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

A. Introduction and methodology

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

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

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

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

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

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

1. Argentina

A. Progress

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

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

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

B. Attacks on and threats against media outlets and journalists

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

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

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10. Available at: http://www.grupoemedios.com/noticia.php?id=55044
individuals presumed to be sympathizers of the local government, allegedly in relation to information and comments that he had broadcast.11

12. The Office of the Special Rapporteur was informed that five hooded men used firearms to threaten and intimidate journalism students Omar Millalonco and Lilien Mercado on February 13 in La Plata, in Buenos Aires province. According to the information, the attackers shouted at them, “[q]uit fucking around because we’re going to shoot you.”12 On March 31, Rubén Darío Heredia, a journalist with radio station FM RED and the newspaper La Verdad del Noa, was threatened over the phone after raising questions about the municipal authorities of Rosario de la Frontera, Salta province.13 Additionally, Hernán Lascano, the head of the police reports section of the newspaper La Capital, in Rosario, received threats starting in June of 2010 in connection with his reporting on drug trafficking in the city. On April 3, 2012, Lascano held a meeting with the governor of Rosario, who offered him protective measures.14

13. According to information received, on April 4, individuals presumed to be municipal employees in Pinamar, Buenos Aires province, attacked Gonzalo Rodriguez, a reporter with Canal América program ‘Caiga Quien Caiga’, while he was trying to interview the mayor about a housing project. Later, Guillermo López, the host of the program, received telephoned threats warning him not to return to Pinamar.15 On April 26, journalists Mirna Reijers and Manuel Romero were attacked while trying to cover a Corrientes City Council session in which an increase in the cost of public transportation was being discussed.16 Additionally, Daniel Luna, a journalist and owner of television station Sistema de Medios Candelaria, was attacked by the president of the Candelaria municipal council on April 19 while he was trying to film a council session.17 Later, on May 8, journalist and photographer Rodrigo Castillo was also assaulted while covering a session of that municipality’s City Council, allegedly by one of the council member’s bodyguards.18


14. The Office of the Special Rapporteur was informed that on May 7, Juan D’Anvers, a journalist and the owner of Radio Brava, in Puerto Madryn, received a threat stating that “you’re going to turn up cut to pieces in a ditch” if he did not stop reporting about a local mayor.\textsuperscript{19} Additionally, on May 10 and 11, journalists Gustavo Raffin and Ester Lutz with Radio Dziez in Reconquista, Santa Fe, received death threats after denouncing alleged irregularities in the local municipality.\textsuperscript{20}

15. According to information received, on May 15, Robert Papilli, director of Radio 100.1 FM in Ceres, Santa Fe province, received threats telling him to suspend the program ‘La Tierra Sin Mal’, which issued reports critical of the use of agrochemicals and their impact on public health.\textsuperscript{21} On May 29, an armed man entered the radio station Cadena Nueve, in the city of 9 de Julio, Buenos Aires province, and threatened journalist Gustavo Tinetti and warned him not to publish certain unspecified information.\textsuperscript{22}

16. The Office of the Special Rapporteur received information on attacks suffered by a number of journalists while they were reporting. According to the information, on June 1, individuals presumed to be protesters attacked Lucas Martínez, Sergio Loguzzo and Ezequiel Schneider, communicators with the Televisión Pública program 6,7,8, while they were covering a protest in Buenos Aires, destroying a camera.\textsuperscript{23} Additionally, on June 5, masked individuals chased and beat journalist Julio Mosle, photographer Florencia Downes and host Federico Molinari, all three with the Télam State news agency. They also attacked Mariano Vega, a photographer with the newspaper Tiempo Argentino and Adrián Subelza, with morning newspaper Crónica. The attacks took place while the aforementioