporter had gone to the place where the police were securing the victim’s release, and reportedly identified himself with his credential from the Chiquimula Journalists’ Network (RCS). Nevertheless, he was arrested with four other suspects, who reportedly denied that the journalist had been an accomplice to the kidnapping. On May 18, 2011, he was placed in pretrial custody and charged with “kidnapping, collusion and conspiracy.” Since then, the date of his hearing has been postponed twice, and his attorneys have reportedly filed several requests to present exculpatory evidence. On June 9, 2011, the Chiquimula Court apparently reported that Vásquez would remain in pretrial detention and be prosecuted for kidnapping.\footnote{RSF expresa serias dudas sobre acusaciones contra periodista detenido. Available at: http://ifex.org/guatemala/2011/06/14/vasni_vasquez/es/; Crónica Viva. June 13, 2011. Guatemala: exigen libertad de reportero Vasni Vásquez. Available at: http://www.cronicaviva.com.pe/index.php/prensa/27-prensa/21534-guatemala-exigen-libertad-de-reportero-vasni-vasquez.}

Nevertheless, on October 19, the Appeals Chamber of Zacapa reportedly released the journalist for lack of evidence against him.\footnote{Mi Chiquimula. October 20, 2011. Queda libre, confirma clausura del caso Vasni Vasquez. Available at: http://www.michiquimula.com/2011/10/queda-libre-confirm-clausura-del-caso-vasni-vasquez/}
273. Environmental journalist Eduardo Villatoro of the newspaper *La Hora* reportedly began receiving intimidating phone calls on June 2, 2011, following the publication of articles about iron mining on Guatemalan beaches and the construction of a liquid gas storage facility. He reportedly received a death threat in one of the last calls. The unknown individuals allegedly also called the Guatemalan Journalists’ Association in order to reiterate the threats, and they linked the threats to the publication of his environmental articles. The journalist reportedly did not file a complaint with the Office of the Public Prosecutor.\(^{431}\)

274. On July 13, 2011, following the publication of an article on alleged corrupt acts of the municipal government of Mazatenango, *Prensa Libre* correspondent Dánilo López was reportedly harassed and verbally assaulted by the mayor. On August 4, 2011, López and Ángel Ruiz, a correspondent from *Nuestro Diario*, were allegedly intimidated by supporters of the mayor, and threatened by his bodyguards.\(^{432}\)

275. In mid-July 2011, journalists Astrid Blank and Jorge Hernández were reported to have been assaulted by an unidentified person in the La Florida neighborhood of Guatemala City. Blank and Hernández had gone to cover a news story about rumors of alleged vote-buying. At the scene, the unidentified person reportedly requested that they stop recording, and when they asked for his name, he verbally and physically assaulted them and destroyed their camera.\(^{433}\)

276. On July 26, journalists Javier Solís, director of *Tele Noticias* of *Mega Visión Canal 3*, and Manolo Lú, of *Ultra Canal 51*, reported that they had been assaulted by two employees of the presidential program *Mi Familia Progresa* (MIFAPRO) from the town of Santa Cruz Muluá, when they went to request information about the implementation of this program in the town. According to reports, the person in charge of MIFAPRO in the town verbally assaulted the reporters and attempted to hit them, while a second staff member hurled threats at them.\(^{434}\)

277. During the first round of the national elections on September 11, a poll worker in the community of Sololá reportedly assaulted Alfonso Guárquez, a *Cerigua* correspondent in that town, as well as *Noti7* correspondent Enrique Pablo de León, when they tried to photograph a polling place.

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where some alleged anomalies had been reported by election observers from the University of San
Carlos.435

278. On October 27, journalist Lucía Escobar reported that she had received threats following the October 19 publication of a column in El Periódico in which she spoke out against a “group of masked men” in the tourist city of Panajachel, called the Security Commission, which was allegedly responsible for violating the freedom and safety of some people. The journalist also identified the authorities who, in her opinion, had defended the masked men or had been indifferent to the events that took place. The threats were reportedly issued on a local television station that was broadcasting a meeting of the Security Commission, at which some of its members made disparaging and stigmatizing remarks against the journalist and reportedly called her “trash” that would have to “end up in the trash.”436

279. According to the ninth principle of the IACHR’s Declaration of Principles on Freedom of Expression, “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.”

280. The Office of the Special Rapporteur notes with concern the appeal from Guatemalan freedom of expression organizations regarding the possible increase in the phenomenon of self-censorship. As evidence of this situation, they cite the fact that in departments where drug trafficking groups are known to operate, information about the problem is scarce. For example, according to the information received, in Alta Verapaz—where the government declared a state of siege in December 2010 due to the presence of the criminal group “Los Zetas”—only 35 articles about drug trafficking were published in the entire year in five newspapers. At the same time, in Chiquimula, where there is reportedly an even greater presence of drug trafficking groups, only five articles were published on the subject in 2010. The Guatemalan organizations theorize that once again there are issues that are not covered or published in Guatemala, and that journalists are again facing the rise of self-censorship because of new censors of freedom of expression, especially coming from the drug trafficking world.437 The Office of the Ombudsman has called the problem of self-censorship among journalists “serious” in light of the activities of organized crime.438

The Office of the Special Rapporteur notes that the bill for the Community Media Act introduced to the Congress of the Republic of Guatemala in August 2009 has been held up. The bill was ruled on favorably by the Indigenous Peoples’ Commission on January 12, 2010, and was included on the agenda for the full legislative session as of February 2010. However, during 2010 changes were made to the bill that would restrict the geographic range of the community radios and impose discriminatory criteria for accessing frequencies—a concern expressed by the Office of the Special Rapporteur in its 2010 annual report. During 2011, the initiative has not been debated in a full legislative session, even though the law would realize aspirations set forth in the Constitution of the Republic of Guatemala, is in line with the commitments of the 1996 peace accords, and could implement the recommendations of the Inter-American Commission on Human Rights and the Office of the Special Rapporteur for Freedom of Expression. Guatemalan organizations for the defense of freedom of expression and Frank La Rue, the United Nations Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, have criticized the reluctance to debate the bill, and have called into question the persistence of a status quo governed by a monopoly in the ownership of television channels and a high degree of concentration in the use and enjoyment of radio frequencies.

The Office of the Special Rapporteur reiterates 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...”

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According to the information received, the amendments mean that the coverage of community radios would be reduced to the local level, with a range of barely 2.5 km., and only on the FM band. The Office of the Special Rapporteur reiterates its 2009 call to the Guatemalan State regarding the need to implement effective policies that ensure equal opportunity of access to radio and television broadcast frequencies. In addition, it reminds the State of its obligation to take all measures necessary, including positive acts, to ensure media access for minority groups and its effective enjoyment without discrimination. IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: 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). Para. 283. Available at: http://www.oas.org/es/cidh/expresion/docs/informes/anuales/Informe%20Anual%202010%20ESPl.pdf

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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.  

283. Principle 12 of the Declaration of Principles establishes that: “The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals.” The Office of the Special Rapporteur again urges the Guatemalan State to bring its legislative framework on broadcasting into line with international standards on freedom of expression.

13. Guyana

284. The Office of the Special Rapporteur was informed of the cancellation of the critical interview and opinion program, *Keeping Them Honest* of *CNS Channel 6*, through a Saturday, July 23 letter sent by the channel’s owner, Chandra Narine Sharma to one of the program’s hosts. The letter regretted having to cancel the program, stating: “This decision, which takes effect immediately, has been taken for regulatory reasons following a conversation I have had with the relevant authorities concerning the content of the program.” The note added, “I thank you most sincerely for choosing the People’s Station CNS6 for your hugely popular and useful program and I trust that you will understand the pressure to which my TV station has been subject over the past several years and the sensitivity of the authorities in the current politically charged environment.” According to the information available, the program’s hosts, Ramon Gaskin and Christopher Ram, spoke harshly of this decision at a press conference held on July 25, 2011. They alleged that it was the result of government pressure. Previously, in May of 2011, following the controversial broadcast of remarks by government critic Anthony Vieira, the Advisory Committee in Broadcasting (ACB) had found *Channel 6* at fault for regulatory noncompliance and had made a recommendation to President Bharrat Jagdeo to close the station for 6 months. According to the information available, *Channel 6*’s license had already been suspended for a month in 2005, and for four months in April 2008, for charges relating to its programming content.

285. The Office of the Special Rapporteur received information indicating that on May 17, the Chairman of the Ethnic Relations Commission filed a claim for Gy$50 million (approximately US$250,000) each for defamation, and for aggravated and punitive damages, both against commentator and government critic Anthony Vieira, and the owner of *CNS6*, Chandra Narine Sharma. The claims arose from statements made by Vieira on May 4, 2011, alleged to have harmed the chairman’s reputation and caused distress, shame, public humiliation, and ridicule. According to

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reports, Sharma acknowledged the mistake and apologized to the chairman for not editing the program prior to its airing.444

286. The Office of the Special Rapporteur for Freedom of Expression sent two requests for information to the State of Guyana, in accordance with Article 18 of the Statute of the IACHR. The first request was sent on August 22, 2011, and was subsequently reiterated and supplemented by a second request for information dated October 12, 2011. Both letters referred to the aforementioned cancellation of the interview and opinion program *Keeping Them Honest* and the particular situation of the CNS Channel 6 network.

287. On October 14, 2011, the Office of the Special Rapporteur received Note No. 893-11 from the State of Guyana445, dated October 13, 2011, in reference to the information requested by this office in both letters. It first provided background information on the state of communications in the country, and then answered the specific questions. In its response, the State indicated that under Guyanese law, media operators are licensed by the National Frequency Management Unit, and monitored by the Advisory Committee on Broadcasting (ACB). They stressed that in view of the unfortunate incidents of violence that erupted in Guyana following the 1997 and 2001 elections, where some media outlets used their forums to promote ethnic violence, both the party of the government and the opposition agreed to set up a bipartisan committee to define media policies in the country. This committee would be comprised by representatives of the main political parties in parliament and by media experts.

288. They indicated that the committee recommended the amendment of the Post and Telegraph Act and the creation of a supervising advisory body. Accordingly, the law was amended on June 23, 2001 and on November 17, 2001, to create a supervisory committee that would be assigned specific powers. That committee was formed in 2002, and was comprised of three people: one appointed by the President, another by the leader of the opposition, and the last one by civil society. The committee is charged with monitoring the media’s compliance with the Constitution and the laws of Guyana.

289. The State reported that since 2006 the President has been the public official in charge of the telecommunications sector. It indicated that, following a lengthy debate, Broadcasting Act No. 17 of 2011 was enacted by the National Assembly on July 28, 2011, and signed into law on September 27, 2011. This law provides for the creation of a National Broadcasting Authority in charge of the regulations and operations for the sector. The Telecommunications Bill and the amendments to the Public Utilities Commission Bill are currently pending before parliament. Those three laws, once they are approved, will provide a completely new legal framework for communications in Guyana.

290. The State asserts that in 2006 the Guyana Elections Commission (GECOM) developed a media code of conduct, which was revised in 2011 with the cooperation of all of the media companies, and that it has been signed by both public and private media outlets. In addition, GECOM created a Media Monitoring Unit (MMU) that operates during election season. Added to this is the “peace accord” signed by the political parties in 2006. They indicated that all of these efforts have been acknowledged by the international observation missions, including from the OAS.

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291. In response to the question regarding the cancellation of the program *Keeping Them Honest*, they maintained that the State does not interfere, and has not interfered, in agreements between private parties, as those agreements are strictly commercial. They asserted that the State did not play any role in the interruption of that program.

292. With respect to the suspensions of *CNS TV6*, the State indicated that it was suspended for a month, from January 22 to February 25, 2005, during a natural disaster that affected more than 300,000 people and 67% of the economy. The State provided the notice sent to the channel on that occasion, which indicated that it had violated the terms of its license in its broadcasting of programs that covered the floods in areas the President had declared disaster zones; in the State’s opinion, the journalists misrepresented the situation by holding the government responsible for the suffering caused by the floods, and this rhetoric encouraged disorder and the creation of a hostile environment for the aid efforts. Consequently, the channel was given notice of the suspension and warned that another violation of its licensing terms could result in the revocation of its license.446

293. The channel’s license was once again suspended for four months, from April 11 to August 28, 2008, because of the content of a live program aired on February 21, 2008, during which a viewer called in and threatened to kill the President. The State provided a copy of the letter sent to the channel indicating that it had violated the terms of its license and of the Post and Telegraph Act with its February 21, 22 and 23, 2008 broadcast of a program whose content advocated the death of the President, and for not having accurately presented statements made by the President on the subject of national security.447 They further stated that the channel had been warned by the Advisory Committee on Broadcasting (ACB) of numerous and repeated transgressions, and had been given the opportunity to respond to or correct them. They also indicated that in January of 2011 the channel’s license was renewed for one year, like all the other licenses, and they provided a copy of the renewed license.448

294. In response to the question about the recent suspension of *CNS TV Channel 6*, the State indicated that on May 4, 2011, the channel had broadcast remarks by Anthony Vieira that defamed the President and his administration, as well as the Chairman of the Ethnic Relations Commission, and that it was an attack on various religious leaders. The Chairman of the Ethnic Relations Commission, Bishop Juan Edghill, filed a formal complaint in his own name before the ACB on May 10, 2011.449 The ACB provided notice of the complaint to the channel and indicated that it had violated Regulation 23A (a-e) to the Post and Telegraph Act. The channel responded to the ACB stating that the broadcast of the remarks had been in error, and that they apologized to Bishop Edghill.

295. The State provided a copy of Regulation 23A, which specifies the necessary conditions for holding a television broadcast license. The amendment to the Post and Telegraph Act provides that section a) of Regulation 23A was eliminated in 2001, and sections b) – i) were

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446 Attachment 4 to Note No. 893-11: Letter from the Office of the Prime Minister to CNS Television Station Channel 6, dated January 22, 2005.
447 Attachment 5 to Note No. 893-11: Letter from the Office of the President to CNS Channel 6, dated April 11, 2008.
448 Attachment 6 to Note No. 893-11: Renewal of License No. 332V/12/OT/2011 from January 1, 2011 to December 31, 2011. It includes the appendix with the terms and regulations governing the license.
449 Attachment 9 to Note No. 893-11: Formal complaint filed before the ACB by Bishop Edghill, dated May 10, 2011.
redesignated as a) – h). Accordingly, sections a) – e) of the regulation establish the following obligations: a) ensure that program content does not offend good taste or decency, or encourage or incite racial hatred, crime, or public disorder, or offend public sensibilities; b) act reasonably and in good faith to ensure that news is presented with due accuracy and impartiality; c) ensure that persons whose work deals with political matters, industrial controversies, or public policy issues maintain their impartiality; d) ensure that due responsibility is exercised with respect to programs with religious content and, in particular, that such programs do not involve any abusive or derogatory treatment of the religious views and beliefs of the persons belonging to a specific religion or religious denomination; and e) ensure that the programs broadcast by the licensee meet the highest possible standard.  

296. On May 27, 2011, the ACB found that CNS TV Channel 6 was liable for the violation of Regulation 23A, and it recommended that the President impose a penalty that could involve the suspension of the channel’s license for a minimum of 6 months, or any other period of time deemed appropriate. In this regard, the ACB found that the channel had violated sections a), b), c), and e) of Regulation 23A. In the ACB’s opinion, the channel’s statements had the potential to create and heighten ethnic and religious tensions in a multi-ethnic and multi-religious society. It reminded the licensee that the media must not be used to insinuate that one religious group benefits more or less than another religious group, without having specific evidence with regard to the matter. It also noted that the company demonstrated a historical pattern of violating Regulation 23A a), b), c), d) and e) since April of 2002.  

297. According to the information provided, the President reportedly met with the owners of the channel in June of 2011. However, after this meeting, the channel again broadcast the offensive program. On September 23, the President met with the owners once again and informed them of his decision to suspend the channel for 4 months. Formal notice of the suspension was given on September 30, 2011, specifying that the suspension would take effect the same day at 6:00 p.m. However, on October 9, 2011, the President announced that he was postponing the start date for the suspension to December 1, 2011.  

298. The Office of the Special Rapporteur is very grateful to the State of Guyana for the information it forwarded, and notes that the IACHR has acknowledged the authority of States to regulate broadcasting activity. This authority encompasses not only the ability to determine the manner in which licenses are granted, renewed, or revoked but also the power to design and implement public policies on broadcasting, provided that the guidelines imposed by the right to freedom of expression are respected.  

299. Additionally, the State confirmed that subsequent to filing his complaint before the ACB, Bishop Edghill filed suit in the Guyana courts against the author of the remarks, Anthony Viera, and the licensee, Mr. Sharma, seeking more than Gy$50 million (approximately US $250,000) in damages.  

300. The Office of the Special Rapporteur finds it relevant to note that, according to principle 10 of the IACHR’s Declaration of Principles on Freedom of Expression, “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.” In addition, principle 11 of the IACHR’s Declaration of Principles on Freedom of Expression states that, “Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as ‘desacato laws,’ restrict freedom of expression and the right to information.”

301. On October 27, 2011 the Office of the Special Rapporteur for Freedom of Expression received Note No. 897-11 from the State of Guyana, in which the State offered its comments on the information issued by the Office of the Special Rapporteur in its 2010 Annual Report. In that report, the Office of the Special Rapporteur made reference to a defamation lawsuit filed by the President of Guyana against Kaieteur News columnist and Editor Freddie Kissoon.

302. The State indicated that freedom of expression is subject to important limitations, and that the purpose of defamation laws is to establish a balance between this freedom and the right to privacy and honor. The State’s position with respect to the particular case that appears in the report is that Mr. Kissoon made libelous statements that were published for purposes of negatively affecting the reputation of President Jagdeo. They indicated that the information gave the impression that the President is racist. They stress that the article is defamatory per se and that—in spite of the fact that it was a statement of opinion—it was defamatory based on specific facts and on allegations regarding those facts, which are defamatory.

303. The State alleged that the statement against the President was unnecessary and that it gives rise to liability from the time of its publication; that is, from June 28, 2010. In their view, the President has demonstrated prima facie that his allegations of defamation are consistent with principles 10 and 11 of the IACHR’s Declaration of Principles on Freedom of Expression, as well as with other principles of that declaration.

304. The Office of the Special Rapporteur is especially grateful for the information provided by the State. In this respect, it finds it important to underscore that, indeed, one of the inter-American standards on the issue establishes that any propaganda for war and any advocacy of national, racial, or religious hatred that constitutes incitement to violence or any other similar unlawful action against any person or group of persons, for any reason, including race, color, religion, language, or national origin, shall be prohibited by law. In this respect, the incitement of violence for racial reasons is not protected by the right to freedom of expression.


455 Without prejudice to the presumption of coverage ab initio of all forms of human expression by freedom of expression, there are certain types of speech that are excluded from this freedom’s scope of coverage by virtue of express prohibitions set forth in international human rights law. There are essentially three types of speech that do not enjoy protection under Article 13 of the American Convention, according to the treaties in force: Propaganda for war and advocacy of hatred that constitute incitements to violence; direct and public incitement to genocide; and child pornography. IACHR, Office of the Special Rapporteur for Freedom of Expression. Inter-American Legal Framework of the Right to Freedom of Expression. OEA/Ser.L/V/II CIDH/RELE/INF. 2/09. December 30, 2009. Paras. 57-80. Available at: http://www.cidh.org/pdf%20files/Marco%20Juridico%20Interamericano%20Estandares.pdf
In this respect, “The IACHR has said, following the settled international doctrine and jurisprudence on the subject, that the imposition of sanctions for the abuse of freedom of expression under the charge of incitement to violence (understood as the incitement to commit crimes, the breaking of public order or national security) must be backed up by actual, truthful, objective and strong proof that the person was not simply issuing an opinion (even if that opinion was hard, unfair or disturbing), but that the person had the clear intention of committing a crime and the actual, real and effective possibility of achieving this objective.”

In addition, when the matter concerns speech that does not incite violence, or statements that may be offensive to a public servant, the proper forum in which to allege liability must be the civil courts, bearing in mind the criteria of actual malice and the proportionality of the potential penalty. In this regard, principle 10 of the IACHR’s previously cited Declaration of Principles on Freedom of Expression establishes that, “Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.”

14. Haiti

The Office of the Special Rapporteur notes that one year after the earthquake that took place on January 12, 2010, the Haitian media was showing signs of reconstruction, although multiple difficulties persist. According to the information received, 25 of the 50 radio broadcasters in Port-au-Prince were back to broadcasting one month after the earthquake. After one year, audiovisual broadcasting in the capital was almost fully reestablished. The assistance of the Haitian State was relevant to these results. The State provided support for 30 broadcasters in the capital with a fund of two million American dollars, providing support that varied between US $5,000 and $25,000 dollars. However, assistance for rural broadcasters has been slower, particularly for those located in the most devastated towns. The Media Operating Center in Port-au-Prince continued to function. It was set up by international aid organizations and allowed dozens of local and foreign journalists to continue to work. As far as print media, the newspaper Le Nouvelliste was back in daily circulation by April of 2010, while Le Matin became a weekly edited in the Dominican Republic and was forced to dismiss half its employees. Bon Nouvel, the last newspaper in the creole language, has closed.

The Office of the Special Rapporteur takes note of the bill submitted on May 5 to Senator Melius Hypolite by Haitian community broadcasters and the Entertainment and Social


Communication Society (Saks) that would provide these broadcasters with a legal framework and guarantee them conditions that are equal to those of the other media. Marie Laurence Jocelyn Lassègue, the Minister of Culture and Communication, recognized the important role played by community broadcasters during natural disasters. She publicly expressed her support for the initiative, and before the parliamentary vote she also expressed a commitment to promoting the availability of funding for the bill.458

309. The Office of the Special Rapporteur received information on a variety of attacks on the media and journalists in the context of the elections held in November of 2010 and on March 20, 2011. On December 7, a group of people looted Radio Lebon FM, in the Les Cayes locality, and set it on fire. Its owner was a Senate candidate.459 On December 9, individuals presumed to be partisans of the winning candidate detained and intimidated journalist Esther Dorestal, with radio station Metropole, as she was on her way to work.460 Likewise, a cameraman with Haiti Press Network was attacked after being pointed out in front of the National Palace.461 That same day Guyler C. Delva, a correspondent with the Reuters news agency and the secretary general of the Haitian organization SOS Journalistes, was attacked by officers who were providing guard services in front of the Karibe Convention Center after they denied him access to the auditorium where the candidates would be debating.462 On March 20, 2011, alleged members of the party INITE attacked Jean Preston Toussaint, the correspondent for Radio Kiskeya on the Gonâve Island.463

310. On April 12, 2011, individuals who presumably sympathize with governing party INITE set community radio station Tèt Ansanm Karis on fire, along with the premises of the Center for Culture and Development (SKDK), the Library of the Jacques Roumain Community, and six nearby homes, all in the community of Carice. According to the information received, armed men broke into the facilities after the broadcaster issued the final results of the legislative election that took place on March 20 and leveled accusations of fraud committed during the election. According to reports, the radio station personnel identified the perpetrators of the attack. The fire completely


Information was also received on death threats received by nearly 15 communicators in different media outlets throughout the country during the election and in connection with news items that could have been considered unfavorable to certain candidates. Due to the warnings received, journalists Jean-Claude Dumény, of \textit{Radio-Télé Ginen}, and Patrick Jeune, of \textit{Radio One}, had to go into hiding to escape armed attacks from individuals trying to kill them.\footnote{Le Nouvelliste. May 2, 2011. \textit{Deux journalistes contraints de prendre le maquis.} Available at: \url{http://www.lenouvelliste.com/article.php?PubID=1&ArticleID=91991&PubDate=2011-05-02}; Radio Métropole. May 4, 2011. \textit{Cri d’alarme des associations à l’occasion de la journée de la presse.} Available at: \url{http://www.metropolehaiti.com/metropole/full_une_fr.php?id=19078&action=print}  

312. According to information received, on June 20, 2011, two hosts of the program “Les on dit” (They Said It) of Radio Prévention - Ernst Joseph and Wolf 'Duralph' François - were arrested. Joseph is the owner of the radio station. The authorities confiscated the transmitter and other radio equipment. According to the information, Joseph and François were called before a first instance court in Petit-Goâve on orders of the Public Prosecutor’s Office based on a petition signed by officials and members of civil society, including the mayor of the city, to answer questions related with information and opinion broadcast on the program. When the news emerged that the journalists were in the court, a large group of people gathered outside the building and threw rocks and clashed with police and United Nations security forces. The government commissioner had ordered the two journalists arrested on charges of “defamation,” “disturbance of the public order” and “damage to public property.”\footnote{Reporters Without Borders. June 29, 2011. \textit{Two Petit–Goâve journalists detained arbitrarily.} Available at: \url{http://es.rsf.org/haiti-detienen-de-forma-arbitraria-a-dos-29-06-2011,40552.html}; Haitian-Truth.org. June 30, 2011. \textit{Press Freedom Organization Condemns Arrest of Journalists in Petit–Goâve.} Available at: \url{http://www.haitian-truth.org/press-freedom-organization-condemns-arrest-of-journalists-in-petit-goave/}; Inter-American Press Association (IAPA). October 2011. \textit{Country reports: Haiti.} Available at: \url{http://www.sipiapa.org/v4/det_informe.php?asamblea=47&infofoid=833&idioma=us}}
gourdes (some US$1,100) for damages. The Minister of Culture and Communication of the Government, Marie Laurence Jocelyn Lassègue, asked the general director of the State television channel to dialogue with the dismissed employees and with media and journalist organizations. 468

314. According to information received, the security detail of President Martelly was involved in a series of incidents with employees of the media. On May 22, 2011, police officers prevented at least three journalists from working, pushing them and damaging their equipment while they were covering the president’s visit to Gonaïves. 469 On July 28, the president’s security personnel attacked journalists covering his visit to the city of Jacmel. 470

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

15. Honduras 471

316. The Inter-American Commission on Human Rights has received information relating to the situation of the right of freedom of expression in Honduras, from civil society as well as from the State of Honduras. In terms of the latter, on December 16, 2011, the State of Honduras sent Official Letter No. 1899-DGAE-11 to the IACHR, forwarding Official Letter No. SP-A-158-2011 from the Office of the Attorney General of Honduras, in which the State makes reference to the situation of freedom of expression in Honduras and provides information with respect to the particular cases that have been reported to the IACHR and which are addressed in this report.

A. Murders

317. The Special Rapporteur for Freedom of Expression of the IACHR has counted at least 13 murders of journalists and communicators in Honduras between 2010 and 2011, which could be related to their professional activities. The IACHR deplores these homicides and urges the State to conduct diligent and thorough investigations paying particular attention to the possibility of the motive of the crimes being the professional activities of the communicators. In addition, the IACHR appreciates the information provided by the State of Honduras with respect to the ongoing investigations into these murders and other acts of violence against journalists. It urges the State to

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471 This section corresponds to the section on freedom of expression in Honduras in Chapter IV, Volume I, of the IACHR 2011 Annual Report. This section was assigned to the Office of the Special Rapporteur for Freedom of Expression.
follow up on these investigations diligently and to open the pertinent investigations in those cases where they have not yet been opened.

318. In its report to the IACHR, the State began by noting the murders of journalists in 2007 and 2009, years in which the murders of journalist Carlos Alberto Salgado (2007) and journalists Bernardo Rivera Paz, Rafael Munguía and Osman Rodrigo López (2009) were reported. The State also indicated that it is aware of its obligation to guarantee diligent and exhaustive investigations into acts that violate freedom of expression, and that the State “has requested the assistance of friendly countries to strengthen investigative teams with more personnel and with the necessary logistical resources.” In this same respect, the State specified that “between 2010 and 2011, the Office of the Public Prosecutor has documented 14 cases involving the deaths of journalists, in 9 of which the investigations have yielded specific theories and suspects.” As a result, those 9 cases have been brought before the courts.\(^\text{472}\) In particular, the IACHR urges the State not to rule out the theory that the victims could have been murdered in retaliation for the exercise of their right to freedom of expression, and to thoroughly exhaust any line of investigation in this respect.

319. In an initial case reported to the IACHR, concerning the murder of journalist Henry Suazo on December 28, 2010 in the town of La Masica, Department of Atlántida, the information received indicates that two individuals shot the journalist several times as he was leaving his home in the morning. He reported on general news as a correspondent for radio HRN and was a reporter on the local television news program Cable Visión del Atlántico. A few days prior to the murder, journalist Suazo had filed a complaint that he had received a death threat in a text message on his cell phone.\(^\text{473}\) With regard to this case, the State indicated that “On January 21, 2011, the Office of the Public Prosecutor filed a criminal complaint against an individual alleged to be the direct perpetrator of the offense of murder, and on the same date, the corresponding Court issued a warrant for the suspect’s arrest.”\(^\text{474}\)

320. On May 11, 2011, journalist Hector Francisco Medina Polanco, manager and anchor of Omega Visión television station, was murdered in Morazán, Department of Yoro. According to reports, when he was leaving the television station the night of May 10, the journalist was followed by two unknown individuals riding on a motorcycle, who shot him as they approached his home. Hector Medina was taken to a hospital alive in San Pedro Sula, where he passed away early in the morning of May 11. In addition to managing the local TV station Omega Visión, Hector Medina worked as a producer and anchor on TV9 news, where he had recently reported on alleged irregularities by local authorities and land ownership disputes. He had been telling his family for weeks prior to his murder that he was receiving death threats.\(^\text{475}\) In August, a brother of the

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murdered journalist, who is also in the same field, charged that he had been threatened to persuade him to stop demanding an investigation of the crime.\(^{476}\) In reference to this case, the Honduran State specified that “Various proceedings have been conducted, including the taking of statements from the channel’s employees, from relatives, and from eyewitnesses, as well as from individuals who worked with him as a community outreach worker for PROHECO […]; inspections and other expert and scientific proceedings have also been conducted, and his cell phone records have been investigated. There are two theories in the case.”\(^{477}\)

321. The Special Rapporteurship learned of the murder of the owner of Canal 24 Luis Ernesto Mendoza Cerrato, in the City of Danlí, El Paraíso, on May 19, 2011. Based on the available information, at least three hooded and heavily armed men ambushed Luis Mendoza and shot him several times at the entrance to the television station, when he come to work in the morning. Mendoza Cerrato died during the shooting while two women and a child, who were passing by, were wounded. The perpetrators fled in a vehicle, which was abandoned and set afame later.\(^{478}\)

The Honduran State indicated that the case is related to another case and that “various measures have been undertaken, such as telephone wiretaps, judicial and police background checks, and others.”\(^{479}\)

322. It was also reported that on July 14, 2011, journalist Nery Jeremías Orellana, Director of Radio Jacconguera and correspondent at Radio Progreso, was murdered in the municipality of Candelaria, Department of Lempira. According to the information in the file, journalist Orellana was riding on a motorcycle toward the radio station when he was intercepted by unknown individuals, who shot him several times in the head. He was transported alive to the hospital of Sensuntepeque but died a few hours later. As director of Radio Jacconguera, he had opened spaces of discussion on radio programs of the Catholic Church and of the National People’s Resistance Front (FNRP) and had held a critical position of the 2009 coup d’état. Shortly before his murder, Orellana had confirmed his attendance at a meeting of community radio stations scheduled for July 15, 2001.\(^{480}\) The State of Honduras reported that “Several proceedings have been

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conducted, including the taking of statements from coworkers, relatives, and protected witnesses, inspections and other expert and scientific proceedings. Also, mutual legal assistance was requested from El Salvador, the place of his death. There is a theory and a suspect in the case.481

323. Information was also received of the murder of the popular social communicator Medardo Flores, on September 8, 2011 in the community of Blanquito, Puerto Cortés. According to available information, several unidentified individuals murdered Medardo Flores with firearms in the town where he resided. Medardo Flores, who was a farmer by trade, was part of a group of volunteer popular communicators of Radio Uno of San Pedro Sula and was in charge of finances in the northern part of the country for the Broad People’s Resistance Front (FARP).482

324. As the Inter-American Commission has held repeatedly, it is of paramount importance for the State to urgently conduct investigations through specialized independent agencies under special protocols of investigation that lead to conclusively determining whether or not the crimes are indeed connected to the practice of the profession and to enable the prosecution and conviction of the persons responsible for them. Additionally, it is essential for the State to put permanent mechanisms into place in order to ensure the lives and integrity of at-risk communicators. The persistence of impunity not only is a threat to the family members of the victims but also has an adverse effect on society as a whole, because it sows fear and leads to self-censorship.483

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

B. Assaults on journalists and media

326. According the information on file, on May 23, 2011, in Tegucigalpa, the managing editor of the newspaper La Tribuna, Manuel Acosta Medina, was the target of an attempt on his life, which left him seriously wounded. Mr. Acosta’s car was blocked by two vehicles with armed individuals on board. When Acosta Medina accelerated to escape, the criminals shot and wounded him. The victim was able to drive home where his family came to his aid and took him to a hospital.

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medios comunitarios. [Young director of a radio station murdered on the eve of community media meeting]; Radio Progreso.
July 16, 2011. Asesinan director de Radio Jacounguera. [Director of Radio Jacounguera murdered]


Shortly after the attempt, the Police arrested five armed suspects who were riding in a similar vehicle to the one used in the attack.484

327. On April 27, 2011, a group of armed men allegedly attempted to ambush the director of Radio Uno, Arnulfo Aguilar, when he was returning to his home in San Pedro Sula. According to available information, Aguilar had managed to lock the gate and enter the residence before the suspects reached him. The journalist asked the Police for help, which arrived one hour later, when the individuals had already left. The incident occurred a few days after Radio Uno released cables from the US Department of State reported that weapons given to the Honduran Army were alleged to be in the possession of organized crime groups. Radio Uno has held a critical editorial line against the June 2009 coup d’état.485 The State provided information with respect to the case, indicating that “Several proceedings have been conducted, including the taking of statements from the victim and from witnesses, inspections, and other procedures. At this time, we are waiting for the victim to go to the Office of the Public Prosecutor in order for a psychological evaluation to be conducted.”486

328. The Special Rapporteurship has expressed its concern in light of several acts of harassment and violence perpetrated against several community radio stations and reminds the Honduran State of its obligation to investigate these incidents and make sure that its agents, or private individuals, do not attack people who exercise their freedom of expression through these media outlets.

329. According to reports, on March 13, 2011, the Director of La Voz de Zacate Grande, Franklin Meléndez, was allegedly threatened by two men in connection with coverage of the land disputes in the area and one of them is alleged to have shot him in the leg. The assailants were fully identified but the local authorities did not take any action against them.487 A few hours later, the same individual that allegedly shot Melendez, threatened to kill journalist Ethel Correa of La Voz de Zacate Grande, whom he warned: “You’ll be the second to die.”488 On August 4, 2011 a request for an arrest warrant from the public prosecutor was filed for the attempted murder against the person suspected of shooting Franklin Melendez, and on August 9, the presiding judge issued an arrest warrant.

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485 Committee to Protect Journalists (CPJ). April 29, 2011. Director de radio hondureño emboscado por sujetos armados. [Director of Honduran Radio Station Ambushed by Armed Individuals]; Reporters Without Borders. April 29, 2011. Honduras: Ataque frustrado contra el dueño de una emisora de oposición. [Honduras: Assault on Owner of Opposition Radio Station Thwarted]


The State of Honduras provided information indicating that “The defendant has been arraigned and the initial hearing was held on October 4, 2011.”

On April 16, a journalist from the La Voz de Zacate Grande station, Pedro Canales, is alleged to have been the target of sabotage and death threats. That same day, Canales noticed unidentified individuals had sunk nails into one of the tires of his vehicle and later two armed individuals allegedly intercepted him and pointed their weapons at him. Reports also indicated that two journalists from the community radio station La Voz de Zacate Grande had been detained in the performance of their reporting duties on December 15, 2010. Based on the available information, correspondents Elia Hernández and Elba Rubio were covering the forced removal of a family from land in the community of Coyolito, on the Isle of Zacate Grande, where they allegedly were detained by members of the preventive Police and the Navy. According to the report, the lady reporters were stripped of their journalistic accreditation and cameras, held incommunicado for 36 hours, and charged with the crime of disobedience. The journalists are alleged to have been restricted by the court from performance of their journalistic tasks, in prohibiting their departure from the country, compelling them to secure permission to leave Coyolito, forcing them to appear before a judge every two weeks and prohibiting their participation in public demonstrations, as well as prohibiting them from having contact with the community of Coyolito.

According to the information received by the IACHR, on February 15, individuals identified as agents of the national Department of Criminal Investigation (DNIC), are alleged to have show up at the radio station in order to serve notice of an arrest warrant for disobeying an order to shut down the radio station, that had been issued in 2010 and to conduct an inspection. It is claimed that the agents attempted to force their way inside when radio station officials prevented them from entering. Additionally, on April 7 the Office of the Prosecutor of Choluteca allegedly issued arrest warrants for the crimes of disobeying authority and usurpation of land, against eight individuals who were members of La Voz de Zacate Grande and the Land Titling Movement.

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489 Communication from the Center for Justice and International Law (CEJIL) to the IACHR. Ref: Communicators of The Voice of Zacate Grande MC115-11. September 2, 2011.


(Movimiento de Titulación de Tierras), including Franklin Meléndez, Ernesto Lazo, Rafael Osorio, Danilo Osorio, Pedro Canales, Wilmer Rivera, Ethel Correa and Benito Pérez. In light of proof of a situation of imminent danger, on April 18, 2011, the IACHR requested the Honduran State to adopt urgent precautionary measures to ensure the lives and physical integrity of the communicators of La Voz de Zacate Grande, and to work out a specific agreement with the beneficiaries and their representatives on the measures to be taken.\footnote{IACHR. Precautionary Measure MC 115-11. Medida Cautelar MC 115-11. April 18, 2011; Center for Justice and International Law (CEJIL). April 26, 2011. Comisión Interamericana exige que Honduras proteja a integrantes de radio comunitaria. [Inter-American Commission demands Honduras to protect members of community radio station]; Reporters Without Borders. June 28, 2011. Radios comunitarias: voces aún excluidas de la frecuencia radiofónica, señalan RSF y AMARC. [Community Radio Broadcasters: voices still excluded from radiofrequencies, according to RSF and AMARC]}

332. The State indicated that the eviction from the property where the station operates was ordered by the District Trial Court of Amapala, and that the measure “is not related to the journalists’ activities, but rather to the unlawful appropriation of the land on which [the station] operates.” The State confirmed that a criminal complaint was filed against the 8 above-named journalists for the offenses of “unlawful appropriation and tax fraud,” and noted that following the issuance of the warrants for their arrest, the journalists appeared voluntarily at an arraignment hearing held on May 5, 2010, at which “the Office of the Public Prosecutor requested that the defendants be granted supervised pretrial release.”\footnote{Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 8.}

333. The State established that on May 27, 2010, the Court issued an incarceration order for the offense of unlawful appropriation with respect to 5 of the defendants, while the complaint alleging tax fraud was dismissed with prejudice. The Court also “affirmed the precautionary measures established at the arraignment hearing” with respect to the 5 aforementioned journalists. In addition, the Court ordered the dismissal without prejudice of the complaints against the other 3 accused journalists, and ordered that the property be vacated immediately. According to the information received, all of the defendants appealed the incarceration order before the Choluteca Court of Appeals. That appeal was declared inadmissible by the court on August 4, 2010. Subsequently, on October 11, 2010, the defendants filed a writ of amparo [petition for a constitutional remedy], which was forwarded to the Supreme Court of Justice on October 11, 2010.\footnote{Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 9.}

334. The information provided by the State indicates that on June 2, 2010, the court officer in charge of executing judgments carried out the eviction of the property, together with members of the military and the National Police. The State established that “The defendants were not there, and the door was locked. Accordingly, the specified property was cordoned off with yellow adhesive tape, as ordered by the Court.” In spite of the fact that the State indicated that upon arriving at the property “they were met by unknown persons carrying some machetes and sticks,” it stated that the operation “was carried out peacefully, without anyone being injured.” The
State further maintained that at the time of the eviction, “the radio station had already ceased broadcasting because of a problem with the equipment it was using,” and that “at no time during the execution of the order were they restricted from continuing with their broadcasts.” In this same respect, however, the State underscored that the broadcasts were illegal because the station does not have “a broadcast license issued by the National Telecommunications Council (CONATEL), and does not meet the other legal operating requirements, like having the municipal permits.”

335. The State noted that there was a new allegation that “the defendants re-entered the property […] which resulted in the filing of another complaint by the prosecutor’s office on March 31, 2011 for the offense of contempt.” The defendants were again granted supervised pretrial release.

336. Finally, the State addressed “the alleged intimidating acts and attacks by armed, masked individuals.” It stated that those individuals were on-site investigative technicians from the National Bureau of Criminal Investigation (DNIC) who were at the property “to conduct the inspections requested by the prosecutor’s office,” and that they were met by individuals armed with “sticks, rocks, and machetes” who proceeded to intimidate, assault, and threaten the investigators. The information received indicates that in order to avoid a confrontation, they left the scene “after conducting the proceedings that had been ordered.”

337. To date, the IACHR does not know whether the radio station has continued to operate, and it is closely following the complaints that the eviction and seizure of the station are aimed at preventing it from continuing to air critical reports and expressions regarding matters of public interest in the region.

338. Furthermore, the IACHR received information about acts of harassment and threats to force the community radio station Faluma Bimetu (Sweet Coconut) to suspend broadcasts for 12 days beginning on January 14, 2011. According to the reports, municipal authorities of Tela, assisted by police officers, arrived on January 12, 2011 in the Garifuna community of Triunfo de la Cruz, where the radio station operates out of, to pressure it to appoint certain members to the board of the station, even though the election of board members was scheduled for January 28. In light of the refusal of the community to move up the date of the appointment, the members of the municipal delegation threatened to burn down the facilities of the radio station, which had already been destroyed by arsonists a year earlier. On January 14, the director of radio Faluma Bimetu, Alfredo López, was brought before a criminal court in connection with a shooting that had taken place a few days earlier in Triunfo de la Cruz, without any charges being brought against him, much less any evidence being introduced to implicate him. At that same hearing, the charges were dropped due to lack of evidence. When broadcasts were suspended, the workers of the radio station hung a sign at the entrance that said: “Closed temporarily due to insecurity.”}

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502 Faluma Bimetu and Garifuna community have maintained their opposition to real estate development projects in the Atlantic region of Honduras.
resumed broadcasts on January 26.\textsuperscript{503} Lastly, on April 7, 2011, unidentified individuals set Alfredo Lopez’ house on fire, and as of this date, the outcome of the investigation is unknown.\textsuperscript{504} The IACHR requested information from the State of Honduras on January 18, regarding these incidents.

339. The State indicated with respect to the incident at the community radio station 	extit{Faluma Bimetu} that a complaint had reportedly been filed before the Office of the Special Prosecutor for Ethnic Groups and Cultural Heritage “against unknown persons for the offense of harm to the Community of Triunfo de la Cruz.” The Honduran State reported that “the local Prosecutor’s Office in Tela conducted several investigative proceedings that subsequently led to the filing of a complaint on February 18, 2001 against unknown persons for the offenses of aggravated robbery and arson.” In the initial hearing of April 14, 2011 “the complaint alleging aggravated robbery was dismissed without prejudice, and the complaint alleging arson was dismissed with prejudice.” In this respect, the State indicated that “the investigations are ongoing.” In addition, with respect to the fire at Mr. Alfredo López’s house, the State specified that “Various proceedings have been conducted, including the taking of statements from the victims, the performance of a visual inspection, and the compilation of a photo album of the damages. A report was also requested from the Tela Fire Department for purposes of determining the cause of the fire. It has not yet been possible to identify the perpetrators.”\textsuperscript{505}

340. According to the information provided, on January 5, 2011, alleged members of the Electric Measuring Service of Honduras (SEMEH) entered the offices of the Civic Council of People’s and Indigenous Organizations (COPINH) in the city of La Esperanza and turned off the electricity, preventing the community radio stations 	extit{Guarajambala} and 	extit{La Voz Lenca} from broadcasting. According to the affected individuals, the purpose of the cutting of the electricity was to prevent these radio stations from continuing to broadcast, as retaliation for the critical content of their broadcasts. Additionally, the members of the SEMEH made death threats against them.\textsuperscript{506}


\textsuperscript{504} Reporters Without Borders. April 29, 2011. \textit{Honduras: Ataque frustrado contra el dueño de una emisora de oposición}. [Honduras: Attack against owner of opposition broadcaster thwarted]; Afro Legacy (Legado Afro.) April 12, 2011. \textit{Honduras: Incendian casa de integrante de radio comunitaria Faluma Bimetu (Coco Dulce)}. [Honduras: house of member of community radio broadcaster Faluma Bimetu (sweet coconut) set ablaze]; RSF/AMARC/IFEX. April 13, 2011. \textit{Las radios comunitarias siguen siendo presas de grandes dificultades por el simple hecho de existir}. [Community radio broadcasters in big trouble for the simple fact of existing]


341. The Honduran State indicated that “on January 6, 2011, the Office of the Public Prosecutor filed a complaint alleging the offense of threats” against two SEMEH employees. After the arraignment and the initial hearing, an incarceration order was issued against both defendants on February 1, 2011. They filed a motion for appeal that is still pending. The State stressed that “SEMEH is a private company in charge of measuring the electric power services of all consumers in the country, and it shuts off the power of individuals or legal entities that are delinquent in payment for services.” According to the State, “It was proven before the Office of the Public Prosecutor that COPINH was behind in its payment, and that is why its power was cut.” The State indicated that it assumes that “the members of COPINH were opposed to the power shut-off, and that gave rise to a dispute with the SEMEH employees.” It underscored that “the members of COPINH have not demonstrated interest in continuing with the case.”507

342. Information has been received about several assaults on Honduran journalists, indicating that on March 25, 2011, police officers fired tear gas bombs at Canal 36-Cholusat reporter Richard Casulá, and cameraman Salvador Sandoval, as they were covering the police response to the educators’ demonstration in Tegucigalpa. Sandoval was wounded in the face and Casulá suffered from gas inhalation poisoning.508 The State asserted that several proceedings have been conducted with respect to these events; nevertheless, “to date it has not been possible to identify the officers.”509 According to the information received, on March 22, 2011, the Police also assaulted journalist Lidieth Díaz, cameraman Rodolfo Sierra, of Canal 36-Cholusat, and the director of Radio Globo, David Romero, while they were in conversation with a group of professors.510 The State of Honduras reported that “The Office of the Public Prosecutor filed a complaint against five police officers alleging the offense of abuse of authority.” However, the presiding Court issued an order of incarceration against one of the officers, and dismissed the complaint with prejudice in the case of the other four officers. The Office of the Public Prosecutor appealed the dismissal with prejudice on June 27, 2011, but the court affirmed the lower court’s decision, “and therefore the Office of the Public Prosecutor filed a writ of amparo [petition for a constitutional remedy], which is pending.”511

343. In a separate incident, according to reports, on March 21, 2011, police agents fired tear gas bombs and rubber bullets at journalist Sandra Maribel Sánchez, director of Radio Gualcho, and Globo TV cameramen Uriel Rodríguez, as they were covering the forced removal of teachers in
The State reported that “The Office of the Public Prosecutor filed a complaint against a police officer alleging the offense of abuse of authority”; an initial hearing has yet to be held in the case. On March 30, 2011, Radio Progreso correspondent Pedro López was detained for four hours by police agents in Potrerillos, Department of Cortés, as he reported on a protest demonstration in the context of the nationwide work stoppage. That same day, a bullet wounded journalist David Corea Arteaga of the Centro de Noticias de Colón in the jaw, as he reported on the forced removal of demonstrators by the Police and the Army.

On May 5, 2011, reporters Silvia Ardón of Radio Uno and Noel Flores of Globo TV, as well as the cameraman of that station, Uriel Rodríguez, were assaulted by policemen in San Pedro Sula as they tried to obtain information on a group of individuals being held in custody at the police station, for participating in a demonstration that was broken up with tear gas. According to the information provided to this Commission, the policemen pushed the communicators and prevented them from doing their job as journalists. The State indicated that these acts have not been reported to the Office of the Public Prosecutor, and “requests that those individuals file the appropriate complaint in order to be able to open an investigation into the matter.” One day later, cameraman Uriel Rodríguez was beaten again and his equipment was destroyed by agents of the National Police. According to the reports, Rodríguez was wounded in the head and his equipment was destroyed while he was filming the violent breakup of a student demonstration. The communicator was taken to one hospital where he was supposed to have been stitched up but was then transferred to a different hospital. Government officials had gone to the original hospital he was supposed to go to with the intention of arresting him. With respect to these events, the State reported that on November 18, 2011 “the Office of the Public Prosecutor filed a complaint alleging the offense of torture.”

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515 Committee to Protect Journalists (CPJ). April 6, 2011. El CPJ alarmado por ola de ataques contra la prensa en Honduras. [CPJ alarmed by wave of attacks against the press in Honduras]; C-Libre. April 1, 2011. Periodista en herido de bala disparada por el Ejército Nacional. [Woman Journalist wounded by bullet shot from National Army]


The IACHR has been informed of the armed robbery of journalist Edgardo Antonio Escoto Amador on September 22, 2011, in colonia Las Brisas of the city of Comayagüela. Edgardo Antonio Escoto Amador, also known as “el Washo”, is the coordinator of the news program “Temas y Debates” and the interview program “Entrevista con el Washo [interview with el Washo]” on Canal 13 in Tegucigalpa. According to reports, two men on a motorcycle intercepted him while he was heading to his car; they held him up at gunpoint with wide gauge firearms and grabbed his laptop, which contained confidential information. Prior to the hold up and harassment, the journalist had reported on matters connected to the Armed Forces and the coup d’état and, according to the information obtained, had been the target of threats.520

The ninth principle of the Declaration of Principles on Freedom of Expression 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.”

C. Threats

During 2011, information was received regarding several acts of violence, intimidation and harassment of journalists. On July 17, 2011, journalist Roberto García Fúnez, correspondent of Radio Progreso in the municipality of Arizona, Department de Atlántida, was allegedly physically assaulted by the mayor of Arizona at a public gathering and, consequently, the journalist brought a suit for physical assault against the mayor on July 25. According to reports, the journalist and his family were the targets of threats and acts of harassment.521 According to the information, on September 14, 2011, journalist Mario Castro Rodríguez, director of the news program “El látigo contra la corrupción” ['the whip against corruption'] on Globo TV, received death threats via text messages.522 Journalists Esdras Amado López and Mario Rolando Suazo, of Canal 36-Cholusat, received death threats after disclosing information on alleged irregularities in the Honduran Catholic church. According to the account, the journalists began to receive threatening text messages on their cell phones, after revealing on July 12, the resignation letter of a priest in which alleged anomalies committed by the religious institution were mentioned.523 As of September 8, journalist Mario Castro Rodríguez, director of the news program “El látigo de la corrupción”,


which is broadcast on Canal Globo TV in Tegucigalpa, received threats on several occasions via text messages to his cell phone.\footnote{524 The messages, which were sent repeatedly, were text such as: “It is great that they kill you pigs;” “Better to bring you all down;” “Old scoundrel let them kill you;” “Ha, ha, ha they’re killing those dumb guys, ass hole,” Reporters Without Borders. September 28, 2011. \textit{RSF pide protección para los periodistas Mario Castro y Edgardo Escoto}. [RSF requests protection for journalists Mario Castro and Edgardo Escoto]; C-Libre. September 14, 2011. \textit{Director del noticiario “El látigo contra la corrupción” recibe amenazas de muerte}. [Director of news program “El látigo contra la corrupción” receives threats]}

348. The Special Rapporteurship reiterates that, according to the ninth principle of the Declaration of Principles on Freedom of Expression of the IACHR: “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. Indirect censorship, subsequent punishment and limitations on access to public information

349. The IACHR has received information on National Telecommunications Commission (CONATEL)-issued resolution NR003/11 of February 24, 2011, which suspends the permitting and licensing of radio electric frequencies for Low Power FM (LPFM) Stations operating in the range of 88 to 108 MHz. CONATEL establishes that the use of those frequencies can only be authorized as repeaters for operators who have a frequency in another range. The decision would affect a group of community radio broadcasters that could not gain any access to other powers or frequencies because the only procedure to obtain them is through a bidding process.\footnote{525 Based on the information received, this resolution came about despite the commitments accepted by the Honduran State at the United Nations Human Rights Council Universal Periodic Review in November 2010, under which Honduras made a commitment to “generating a debate in the National Congress and civil society with a view to harmonizing the regulatory framework of the Telecommunications Sector Law and ensuring that it is was /sic/ line with the international human rights conventions and standards, in particular with regard to the levels of public, private and community broadcasting.”\footnote{526 UN. Human Rights Council. November 15, 2010. \textit{Proyecto de Informe del Grupo de Trabajo sobre el Examen Periódico Universal: Honduras}. [Draft Report of the Working Group on the Universal Periodic Review: Honduras]. Para. 85b.}} Based on the information received, this resolution came about despite the commitments accepted by the Honduran State at the United Nations Human Rights Council Universal Periodic Review in November 2010, under which Honduras made a commitment to “generating a debate in the National Congress and civil society with a view to harmonizing the regulatory framework of the Telecommunications Sector Law and ensuring that it is was /sic/ line with the international human rights conventions and standards, in particular with regard to the levels of public, private and community broadcasting.”

350. In this respect, the Honduran State maintained that Resolution NR003/11 “is based on technical considerations” relating to the saturation of the radio spectrum in the 88-108MHZ band, specifically for the stations that use frequency modulation (FM). This is because “in the more populated zones or areas of the country there is no availability of radio spectrum frequencies in that frequency range.” According to the State, that situation resulted in CONATEL authorizing “low power radio frequencies within the country to cover those zones that were not covered by regular power radio broadcasting stations.” The State maintained that these provisions have given rise to “obstacles to the development and implementation of new channeling schemes and new broadcasting zones made possible by the new technologies,” and that the new resolution aims to “prevent greater problems for the future planning of channeling schemes and of service areas for
sound broadcasting services.” Nevertheless, the IACHR notes that in the information provided, the State did not make reference to any difficulty that this resolution imposes upon community radio stations, in the sense that they would not be able to access other powers and frequencies through procedures other than financial bidding.

351. Principle 13 of the Declaration of Principles on Freedom of Expression of the IACHR holds that: “The exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans, the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law. The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.”

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

353. According to the information we received, on September 23, 2011, the National Congress denied the digital magazine Revistazo.com information on non-governmental organizations, churches and foundations that had received money from the State during the de facto government of Roberto Micheletti, from June 28, 2009 to January 27, 2010. Congress limited its response to stating that it had information available on the requested subject as of 2010, but did not have information from 2008 to 2009. Revistazo filed an administrative appeal for review with the Institute of Access to Public Information, which as of the date of completion of this report had not ruled on the appeal.

354. The 4th Principle of the Declaration of Principles on Freedom of Expression establishes: “Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.”

16. Jamaica

355. The Office of the Special Rapporteur learned that a report from the Joint Select Committee for the consideration and revision of libel laws in Jamaica was approved by the House of

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Representatives on January 25, 2011, and by the Senate on April 8, 2011. According to the information received, the report was forwarded to the Chief Parliamentary Counsel for the drafting of the bill, which must be signed by the cabinet before being returned to the House of Representatives. The report of the Joint Select Committee recommended, among other things, to eliminate criminal libel, including for publications that could be considered blasphemous, obscene or seditious, with the understanding that international standards establish that no person can be imprisoned for expressing his or her self; to eliminate the distinction between libel and slander and replace it with a single civil action of defamatory publication; to reduce the statutory limitations period for an action of defamation from six years as of its publication to two; to replace the defense of justification with the defense of exceptio veritatis - that is, that the person being sued for defamation shall be acquitted of the charges when that person can allege and prove that the facts contained in the publication are in large part or completely true; and to create the defense of innocent dissemination to protect the media that within reasonable limits have in good faith reproduced the content of other publications that could be defamatory. According to the information received, on November 22 a bill was submitted to the House of Representatives that would implement the report of the joint Select Committee. As of the publication deadline of this Annual Report, the passage of these reforms was still pending.

356. In the same sense, on October 26, 2010, the Prime Minister of Jamaica, Bruce Golding, reiterated before the Press Association of Jamaica his commitment to protecting freedom of the press and expressed his interest in pushing for changes to the Defamation Act, which have become bogged down. According to the information, the Prime Minister also insisted on the need for the media to establish a “media council” to process complaints from members of the public whose reputation may have been damaged by “unjustified” reports in the media. The Press Association of Jamaica responded that it will continue in its efforts to establish a media complaints council to receive complaints from the public on the media.

357. The Office of the Special Rapporteur views positively the steps taken by the State of Jamaica toward reforming its laws on defamation and recalls the Principle 10 of the Declaration of Principles on Freedom of Expression of the IACHR 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

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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.”

358. According to the information received, on April 14, 2011, the Joint Select Committee created by Parliament to examine how the Access to Information Act of 2002 was operating submitted its recommendations to Parliament for strengthening the law and improving its effectiveness. According to reports, in addition to the significant progress made, the law has shown certain weaknesses in its application. Among the recommendations issued by the committee is the need to empower the Access to Information Unit - ATI Unit - as a statutory body with significant authority to monitor the performance of government agencies in complying with the contents of the Act; the application of the public interest test to justify the rejection of requests for access to information; and the separation of the Appeal Tribunal from the Access to Information Unit, such that it is more independent and has a prerogative to carry out the investigations and inquiries necessary to resolve challenges to first instance rulings on access to information beyond its already established authority to review the requested documents. However, the committee came out against the proposal to establish a time period in which that Appeal Tribunal must issue its rulings.534 The same committee proposed that the Official Secret Act of 1911 be repealed. Currently, that Act can block public officials from revealing basic information in the public interest. The former Prime Minister, Bruce Golding, expressed publicly his desire for the Official Secrets Act to be repealed.535

359. The Office of the Special Rapporteur views positively the State’s efforts to strengthen and improve effectiveness of its Access to Information Act. Likewise, it reiterates its concern over the fact that the Official Secrets Act is still in force. In this sense, it reminds that Principle 4 of the Declaration of Principles on Freedom of Expression of the IACHR establishes that, “Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.”


17. Mexico

A. Progress

360. The Office of the Special Rapporteur was informed of the decision of the Senate of the Republic on November 29 to eliminate articles 1 and 31 of the Press Crimes Act. The articles address, respectively, “attacks on privacy” and the punishments applicable in the event of such infractions. According to information received, the initiative was sent by the federal executive branch for publication. In its 2010 Special Report on Freedom of Expression in Mexico, the Office of the Special Rapporteur recommended that the Mexican State “Repeal the criminal provisions that penalize expression, including those contained in the 1917 Press Crimes Act.” The Office of the Special Rapporteur recognizes this important step forward.

361. The Office of the Special Rapporteur for Freedom of Expression received with satisfaction the ruling of the Supreme Court of Justice of the Nation on Direct Amparo 28/2010. The case arose out of a civil complaint submitted over a column published in the magazine Letras Libres questioning a collaboration agreement between the newspaper La Jornada and a Spanish newspaper and the effect that agreement would have on the editorial stance of La Jornada. In a ruling dated November 23, the Supreme Court acquitted the author of the column and Letras Libres. Broadly citing inter-American case law on freedom of expression, including the standard of “actual malice.” The Court observed that:

Debate on subjects in the public interest should be uninhibited, robust and open, able to include vehement, caustic and unpleasantly scathing attacks on public personalities, as well as, in general, ideas that could be unwelcome by those receiving them and by public opinion in general, such that ideas that are welcome or seen as inoffensive or indifferent are not the only ones protected. These are the demands of a plural, tolerant and open society without which true democracy cannot exist.

In this regard, although it is true that any individual participating in a public debate in the general interest should refrain from exceeding certain limits - such as respect for reputation and the rights of third parties - that individual is also allowed to employ a certain amount of exaggeration, even provocation - that is, an individual’s statements can be somewhat excessive, and it is precisely in expression that can

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536 See Press Crimes Act. Available at: http://corteidh.or.cr/docs/medidas/lanacion_se_04.pdf
offend, shock, disturb, upset, worry or disgust where freedom of expression is most valuable.\footnote{541}

362. The Office of the Special Rapporteur also received with satisfaction a ruling of the Supreme Court of Justice of the Nation dated November 30 that ordered the Office of the Attorney General of the Republic (PGR in its Spanish acronym) to turn over the case file on the initial inquiry into the forced disappearance of Mr. Rosendo Radilla Pacheco to a relative of the victim.\footnote{542} The Supreme Court announced the decision,\footnote{543} however its full text was still not available as of the publication deadline of this report. According to the Supreme Court press release, the court ruled “in observance of the judgment issued by the Inter-American Court of Human Rights\footnote{544} […] and attending to the case law this Supreme Court of Justice of the Nation,” that:

\begin{quote}

Article 14 of the Federal Transparency and Access to Public Government Information Act must be interpreted in the sense that initial investigations into facts that could constitute grave violations of human rights are not confidential, meaning that they are public information, pursuant to the provisions of Article 6 of the Constitution.\footnote{545}

\end{quote}

363. In its 2010 Special Report on Freedom of Expression in Mexico, the Office of the Special Rapporteur called attention to the fact that the PGR had not observed the ruling of the Federal Institute on Access to and Protection of Information (IFAI in its Spanish acronym) in this case.\footnote{546} At that time, the Office of the Special Rapporteur expressed that it:

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recognizes the need to withhold open criminal investigations in order not to affect the investigation and to protect sensitive data. Nevertheless, the Office of the Special Rapporteur considers that delivery of a public version of information on investigations that have been concluded or inactive for years, with due regard for the protection of sensitive data and elements which it can be proven should be withheld to protect other legitimate interests, promotes the public nature of the proceedings and is a guarantee of appropriate inter-departmental and public oversight of the bodies of administration of justice. This is precisely the purpose of the right of access to information.\footnote{547}

\end{quote}


\footnote{543} Supreme Court of Justice of the Nation. Direct Amparo 28/2010. November 30, 2011. Press Release 220/2011: The SCJN protects the daughter of Rosendo Radilla against the PGR’s refusal of access to the initial inquiry into the forced disappearance of her father. Available at: http://www2.scjn.gob.mx/red/comunicados/


\footnote{545} Supreme Court of Justice of the Nation. November 30, 2011. Press Release 220/2011: The SCJN protects the daughter of Rosendo Radilla against the PGR’s refusal of access to the initial inquiry into the forced disappearance of her father. Available at: http://www2.scjn.gob.mx/red/comunicados/


364. The Office of the Special Rapporteur received with satisfaction the news of the ruling to acquit handed down on April 7 by the First Civil Chamber of the Superior Tribunal of Justice of the Federal District to the benefit of weekly newspaper Contralínea and its director, Miguel Badillo, reporters Ana Lilia Pérez and Nancy Flores, and cartoonist David Manrique. On January 3, 2011, the 54th Civil Court of the Federal District had found the weekly newspaper and the communicators guilty in first instance of having committed moral damage to the detriment of three oil businessman who felt offended by the contents of a series of reports published in Contralínea on their participation in allegedly irregular business deals with State oil company Petróleos Mexicanos (PEMEX). Among other aspects, the judgment of the Superior Tribunal establishes that the journalists only have the duty to carry out a reasonable investigation into the the facts they publish; that they can only be punished if the nonexistence of sources or an intent to damage the persons in question is demonstrated and that they do not have the obligation (as judicial authorities do) to provide formally generated evidence; in addition, the judgment holds that the threshold for the protection of the moral reputation of the businessmen who voluntarily do business with the State is lower, as they are public figures participating in matters of public interest.548

365. The Office of the Special Rapporteur takes note of the ruling of the Federal Institute on Access to Information (IFAI) to order the Center for Investigation and National Security (CISEN), a State intelligence agency, to turn over information on the number of people who have died in clashes between criminal groups or between criminal groups and State forces between years 2000 and 2010. The information must be broken down by month and identify whether those who died were government functionaries or not and to which institution they belonged. Initially, the CISEN had alleged that it did not have the information and remitted the petitioner to other State entities and a State database on homicides, with information from 2006 to 2010. According to the information received, the IFAI requested the CISEN to do an exhaustive search of its archives to locate the information requested from the period 2000-2010 and turn it over in an electronic format.549

366. The Office of the Special Rapporteur highlights the fact that the Second Chamber of the Supreme Court of Justice of the Nation ruled on February 2 - for reasons of “interest and importance” - to hear a case on the Secretary of Health’s refusal to place public advertising with community radio broadcaster La Voladora Radio, from the Amecameca municipality in Mexico state. The Secretary of Health had alleged that the broadcaster did not meet its standards of broad distribution and coverage for its messages, while the radio station and its legal representatives argue that the broadcaster serves a poor and vulnerable population and that the refusal to place advertising contravenes the obligations to respect and promote freedom of expression and the right


to inform, guaranteed in the Mexican Constitution. The matter reached the Supreme Court of Justice after the Ninth District Court on administrative matters of the Federal District denied the radio station’s *amparo* petition in August of 2010. On July 13, the Second Chamber of the Supreme Court of Justice of the Nation granted the *amparo* to La Voladora Radio on finding that the Secretary of Health’s refusal to place a reasonable amount of government advertising with a community radio broadcaster was a violation of freedom of expression and the right to be informed. According to the ruling, the Secretary of Health’s decision was based on measures of restriction lacking reasonableness, as they favored media outlets based generally on their broadcast range and not their real coverage in different regions and communities throughout the country. According to the judgment, there could be special cases in which broadcasters with a national reach are not ideal, as when a community speaks an indigenous language or the geographic landscape makes signal reception difficult.

367. In another very similar ruling, the First Chamber of the Supreme Court of Justice of the Nation ruled on August 24 to grant the *amparo* requested by community broadcaster *Radio Nandiá*. As with *La Voladora Radio*, *Radio Nandiá* submitted an *amparo* petition in response to the Secretary of Health of the State of Mexico’s refusal to place government advertising with it, demanding the petition be granted by the Supreme Court to the benefit of the radio station.

368. The Office of the Special Rapporteur observes that on March 24, more than 50 Mexican media outlets signed an agreement on coverage of the violence in order to protect journalists and avoid being used as instruments of propaganda by organized crime. The document establishes objectives, guiding principles, and common editorial standards and, among other provisions, proposes guaranteeing the safety of the reporters covering issues related with violence and insecurity through joint coverage, avoiding filing reports from the most violent areas, and not placing bylines on news items on subjects related to organized crime. Among other points, it also calls for encouraging citizen participation and complaints in the fight against crime, noninterference in combating crime, protecting victims and minors, and the creation of a citizen body for monitoring the media to prepare regular reports on the degree to which the media have followed the terms of the agreement.

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369. The Office of the Special Rapporteur views positively the creation of a Public Prosecutor’s Office for the Investigation of Crimes of Social Relevance in Oaxaca State with the purpose of investigating more than 400 crimes with political motives, among them the deaths of more than 20 people murdered during a protest against the state government in 2006, in which the American journalist Bradley Will also died. The independent American journalist died after being shot while filming the disturbances. The only person accused of the crime against the communicator, an activists who was participating in the protests, was acquitted of all responsibility by a federal court.

370. The Office of the Special Rapporteur learned of the August 28 arrest of an individual accused of the murder of journalist José Luis Romero, who was also working for news radio program *Línea Directa*, disappeared in December 2009 and his lifeless body was found in Los Mochis, Sinaloa State, on January 16, 2010. According to the information received, the captured individual, Gilberto Plascencia Beltrán, belonged to the criminal group Los Mazatlecos and had turned over the names of other persons who participated in Romero’s kidnapping and murder. For its part, the Sinaloa Journalists Association and the Sinaloa and Association of Communicators had demanded that the authorities provide evidence of the suspect’s guilt.

B. Murders and disappearances

371. According to the information that has been provided to the Office of the Special Rapporteur, at least eight journalists and two media workers were killed in 2011 under circumstances in which a link between the crime and the exercise of their profession could not be ruled out. Likewise, the Office of the Special Rapporteur was informed of the disappearance of two journalists and the murder of two possible bloggers, allegedly by organized crime. The Office of the Special Rapporteur also received information on multiple attacks, harassment, kidnappings and other acts of violence. As indicated in its 2010 Special Report on Freedom of Expression in Mexico, the

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Office of the Special Rapporteur confirms that the alarming problem of violence against journalists continues to worsen. Likewise, the Office of the Special Rapporteur emphasizes that attacks on communicators constitute the most radical form of censorship, as they prevent absolutely both the right of journalists to circulate ideas or information and the right of all persons to receive that information, meaning that it affects not only the victim and the victim’s relatives but also society as a whole.

372. The Office of the Special Rapporteur received information on an armed attack on the television station owned by Grupo Multimedios Laguna and on radio broadcaster Radiorama Laguna on February 9 in the state of Coahuila, Mexico, which resulted in the death of an engineer at the television station. According to the information received, several masked and armed individuals entered Radiorama’s broadcasting facilities, where they beat two people and damaged equipment. Later, they broke into the facilities of Grupo Multimedios, where they murdered engineer Rodolfo Ochoa Moreno when he tried to make a phone call for help.560

373. On March 25, journalist Luis Ruiz Carrillo, with the newspaper La Prensa in Coahuila, accompanied by the host of a Televisa program José Luis Cerda Meléndez and one of his relatives Juan Roberto Gómez Meléndez - was found murdered in Monterrey. According to the information received by the Office of the Special Rapporteur, the three men had been kidnapped the previous night after Cerda Meléndez left work at the television channel.561

374. The Office of the Special Rapporteur learned of a crime committed against journalist Noel López Olguín. According to the information available, on March 8 the reporter was traveling to the area of Soteapan, in the south of Veracruz, and never arrived to his destination. On Sunday, May 29, the police captured an alleged drug trafficker who confessed to having murdered the journalist. With the information obtained, the authorities exhumed the body that had been buried in a secret grave on the Malacate cooperative farm in the Jáltipan municipality. On June 1, the relatives of the journalist identified the remains. Noel López Olguín was a columnist with the newspaper La Verdad de Jáltipan and contributed to several media outlets, including Horizonte and Noticias de Acayucan. According to the information, the journalist regularly denounced and harshly criticized acts of local corruption.562


561 The body of José Luis Cerda Meléndez was found the morning of March 25 at the side of a highway with hands tied, blindfolded, and a gunshot wound to the head. Near the body, the murderers - presumably the Gulf cartel - had written a sign on the wall that said, “Stop cooperating with the Zetas. Sincerely CDG Greetings to Architect No. 1.” While the police were guarding the scene of the crime, armed men arrived and took Cerda’s body. The body appeared several hours later in a place where people had been invited the day before to a march for peace. The remains of Ruiz Carrillo and Gómez Meléndez were found that morning in another place in the city. IACHR. Office of the Special Rapporteur for Freedom of Expression. March 29, 2011. Press Release R26/11. Office of the Special Rapporteur Condemns Crime Against Two Media Workers in Mexico. Available at: http://www.cidh.org/relatoria/showarticle.asp?artID=834&lID=1; Reporters Without Borders/IFEX. March 29, 2011. Double murder in Nuevo León; Guerrero newspaper suspends publication following threats. Available at: http://www.ifex.org/mexico/2011/03/29/double_murder/; Europa Press. March 25, 2011. Body of José Luis Cerda Meléndez, “La Gata,” found. Available at: http://www.europapress.es/tv/noticia-hallan-cadaver-jose-luis-cerda-melendez-gata-20110325193102.html

375. The Office of the Special Rapporteur received information on the murder of journalist Miguel Ángel López Velasco, assistant director of *Notiver*, together with his son Misael López Solana, a journalist at the same newspaper, and his wife, Agustina Solana, in Veracruz state on June 20. All three were murdered in their house while they slept. Miguel Ángel López Velasco, also known in his column as “Milo Vela,” specialized in issues of security, politics and narco trafficking for *Notiver*, a widely circulated newspaper in Veracruz. He had received threats over his professional activity.\(^{563}\) In its 2007 Annual Report, the Office of the Special Rapporteur documented that on May 3 of that year, a human head was dropped outside the headquarters of *Notiver* with a note saying “this is a gift for the journalists, more heads are going to roll and Milo Vela knows it well.”\(^{564}\) With regard to the triple murder, the governor of the state of Veracruz ordered the investigation be sped up and for the Office of the State Prosecutor to carry out the investigation, with the assistance of experts from the Office of the Attorney General of the Republic.\(^{565}\) Likewise, the national human rights Commission opened an *ex officio* complaint to launch an investigation.\(^{566}\)

376. On July 26, journalist Yolanda Ordaz, also with *Notiver*, appeared dead in Boca del Río, Veracruz. The journalist disappeared on July 24, shortly after telling her family members that she was going to cover a story. Her body was found decapitated behind the offices of the newspaper *Imagen del Golfo* and nearby radio broadcaster MVS. According to the available information, Yolanda Ordaz was working as a journalist covering the police beat for *Notiver* in Veracruz.\(^{567}\) According to reports, the head of the state Office of the Public Prosecutor in charge of

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the investigation indicated that a sign was found along with the body apparently linking the journalist with criminal groups.\textsuperscript{568} The newspaper \textit{Notiver} requested the resignation of the Attorney General of Justice of Veracruz and demanded a public apology after the official made premature public statements dismissing any link between the crime and the journalist’s work. He resigned in the first week of October.\textsuperscript{569} The National Human Rights Commission opened an \textit{ex officio} complaint to launch an investigation into the murder.\textsuperscript{570}

377. The Office of the Special Rapporteur learned of the kidnapping and murder of Humberto Millán, journalist with Radio Fórmula, in Sinaloa, Mexico. According to the information received, Humberto Millán was kidnapped by several armed men on the morning of August 24 in Culiacán, Sinaloa. On the morning of August 25, the journalist was found dead with a bullet wound to the head. In addition to his work with \textit{Radio Fórmula}, he edited the digital newspaper \textit{A Discusión}, where he specialized in local and national politics. The journalist, with more than 30 years experience in the media, was known for his critical commentaries and denouncements of alleged acts of corruption.\textsuperscript{571} On August 24, the date on which the journalist disappeared, the National Human Rights Commission opened a complaint case file to investigate the facts and asked the Secretary of the Government to implement precautionary or protective measures to the benefit of the relatives of the journalist, who had received threats.\textsuperscript{572}

378. On September 24, the editor of the newspaper \textit{Primera Hora}, María Elizabeth Macías, appeared dead in Nuevo Laredo, Tamaulipas state. According to information received, the communicator was found decapitated and a message was found with her remains accusing her of denouncing the actions of criminal groups on her blog. The information received by the Office of the Special Rapporteur also indicates that two weeks prior, on September 13, 2011, the bodies of two young people were found in the city of the Nuevo Laredo showing signs of torture. The bodies were accompanied by a message warning people not to report crimes on social networks.\textsuperscript{573} According to


what was reported to this Office of the Special Rapporteur, as of the publication deadline of this report, the bodies of the two young people had not been identified. **574**

379. The Office of the Special Rapporteur for Freedom of Expression received information concerning the disappearance of journalist Marco Antonio López Ortiz, information chief for newspaper *Novedades Acapulco* in the state of Guerrero on June 7, 2011. According to the information received by the Office of the Special Rapporteur, the journalist was abducted by a group of unknown individuals in the city of Acapulco on the night of June 7. His car was found abandoned at the place of the kidnapping and since then there has been no news on his whereabouts. **575** According to information, the Office of the Attorney General of Justice of the State of Guerrero has launched an investigation into these facts. **576** The Commission for the Defense of Human Rights of the State of Guerrero issued press releases on the case and the National Human Rights Commission also open a case file and visited the offices of *Novedades Acapulco* to look into the journalist’s disappearance. However, the whereabouts of the journalist are still unknown. **577**

380. The Office of the Special Rapporteur received information on the disappearance of journalist Manuel Gabriel Fonseca, a reporter with newspaper *El Mañanero* in the municipality of Acayucan, Veracruz state. Fonseca, who was covering the police beat, was last seen leaving work on September 19. **578**

381. The Office of the Special Rapporteur urges the Mexican authorities to investigate the motive for these crimes, prosecute and properly punish the perpetrators, and guarantee fair reparations for the victim’s relatives. It is essential that the necessary measures be taken to prevent these acts of violence from being repeated, and to counter their serious impact on all of society’s right to freedom of expression.

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**574** Telephone interview with nongovernmental organization Article 19. October 31, 2011.


The Office of the Special Rapporteur recalls that 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.”

C. Attacks on media and journalists

The Office of the Special Rapporteur received information on various attacks on communicators during this period. On December 18, 2010, armed men fired at least 15 times at the residence of journalist José Rosario Olán Hernández, with the newspaper Verdicto Popular, in Cárdenas, Tabasco, while he was there with his family. According to reports, Veredicto Popular regularly publishes denouncements of alleged acts of corruption in the state of Tabasco.\(^579\) On January 9, government security personnel of the state of Mexico attacked a correspondent with the newspaper La Jornada, Misael Habana de los Santos, and independent photographer Bernadino Hernández while they were reporting on the collapse of a metal structure during a political rally that caused the death close to 20 people. According to reports, the security personnel tried to prevent press from approaching the place and capturing images, in doing so seizing Habana’s camera and threatening Hernández with a firearm.\(^580\)

In the early morning hours of January 11, unknown individuals threw a fragmentation grenade and fired at a building owned by newspaper El Norte in Monterey, Nuevo León. The attack caused damage to glass and the newspaper’s façade. The attack took place hours after presumed criminal groups threatened local media covering news related to the war against narco trafficking.\(^581\) The newspaper was attacked again with a grenade on March 31, though no one was injured and no major damage was caused.\(^582\)

The Office of the Special Rapporteur was informed that reporter Alejandro Caballero and photographer Hugo Camarillo, with the newspaper Plaza de Armas, were attacked on January 6

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by security guards of the local delegation of the Mexican Institute of Social Security (IMSS in its Spanish acronym) in Queretaro while trying to interview nurses to refute an official statement on these worker’s salaries. According to reports, in the evening, an official with the Internal Communications Department had gone to the newspaper’s offices to demand to be informed of the content of the news item that was to be published.583 In follow up to the incident, the Querétaro State Human Rights Commission opened an *ex officio* complaint the following day.584 On January 20, presumed employees of union leader Martín Esparza beat journalists Javier Vega and cameraman Juan Carlos Martínez, of *Mileno Televisión*, and seized and destroyed a camera and cellular phones while the two were recording images outside the property of the union leader in Tetepango, Hidalgo. The Office of the Special Prosecutor on Crimes Committed against Freedom of Expression (FEADLE in its Spanish acronym) ordered forensics experts and agents of the Federal Investigation Agency (AFI) be sent to collect evidence.585 Elsewhere, the Office of the Special Rapporteur learned of an attack suffered on February 1 by Juan César Martínez, a cameraman with *Televisa Monterrey*, while he was covering a confrontation between members of criminal groups and federal forces in Apodaca, Nuevo León.586 On February 28, Julián Ortega, a photographer with daily newspaper *El Imparcial* in Sonora, was physically and verbally attacked by state police officers while photographing the search for an armed gang in the city of Hermosillo. While he was doing his job, three police officers approached him to take away his cameras.587 In Saltillo, Coahuila, Milton Martínez, a cameraman with *Televisa*, was beaten, arrested and threatened by officers of the Coahuila Prosecutor’s Office on March 4 while he was taking pictures of the destruction caused by a clash between criminals and police forces. The communicator was released hours later. In following up the incident, the National Human Rights Committee opened an *ex officio* complaint.588

On February 15, Gildardo Mota, a journalist with *Radiorama* and weekly newspaper *La Hora* was wounded by a gunshot to the leg while reporting on a clash between federal police officers and members of the teachers union, close to the Zócalo in the city of Oaxaca where President Felipe

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Calderón was located. According to the information received by the Office of the Special Rapporteur, photographers Luis Cruz, Hugo Velasco and Jaime García were also slightly injured.\footnote{386} The Office of the Special Rapporteur was informed of an attack on the headquarters of television channel Televisa in Piedras Negras, Coahuila state, on January 8. The attack took place when unknown individuals threw at least two fragmentation grenades that did not explode. The grenades were deactivated by members of the Secretary for National Defense in coordination with state and federal police.\footnote{387} According to information received, the Office of the Attorney General of the Republic reported that the Public Ministry of the Federation launched an initial inquiry into who was responsible for the commission of the crime after receiving a report from the State Control, Command, Communications and Computation Center (C-4).\footnote{388}

On February 25, reporter Oswald Alonso Navarro, a correspondent with Radio Fórmula and the AP news agency, and Marco Antonio Vallejo Estrada, a publicist with Radio Fórmula, were attacked by unidentified armed men in Cuernavaca, Morelos state. According to information received by the Office of the Special Rapporteur, at around 10 PM, three armed men tried to intercept the communicators and make them get out of their vehicle. When the journalists fled, they fired at them with assault rifles, wounding Marco Antonio Vallejo Estrada in the leg.\footnote{389} According to reports, the Mexican Reporters Network announced that the Secretary of Public Security of Morelos state had failed to apply precautionary measures to the benefit of the communicators based on these facts and asked the Office of the Special Prosecutor on Crimes Committed Against Freedom of Expression (FEADLE) of the Office of the Attorney General of the Republic to urgently implement the precautionary measures. According to the information, the FEADLE interviewed the communicators, asked the secretary of public security of Morelos state to issue precautionary measures, and took up the case. Based on these facts, the National Human Rights Commission opened an \textit{ex officio} investigation.\footnote{390}  


388. The Office of the Special Rapporteur was informed of the kidnapping of journalists Fabián Antonio Santiago Hernández and Margarito Santiago Pérez, with the newspaper La Verdad, which took place on February 25 in the municipality of Jáltipan, Veracruz. Both were abducted close to noon in the center of the municipality and released hours later after an intense police operation in the community that had blocked all exits.595 Two days before the abduction, municipal police authorities had threatened the journalists for having published the statements of a municipal police officer denouncing the improper practices of his superiors.596

389. On May 30, unidentified individuals threw a grenade at the offices of newspaper Vanguardia in Saltillo, Coahuila, at around 11:30 p.m. The attack did not cause any injuries.597 Following the attack on Vanguardia offices, the Office of the Attorney General of the Republic launched an inquiry.598 Likewise, the National Human Rights Commission issued an ex officio complaint and requested that precautionary measures be granted for the newspaper’s employees.599

390. The Office of the Special Rapporteur received information on an attack on journalist Jacobo Elnecavé Luttmann, in Tuxtla Gutiérrez, Chiapas state, on June 19. According to the information received, Elnecavé, the host of one of the news programs of the Sistema Chiapaneco de Radio, Televisión y Cinematografía, was attacked with a blunt object while at an amusement park with friends. The attack caused injuries to his head, face and right shoulder. He was taken to a medical center in Mexico City, where he remained hospitalized for an extended period of time. The CNDH opened a file on the case and ordered precautionary measures to the benefit of the communicator.600

391. On August 5, reporter Yuri Galván Quesada with the newspaper Provincia in the state of Michoacan was arrested while carrying out research in a health center in the city of Morelia in that state. According to the information received, Galván was looking into whether health

services that by law should be free were being charged for when the director of the center called the police, who arrested the journalist and transferred her to a municipal detention center.601

392. The Office of the Special Rapporteur received information on telephone threats and website sabotage against the newspaper El Sol del Sur in Tampico, Tamaulipas state, during the month of September. The information also indicates that reporter Mario Alberto Segura, from the same newspaper, was subjected to aggression on September 21. Segura had been filming the police of the city of Madero, Tamaulipas, as they violently evicted street vendors when he was beaten and arrested. According to the information received, a criminal complaint was filed before the FEADLE regarding the facts.602

393. In October of 2011, journalists Norma Madero Jiménez and Agustín Ambríz, with the magazine Luces del Siglo in the state of Quintana Roo, filed a criminal complaint of harassment before the Office of the Special Prosecutor on Crimes Committed against Freedom of Expression (FEADLE). Madero and Ambríz are the owner and director, respectively, of the magazine and have been threatened, harassed, and physically attacked in connection with the article “How big was the debt he left?” bearing Ambríz’ byline, about the financial debt left by the administration of a former state governor. The information received indicates that the journalists filed criminal complaints upon receiving several threatening e-mails per day detailing their activities. They have been moved to Mexico City for security reasons.603

394. On November 1, in Ciudad Juárez, Chihuahua, several journalists including Christian Torres from the newspaper El Diario and Ramiro Escobar from Radio Net were attacked and arrested by municipal police officers while covering a demonstration against violence and organize crime. According to the information received, both journalists have filed criminal complaints for abuse of authority and damages against the police officers responsible. The authorities have indicated that they will impose administrative sanctions on the police officials who caused the journalists’ injuries.604


D. Threats

395. The Office of the Special Rapporteur learned of several cases of threats against journalists that took place since December of 2010. On December 15, 2010, journalist Anabel Hernández alleged in an open letter that there was a plan, allegedly of certain officials with ties to the Secretary of Public Security and the Federal Investigations Agency, to attack her after the publication of her book *The Lords of the Narco* on December 1, 2010. At her request, the National Human Rights Commission interviewed the journalist, opened a complaint case file and opened an investigation into the facts. On March 25, an anonymous phone call warned a receptionist at the newspaper *El Sur* in Acapulco that there would be an attack on the newspaper’s director, Juan Angulo: “This message is for Juan Angulo. [...] Tomorrow at two in the afternoon, all the innocents should get out of there.” As a precautionary measure, on the following day the newspaper’s employees did not go to the office and many of them worked from home. In November of 2010, *El Sur* had been attacked by armed men who entered the building and fired several times. According to the information received, the newspaper enjoys precautionary measures of protection ordered by the National Human Rights Commission.

396. The Office of the Special Rapporteur was informed of the April 15 arrest and deportation of Italian journalist Giovanni Proiettis, a resident of Mexico for 18 years. According to the information received, the communicator had permission to work as a teacher at a university in Chiapas and also wrote a blog for the Italian newspaper *Il Manifesto*. The authorities indicated that he had been deported because he was exercising a profession that was not the one for which he was authorized. Proiettis was involved in an incident with President Felipe Calderón during the United Nations Climate Change Conference held in Cancun in December of 2010, where security agents canceled his press credentials for covering the event.

397. The Office of the Special Rapporteur learned of new threats against journalist Lydia Cacho received on June 14. According to information received, the journalist was again threatened with torture and death via telephone and e-mail. The journalist, who has alleged that the threats are in retaliation for “revealing the names of traffickers of girls and women,” filed a criminal complaint

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over the threats and petitioned authorities to provide her with security measures. As the Office of the Special Rapporteur has noted, this is not the first time that journalist Lydia Cacho has been subjected to threats or attacks in retaliation for her work. The IACHR granted precautionary measures to the journalist, her family and functionaries with the Comprehensive Women’s Care Center (CIAM its Spanish acronym) starting in 2009 based on the death threats she received in connection with her work as a journalist and human rights defender.

E. Obstructions to the disclosure of information

398. The Office of the Special Rapporteur was informed that on March 2, the 12th Court of the Administrative District of the Federal District temporarily suspended the showing of the documentary “Presumed Guilty” in response to the request for a writ of amparo. 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. The court order to prevent the distribution of the documentary was sought by a person who appeared as a witness in the criminal proceeding in question. Through a restraining order, the first instance judge ordered the documentary’s distribution be suspended. However, in response to a writ of complaint and request for clarification from the General Directorate of Radio, Television and Cinematography (RTC), the court removed the suspension but placed a restraining order requiring the documentary to keep the identity of the person who requested the writ of amparo confidential. Later, movie theater company Cinépolis filed a writ of amparo in favor of the distribution of the film and on May 23, the 12th Multimember Tribunal of the City of Mexico authorized the unrestricted showing of the movie inside Mexico and abroad. In response to a request for information by the Office of the Special Rapporteur submitted on March 4, 2011, the Mexican State responded on March 25, 2011, that the Secretary of Governance authorized and defended showing the documentary and that the Federal Government, in disagreement with the

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614 Communication dated March 25, 2011, from the State of Mexico to the Office of the Special Rapporteur for Freedom of Expression. OEA-000680. Pg. 2; La Jornada. March 6, 2011. Presumed Guilty. Available at: http://www.jornada.unam.mx/2011/03/06/opinion/a09a1esp


616 Communication dated March 25, 2011, from the State of Mexico to the Office of the Special Rapporteur for Freedom of Expression. OEA-000680. Pg. 3.

initial court ruling, would exhaust all legal resources to challenge the ruling and defend freedom of expression.\footnote{Communication dated March 25, 2011, from the State of Mexico to the Office of the Special Rapporteur for Freedom of Expression. OEA-000680. Pg. 4.}

399. The Office of the Special Rapporteur learned that a group of individuals identifying themselves as “very influential” tried to prevent the circulation of the newspaper \textit{Novedades} in Quintana Roo on the morning of March 31. According to the information, shortly after midnight several individuals appeared at the newspaper to offer to purchase that day’s full print run, some 45,000 copies. In response to the company’s refusal, men in several trucks and on motorcycles rode through the city for several hours to intimidate the drivers of circulation trucks and the newspaper’s vendors in order to acquire the newspapers. In the end, the unknown group was able to buy close to 90\% of the edition. The newspaper denounced the facts before the Human Rights Commission of the State of Quintana Roo, which condemned the restriction on the right to freedom of expression.\footnote{The main news items to be published that day addressed the government acquisition of armored patrols, the sentencing of a man accused of corrupting minors to 13 years in prison, the report of a murder in broad daylight in Cancun, and the problems facing a tourism fair in Quintana Roo. Excelsior. March 31, 2011. \textit{Newspaper Novedades de Quintana Roo} suffers suppression. Available at: \url{http://www.excelsior.com.mx/index.php?m=nota&id_nota=726476}; Novedades. April 1, 2011. \textit{Suppression of newspaper Novedades de Q. Roo} suffers suppression. Available at: \url{http://www.novenet.com.mx/portada.php?id=200947}; El Economista. April 1, 2011. \textit{Newspaper Novedades de Quintana Roo} censored. Available at: \url{http://eleconomista.com.mx/sociedad/2011/04/01/censuran-diario-novedades-quintana-roo}; SIPSE. April 3, 2011. \textit{Censorship of newspaper Novedades de Quintana Roo violates Constitution}.

400. On June 8, journalist Ángeles Mariscal was prevented from doing her job when she tried to cover a public hearing of the former governor of the state of Chiapas. According to the information received, Mariscal - with CNN and \textit{Animal Político} in Chiapas - had her equipment confiscated when she arrived to the hearing. Later, several police officers ordered her to leave the place where the hearing was taking place, which she refused to do without a written order from the judge. When she left the place where the hearing was taking place, Mariscal was intercepted by prison security officials who confiscated her USB memory sticks, her audio recorder, and the memory card from her video camera, all of which were returned half an hour later. During that half an hour, she was held inside the prison.\footnote{Article 19/CENCOS/IFEX. June 20, 2011. \textit{Chiapas reporter prevented from covering public hearing}. Available at: \url{http://www.ifex.org/mexico/2011/06/20/mariscal_obstaculizada/es/}; CENCOS/IFEX. June 27, 2011. \textit{Concern over harassment and attacks on journalists in Chiapas}. Available at: \url{http://www.ifex.org/mexico/2011/06/30/mandujano_acoso/es/}.}

401. In the first week of July, online media outlets \textit{Expediente Quintana Roo}, \textit{Cuarto Poder} and \textit{Noticaribe} in the state of Quintana Roo suffered denial of service attacks. As a result of the attack, \textit{Expediente Quintana Roo}, a media outlet based exclusively on the Internet, remained off line for almost 5 days; information was also stolen from the e-mail account of its director. The attack on \textit{Expediente Quintana Roo} took place on the eve of a poll evaluating the first 100 days of the state government.\footnote{Article 19/IFEX. July 11, 2011. \textit{Cyber attack on three online media outlets in Quintana Roo}. Available at: \url{http://www.ifex.org/mexico/2011/07/14/ataque_cibernetico/es/}; Online journalists. July 13, 2011. \textit{Online media in Quintana Roo victims of cyber attacks}. Available at: \url{http://www.periodistasenlinea.org/modules.php?op=modload&name=News&file=article&sid=19273}.}

402. In September, the magazine \textit{Proceso} reported repeated mass purchases of copies the magazine. According to information received, in that month the mass purchase took place in the
cities of Veracruz, Nuevo Leon, Guanajuato, Durango and Puebla, where unknown individuals appeared at different sales points to purchase, without violence, all the copies in circulation, preventing them from reaching the public. In Veracruz, for example, some 5400 copies of the magazine were purchased. The edition dedicated its cover to the narco trafficking violence in that state.622

F. Judicial proceedings

403. On May 25, the Second Single Judge Court of the Fourth Circuit, in Monterey, confirmed the sentence of two years in prison for the director of community radio station Tierra y Libertad, Héctor Camero. The communicator was granted a conditional suspension of the prison sentence but ordered to pay a fine equivalent to US $1,360 dollars and barred from practicing his civil and political rights for - according to the ruling - having used the broadcast spectrum without authorization. According to the information received by the Office of the Special Rapporteur, the proceeding against Camero began in 2008, when officers with the Federal Preventive Police forcibly entered the radio station Tierra y Libertad and confiscated broadcast equipment. In November of 2009, Camero was convicted by a first instance judge. The radio station Tierra y Libertad has provided information in the public interest to low income communities in Monterey since 2002.623

404. On January 17, José Maza, a member of community radio station Radio Diversidad, was arrested by officers of the Office of the Attorney General of the Republic as part of a criminal proceeding launched when the radio broadcaster was closed in March of 2009 for allegedly operating without the corresponding permits.624 According to information received by the Office of the Special Rapporteur, the communicator had to post bail equivalent to US $1,800 dollars. Communicators Juan José Hernández and Paula Ochoa also faced accusations on the same grounds.625

405. The Office of the Special Rapporteur insists that laws on radio broadcasting must be adjusted to international standards and must be enforced through the use of proportional administrative penalties, not through the use of criminal law.626

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406. The Office of the Special Rapporteur emphasizes that “a restriction imposed on
freedom of expression for the regulation of radio broadcasting must be proportionate in the sense
that there is no other alternative that is less restrictive of freedom of expression for achieving the
legitimate purpose being pursued. Thus, the establishment of criminal sanctions in cases of
violations of radio broadcasting legislation does not seem to be a necessary restriction.” The Office
of the Rapporteur recalls that legal recognition of community radio broadcasters is not sufficient if
there are laws establishing discriminatory operating conditions or disproportionate penalties, such as
Special Rapporteurship for Freedom of Expression. Chapter VI (Freedom of Expression and Broadcasting). Paras. 40-41. Available at: \url{http://www.cidh.oas.org/pdf%20files/RELEAnual%202009.pdf}}

407. Likewise, the Office of the Special Rapporteur observes that it is necessary for the
State to recognize the existence of community broadcasters and set aside parts of the spectrum for
these media outlets. It must also provide equal conditions for access to licenses that take into
account the different nature of noncommercial private media.\footnote{See IACHR. Office of the Special Rapporteur for Freedom of Expression. Inter-American Framework on the Right
%20PORTADA.pdf}} As this office has indicated, States
must provide a clear, preestablished, precise and reasonable legal framework that recognizes the
special characteristics of community broadcasting and that includes simple and accessible
proceedings for obtaining frequencies. These proceedings may not establish severe technology
requirements and they must not impose discriminatory or unreasonable limits on funding and
range.\footnote{See IACHR. Office of the Special Rapporteur for Freedom of Expression. Inter-American Framework on the Right
%20PORTADA.pdf}} The Office of the Special Rapporteur likewise observes that community broadcasters must

408. The Office of the Special Rapporteur was informed that on May 11, Mexican
authorities released without charges Jesús Lemus Barajas, the director and founder of newspaper \textit{EL Tiempo}, in La Piedad, Michoacan, after keeping him in prison for three years on suspicions of having
had connections with criminal groups. The journalist was arrested by police officers on May 7, 2008, in Cuerámaro, Guanajuato, along with two sources as he was gathering information for a
report on drug trafficking routes in the south of the country. In February of 2011, he was convicted
and sentenced to 20 years in prison for drug trafficking. However, a second instance court
overturned the ruling and acquitted him on finding that there was no evidence connecting him with
incidents of drug trafficking or organized crime. Prior to his arrest, Lemus Barajas’ newspaper was
critical in its coverage of local news. He had alleged a campaign of harassment by the La Piedad
mayorality against the media, unequal placement of government advertising in the municipality, and
police intimidation.\footnote{Months after the journalist’s arrest, a group of soldiers searched his home on July 31, 2008. A similar incident
took place again on August 18, 2010. In addition, on August 31, 2009, at least two attorneys defending Jesús Lemus
409. Reporter Arcelia García Ortega, with newspaper *Realidades de Nayarit* in the state of Nayarit, had a criminal complaint brought against her for the crimes of defamation, libel and slander by state deputy Omar Reynoso Gallegos over a report she published on July 21. García Ortega published statements issued by another deputy accusing Reynoso Gallegos of embezzlement during his time as state health secretary. The Office of the Special Rapporteur recalls that according to Principle 10 of the Declaration of Principles, “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.”

410. On August 26, 2011, María de Jesús Bravo Pagola and Gilberto Martínez Vera were arrested on charges of terrorism and sabotage in the city of Veracruz after having spread rumors of attacks by drug trafficking cartel through microblogging site Twitter. The rumors, which turned out to be false, reported attacks on schools. According to the press, they caused “chaos” in the city. On September 1, 2011, in a letter addressed to the Office of the Special Rapporteur, the Secretary of the Government of Veracruz State, Gerardo Buganza Salmerón confirmed these facts and explained that the accused individuals “were not arrested, brought before the authorities, and placed at the disposal of a judge for ‘publishing messages on Twitter and Facebook,’” but for taking “actions against persons, things, or public services that caused alarm, fear, and terror in the population [...] as set forth in the Veracruz State Criminal Code.” On September 21, 2011, the government of Veracruz State dropped the charges and freed the two accused individuals.

411. Available information indicates that the Congress of Veracruz State passed a reform of the State Criminal Code on September 20, 2011, codifying the crime of “disturbance of the public order,” in connection with the aforementioned incident on social network Twitter. According to the information, new Article 373 of the Criminal Code establishes that “those who through any medium falsely affirm the existence of explosive or other devices; attacks with firearms; or chemical, biological, or toxic substances that can cause damage to health, resulting in the disturbance of public order, will be sentenced to a prison term of one to four years and a fine equivalent to 500 to 1000 salary days, depending on the alarm or disturbance of public order effectively caused.” Javier Duarte, the governor of Veracruz State, submitted the initiative on

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634 Communication from the Secretary of the governments of Veracruz state Gerardo Buganza Salmerón to the Special Rapporteur. September 1, 2011. In possession of the Office of the Special Rapporteur.

According to information, the National Human Rights Commission (CNDH in its Spanish acronym) began analyzing the reform on September 22, 2011, evaluating whether it should move to file an action of unconstitutionality. According to information received, a similar proposal was submitted to the Tabasco State Congress on August 31.

412. The Office of the Special Rapporteur recognizes that in certain cases, restrictions on forms of expression that can incite acts of violence or public panic and situations that put the safety and integrity of people at risk can be legitimate. At the same time, the Office of the Special Rapporteur notes the important role that social networks play as a medium for sharing information. This is true at all times, but especially so in the situation of violence faced by many regions. For this reason, it is essential that norms that tend to discourage violence by providing sanctions for certain forms of expression adhere to the principle that only expressions that have the intent and potential, real and objective, to lead to violence should be prohibited in the terms of Article 13.5 of the American Convention.

G. Violence against journalists: follow-up to the recommendations in the 2010 Special Report on Freedom of Expression in Mexico.

413. In this section, the Office of the Special Rapporteur follows up on some of the recommendations issued in its 2010 Special Report on Freedom of Expression in Mexico with regard to the issue of violence against journalists. The Special Report was the result of an in loco visit


638 The proposal presented on August 31, 2011, would add the following to the Tabasco Penal Code: “Article 367: Those who through various oral, written, electronic, or any other kind of media distribute false information with the purpose of causing alarm and disturbing the public peace or constitutional order will be sentenced to six months to five years in prison and fined the equivalent of 100 to 500 workdays.” (“A quien por diversos medios orales, escritos, electrónicos, o de cualquier otro tipo, difunda información falsa con el ánimo de causar alarma, perturbar la paz pública o el orden constitucional, se le impondrá prisión de seis meses a cinco años y multa de cien a quinientos días”). The President of the Permanent Commission, José Carlos Ocaña Becerra, turned the document over to the Commission on Public Safety, Civil Protection and Justice for analysis and approval. Tabasco State Congress. August 31, 2011. Proposal to punish those who disrupt the social peace with negligently provided information. Available at: http://www.congresotabasco.gob.mx/legislatoralX/index.php?option=com_content&view=category&layout=blog&id=30&Itemid=123

639 See American Convention on Human Rights. Art. 13(5) The famous line from Judge Oliver Wendell Holmes in the case of Schenck v. United States, 249 U.S. 47 (1919) should also be recalled, wherein he expressed that even the strictest protection of freedom of expression does not protect those who falsely shout “fire” in a crowded theater:

The most stringent protection of free speech would not protect a man falsely shouting fire in a theater and causing a panic. [...] The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent.


carried out jointly between August 9 and 24, 2010, with the United Nations Special Rapporteur on Freedom of Opinion and Expression at the invitation of the Mexican government. The Special Report, which was incorporated into the Annual Report of the Office of the Special Rapporteur for 2010, analyzes the following issues: violence, impunity and self-censorship; freedom, pluralism and diversity in the Democratic debate; legal action related to the exercise of freedom of expression; and access to information. Likewise, the Office of the Special Rapporteur examined certain specific cases and formulated conclusions and recommendations based on the ones that were formulated at the conclusion of the joint in loco visit. At this time, the Office of the Special Rapporteur will do a special follow-up to some of its recommendations on the violence against journalists and communicators in Mexico.

414. At the conclusion of the 2010 in loco visit, the offices of the Rapporteurs issued a preliminary report in which they recommended, inter alia, that the Mexican State:

- Strengthen the Office of the Special Prosecutor for Crimes against Journalists of the Office of the Attorney General of the Republic and the local prosecutors’ offices. It is especially recommended that the necessary reforms be made to permit the exercise of federal jurisdiction over crimes against freedom of expression.

- Give the Special Prosecutor’s Office and the local prosecutors’ offices greater autonomy and greater resources, and adopt special protocols of investigation for crimes committed against journalists, requiring the full consideration of the possibility that the crime was committed because of the victim’s professional activity.

- Establish a national mechanism for the protection of journalists. The mechanism must be implemented through a high-level official and inter-institutional committee; be led by a federal authority; have the ability to coordinate among different government organizations and authorities; have its own, sufficient resources; and guarantee the participation of journalists and civil society organizations in its design, operation and evaluation.

- Provide training to members of the security forces on the subject of freedom of expression.

415. In the same sense, in its 2010 special report on freedom of expression in Mexico, the Office of the Special Rapporteur urged the Mexican state to “implement, as soon as possible, a comprehensive policy of prevention, protection and prosecution in response to the critical situation of violence facing journalists in the country” with “the active participation of all relevant sectors, including journalists and social organizations that defend human rights and freedom of expression.” These recommendations highlight the need to strengthen the Office of the Special

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Prosecutor for Crimes against Journalists (FEADLE) and to create and put into operation a mechanism for protecting journalists.

416. During 2011, the IACHR and the Office of the Special Rapporteur remained particularly concerned with regard to the situation of violence against journalists and the media in Mexico. At the conclusion of its visit to Mexico on September 30, 2011, the Office of the Rapporteur for Mexico expressed that:

> [T]he Commission continues to be concerned over the high levels of violence against journalists and media workers in Mexico. In 2011, 13 members of the media have been killed for reasons that could be tied to the exercise of freedom of expression. In addition to the murders and disappearances, journalists and the media continue to face serious attacks, acts of aggression, and harassment. In parts of Mexico, journalists are subject to intense intimidation, coming primarily from criminal groups. This phenomenon creates self-censorship among many media outlets and limits investigative journalism. The Inter-American Commission once again urges the State of Mexico to strengthen the Office of the Special Prosecutor for Crimes against Freedom of Expression (FEADLE, for its Spanish acronym); transfer the investigation of crimes against media workers to the federal justice system, in cases in which this is warranted; and urgently implement any necessary security mechanisms to effectively safeguard the lives and well-being of journalists who have been threatened, as the IACHR recommended in its 2010 Special Report on Freedom of Expression in Mexico.645

417. Hereinafter, the Office of the Special Rapporteur will examine the progress and challenges with regard to its recommendations on violence, impunity and self-censorship, particularly with regard to the operations of the FEADLE and the creation of a mechanism for the protection of journalists. Toward doing so, it will take into account, among other elements, the Report on Mexico: Human rights progress and challenges, from Mexico’s Secretary on Foreign Relations,646 as well as the information provided by civil society and the State during the hearing entitled "Attacks on journalists in Mexico," held on October 28, 2011, in the framework of the 143rd period of sessions of the IACHR.647

H. The Office of the Special Prosecutor on Crimes against Freedom of Expression (FEADLE)

418. In its 2010 Special Report on Freedom of Expression in Mexico, the Office of the Special Rapporteur observed that:

> [T]he Mexican Federation has reacted to the situation of general impunity that holds sway with regard to crimes against journalists with the creation of a Special Prosecutor’s Office within the structure of the PGR.

[…]


The FEADLE is empowered to prosecute crimes committed against those who engage in journalistic activities if and when: the victim of the crime is a practicing journalist; the crime in question was committed as a result of the exercise of the right to information or of press freedom or was motivated by either of these; the crime is of federal or common law jurisdiction, when the acts are connected to federal crimes; and when the crime concerned is punishable by a prison sentence.648

419. During its in loco visit, the Office of the Special Rapporteur met with the FEADLE head to hear and discuss its working plan. The Office of the Special Rapporteur learned at that time that the FEADLE was moving forward with "several activities, among them the investigation and criminal prosecution of crimes over which it has jurisdiction, collaboration with the Attorneys General of Justice of the different federal entities in the investigation of unlawful acts against journalists, the creation of a centralized archive of initial inquiries into the homicides and disappearances of journalists, the preparation of security protocols, and the carrying out of meetings with public entities and civil society bodies."649

420. In its Special Report, the Office of the Special Rapporteur observed that as of that time, the FEADLE had not been able to "reduc[e] the generalized impunity that holds sway in cases of violence against journalists, if we consider that according to information provided in the course of the on-site visit, since its creation in 2006 the FEADLE had not achieved a single conviction, and had brought only four cases to trial."650 Likewise, the Office of the Special Rapporteur took note of FEADLE’s historical tendency to decline responsibility for cases referred to it, evidencing “a lack of political will that went uncorrected until the designation in 2010 of a new Special Prosecutor who has shown the will to assume the pertinent cases.” The Office of the Special Rapporteur viewed positively the fact that seven cases were brought to trial by the FEADLE between February 15 and December 31 of 2010 and expressed its hope that the working plan of the current FEADLE head would bring specific results in the short term.651

421. Finally, the Office of the Special Rapporteur offered recommendations to the Mexican State. First, it made an urgent call to the Mexican State to strengthen the FEADLE, “granting it greater autonomy and its own budget, and making the necessary reforms to allow the federal jurisdiction to exercise competence over crimes against freedom of expression.” Second, it recommended that the State resolve “the existing ambiguity with regard to jurisdiction over crimes against freedom of expression [...] in order to permit the exercise of federal jurisdiction over the crimes against freedom of expression when circumstances so demand,” and considered it


enormously important to push for the reforms necessary to allow federal judges to be able to hear these kinds of crimes.\textsuperscript{652}

422. In its \textit{Report on Mexico: Human rights progress and challenges}, the State indicated that the FEADLE “is now strengthened in that it answers directly to the Office of the Prosecutor” and that “although the Office of the [Special] Prosecutor refers responsibility on cases of organized crime to the Office of the Assistant Prosecutor of Specialized Investigation on Organized Crime (SIEDO) of the Office of the Attorney General of the Republic (PGR), there are mechanisms for institutional coordination between both areas for carrying out investigations.”\textsuperscript{653} Likewise, the State reported that the FEADLE established a Subprogram for the Systemization of Information “whose purpose is to use an automatic system to identify, locate and categorize information on cases of the homicide and disappearance of journalists,” for which reason a “national database on homicides and disappearances of journalists” was created including 2914 entries broken down according to state, year, area or region, and sex, among other categories. A database was also set up on attacks on journalists and the media apart from the aforementioned homicides and disappearances, with a total of 3306 entries.\textsuperscript{654} Finally, it indicated that the FEADLE had developed a Guide of Basic Steps for the Investigation of Homicides Committed against Freedom of Expression, which it had made available to prosecutors in the different federal entities.\textsuperscript{655}

423. The Office of the Special Rapporteur also took note of the meeting held on August 9, 2011, that included the participation of the Special Prosecutor on Crimes against Freedom of Expression and the permanent Commission of the Congress of the Union with the purpose of discussing the subject of impunity in cases of violence against journalists. According to the information received, the Prosecutor indicated that the FEADLE was concentrating on a Work Plan that includes the statistical systematization of information in cases of homicides and disappearances of journalists through a database; the granting of precautionary measures; and the design of an early alert system to set up security protocols, among other measures.\textsuperscript{656}

424. In the same meeting on August 9, 2011, the head of FEADLE reported that he had launched 126 investigations and ordered 64 precautionary measures since 2010. Likewise, he reported that his office had launched more than 40 actions against those allegedly responsible for}


crimes against journalists since September of 2010 for crimes such as abuse of authority, threats, aggravated assault, aggravated theft, aggravated damage to property, and attempted murder, the majority of which had been committed by public officials. According to the information, the FEADLE was able to review 48% of existing case files, allowing for "the first criminologist involvement, which, although it was not conclusive, [...] has begun to explain the phenomenon." In addition, he stated that, "The problem has not been addressed with the speed, flexibility, and efficiency for which we all would have hoped."

425. Despite the progress reported, the Office of the Special Rapporteur observes that more than a year since the presentation of the FEADLE’s new work plan, there has still been no increase in its activities, and to date no case under examination by the agency of the homicide or murder of a journalist has resulted in the punishment of those responsible. According to the information received, the special prosecutor has attributed the persistence of impunity in cases of the homicide or disappearance of journalists to a lack of information and adequate infrastructure and has stated that “very few” cases of this kind have been resolved due to a lack of the necessary information and authority to investigate. Neither has information been received on the status of investigations being carried out by local and state prosecutors, or on punishments for those responsible for crimes against journalists handed down by courts at any level of government.

426. On November 11, 2011 the full Chamber of Deputies passed a modification of Article 73 of the Constitution that would empower federal authorities to hear “crimes against journalists in the exercise of the freedoms of expression, information and press,” representing an

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important step forward in the process. However, the passage of this change by the Senate and the legislatures in a majority of states is still pending as this report goes to press.

427. The Office of the Special Rapporteur views positively the increase in the number of investigations and protective actions put in place by the Office of the Special Prosecutor on Crimes against Freedom of Expression, as well as the development of investigation protocols for crimes against freedom of expression. The gathering and systemization of forensic evidence on crimes against journalists is also important, and addresses the specific recommendations made by the Office of the Special Rapporteur in its Special Report. At the same time, it reiterates its great concern over the fact that in its almost six years of existence, the office of the special prosecutor still has not achieved the criminal conviction of a single person responsible for murdering or disappearing a journalist. In its preliminary report on the conclusion of the in loco visit issued in August of 2010, the Office of the Special Rapporteur expressed its hope that the FEADLE’s new work plan would translate into specific results in the “short-term.” More than a year later, the information submitted by the State indicates some progress, such as for example the 47 "likely guilty parties" who, as reported by the State in the hearing held before the IACHR, were turned over to the courts by the FEADLE between September 2010 and September 2011 for the commission of different crimes against freedom of expression. However, the lack of clear, specific and broken-down statistics on the results achieved - arrest warrants, arrests, charges, convictions and sentences - complicates the ability of the press and the Mexican public to evaluate the performance of the office of the special prosecutor and other prosecutorial offices. The reasons offered by the head of FEADLE for the lack of “rapidity, agility and efficiency” in resolving cases of violence against journalists - among them, an inadequate definition of its jurisdiction - are legitimate and were pointed out by the Office of the Special Rapporteur earlier. At the same time, the Office of the Special Rapporteur observes that the FEADLE has spent scarce resources on activities other than the ones directly associated with its central responsibility: to obtain criminal punishment for the most serious crimes - murders, disappearances and attacks - committed over the exercise of freedom of expression. The urgent situation of violence against communicators in Mexico demands an effective policy for combating impunity in these cases, and the Office of the Special Rapporteur will continue to carefully monitor the FEADLE’s role in this struggle and to collaborate, where possible and within the bounds of its competence, to the attainment of these goals.

I. Creation of a mechanism for protection of journalists

428. At the close of its in loco visit to Mexico, the Office of the Special Rapporteur recognized the progress made in the talks between the federal government and civil society toward creating a mechanism of protection for journalists. In the report, the Office of the Special Rapporteur called attention to the:


urgent need to make this process a reality and put [the] protection mechanism into operation as soon as possible. In particular, the Rapporteurs consider it essential that [the] mechanism be implemented through a high-level official and inter-institutional committee; be led by a federal authority with the ability to coordinate among different government organizations and authorities; have its own, sufficient resources; and guarantee the participation of journalists and civil society organizations in its design, operation and evaluation. 665

429. Later, the Office of the Special Rapporteur learned of the adoption of a “Coordination agreement for the implementation of preventive actions and actions to protect journalists” signed by the Secretary of Governance, the Secretary of Foreign Relations, the Secretary of Public Security, the Office of the Attorney General of the Republic and the National Human Rights Commission (CNDH). 666 According to the State, this represented “the first step toward establishing a mechanism for the protection of journalists and communicators” and complied with the aforementioned recommendations of the Special Rapporteurs of the IACHR and the UN. 667 The agreement created a Consultative Committee in charge of receiving requests for protection, establishing and following up on measures of prevention and protection for journalists, and facilitating the federal and local implementation of those measures. Likewise, an Evaluation Subcommittee was created with the responsibility of analyzing the requests for preventive and protective measures and making the corresponding recommendations to the Consultative Committee. 668

430. The agreement established a time period of 30 days for setting up the Consultative Committee and indicated that within the next 30 days, this committee would issue the Operational and Working Guidelines that would define, among other issues, “the standards for adopting, implementing, maintaining, modifying or ending preventive or protective measures for journalists.” 669

431. According to the information provided in the Report on Mexico: Human rights progress and challenges, the Secretary of Governance is the department in charge of coordinating the mechanism for the protection of journalists, and the Consultative Committee is comprised of that Secretary as well as the Secretary of Public Security, the Office of the Attorney General of the Republic, the National Human Rights Commission, and the United Nations Office on Drugs and Crime. 670

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432. The Office of the Special Rapporteur has received information on some progress in the implementation of the Agreement. On July 18, 2011, the organization National Center for Social Communication (CENCOS in its Spanish acronym) accepted an invitation to participate in the Consultative Committee as a permanent guest from civil society. Likewise, on October 5 of this year, it was revealed that the state government of Morelos had joined the Agreement.

433. At the same time, the Office of the Special Rapporteur took note of the comments of press and freedom of expression organizations on the mechanism’s capacities and procedures and the lack of effective implementation of the protective measures contemplated in the agreement. Among other things, these comments make reference to the importance of specialized organizations and the United Nations Office of the High Commissioner for Human Rights’ participation in the mechanism, as well as the need for the mechanism to have an adequate budget and technical capacity, management, and ability to act throughout the country. Likewise, in a communication issued on November 18, several nongovernmental organizations called the budget of 28.5 million pesos assigned to the mechanisms for the protection of journalists and human rights defenders in the Federation Budget Expenditures for Fiscal Year 2012 “still insufficient.” The Office of the Special Rapporteur notes the agreement between these comments and the recommendations that the Office of the Special Rapporteur had sent to the Mexican State on the preparation of the Operational and Working Guidelines and that were later incorporated into the 2010 Special Report on Freedom of Expression in Mexico.

434. In the hearing held before the IACHR on October 28, the State did not make reference to any journalists who had received State protection in the framework of this...
Likewise, the Office of the Special Rapporteur observes with concern the delay in publicly issuing the Operational and Working Guidelines of the Agreement. Although the State indicated in the public hearing held on October 28 that the Committee approved the Guidelines in its fifth session held on January 28, 2011, those Guidelines have still not been made public as of this report’s publication deadline, for which reason the majority of communicators in the country are not aware of the preceding for requesting protection in the framework of the Agreement. The Office of the Special Rapporteur reiterates the urgent need of putting the mechanism for protection into operation given the critical situation of violence against journalists and the media in Mexico and will continue to monitor closely the implementation of the coordination Agreement for the implementation of preventive actions and protection of journalists, as well as providing all assistance to the State which its competence permits.

18. Nicaragua

A. Threats

435. The Office of the Special Rapporteur received information that Luis Galeano, a journalist from the newspaper *El Nuevo Diario*, reportedly received death threats on at least two occasions—February 19 and 21—coinciding with the February 21, 22, and 23 publication of several articles about administrative irregularities alleged to have been committed at the Supreme Electoral Council (CSE). According to the information received, on February 19 Galeano received a message on his cell phone that said: “You have 72 hours to take back what you’re going to publish. This is not a game. This is serious. If you don’t, your poor family isn’t going to see you again.” On February 21, Galeano received another message via email that said: “Luisito, man, it looks like you don’t want to live to be an old man (…) because you don’t want to take advice. Look, man, don’t go forward with that crap you’re writing for that right-wing rag *El Nuevo Diario*. Galeano and the newspaper reported the incident to the police. In June, the Judicial Assistance Department of the Nicaraguan Police announced that the alleged author of the February 19 threats had been identified. However, the suspect, whose identity was not revealed, denied being the owner of the telephone from which the threat was made at the time of the incident. At the time of this writing, there were no reports of new developments in the investigation.

436. According to information received, Silvia González, the *El Nuevo Diario* correspondent in the city of Jinotega, received several threats against her and her family during

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2011. Given the serious risk, the journalist finally decided to leave the country.\textsuperscript{681} In addition to her work with \textit{El Nuevo Diario}, González was the director of a radio program that had reported alleged electoral irregularities and used to analyze the local political scene. According to the information received, on July 30 an individual approached one of González’s daughters, 24-year-old Yaneri Sobalvarro González, in a public place and said, “Tell your mother to watch herself, and not go around talking too much, because we’re going to make her pay, and we’re going to get her where it hurts the most (…) and you, girl, take care.” In addition, on August 4, 2011, González reportedly received at least three menacing text messages that were sent to her cell phone. Among other things, they said: “If you keep causing trouble we’re going to have that rag where you work burned down.”\textsuperscript{682} Subsequently, the journalist reportedly received two threatening phone calls. In one of them, a voice warned her that “if she kept being a pest” she would have 48 hours to live. In another one she was reportedly told, “If you don’t shut up, we’re going to shut one of your children up.” Later, the journalist reportedly received new death threats via text message. Unknown persons also reportedly threw a chicken’s head into the yard of her house; it was wrapped in paper, on which her name was written. Finally, two days before she was forced to leave the country, she reportedly received two anonymous notes written with clippings from newspapers and magazines that read, “We’re going to kill you.”\textsuperscript{683} According to reports, the journalist and her daughter filed a complaint regarding the incidents with the National Police in Jinotega. They reportedly named a suspect as the alleged author of the intimidating messages from the July 30 incident. Subsequently, the police reportedly summoned Yaneri to the police premises in Jinotega. There at the police station, the journalist’s daughter reportedly encountered the suspect, who allegedly took her by the arm and led her to an office where she was questioned by two police officers, who also allowed the suspect to participate in the interrogation.\textsuperscript{684} The Office of the Special Rapporteur requested information from the State regarding these incidents on September 1, 2011.\textsuperscript{685}

437. In response to the request for information on these events, on September 22, 2011, the State reiterated its commitment to freedom of expression and underscored the constitutional protection of “the practice of constructive and free critical journalism by the media and by journalism professionals in particular.” The State stated that “In Nicaragua there is no policy of persecution or censorship against the work of the media, or against journalists or media workers individually or collectively; nor is this a country that attacks or harms the freedom to inform, or the physical, emotional, or psychological welfare or the lives of journalists, whatever their ideology or


\textsuperscript{685} On September 1, Office of the Special Rapporteur for Freedom of Expression requested information from the State about the investigations into the threats received by Silvia González and the results thereof; the suspect’s alleged ties to any political organization; the judicial proceedings brought against the suspect, and the circumstances of the summoning of González’s daughter to give a statement at the police station; and finally, it asked whether there had been any public statement condemning the threats and intimidation reported by Nicaraguan journalists.
Government (…).” With respect to the fruitless investigations, the State reported that it had opened the police investigation and classified it as a case involving threats; requested that a telephone company provide the numbers for incoming calls to two telephones used by the complainant; interviewed Silvia González’s daughter, and requested written information from the complainant pertaining to the threatening calls and texts received on her telephone. The State explained with regard to the judicial proceedings against the suspect that the charge had to be amended from “threats” against Silvia González to “harassment” of Yanery Sobalvarro González, the journalist’s daughter. A preliminary hearing for the offense of harassment was scheduled for September 20, 2011. With regard to the suspect’s presence when Yaneri Sobalvarro was summoned to the police station, the State explained that the National Police had summoned the suspect to provide a statement, and had summoned the complainant in order for her to be present at that proceeding. As for whether the State had made any public condemnation of the reported threats and intimidation, the State responded that the complaints involve isolated cases and have been handled diligently by the proper authorities.686

438. Representatives of the complainant informed this Office of the Special Rapporteur that Silvia González’s complaint had not been investigated and that no security had been provided to her. In the representatives’ opinion, the Police had not informed the complainant of the source of the threatening telephone calls that she had received. The police amended the charge and named the daughter as the victim, rather than the mother. They stated that on August 23, the Police reportedly filed a charge before the judicial authorities alleging harassment of the reporter’s daughter, dismissing the threats against the journalist. On September 2, the Local Judge of Jinotega admitted the case and scheduled an initial hearing for September 20. However, that day the journalist reported left the country for her safety.687

439. 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.”

B. Attacks on journalists and media

440. According to the information received, a group of people was reportedly assaulted by Police on April 2, when they tried to take part in an authorized demonstration against the reelection of President Daniel Ortega. According to reports, the Police first refused to allow members of the Nicaraguan Human Rights Center (CENIDH) and other demonstrators pass, and then struck them with police batons. The CENIDH is the beneficiary of precautionary measures that were issued by the IACHR in 2008 and remain in effect at this time. The IACHR requested information

686 The documentation submitted by the State in its response to the Office of the Special Rapporteur provides the statement given by Yaneris Sobalvarro González, the daughter of journalist Silvia González, on August 2, 2011 at the National Police premises. At that time, Sobalvarro stated that the suspect had told her he had heard that “Silvia was talking about politics on the radio and that she should be very careful, that she should not be out on the streets, and if she did go out, she should not go on foot because it was very dangerous.” Sobalvarro added that the suspect “at no time threatened her, let alone told her that she was in their sights.” As for the appearance of the suspect and Silvia González at the National Police offices on August 4, 2011, the record of the proceeding indicates that the suspect stated that he had told Sobalvarro “to be careful, since her mother was a public figure (…) especially now that it’s election season.” In addition, he said that, “at no time had he made threats (since) the only thing he did was give her a piece of advice without any bad intent.” Office of the Attorney General of the Republic. September 22, 2011. Official Letter PGR 1915. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

from the State of Nicaragua about the actions it has undertaken to guarantee the lives and safety of the beneficiaries. The State informed the IACHR that on April 2 two previously scheduled marches ran into each other, even though measures had been taken to prevent that from happening. The State asserted that the precautionary measures have been enforced at all times, and it affirmed that the security mechanisms are still in force at the CENIDH’s offices and at its president’s residence.

441. The Office of the Special Rapporteur was informed that on January 19 the owner of the Telecable company, in the town of Condega, cut the broadcast signal of Canal 15, alleging adverse effects on its business interests. The cancellation of Canal 15’s broadcast occurred following repeated threats and acts of sabotage against this station that coincided with or followed the airing of news and opinion programs that called local authorities into question. In addition, on January 16, 2011, Telecable’s fiber optic cables were reportedly cut. An organization calling itself “Columna Simón Bolívar” reportedly left a written note that read: “We are warning you, we do not want Canal 15 in Pueblo Nuevo.” Prior to the January 16 sabotage, several fiber optic utility poles had reportedly been stolen, and Telecable employees reportedly received text messages containing threats that alluded to the possibility of bombs being placed at the station. They were signed by the so-called “Columna Simón Bolívar.” The victims of those incidents reported them to the Police, but the results of the investigation are unknown.

442. The Office of the Special Rapporteur learned that on several occasions a group of trade unionists and former distributors of the newspaper La Prensa, whose contract had been canceled, blocked the paper from coming out in the early morning hours, causing a several-hour delay in its circulation; they also reportedly fired home-made explosives in the vicinity of the paper. The conflict stemmed from La Prensa’s August 2010 decision to rescind the contracts of a group of newspaper distributors. The Ministry of Labor (MITRAB) ordered the newspaper to rehire 23 contractors who had been dismissed. According to the information received, the blockages at the newspaper’s entrance reportedly took place in the early morning hours of December 7 and 23, 2010, August 14, 2011, and September 4, 2011. The residence of the general manager of La Prensa was also blockaded on December 10, 2010, and February 5, 2011. On all of these occasions, the demonstrators prevented the newspaper from coming out on time, and fired home-made explosives into the air, without the authorities ever reporting to the scene.

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688 Nicaraguan Human Rights Center (CENIDH). Communication to the IACHR in reference to precautionary measures 277-08. April 4, 2011. Available at: Archives of the IACHR.

689 Communication from the State of Nicaragua to the IACHR in reference to precautionary measures 277-08. May 31, 2011. Available at: Archives of the IACHR.


443. The Office of the Special Rapporteur considers it important that in situations such as these the authorities adopt a regulatory framework that simultaneously allows for the satisfaction of the right to freedom of expression—severely affected by the aforementioned blockades—and the right to social protest in accordance with the international standards.

C. Subsequent liability

444. According to information received, two opposition city councilmen from the Managua Mayor’s Office, Luciano García and Leonel Teller, were reportedly charged with criminal defamation, and one of them was reportedly convicted, after exposing alleged irregularities in that municipal government. According to the information received, on March 30, Councilman Luciano García spoke out in an article published by the newspaper La Prensa about several alleged irregularities committed by municipal authorities, and called for the mayor to be dismissed from office. The councilman cited an audit performed at the Managua Mayor’s Office that reportedly revealed embezzlement equivalent to some US $155,000. On April 13, 2011, the aforementioned authority filed a complaint alleging criminal defamation before the Third Criminal Court of Managua. On June 27, 2011, the court found García guilty and imposed a fine equivalent to about US $19,000. The judgment was affirmed on appeal by the Tenth Criminal District Court on September 2, although the amount of the fine was reduced to the equivalent of US $9,500.693

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

446. In addition, principle 11 of the IACHR’s Declaration of Principles on Freedom of Expression states that, “Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as ‘desacato laws,’ restrict freedom of expression and the right to information.”

D. Administrative restrictions

447. According to the information received, the General Revenue Service and the Customs Bureau reportedly delayed the release of a shipment of goods to the newspaper El Nuevo Diario. The shipment contained paper and printing plates—essential input materials for the publication of the morning paper—and had entered the country on January 6. According to the information provided to this office, El Nuevo Diario retrieved materials from customs on several occasions without any trouble during 2010. On this occasion, the delays apparently coincided with

the publication of several articles in which *El Nuevo Diario* reported alleged acts of corruption and nepotism in the Treasury Department and the General Revenue Service. The paper and the input materials were finally able to be retrieved from the warehouse on February 11.695

E. Restriction on access to information and mandatory government broadcasts

448. The Office of the Special Rapporteur learned that on January 7, the Supreme Electoral Council (CSE) reportedly announced through its spokesperson a policy of transparency and open doors toward the media, but stated that it “[w]ould reserve the right” to deny entry into conferences to media with an agenda aimed at “attacking individuals and public servants.” The admonition was issued following a year in which there were repeated reports of discrimination against independent media in accessing official press conferences, especially at the CSE.697

449. Principle 4 of the IACHR’s Declaration of Principles on Freedom of Expression establishes that, “Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.”

450. The Office of the Special Rapporteur has received information indicating that multiple presidential broadcasts have continued to be employed on all cable televisión channels to transmit messages that even include partisan elements. Such actions are carried out based on administrative order 009-2010 of the Nicaraguan Institute for Telecommunications and Postal Service (TELCOR), according to which subscriber-based television channels must make their services and facilities available to the Government of the Republic during times of national emergency. According to reports, last January 10 several cable television channels that did not link their signals up to the presidential speech were reportedly blocked when President Ortega issued his Government Report in a public square. In addition, on July 19, open channels and cable channels were forced to air the official celebration of the 32nd anniversary of the triumph of the Sandinista revolution.699

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451. Principle 12 of the IACHR’s Declaration of Principles on Freedom of Expression maintains that, “Monopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people’s right to information. In no case should such laws apply exclusively to the media. The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals.”

452. Principle 5 of the IACHR’s Declaration of Principles establishes that, “Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”

19. Panama

453. According to information received, on July 25 the 12th Criminal Circuit Court of Panama dismissed without prejudice a case alleging criminal defamation against Grisel Bethancourt, a journalist from the newspaper Crítica and the president of the National Association of Journalists of Panama. The case reportedly began with a claim filed by a person suspected of committing a crime, who was in the end acquitted. The information published in 2009 was based on an order to stand trial issued by the Second Court of Justice. The criminal court reportedly concluded that there was no malicious intent in the article published by the journalist. The Prosecutor’s Office reportedly appealed the decision. Journalists Jahaira Valverde and Enrique Brathwaite of the newspaper Mi Diario have also been prosecuted in this matter, and at the time of this writing their case is still pending. On August 22, Brathwaite was reportedly detained at a routine police checkpoint when his name appeared in a police database showing that he had a pending court case, in spite of the fact that he had appeared before the respective court in a timely manner. The journalist was handcuffed and taken to a police station, then released several hours later.

454. The Office of the Special Rapporteur learned of the concern of press organizations over the fact that there are more than 40 cases pending before various courts in which journalists are accused of crimes against honor. The Office of the Special Rapporteur finds it important to

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stress that, in a 2007 decision that we value for its importance to the defense of freedom of expression, Panama decriminalized libel and slander offenses when they concern critical information or opinions about official acts or omissions of high-ranking public servants. This decision should favor those who had previously been the beneficiaries of a pardon. The Office of the Special Rapporteur has indicated that criminal penalties applied to crimes against honor have an intimidating and chilling effect on the exercise of freedom of expression, and that they are disproportionate and truly unnecessary in a democratic society. The use of criminal mechanisms to penalize expressions regarding issues of public interest or about government employees can be a means of indirect censorship, due to its limiting and chilling effect on speech concerning issues of public relevance.

455. The Office of the Special Rapporteur received information concerning threats reportedly received by La Prensa journalist Santiago Cumbera from Alma Cortés, the Minister of Labor and Employment Development, and personnel from her office. According to reports, on June 23, Cortés stated on a television program, “Cumbera: be careful with me, my reputation has no price.” This was apparently in response to a series of reports by the journalist regarding alleged irregularities in a social program of the Ministry of Labor. According to the information available, a staff member from the minister’s office later warned the journalist: “you are furiously attacking the minister (Cortés), but not the people from the (opposing party) PRD… I am not the minister who allows herself to be intimidated… I don’t threaten, I act.” After the threats were disclosed, President Ricardo Martinelli reportedly ordered the Minister of Labor to refrain from making statements against the media, and to publicly apologize to the journalist. In addition, he reportedly warned her that she or the personnel under her charge would be dismissed in the event that these actions were repeated.

456. According to information received by the Office of the Special Rapporteur, on February 26 the National Police detained Spanish journalists and human rights defenders Francisco Gómez Nadal and María del Pilar Chato Carral while they were filming and documenting an indigenous people’s demonstration in Panama City and ordered their “voluntary return” to their country of origin. According to the journalists’ statement, both of them were held in custody for at least 48 hours prior to being taken to the airport, during which time they were not allowed to meet with their attorney, receive consular assistance, or properly exercise their right to a defense.

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journalists stated to various media outlets that they had been pressured by authorities to agree to the “voluntary return.”

457. In response to a request for information by this Rapporteurship, a statement dated April 28 from the Permanent Mission of Panama to the OAS states that Francisco Gómez Nadal and María del Pilar Chato Carral were apprehended for disturbing the peace, together with other demonstrators who were blocking a public street. Due to their status as aliens, they were sent to an immigration shelter, where it was determined that Gómez did not have employment authorization and Chato had a tourist visa. According to the information provided by the State, on February 27 an order was issued for the journalists’ arrest and it was determined that both of them had violated the immigration laws by taking part in alleged acts against public safety. Based on those acts, the State ordered the “voluntary return” of the Spanish citizens to their country of origin, and barred them from re-entering Panama for two years. According to the State, Gómez and Chato were reportedly assisted “at all times” “by their attorney” and by personnel from the Office of the Ombudsman of Panama. On February 28, they were both escorted to the international airport to board a flight to Spain.

458. The journalist Gómez Nadal assured that he had been exercising his rights in a legal manner and that he was expelled in retaliation for this. As this report went to press, the Office of the Special Rapporteur had not been informed of new developments in this case.

459. The Office of the Special Rapporteur takes note of the withdrawal from the parliamentary agenda of a bill that would have amended the Criminal Code to include the imposition of a four-year prison sentence upon “any person who, without valid grounds, publicly offends, affronts, or insults the president of the Republic or any elected public servant.” The legislative initiative was introduced by representatives of the party in power on January 5, and withdrawn on January 11 following harsh criticism from legislators and the Office of the National Ombudsman. The initiative not only violated Article 13 of the American Convention on Human Rights and Principle 11 of the IACHR’s Declaration of Principles on Freedom of Expression but also contradicted the amendment passed in 2007, set forth in Article 196 of the Criminal Code, which partially decriminalizes defamation offenses when they pertain to critical information or opinions about official acts or omissions of high-ranking public servants.

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710 Statement of the Permanent Mission of Panama to the OAS. April 18, 2011. PANA-OEA-3-361-2011.


The Office of the Special Rapporteur learned of anonymous videos posted on the Internet site YouTube, which contained disparaging messages for the express purpose of damaging the credibility of well-known independent Panamanian journalists. According to the information received, the videos call into question the professional careers of journalists Lina Abad, editor of the investigative unit of the newspaper *La Prensa*, and Álvaro Alvarado, host of the *Telemetro* news program on *Canal 13*. The videos also question the journalists’ integrity and claim that they have ties to opposition political parties. In other cases, the messages have been aired on television channels and attributed to the pro-government Democratic Change Party (*Partido Cambio Democrático*), as in the case of a message that attempted to discredit reporter Santiago Cumbrera of the investigative unit of *La Prensa*. The series of messages reportedly began to appear after the publication of the content of diplomatic cables from the State Department about the Panamanian government.\(^\text{714}\)

During the public hearing on Access to Public Information in Panama held on October 28, 2011, the Office of the Special Rapporteur received information about the implementation of the Access to Information Act in effect since 2002. The petitioners claimed that the law has regressed in terms of its effectiveness, given the issuance of recent administrative decisions inconsistent with the provisions of the Act. Such decisions include the specification that only the interested parties in a matter may request public information; the charging of taxes to photocopy or certify documents; the reduction of information made available to the public by state agencies voluntarily and proactively; the failure to comply with deadlines established for the release of information; the categorization of information as classified or restricted-access beyond what is provided for under the Act, through lower-ranking provisions such as regulations and decrees; and the lack of an effective judicial remedy to prevent the denial of this right. According to reports, in the specific experience of a Panamanian environmental organization, it was able to confirm that of more than 30 writs of *habeas data* filed in over three years, only one has been adjudicated. For its part, the State acknowledges that there are shortcomings in the implementation of the Act, but it maintains that it has progressively fostered mechanisms to develop the legal standards, as well as processes for receiving requests and appeals, and for imposing penalties for noncompliance with the Act. According to the information received from the State, from the time of its enactment, nearly 15 orders or resolutions have been passed regulating or strengthening the enforcement of the act and supporting its progressive development. The State reported that it is taking the necessary steps to bring about technological transformations to improve access to public information and to reduce or eliminate the costs of obtaining it. The State also agreed to receive proposals from civil society enabling it to improve the enforcement and effectiveness of the Access to Public Information Act. The Office of the Special Rapporteur acknowledges the existence of an important legal framework in Panama. However, it expresses its concern over the possibility that in practice the fundamental standards are not being applied. These standards include: the ability of any person to access information in the possession of the State; the ability to obtain the information free of charge or at a low cost; the principle that a request may be denied only under exceptional circumstances; the existence of a restrictive legal stipulation that narrowly defines the limitations on access to information; compliance with brief and reasonable time periods for the release of information; and the existence of simple and effective administrative and judicial remedies to challenge decisions. The Office of the Special Rapporteur notes with satisfaction the State’s willingness to improve the

implementation of the Act and its openness toward working jointly with civil society to adequately implement the right to access to information in Panama.  

20. Paraguay

462. On June 30, Judge Manuel Aguirre Rodas acquitted ABC Color newspaper reporter Sandra López of criminal defamation charges. According to reports, a complaint was filed against the journalist by a businesswoman and former model referred to in an article published on June 28, 2009, about an alleged case of influence peddling. The plaintiff sought a two and a half year prison sentence and damages of 6 billion guaraníes (around US$1.5 million). The judge found that the news article contained the journalist’s opinion based on documents and truthful sources, which did not merit punishment.  

463. In December of 2010, two former employees of the Department of National Emergency separately filed two criminal complaints against journalist Jorge Torres of the newspaper ABC Color, alleging criminal defamation offenses. Torres had reported on irregularities in the management of funds at that public agency. According to the information received, the public employees felt offended by the publications and requested the imposition of a sentence of up to two years in prison or a fine. The Office of the Public Prosecutor reportedly opened a case against the plaintiffs for alleged acts of breach of confidence and the production of fraudulent documents. On February 4, a deputy commissioner filed a criminal defamation complaint against ABC Color news correspondent Omar Acosta, claiming harm based on reports that linked her to allegations of torture while she was the chief of police station No. 16 of Guayaybi, in the department of San Pedro.  

464. Principle 10 of the IACHR’s Declaration of Principles on Freedom of Expression states that “Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the

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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.”

465. In the early morning hours of January 12, a homemade explosive device detonated
near the building of the privately-owned television station Canal 9 in Asunción, and another in
a nearby park. No one was injured. Hours later, a pamphlet appeared—the authenticity of which was
unconfirmed—attribution the attack to an alleged subversive group. The explosion took place in the
midst of a labor dispute at the station.719

466. The Office of the Special Rapporteur was informed of a threat reportedly received on
May 27 by three journalists from the Governor of Alto Paraná. According to reports, the governor
publicly stated, “I want a machine gun to spray these miserable bums with bullets,” following a
series of print and radio reports about a judicial investigation involving the alleged distribution of bad
food to school cafeterias. The journalists referred to were reportedly Carlos Bottino and Samir
Sánchez of Radio Parque, and Fermín Jara of the regional newspaper Vanguardia, who is also a
correspondent for ABC Color. Later, the governor reportedly explained to the press that his
statement was the result of an angry moment and that he had at no time intended to harm the
journalists. Nevertheless, Bottino reported the threat to the Public Ministry. After the governor’s
warning, Radio El Parque reportedly suspended its broadcasting of Bottino and Sánchez’s radio
programs.720

467. The Office of the Special Rapporteur received information about the final enactment
of the Telecommunications Act, which had been vetoed by President Fernando Lugo. At the time,
consistent with the challenge raised, the Rapporteur’s Office maintained that the law contained
restrictions on the operation of community radio broadcasters and criminal penalties that could be
discriminatory and problematic under the freedom of expression standards of the inter-American
human rights system. According to the information received, the Paraguayan Senate passed the
Telecommunications Act last March 8. The Act had been passed in 2010 by both the Senate and
the House of Representatives, but was vetoed by the president on November 12. The House of
Representatives overrode the veto in December, and the Senate subsequently did the same.721 The
Telecommunications Act that was passed limits all community, educational, association, and citizen
radios to 50 to 300 watts of power, without distinction, and restricts the broadcasting of private
and state advertising on those stations. It also imposes a prison term of up to two years, or a fine
ranging from 300 to 500 times the daily minimum wage, on persons operating without a license or

719 Infobae. January 12, 2011. Bomba contra canal de televisión en Uruguay. Available at:

720 Sindicato de Periodistas del Paraguay [Union of Paraguayan Journalists]. May 31, 2011. SPP repudia amenaza de Gobernador Aguinagalde contra periodistas de Ciudad del Este. Available at:
http://www.ultimahora.com/notas/433233-Periodista-denuncia-a-gobernador-por-amenaza-de-muerte

http://www.ultimahora.com/notas/377053-Lugo-veta-el-proyecto-que-modificaba-la-Ley-de-Telecomunicaciones
prior authorization from the National Telecommunications Commission.\footnote{722}{Official Gazette of the Republic of Paraguay. March 30, 2011. Law 4179, amending the Telecommunications Act. Available at: \url{http://www.presidencia.gov.py/v1/wp-content/uploads/2011/03/gaceta30marzopm.pdf}} In the opinion of the Office of the Special Rapporteur, the indiscriminate restrictions on power, the prohibitions against access to advertising funds, and the use of the criminal law to penalize violations of the radio broadcasting system are aspects of the Act that are problematic in light of the American Convention on Human Rights. Those provisions establish distinctions that tend to exclude or limit the participation in public discourse of certain speech that is channeled through non-profit community media. In addition, the establishment of criminal penalties for any private radio is a disproportionate response to an infraction for which it is not even required to prove specific harm. The state has the obligation to establish a regulatory framework that encourages free, open, plural, and uninhibited speech. Private media must be able to rely on guarantees that allow them to operate sufficiently and not to be treated in a discriminatory manner. In this sense, the State must protect community media, as they are outlets for the excluded social groups and communities that are often absent from public debate and whose inclusion is imperative in every democratic state. The Office of the Special Rapporteur urges the Paraguayan State to amend the law in accordance with the inter-American standards on the protection of the right to freedom of expression, and reiterates its offer of technical support in the interest of securing compliance with the principles of pluralism and diversity that must guide regulation of the use of the radio spectrum.\footnote{723}{IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere), Paras. 366 and 367. Available at: \url{http://www.oas.org/es/cidh/expresion/docs/informes/anuales/Informe%20Anual%202010%20Espi.pdf}}

21. Peru

A. Developments


469. On February 1, the Temporary Criminal Chamber of the Supreme Court vacated the acquittal of Luis Valdez, the former mayor of the municipal district of Coronel Portillo. Valdez had been charged as the alleged mastermind of the April 21, 2004 murder of journalist Alberto Rivera Fernández. According to the information received, the high court ordered a new trial, in which Zoilo Ramírez Garay is also being tried. Days prior to his murder, journalist Alberto Rivera Fernández had reportedly criticized the municipal government and linked high-ranking local authorities to drug trafficking activities.\footnote{725}{RPP Radio. May 16, 2011. \textit{Inició nuevo juicio oral a Luis Valdez por asesinato de periodista}. Available at: \url{http://www.rpp.com.pe/2011-05-16-inicio-nuevo-juicio-oral-a-luis-valdez-por-asesinato-de-periodista-noticia_365931.html}; La República. February 1, 2011. \textit{Luis Valdez volverá a juicio por caso de periodista asesinado}. Available at: \url{http://www.larepublica.pe/01-02-2011/luis-valdez-volvera-juicio-por-caso-de-periodista-asesinado}; La Primera. February 2, Continued…}
470. The Office of the Special Rapporteur learned of the judgment handed down on October 28, 2011 by the Temporary Criminal Chamber of the Supreme Court acquitting journalist Paul Garay Ramírez of the offense of defamation and vacating in its entirety the July 27, 2011 judgment of the Ucayali Superior Court that had affirmed his conviction. The journalist had reportedly been sentenced to 18 months in prison and ordered to pay a fine of 20,000 nuevos soles (approximately US $7,400) in civil damages.

B. Murders

471. The Office of the Special Rapporteur expresses its deep concern over the murders of three journalists in Peru in 2011 that may be related to the victims’ professional work. This office reminds the State of its obligation to investigate the crimes diligently and exhaustively, identify the direct perpetrators and masterminds, prosecute them and, if appropriate, impose proportionate penalties. Such actions are essential to prevent impunity and to keep these types of acts from being repeated.

472. The Office of the Special Rapporteur was informed of the murder of journalist Julio Castillo Narváez, which occurred on May 3 in Virú, in the department of La Libertad. According to reports, the journalist was eating lunch at a restaurant when several men came in, pretending to be patrons, and suddenly shot and killed him. The victim’s cell phone was reportedly found at the scene, and was found to contain a message with a death threat. According to reports, Julio Castillo Narváez had been practicing journalism for over 20 years. He was the host of the radio program “Noticiero Ollantay,” and he maintained a critical stance toward the local authorities of La Libertad. Radio Ollantay reportedly confirmed to Peruvian media that the journalist had been receiving threats constantly since March, when he had done an audio broadcast that implicated some government employees of La Libertad in possible irregularities. According to the information received, at least one of the perpetrators, a 17-year old minor, was tried and convicted, and was sentenced to six years in a juvenile detention center. In addition, another individual suspected of having been involved in the murder was reportedly arrested by police and is awaiting trial.

473. The Office of the Special Rapporteur learned of the murder of journalist Pedro Flores Silva, which occurred in Casma, department of Ancash, on September 8. According to the information received, on the night of September 6, a masked individual intercepted the journalist near his house and shot him twice. One of the bullets perforated vital organs, and he died on September 8 at the Chimbote Regional Hospital. Pedro Flores was the director of the program “Visión Agraria” on the local Canal 6 station. The journalist’s wife stated that her husband had

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474. The Office of the Special Rapporteur was informed of the September 14 murder of journalist José Oquendo Reyes in Pueblo Nuevo, in the province of Chincha. According to the information received, Oquendo Reyes was walking near his house when he was ambushed by unknown assailants on a motorcycle who shot him at close range. One of the victim’s sons came to his aid and took him to the hospital, where he died. The journalist was the director and host of “\textit{Sin Fronteras},” a program on BTV Canal 45 of Chincha. According to reports, he had recently done an exposé on his program about alleged administrative mismanagement in the Office of the Mayor of Chincha. In addition to his journalistic activities, Oquendo Reyes also worked as a construction site foreman.\footnote{Reporters Without Borders. September 20, 2011. Detienen a tres presuntos autores materiales del asesinato de un periodista: riesgo de presión sobre los investigadores. Available at: http://es.rsf.org/peru-urge-que-los-poderes-publicos-09-09-2011140954.html; Instituto Prensa y Sociedad (IPYS). September 20, 2011. Caen autores materiales de asesinato de periodista. Available at: http://www.ifex.org/peru/2011/09/20/suspects_arrested/es/; Crónica Viva. September 17, 2011. Caen “El Viejo” y “Macuto”: asesinos de Pedro Flores Silva. Available at: http://www.cronicaviva.com.pe/index.php/prensa/27-prensa/28087-cae-el-viejo-sujeto-planeno-crimen-de-pedro-flores-silva}  

475. According to the ninth principle of the IACHR’s Declaration of Principles on Freedom of Expression, “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. Assaults and threats against journalists and the media

476. The Office of the Special Rapporteur learned of an incendiary bomb attack on the building that houses the newspaper \textit{Voces} on March 5 in Tarapoto, San Martín. According to the information received, unknown persons hurled three explosive devices at the building in the early morning hours, causing slight injuries to two workers who were printing the paper at the time. The attack occurred days after the publication of several articles on the alleged corrupt acts supposedly committed by a candidate to Congress. Also, the editorial director of \textit{Voces} had reportedly received
death threats on his cell phone following the publication of the articles. The National Police pledged to investigate the attack and provide security to the newspaper.732

477. The Office of the Special Rapporteur was informed of various assaults on journalists, especially in certain regions. In the department of Ancash, the Office of the Special Rapporteur learned of the January 14, 2011 assaults on journalists Josué Ibarra, of the newspaper La Industria; Edwin Azaña, a correspondent for América Televisión; Nancy Arellano, a correspondent for Canal N, and Guillermo Napa, a cameraman for Canal 25.733 It also received reports of the assault on photographer Paul Meza Castañeda, of Diario Correo of Chimbote, by the National Police on February 17734, and the assault on Miguel Alcántara, of the newspaper Correo, of Chimbote, while he was covering a protest of neighbors of the regional president of Ancash on May 21, 2011.735

478. In the department of San Martín, the Office of the Special Rapporteur learned of the attack against the news director of Radio Televisión Nor Selva, Juan Vela Castro, by a provincial attorney on January 17, 2011.736 In the department of Amazonas, the Office of the Special Rapporteur was informed of the assaults on journalists Manuel Saldaña García and Julio César Mendoza Escobar, hosts of the program El Matador, on radio Nova Star, on March 5 in Alto Amazonas,737 and of threats against journalists Segundo Alvines and Braulio Rojas Núñez, hosts of...
the program *Hits Star Noticias*, on the Bagua radio station *Hits Star*, on September 24.\(^\text{738}\) The Office of the Special Rapporteur was also informed of assaults on journalist Julio César Mundo Isique, of *Radio Paraiso*, outside the municipal building in Huaura, on April 3,\(^\text{739}\) and journalist Carlos Camacho Sánchez, of *Panamericana Televisión*, at the entrance to his house on October 9.\(^\text{740}\) In the region of Tumbes, journalists Lesly Ventura, of the newspaper *Correo*, and Marlon Castillo, of the newspaper *Tumbes 21* were assaulted on April 19.\(^\text{741}\) Journalist Mario Suárez Romero, director of the program *La Hora de la Verdad* on *Radio Satélite*, was assaulted on May 4;\(^\text{742}\) and journalist Robert Jennier Carrasco Huamán, of *Lorito*, who was shot and wounded by unknown persons on October 23.\(^\text{743}\) In Junín, four journalists from the province of Huancayo were reportedly assaulted by members of the police while covering a protest involving students from the National University of Central Peru on June 22.\(^\text{744}\) In Arequipa, the mayor of the district of Chala allegedly assaulted reporter Silvana

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\(^\text{738}\) The journalists reportedly received the death threat on leaflets left under the doors of their houses, which warned the journalists that they would be killed if they did not leave the news program. According to reports, the threat arrived after they had publicized complaints of alleged irregular acts in the provincial government of Bagua. Instituto Prensa y Sociedad (IPYS). September 27, 2011. *Con panfletos amenazan de muerte a periodistas*. Available at: [http://www.ipys.org/index.php?q=alerta/872](http://www.ipys.org/index.php?q=alerta/872)

\(^\text{739}\) According to reports, a member of the security team of Santiago Cano La Rosa, the provincial mayor of Huaura, punched the journalist in the face, causing injuries. The incident reportedly occurred outside the municipal building, when a group of journalists insisted on asking questions that apparently made the mayor uncomfortable. National Association of Journalists of Peru. Undated. *Un grupo de periodistas se hizo preguntas que incomodaron al alcalde*. Available at: [http://www.anp.org.pe/ofip/alertas/809-miembro-de-seguridad-de-alcalde-lesiona-a-periodista](http://www.anp.org.pe/ofip/alertas/809-miembro-de-seguridad-de-alcalde-lesiona-a-periodista); Crónica Viva. April 5, 2011. *Huaura: miembro de seguridad de alcalde lesiona a periodista*. Available at: [http://www.cronicaviva.com.pe/index.php/mundo/europa/16694-huaura-miembro-de-seguridad-de-alcalde-lesiona-a-periodista](http://www.cronicaviva.com.pe/index.php/mundo/europa/16694-huaura-miembro-de-seguridad-de-alcalde-lesiona-a-periodista)

\(^\text{740}\) Journalist Carlos Camacho Sánchez was reportedly attacked by at least five men at the entrance to his house in Lima. According to reports, the assailants did not attempt to rob him of any of his belongings, and they concentrated on hitting and kicking him. During the attack, one of the perpetrators reportedly told him to, “quit fucking around.” During the months prior to the attack, the journalist apparently had reported on drug traffickers and public servants who had allegedly committed irregularities. Andean Group for Freedom of Information (EL GALI) October 14, 2010. *Matones agreden a periodista y amenazan de muerte a investigación*. Available at: [http://elgali.org/monitoreo/peru/matones-agreden-y-amenazan-periodista-investigacion](http://elgali.org/monitoreo/peru/matones-agreden-y-amenazan-periodista-investigacion); El Comercio. October 11, 2011. *Periodista agredido atribuye ataque a denuncias contra alcalde Ocropoma*. Available at: [http://elcomercio.pe/lima/1316202/noticia-periodista-agredido-atribuye-ataque-denuncias-contra-alcalde-ocropoma](http://elcomercio.pe/lima/1316202/noticia-periodista-agredido-atribuye-ataque-denuncias-contra-alcalde-ocropoma)


Núñez on October 3. In Ayacucho, Jaime Quispe Olano, director of the newspaper *Jornada*, reportedly received a death threat in a July 20 phone call.

479. The Office of the Special Rapporteur received with concern several reports of assaults and harassment of media and journalists in the context of the presidential elections. For example, on May 10, bodyguards of presidential candidate Keiko Fujimori reportedly hit journalist José Luis Lizárraga and José Mandujano, of the radio stations *Súper Éxito* and *Estudio 99*, when they attempted to record a beating that the security staff was administering to a protestor who opposed Fujimori, in Satipo, Junín. A photographer from the newspaper *La República*, Miguel Mejía, was reportedly insulted, head-butted and punched on May 29 by a member of candidate Fujimori’s campaign staff. This reportedly occurred when the journalist sought to verify a report about the distribution of medical prescriptions with printed pro-Fujimori propaganda in a health campaign for low-income individuals at a high school in Lima. On May 25, some ten journalists who were covering a political ceremony for Keiko Fujimori’s presidential candidacy were reportedly attacked by protestors from the *Gana Perú* party in Bambamarca, Cajamarca. On June 15, journalist Ángel Montenegro Guanilo, host of the program “Hora 25” on Line TV, was reportedly chased and attacked by three individuals leaving the law school at the Private University of the North (UPN) in Cajamarca. They reportedly took him to a deserted area where they beat and threatened him, and complained of his criticism of events that took place at a political rally. On May 11, less than one month before the runoff elections, the director of the newspaper *La Primera*, César Lévano, and the chairman of the newspaper’s board of directors, Arturo Belaúnde, received funeral wreaths in Lima. This practice was used in earlier decades to intimidate journalists. The wreaths, delivered by an unknown person, came with cards bearing the recipient’s names and the acronym RIP (Rest in Peace).


Peace). The newspaper *La Primera* had reportedly endorsed candidate Ollanta Humala.751 Television journalist Elvis Italo Guillermo Espinoza reported having received telephone and email threats on May 20, after he called candidate Keiko Fujimori into question. A program that he hosted on *Canal 4 JSV* was cancelled on May 17 after he interviewed the former coordinator of the Truth and Reconciliation Commission, who discussed former president Alberto Fujimori’s criminal history.752

**D. Judicial proceedings**

480. The Office of the Special Rapporteur notes President Ollanta Humala’s important statements to the effect that he will not use existing criminal provisions to dampen the vigor and openness of public debate, even when it may be offensive. Notwithstanding the president’s position, some local public servants have continued the practice of using criminal law to limit the right to freedom of expression, in violation of principles 10 and 11 of the Declaration of Principles on Freedom of Expression.

481. The Office of the Special Rapporteur expresses its concern over the July 6 criminal conviction of journalist Hans Francisco Andrade Chávez of the *América TV* network for the offense of aggravated defamation. According to the information received, the Single-judge Supra-provincial Criminal Court of Chepén sentenced the journalist to two years in prison, with one year suspended, and ordered him to pay 4,000 nuevos soles (approximately US $1,460) in civil damages; and a fine of 120 times the daily minimum wage, for allegedly having defamed the deputy manager of Public Services of Chepén. The judgment ordered the journalist to broadcast a correction and a public apology through the same media outlet, with his own funds, for two days; appear before the enforcement judge every 30 days; and not to leave his place of residence without authorization from the enforcement judge. The journalist and his attorney announced that they would appeal the decision. The case arose following Andrade’s early March interview of a local political leader who, in several media outlets, accused the deputy manager of having threatened him with death. Nevertheless, the complainant brought the action against the *América TV* journalist and not the original source of the alleged defamation.753 On October 12th, the Third Criminal Chamber of Appeal of the Superior Court of Justice of La Libertad overturned the conviction and ordered a new trial.754

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According to information received, on September 22 the Sixth Single-judge Criminal Court for the region of Arequipa convicted Fritz Du Bois, the director of the newspaper Perú 21, and Gessler Ojeda, the paper’s Arequipa correspondent, to two years in prison, all suspended, for the offense of defamation; they were also ordered to pay 30,000 nuevos soles (about US $10,800) in civil damages.755

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

The Civil and Criminal Appeals Chamber of Utcubamba of the Superior Court of Justice of Amazonas reversed the June 7 decision in which a complaint alleging aggravated theft against Aurora Doraliza Burgos de Flores, the holder of the permit for the radio station radio La Voz in Bagua, was ruled inadmissible. According to the information received, this decision reopened the court case against the station, whose permit to provide radio broadcasting services had been cancelled in June of 2010 for allegedly having broadcast content that incited violence in the Bagua uprising of June 5, 2009. The sanction against the radio was then lifted in October of 2010 by a decision of the Ministry of Transportation and Telecommunications. After having prevailed in several administrative and judicial proceedings, there was still a criminal complaint for aggravated theft of radio spectrum pending against the licensees, including Aurora Burgos. The prosecutor’s office sought the imposition of a four-year prison sentence and 3,000 soles (about US $1,100) in civil damages. Burgos’s defense counsel filed a motion to dismiss based on the inadmissibility of the claim, and on May 3, the Utcubamba court ruled in Burgos’s favor. However, the prosecutor’s office appealed, and on June 7 the Superior Court of Justice of Amazonas reversed that decision.756 A court hearing on the complaint alleging aggravated theft of radio spectrum was scheduled for November 15, 2011, but had to be continued due to the prosecutor’s absence.757


485. The Office of the Special Rapporteur reiterates the obligation of community radio stations to operate in accordance with the laws, but insists that those laws must be consistent with international standards, and must be enforced through proportional administrative sanctions, and not through the application of criminal law.758

22. Dominican Republic

486. The Office of the Special Rapporteur received information concerning the August 2 murder of journalist José Agustín Silvestre de los Santos. According to this information, several individuals forced Silvestre de los Santos into a vehicle in the town of La Romana. Hours later his body, bearing several gunshot wounds, was found on the road between La Romana and San Pedro de Macorís. According to the information available, Silvestre was the director of the magazine La Voz de la Verdad, and the host of a program of the same name on the Caña TV television station. Silvestre practiced critical and investigative journalism, which led him to face court accusations and death threats. In the week leading up to his murder, he reported to the Dominican Association of Journalists that two vehicles had attempted to intercept him on July 23, 2011. The Attorney General of the Dominican Republic, Radhamés Jiménez, announced the creation of a special investigative commission to solve the case.759 The National Police identified at least four men suspected of directly perpetrating the murder, and at the time of this report, all four remained in pretrial detention.760 Police authorities stated that the suspected mastermind of the crime is a hotel entrepreneur who reportedly ordered the murder in reaction to an item published in La Voz de la Verdad.761

487. According to information received, alleged police officers reportedly shot and wounded Dominican journalist Francisco Frías Morel in the city of Nagua on January 28. According to the information, Frías Morel and a group of journalists were covering the funeral of a young man who had died in a confrontation, when police officers reportedly attempted to disperse the funeral procession. The journalist was injured by several bullets. The police commander of Nagua, Colonel Juan Antonio Lora Castro, maintained that the police action was not directed against the journalists, but rather was intended to disperse a crowd that it characterized as “unruly.” Frías Morel is the director of Cabrera FM radio, writes a news blog, co-produces a news program on Trébol FM radio, and is the press advisor to a local senator. According to the information received by the Office of

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the Special Rapporteur, the journalist had, in several different media outlets, called into question the police version of the circumstances surrounding the young man’s death.762

488. Principle 9 of the IACHR’s 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.”

489. On February 27, President Leonel Fernández presented the Expression and Communications Media Act, the Radio, Television and Internet Act, and the Audiovisual and Advertising Act to Congress. The Government and the Association of Journalists continue to encourage public debate to publicize and discuss the bills. The Office of the Special Rapporteur invites the Dominican State to broadly disseminate the legislative bills in the interest of promoting an informed and vigorous national debate, and trusts that amendments will be consistent with the international standards on freedom of expression.763 On August 16, Congress began its regular legislative session, and three of the aforementioned bills were pending.764 At the time of this writing, there was no additional information about the progress of the initiatives as they work their way through Congress.

23. Trinidad and Tobago

490. The Office of the Special Rapporteur was informed of alleged email threats sent on January 30, 2011 to Omatie Lyder and Anna Ramdass of the Trinidad Express newspaper. They are the editor in chief and a journalist, respectively. According to the information received, Lyder and Ramdass received emails with threatening content days after the newspaper had published an article about alleged irregularities in the appointment of a public employee to the Strategic Services Agency, who later resigned from the position. The messages were reportedly sent from an email account under the user name of Janice Thomas. However, the investigation traced the sender of the emails and reportedly determined that the messages had originated from a computer at the home of an adviser to the Prime Minister. The advisor has denied having sent such messages, and her attorneys have asked the newspaper to issue an apology for the statements made against her. In

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addition, the attorneys requested that the newspaper refrain from publishing any additional stories on the matter, claiming that there is no evidence that she sent the messages.765

24. Uruguay

491. The Office of the Special Rapporteur was informed of the June 20 judgment denying a civil claim for US $40,000 in damages against public television journalist Ana María Mizrahi, filed in 2009 by Celeste Álvarez, a niece of former Uruguayan dictator Gregorio Álvarez. According to the information received, the case stemmed from a television interview that Mizrahi had conducted in May 2007 with a former Tupamaro guerrilla who reportedly confessed to having assassinated the plaintiff’s father, a member of the military and brother of the dictator, and stated the reasons for which he had committed the crime. The civil judge Beatriz Venturini ruled in favor of the journalist on the grounds that she had not acted with the intent to cause harm, and that she had acted with rigor and objectivity.766

492. The Office of the Special Rapporteur takes note of the process undertaken by the State of Uruguay to conduct a census and regularize community radios, which has reportedly made it possible to authorize the operation of 54 stations since 2010. According to the information received, a new radio regularization process approved on March 23, 2011 recognizes the community nature of the stations and allows them to use an FM radio frequency for a ten-year period. In addition, the State reportedly issued a new call for community projects interested in the allocation of a frequency band to submit the necessary documentation. In order to be considered a community station under Uruguayan law, a station must be collectively owned and have a non-profit, social purpose.767

493. The Office of the Special Rapporteur learned of threats reportedly received by journalist Roger Rodríguez following the February 4 publication of the article entitled, “La ofensiva de los indagables” [“Suspects on the Offensive”], in the magazine Caras y Caretas. The article was about the actions of retired members of the military to evade justice for crimes committed during the military dictatorship (1973-1985). According to reports, days after the article was published, a group—in the name of an organization related to former members of the military—posted


threatening comments against the journalist on the social networking site Facebook that included his personal and family information and the exact address of his house.\(^\text{768}\)

494. According to information received, journalist 
Víctor Carrato of the newspaper La 
República received threats after publishing an article on June 17 about contraband cyanide inside a prison. Carrato received two email messages on June 18, allegedly sent by the head of a criminal gang at the prison, warning him to stop investigating the matter and intimidating him by indicating that they knew where he lived. The newspaper condemned the threats and requested a police investigation.\(^\text{769}\)

495. According to the information received, on February 14 the 10\(^{th}\) criminal duty judge sentenced Álvaro Alfonso to 24 months in prison for the offense of defamation. He will serve the sentence while on supervised release. According to reports, the case arose as a result of the publication of the book entitled “Secretos del Partido Comunista del Uruguay” (“Secrets of the Uruguayan Communist Party”), in which Alfonso asserted that a member of the Communist Party and former Uruguayan legislator had cooperated with the military in the identification of his comrades while detained during the dictatorship (1973-1985). The Public Prosecutor’s Office also requested that all copies of the book be confiscated, but the judge denied the petition, indicating that “preventing the sale of a book would be to disregard freedom of expression.” Mr. Alfonso, who was serving as the Mayor of Aguas Corrientes at the time of the decision, appealed the ruling.\(^\text{770}\)

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


\(^\text{769}\) The first threatening email said: “Very good article. And thank you for the information on the traitor; my police informants also keep me informed. I’ll keep it short... I know where to find you, and I’m going to send someone to get you; I’m fed up with you meddling in my business... I also have something on Pereira Cuadra to get him thrown out of the national bureau [of prisons]. And I’ll take care of Piriz Brum in a few days... Get your life insurance ready.” Five minutes later, another email demanded; “And try cleaning up with your elbow what you wrote with your hands... because I’ll even find your house if I want to.” La Red 21. June 21, 2011. Investigan amenazas de muerte contra periodista de LA REPÚBLICA. Available at: http://www.lr21.com.uy/justicia/458768-investigan-amenazas-de-muerte-contra-periodista-de-la-republica; Montevideo.Com. June 21, 2011. Con libertad ofendo y no temo. Available at: http://www.montevideo.com.uy/notnoticias_140969_1.html; La Red 21. June 17, 2011. Entregan ½ kilo de cianuro en Libertad. Available at: http://www.lr21.com.uy/justicia/458062-entregan-12-kilo-de-cianuro-en-libertad

25. **Venezuela**

A. Attacks on the media and journalists

497. The Commission was informed of the murder of the journalist, Wilfred Ojeda Peralta, who was found dead in the early hours of May 17 in the municipality of Revenga in the State of Aragua. At the time, the Special Rapporteurship recognized the rapid intervention of Venezuelan police authorities to shed light on the case and asked that they not disregard the possibility that the murder had been motivated by the victim’s work as a journalist.\(^772\) On June 28, the Scientific, Criminal, and Criminalistics Investigations Corps (CICPC) concluded that two brothers were responsible for the crime and that the murder had been due to a debt that the journalist owed to one of them. The CICPC declared that the case was “solved by the police” and announced that the suspects “were being sought by the First Preliminary Proceedings Court of the State of Aragua.”\(^773\)

498. The IACHR learned of shots fired on the Venezuelan public television station **Vive TV Zulia** on July 31, 2011, injuring two employees of the channel.\(^774\) According to the information received, two suspects in the shooting at the station were shot down on August 3, 2010 when they were confronted by police.\(^775\)

499. The IACHR was informed of various attacks on media employees by members of the State security forces. On December 6, 2010 in the State of Apure, agents of the Bolivarian National Guard attacked several journalists who were covering a salary protest by State government employees. The Special Rapporteurship learned that several members of the National Guard had beaten the General Secretary of the Apure office of the National Journalists Association, José Ramón González, while trying to arrest him and snatch his photographic equipment. The journalist Aly Pérez of the newspaper **Visión Apureña** was also attacked.\(^776\) On December 23, 2010 the...

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\(^771\) This section corresponds to the section on freedom of expression in Venezuela in Chapter IV, Volume I, of the IACHR 2011 Annual Report. This section was assigned to the Office of the Special Rapporteur for Freedom of Expression.


\(^774\) According to the information received, on Sunday morning unknown subjects on board a truck passed in front of the headquarters of the channel in Maracaibo in the state of Zulia, and shot several times as press staff from the station were leaving the building. As a result of the attack, police officer Gustavo Ceballos was shot in the right leg and employee José Brito fractured his leg when he fell from a stairway while trying to protect himself from the bullets. IACHR. Office of the Special Rapporteur for Freedom of Expression, May 23, 2011. Press Release R84/11. *Office of the Special Rapporteur Expresses Concern Regarding Shots Fired at Public Television Station in Venezuela*; Office of the Attorney General of the Bolivarian Republic of Venezuela. *MP comisionó a dos fiscales para investigar ataque contra Vive TV en el Zulia*. [Prosecutor’s Office commissioned two prosecutors to investigate attack on Vive TV]; Venezolana de Televisión. July 31, 2011. *Dos heridos tras atentado a Vive TV Zulia*. [Two injured after attack at Vive TV Zulia]; Espacio Público [Public Arena]. August 1, 2011. *Atacan sede de Vive TV en Zulia*. [Attack on headquarters of Vive TV in Zulia]


Agence France-Presse (AFP) photographer, Miguel Gutiérrez, received a head wound during a police operation in Caracas to dissolve a demonstration of students opposed to the Universities Law. On January 15, 2011, according to reports, members of the National Guard attempted to seize the cameras of the photographers, Enio Perdomo, of El Universal, and José (Cheo) Pacheco, of El Universal and Últimas Noticias, while they were covering a protest by relatives of prisoners at the La Planta prison in Caracas. On March 28, la Globovisión journalist, Lorena Cañas, was attacked by police officers of the State of Bolívar while she was covering a demonstration of students demanding the release of the former mayor of the municipality of Sifontes, Carlos Chancellor.

500. The IACHR received information regarding several incidents in which individuals associated with the government had allegedly attacked journalists. On January 20, 2011, vigilantes from the State markets network of the Venezuelan Food Producer and Distributor (PDVAL) struggled with the journalist Gabriela Iribarren from the newspaper Últimas Noticias and snatched the notebook where she was noting down product prices in San José, Caracas. As reported to the Special Rapporteurship, on that same day the journalist succeeded in retrieving her notebook and received apologies from PDVAL management.

On January 11, the outgoing President of the Municipal Chamber of Vargas, Miriam González, allegedly attacked the journalist Luisa Álvarez, of the Chamber’s press corps, during a meeting during which the new municipal leadership was being elected and installed. As this office learned, González scolded the journalist so that she wouldn’t note down her statements, called her a “traitor” and hit her in the face. The journalist received various injuries. On April 1, alleged employees of the state-owned Petróleos de Venezuela (PDVSA) attacked a press team from the First Justice party, which was documenting activities of this group in the area around the headquarters of the petroleum company in Caracas.
a group of alleged sympathizers of the United Socialist Party of Venezuela (PSUV) allegedly attacked the journalists Juan Vicente Maya of the newspaper Las Noticias de Cojedes and Rosana Barreto of the daily newspaper La Opinión, as well as two other press employees outside the radio station in Cojedes, while they were waiting for the Governor of the State of Miranda, Henrique Capriles Radonsky, who was granting interviews there.\textsuperscript{783}

501. The IACHR was informed of the attack on a team of journalists from Globovisión on April 7 in Trujillo, while they were covering a peaceful protest of nursing employees at the Central Hospital of Valera. According to reports to this office, individuals allegedly affiliated with the Bolivarian Union of Nurses physically and verbally attacked the journalist Laura Domínguez and the cameraman Heisser Gutiérrez and snatched their recording equipment.\textsuperscript{784}

502. The Special Rapporteurship learned that on February 19 the State channel Venezolana de Televisión (VTV), located in the Los Ruices district of Caracas, was temporarily left without telephone or Internet service after unknown persons deliberately burned the cable equipment from the telephone company, CANTV.\textsuperscript{785}

503. On August 13, journalists from the program “Zurda Kondukta” of VTV were attacked in Puerto Ordaz as they were covering the launch of the campaign for Governor of the State of Bolívar of the opposition deputy Andrés Velázquez. According to the information available, the journalists Oswaldo Rivero and Marcos Ramírez were trying to interview those attending the event when several people beat them and seized a video camera.\textsuperscript{786} On September 13, journalists from VTV who were trying to interview the former governor of Zulia and opposition leader, Oswaldo Álvarez Pérez, were attacked and expelled from a location where the 70th Anniversary of the Democratic Action Party was being celebrated. According to reports, the politician tried to hit Oswaldo Rivero and Pedro Carvajalino when the latter called him a “murderer.” Later, those attending the event insulted, pushed, and expelled the journalists from the room and destroyed one of their cameras.\textsuperscript{787}

\textsuperscript{783} Instituto Prensa y Sociedad (IPYS). April 4, 2011. Simpatizantes del presidente Chávez agreden a periodistas. [Sympathizers of President Chávez attack journalists]; Espacio Público. April 11, 2011. Grupo de oficialistas agrede a comunicadores en el estado Cojedes. [Pro-government group attacks journalists in the estate of Cojedes]


B. Threats and harassment

504. The IACHR was informed of death threats received via Twitter on January 24 by Rayma Suprani, a journalist and cartoonist at the daily *El Universal*. The threats were sent from an account in the name of a recognized pro-government leader and activist. Based on the information received, the reason for the threatening message was a critical cartoon Suprani published about a submarine cable that will link telecommunications between Venezuela, Cuba and Jamaica. In December 2010 and January 2011, the secretary of Photojournalists of the National Union of Press Employees (SNTP), Nilo Jiménez, received anonymous phone calls with intimidating messages and death threats, in which, according to the information provided to this office, he was warned to stop gathering information for a book he is preparing that includes a photographic compilation regarding violations of freedom of expression in Venezuela. According to the information received, the reporter from the daily *El Carabobeño*, Kevin García, received a death threat on February 22 from two individuals who warned that they would kill him if he continued writing about the municipality of Guacara in the State of Carabobo.

505. The U.S. journalist, John Enders, claimed he was harassed by agents of the Bolivarian Intelligence Service (SEBIN). According to the information received, on February 13 the journalist was in the city of Sabaneta, State of Barinas, when he realized he was being followed and photographed by two unknown men.

506. The IACHR received information regarding the intervention or hacking, since August 31, of the electronic accounts of journalists, writers, human rights defenders, and politicians on social networks, blogs, and e-mail accounts. The anonymous e-attack consisted of the insertion of text with insults, threats and mudslinging, as well as the disclosure of private information, destruction of data and threats to publicly identify the information sources of those affected. According to the reports, at least 14 people who expressed critical or independent positions regarding the government were subject to the attack. An anonymous group called N33 was said to be responsible for executing the attacks. In a communication from the perpetrators issued on September 2 and read on the state-owned broadcaster VTV, the N33 group alleged that the purpose

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788 In the cartoon, Suprani drew a cable with the title “Cable to Cuba” alongside a noose with the text: “Cable to Venezuela.” One of the threatening messages said: “We’re going to put that noose on you unpatriotic X, Yankee-lover X, unfaithful to Vzla (Venezuela) X.” International Freedom of Expression Exchange (IFEX)/IPYS. February 1, 2011. *Amenazan a caricaturista via Twitter.* [Cartoonist threatened via Twitter]; Espacio Público. January 26, 2011. *La caricaturista Rayma es amenazada de muerte por @LinaNRonUPV.* [Cartoonist Rayma receives death threats via @LinaNRonUPV]


791 The journalist discussed the event with representatives of the opposition party COPEI he was interviewing, and those representatives photographed the unknown subjects. Moments later, alleged police officers arrived where the reporter was interviewing the representatives and took their camera’s memory card. One day later, the journalist again noticed he was being followed and notified officials of the National Guard who were at a police post. The police detained the subjects, who were released after identifying themselves as agents of SEBIN. International Freedom of Information Exchange (IFEX)/IPYS. February 23, 2011. *Periodista estadounidense denuncia acoso del servicio de inteligencia.* [U.S. journalist denounces assault by intelligence service]; Informe On Line. February 25, 2011. *SEBIN sigue los pasos a periodista estadounidense.* [SEBIN follows trail of U.S. journalist]

of the hacking was to prevent the legitimate owners of the accounts from using them “under the guise of freedom of expression” to attack Venezuelan institutions and the Head of State. The N33 group maintained that it had no links to the Government but was a sympathizer of President Chávez.

As of the date this report is being completed, the hacking of electronic accounts continues and no information has been received regarding investigations begun by the State to identify and punish those responsible.

507. On April 7, the journalist Maolys Castro and the photographer Ernesto Morgado, both of the daily El Nacional, were detained for some six hours at the military installations at Fort Tiuna, in Caracas, where they were covering a demonstration of victims of natural disasters being housed at that military center. Based on the reports, soldiers held the reporters at the entrance to the fort; took away their identity documents and did not tell them why they were being detained. They were released hours later after being forced to sign a document in the presence of attorneys and officials from the Public Defender’s Office.

508. On April 7, the Director of the Educational Zone of the State of Mérida dismissed the educator, Manuel Aldana, Director of the “Rafael Antonio Godoy” State College in Mérida, allegedly for having informed the official newspaper “Correo del Orinoco” that cases of the AH1N1 flu had been detected at the school.

C. Indirect restrictions on freedom of expression: calls to suspend programming that the authorities find “offensive”

509. The IACHR was informed that on January 13 the National Telecommunications Commission (CONATEL) called on the television company Televen “to immediately suspend transmission of the 12 Corazones programs and the Colombian soap opera Chepe Fortuna, because of their demeaning treatment of Venezuela.” On January 15, in his report to the National Assembly, President Hugo Chávez questioned the transmission of the Colombian soap opera, which

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793 Redpres Noticias. September 2, 2011. Grupo Hacker #N33 se pronuncia y se atribuye hackeos a cuentas de personajes conocidos en twitt. [Hacker Group #N33 announces itself and claims it hacked accounts of persons known in Twitter]. Venezolana de Televisión. La Hojilla. September 3, 2011. Mario Silva lee un supuesto comunicado de los hackers #33. [Mario Silva Lee reads an alleged communication from the #33 hackers].

794 The document signed by the journalists stated that they were not mistreated and that they needed to identify themselves in advance in order to enter a military installation. The reporters insisted they were detained outside the fort. Espacio Público. April 8. Gremios denuncian abuso de autoridad. [Unions denounce abuse of authority]; Noticias 24. April 7, 2011. Periodistas de El Nacional retenidos en Fuerte Tiuna son liberados tras firmar acta. [El Nacional journalists held at Fort Tiuna are released after signing document].

795 Institute for Press and Society (IPYS)/IFEX. April 15, 2011. Destituyen a director de colegio por declarar a la prensa sobre casos de gripe AH1N1. [College director dismissed for telling press about AH1N1 flu cases]; El Universal. April 9, 2011. Destituyen a docente que alertó casos de AH1N1 en el estado Mérida. [Teacher who warned of AH1N1 cases in State of Merida dismissed]; Correo del Orinoco. March 16, 2011. Se detectaron en Mérida dos casos de influenza AH1N1. [Two cases of AH1N1 flu detected in Merida].

796 According to reports, in the soap opera Chepe Fortuna one of the characters is a women named Venezuela, whose pet is a chihuahua named huguito. In one show, which led to the criticism, the dog was lost and Venezuela asks herself “and now what am I going to do without Huguito,” to which a friend answers “you will be free, Venezuela.” On January 13, both programs were sharply criticized on the “La Hojilla” program on the state channel Venezolana de Televisión. According to a communication from CONATEL: “The Colombian soap opera Chepe Fortuna (…) understimates the intelligence of the viewer by presenting two characters identified as the sisters Colombia and Venezuela, with the second character being characterized as associated with criminal and interventionist activities, a metaphor that indicates blatant manipulation of the script to demoralize the Venezuelan people.” El Universal. January 13, 2011. Conatel exhortó a Televen a suspender un programa y una novela. [CONATEL urged Televen to suspend a program and a soap opera]; RCN. Undated. Escena: “Sin Huguito” de Chepe Fortuna. [“Without Huguito” scene from Chepe Fortuna].
he called “disrespectful” of Venezuela. President Chávez indicated that Televen had agreed to remove the soap opera.

D. Criminal proceedings against journalists and opposition leaders

510. On January 27, the Criminal Cassation Chamber of the Supreme Court of Justice let stand the decision imposing 30 months in prison on the journalist, Gustavo Azócar, for the crime of “unlawful enrichment from the business of government.” The judges rejected a cassation appeal filed by the journalist’s defense. Gustavo Azócar was granted the benefit of conditional release but received an additional punishment of political disqualification. The journalist was also forbidden to speak about his case and in July 2009 he was imprisoned for eight months for reproducing news related to his legal situation in a personal blog. On February 7, 2011, Gustavo Azócar appeared before a court in the State of Táchira accused of defamation of an Army officer. According to the reports, the case began with an article that Gustavo Azócar published in September 2004 in the daily El Universal, in which he cited an official report discussing alleged irregularities in tasks involved in registering citizens, under the responsibility of the complaining military official. In a conciliation agreement, in April 2005, the journalist agreed to allow the official to respond on this television program “Café con Azócar” on Televisión Regional del Táchira. However, the officer had not received authorization from his superiors to discuss the case. When he was finally able to make statements, the complainant indicated that responsibility for the alleged offense belonged to the author of the report and not the journalist. However, processing of the case continued.

511. The IACHR learned of the criminal conviction on July 13, 2011 of the former Governor of the State of Zulia, Oswaldo Álvarez Paz, for the crime of spreading false information, as established in the Penal Code of the Bolivarian Republic of Venezuela. According to the information received, Court 21 of the Metropolitan Area of Caracas sentenced Álvarez Paz to two years in prison, with the benefit of conditional release, and prohibited him from leaving the country. The case began on March 8, 2010, when Álvarez Paz talked on the “Aló Ciudadano” program aired by the private broadcaster Globovisión about international judicial investigations into the alleged activities and links of international organized crime in Venezuela. Because of these comments, the

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801 Third Court of First Instance (at trial). February 1, 2005. Orden para librar boleta de citación a Gustavo Enrique Azócar Alcáld. [Order to issue summons for Gustavo Enrique Azócar]

802 Reporters Without Borders. February 8, 2011. El periodista Gustavo Azócar comparece de nuevo ante la justicia, esta vez por un caso de “difamación” con una base dudosa. [Provincial journalist prosecuted on dubious criminal libel charge]; El Universal. February 5, 2011. Gustavo Azócar regresa a tribunales este lunes. [Gustavo Azócar returns to court this Monday]

governing party deputies, Manuel Villalba and Pedro Lander, filed a complaint with the Public Prosecutor’s Office seeking an investigation into the conduct of Álvarez Paz for having committed various crimes established in the Venezuelan Penal Code, including conspiracy, spreading false information, and instigating the commission of a crime. In addition to being a former Governor of Zulia, Oswaldo Álvarez Paz is a primary candidate from the opposition Constitutional Pole and was a candidate for the presidency of Venezuela in 1993. As of October 2011, Oswaldo Álvarez Paz had not received copy of the conviction and had not been able to appeal the decision so far.

512. The IACHR was informed of the decision made by the Venezuelan courts to temporarily prohibit circulation of the weekly paper Sexto Poder in Venezuela and to order the capture, arrest, and criminal prosecution of the editorial director and president of that media outlet. According to the information received, the edition of the weekly Sexto Poder for Sunday, August 21, 2001 came out on August 19. It included a satirical article titled “The Powerful Ladies of the Revolution,” illustrated with a photographic montage of six female senior officials of the Venezuelan State dressed as cabaret dancers. The point of the publication was to question the alleged dependence on the Executive Branch of oversight agencies in Venezuela. Some of the female officials referred to, as well as other male senior public officials, stated that the photomontage and text offended “the dignity of Venezuelan women” and constituted “gender-based violence.” They claimed that the publication contained “hate speech” and that it “vilified” the officials and the institutions they represented. Once the publication became known, the Comptroller filed a complaint against the journalists with the Prosecutor’s Office and less than 24 hours later the Ninth Preliminary Proceedings Court of the Metropolitan Area of Caracas ordered a precautionary measure to prohibit the “publication and distribution” of the weekly “by any means.”

The same court ordered the arrest of the general manager of the Sexto Poder, Dinorah Girón Cardona, and its president and general editor, Leocenis García, for alleged violations of the Penal Code of Venezuela based on publication of the referenced article. On August 21, agents of the Special Rapporteur Expressed Concern over Detention of Journalists and Serious Measures Taken against outlet. According to the information received, the edition of the weekly Sexto Poder for Sunday, August 21, 2001 came out on August 19. It included a satirical article titled “The Powerful Ladies of the Revolution,” illustrated with a photographic montage of six female senior officials of the Venezuelan State dressed as cabaret dancers. The point of the publication was to question the alleged dependence on the Executive Branch of oversight agencies in Venezuela. Some of the female officials referred to, as well as other male senior public officials, stated that the photomontage and text offended “the dignity of Venezuelan women” and constituted “gender-based violence.” They claimed that the publication contained “hate speech” and that it “vilified” the officials and the institutions they represented. Once the publication became known, the Comptroller filed a complaint against the journalists with the Prosecutor’s Office and less than 24 hours later the Ninth Preliminary Proceedings Court of the Metropolitan Area of Caracas ordered a precautionary measure to prohibit the “publication and distribution” of the weekly “by any means.”

The note and illustration showed the President of the Supreme Court of Justice, Luisa Estella Morales; the General Prosecutor, Luisa Ortega; the Ombudswoman, Gabriela Ramírez; the interim General Comptroller, Adelina González; the President of the National Electoral Council, Tibisay Lucena, and the Vice President of the National Assembly, Blanca Eekhout, all dressed as cabaret dancers. Among other assertions, the publication indicated that each of the representatives of the above-mentioned entities “played a specific role within the cabaret led by Mr. Chávez.” Twitpic. August 22, 2011. [Photo: Powerful ladies of the pretty revolution]

The note and illustration showed the President of the Supreme Court of Justice, Luisa Estella Morales; the General Prosecutor, Luisa Ortega; the Ombudswoman, Gabriela Ramírez; the interim General Comptroller, Adelina González; the President of the National Electoral Council, Tibisay Lucena, and the Vice President of the National Assembly, Blanca Eekhout, all dressed as cabaret dancers. Among other assertions, the publication indicated that each of the representatives of the above-mentioned entities “played a specific role within the cabaret led by Mr. Chávez.” Twitpic. August 22, 2011. [Photo: Powerful ladies of the pretty revolution]


805 El Universal. October 1, 2011. Oswaldo Álvarez Paz no ha podido apelar su condena. [Oswaldo Álvarez Paz has been unable to appeal his conviction]

the SEBIN arrested Girón, who was released two days later when the referenced Ninth Court ordered conditional release. However, the court ordered that she be prohibited from leaving the country, that she appear in court to leave her signature every 15 days, and prohibited her from referring to her case and participating in public assemblies. On August 23, the Special Rapporteurship asked the State for information on this case. In its response, the State indicated that, based on her publication, Dinorah Girón was being charged with the crimes of “vilification of a public official, public instigation of hate, and public offense based on gender” while Leocenis García was being charged for “instigating hate, vilification and gender-based violence.” According to the information supplied by the State, such crimes are established and punished under the Penal Code and in the Organic Law on the Right of Women to a Life Free of Violence. 810 In addition, on August 29, the State informed the Special Rapporteurship that it had revoked the prohibition on publication of the weekly. However, it was reported that the judge imposed an order prohibiting Sexto Poder from publishing information containing “graphic or textual” information that “constitutes an offense or insult against the reputation or decorum of any representative of the branches of government, where the purpose is to expose them to scorn or public hatred.” The court also prohibited the publication of “degrading and offensive content against women” and ordered the removal of copies of the edition of this past August 19 that were still available to the public. 811 The weekly could not circulate on August 28 because the judicial measure originally adopted was in effect. On August 30, Leocenis García turned himself in to the authorities. 812

513. According to the information the IACHR has received, Leocenis García was on a hunger strike in the detention facility where he was being held. In the early morning hours of November 17, 2011, he was reportedly taken against his will to the Military Hospital. The information indicates that his family and the lawyers representing Leocenis García did not initially have information concerning his whereabouts and that despite his delicate health he allegedly received no medical treatment. On November 18, 2011, in exercise of its authorities under Article 41 of the American Convention, the Commission requested information about the situation and about Mr. Leocenis García’s health and the conditions under which he is being held.

E. Administrative proceedings

514. The IACHR learned that the CONATEL Social Responsibility Board penalized the television channel Globovisión on October 18, 2011 by imposing a fine of 9,394,314 Strong Bolivars (about US$ 2.1 million), the equivalent of 7.5% of its gross revenue for the year 2010. 813 According to the information received, the penalty was imposed due to violations of Articles 27 and 29 of the Law on Social Responsibility in Radio, Television and Electronic Media (the Resorte Law), based on material aired by Globovisión between June 16 and June 19, 2011 about the prison situation at the El Rodeo Penitentiary Center. 814 According to the resolution issued on October 18,


814 Article 27 of the Resorte Law as cited in Administrative Order No. PADRS-1.913, establishes that: Radio, televisión, and electronic media are not permitted to disseminate messages that:

Continued...
the Social Responsibility Board determined that the television channel had transmitted “messages that promoted disturbances of the public order, advocated crime, and incited against the legal system in effect, promoted hatred for political reasons and fomented anxiety among the population, on June 16, 17, 18, and 19, 2011.” As the Special Rapporteurship learned, for several days Globovisión reported information on the events that occurred in the area of the El Rodeo Penitentiary Center and the intervention of law enforcement. Coverage included interviews of the relatives of those in prison, opposition politicians, and government officials.815

515. The IACHR has expressed its concern regarding the Law on Social Responsibility in Radio, Television and Electronic Media and its most recent reform of December 2010, which introduces a broad catalogue of restrictions written in vague and ambiguous language, and makes the sanctions for such prohibited actions more onerous. In that regard, this Rapporteurship considers it must observe that vague and imprecise legal provisions may grant overly broad discretionary powers to the authorities, which are incompatible with the full effect of the right to freedom of expression, because they may support potentially arbitrary actions that impose disproportionate liabilities for airing news, information, or opinions of public interest. By their mere existence, provisions of this type discourage the transmission of information and opinions due to fear of sanctions and may lead to broad interpretations that unduly restrict freedom of expression. Thus, the State must be specific about the conduct that may be subject to liability later, so as not to affect the free expression of uncomfortable ideas or inconvenient information regarding the actions of the authorities.

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516. The IACHR has also expressed its concern regarding the absence of guarantees on the independence of agencies responsible for implementing the Law on Social Responsibility in Radio, Television and Electronic Media. The Rapporteurship notes that the President of the Republic may freely appoint and remove the members of CONATEL and there are no safeguards to ensure their independence and impartiality. In addition, seven of the eleven members of the Social Responsibility Board are selected by the Executive Branch, the referenced law does not establish any criteria for appointing the board members, and does not define a fixed term of office for them or establish specific grounds for their removal.

517. The IACHR received information that Canal 67 Tu Imagen TV has been excluded from the programming grid of the cable company, Representaciones Inversat C.A, Tele-Red, in Charallave, State of Miranda, since March 28, 2011.816 According to the information received, its exclusion from the grid occurred after the mayor of Charallave, José Ramirez, wrote a note on November 16, 2010 to the President of the Tele Red company demanding that Canal 67 be “suspended indefinitely from its transmissions.” In the same note, the mayor claimed that the content of Canal 67 “has been systematically partial in favoring an opposition political sector to the detriment of economic equilibrium,” launches “misinformation attacks” and “gathers opinions against the municipal government in the communities.”817 On March 28, officials of CONATEL appeared at the facilities of Canal 67 and Representaciones Inversat to conduct an inspection of the technical conditions at the station and its legal situation, during which it noted the lack of a written contract between the television station and the cable company, leading to the channel’s exclusion from the programming grid.818 On April 7, 2011, Canal 67 remedied the failure to sign a contract with Representaciones Inversat C.A, and this was immediately demonstrated to CONATEL.819 Nonetheless, the cable company alleged that it would keep Canal 67 off the grid until it received written approval from CONATEL. Despite requests for information made to CONATEL and various State agencies regarding the situation, the representatives of Canal 67 and the cable company have not received a response and the channel’s suspension continues.820

518. The IACHR received information about proceedings that shut down various radio stations, some of them included in the proceedings initiated in 2009 against 34 stations that, according to CONATEL authorities,821 violated provisions of the Organic Law on Telecommunications.822 On February 2, the Supreme Court of Justice confirmed the shutdown of Radio Bonita “La Guapa” in Guatire, State of Miranda. According to the reports, the Political-
Administrative Chamber of the Supreme Court of Justice (TSJ) declared inadmissible the appeal filed by Radio Bonita “La Guapa” seeking to overturn the shutdown order issued by what was then the Ministry of Popular Power for Public Works and Housing. On March 18, CONATEL ordered the shutdown of the station Carabobo Estéreo 102.3 FM, in the city of Valencia, State of Carabobo, as well as the seizure of the equipment and materials needed to operate the radio station, since it did not have “the proper administrative authorization and license.” On January 20, National Guard soldiers closed the station Onda Costera 95.1 FM in Costa de Oro, State of Aragua, and seized the broadcasting equipment. According to the information received, local authorities requested the shutdown because it aired information regarding the illegal occupation of housing in that town. On March 25, CONATEL ordered the shutdown and seizure of equipment at the station Musicable Higuerote 93.7 FM, in Higuerote, State of Miranda, alleging clandestine operations by the station, a claim denied by the station’s owners. The Special Rapporteurship had already expressed its concern in 2009 over the massive shutdown of stations and the fact that, after several years of inaction, the authorities would announce such measures against a background of tension between the private media and the government and constant criticism by government agents regarding the editorial content of the media that would be affected, suggesting that the editorial outlook of these media outlets was one of the reasons for the shutdown measures.

519. The IACHR was informed that a decree published on March 29, 2011 in the Official Gazette granted the Vice President of the Republic unilateral power to define the direction of public policies in all matters related to the radio spectrum and the power to “grant, revoke, renew, and suspend” radio and television frequency licenses.

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823 Supreme Court of Justice. Administrative-Political Chamber. Trial Court. June 8, 2010. Exp. 2010-0279. [Case File 2010-0279]


829 Paragraph three of the new Article 2 of the Organic Regulations on the Office of the Vice President of the Republic, amended by Decree 8122 of March 29, 2011, signed by President Hugo Chávez, establishes, inter alia, that the Vice President has the power to “grant, revoke, renew and suspend administrative authorizations and licenses in the area of open radio and television broadcasting and non-profit community public service radio and television broadcasting.” Paragraph one also assigns to the Vice President “the leadership of public policies on matters relating to the administration, regulation, organization, and control of the radio spectrum.” Since August 3, 2010 the Office of the Vice President had attached to CONATEL [missing text here?]. However, the Vice President was not authorized to make unilateral decisions until the aforementioned decree took effect. Official Gazette of the Bolivarian Republic of Venezuela. March 29, 2011. Decreto Número 8.122 [Decree No. 8.122]; Institute for Press and Society (IPYS)/IFEX. April 7, 2011. Vicepresidente podrá revocar concesiones de radio y televisión. [Vice President may revoke radio and television licenses]
F. Access to information

The IACHR received information about a series of problems in guaranteeing the right of access to public information as well as judicial interpretations that restrict that right, the absence of a suitable judicial remedy, restrictions on journalists’ access to information sources, lack of information available on government websites, and lack of response to requests for public information.\(^{830}\) According to reports, the criterion being used by public institutions to reject requests for information is a decision handed down by the Supreme Court of Justice on July 15, 2010, requiring “i) that the person requesting the information expressly indicate the reasons or purposes for which he or she needs the information; and ii) that the magnitude of the information being sought is in proportion to the utilization and use one wishes to make of the information being requested.”\(^{831}\) That criterion was reflected, for example, in a response that CONATEL gave to a request for information filed by the Public Arena Civil Association \([\text{Asociación Civil Espacio Público}]\) in which the regulatory agency maintained that, in accordance with a binding decision from the Supreme Court of Justice, the requester must communicate to the entity “the ultimate purpose for which the information being sought is needed, so that this regulatory entity can make the appropriate determination, in view of the weight assigned between the proportionality of the information and the use to which it will be put.”\(^{832}\) The jurisprudence of the Inter-American Court of Human Rights has maintained that “[t]he information should be provided without the need to prove direct interest or personal involvement in order to obtain it, except in cases in which a legitimate restriction is applied.”\(^{833}\) There are also obstacles in terms of having a suitable judicial remedy ensuring access to public information, given that in Venezuela there is no law on access to information and the courts have decided to reverse the original assumption according to which the right of access could be sought through a quick and simple remedy (appeal) and maintain that one must exhaust the entire Appeal for Failure to Act \([\text{Recurso de Abstención o Carencia}]\) procedure established in the Organic Law of the Contentious Administrative Law Jurisdiction, which is neither quick or simple.

\(^{521}\) The IACHR learned of limitations that had been imposed on journalists’ access to various public agencies. As reported to this office, during 2011 there has been an increase in the restrictions imposed on journalists’ ability to access and obtain information from entities such as the National Assembly, the Supreme Court of Justice, the Miraflores Palace (seat of the Executive Branch), the Ministry of Planning and Finance, and the headquarters of the state-owned company, PDVSA.\(^{834}\) In the National Assembly, since February, journalists and photographers are prohibited from attending legislative debates and are only allowed to follow the debates from a television set in an adjoining room. The audio for the transmission was even suddenly suspended on February 3,

\(^{830}\) Cf. Hearing on right of access to public information in Venezuela held at the IACHR on October 25, 2011 during the 143rd Period of Session.

\(^{831}\) Public Arena sought information regarding the salary and other benefits of the Comptroller General of the Republic, as well as the personal compensation table for that institution. Supreme Court of Justice. Constitutional Chamber. July 15, 2010. 745-15710-2010-09-1003.


based on the claim that the session had been declared private. In response to the journalists’ protests, the legislative employee pushed and insulted them.\textsuperscript{835} On February 21, one journalist involved in that incident, Oliver Fernández, from the station Televén, had his credentials for access to that public building revoked without explanation by the National Assembly. He submitted another request to the press team headed by Ricardo Durán for accreditation to access the Assembly, but this was denied although no written reasons were given for that denial. In practice, the new rules were extended even to the free movement of journalists within the legislative building. Prior to February, the restriction only covered television cameramen.\textsuperscript{836} The limitations were established based on reform of the Internal Rules of Procedure and Debates of the National Assembly approved in December 2010, according to which the National Assembly’s Fundación Televisora will provide private stations with the signal from legislative sessions.\textsuperscript{837} According to reports, between January and September 2011, national organizations defending freedom of expression recorded 21 complaints involving restrictions on journalists’ access to sources of official information, which includes both limitations on entering public buildings and discrimination against private communication media in terms of their participation in press conferences held by public agencies.\textsuperscript{838}

522. According to reports, an analysis of the 65 requests for information submitted to various public agencies between August and October 2011 indicated that 82% of the requests received no response, while 12% obtained a positive response and 2% received an explicit negative response.\textsuperscript{839} In addition, an evaluation of the websites of 28 public institutions, performed during October 2011, revealed that none of them meets the standards established in the Model Law on Access to Public Information approved by the OAS General Assembly in 2009, although there is greater compliance in mayor offices in the Metropolitan Area of Caracas and less compliance in the national central government.\textsuperscript{840}


\textsuperscript{836} El Universal. February 4, 2011. \textit{Impponen más restricciones a los periodistas en la AN}, [More restrictions imposed on journalists in National Assembly]

\textsuperscript{837} Article 56 of the new Internal Rules of Procedure and Debate of the National Assembly of Venezuela, a chapter in the Operating System of the National Assembly, establishes that: “In order to guarantee access to information in accordance with Article 108 of the Constitution of the Republic, plenary sessions shall be transmitted by the National Assembly’s Fundación Televisora (ANTV) and the State television station may provide support for transmission. Conditions shall be provided so that media outlets interested in transmitting the information produced in the course of the session may do so through the ANTV signal.” These Rules, in Article 87 of the same chapter, established that: “All sessions shall be public. In view of the content of Article 108 of the Constitution, audiovisual communications media may partially or totally transmit the development of the sessions.” National Assembly of the Bolivarian Republic of Venezuela. December 22, 2010. \textit{Reglamento Interior y de Debates de la Asamblea Nacional}, [Internal Rules of Procedure and Debate of the National Assembly]; National Assembly of Venezuela. September 5, 2000. \textit{Reglamento Interior y de Debates de la Asamblea Nacional}

\textsuperscript{838} Cf. Hearing on the right of access to public information in Venezuela, held at the IACHR on October 25, 2011 during the 143rd regular session.

\textsuperscript{839} Cf. Hearing on the right of access to public information in Venezuela, held at the IACHR on October 25, 2011 during the 143rd regular session.

\textsuperscript{840} According to the evaluation done by the Public Arena Civil Association, the information that is usually available would represent information related to the organic structure, functions, location of department, names of employees, services offered, and laws and operational manuals, and the least available information is that related to employee salaries, complaints, and responses form agencies, requests received, lists of published information, decision-making procedures, budget, and subsidies granted. \textit{Cf.} Hearing on right of access to public information in Venezuela, held at the IACHR on October 25, 2011 during the 143rd regular session; Organization of American States. Department of International Law. June 4, 2009. Resolution of the OAS General Assembly AG/RES. 2514 (XXXIX-0/09). \textit{Ley Modelo sobre Acceso a la Información}, [Model Inter-American Law on Access to Information]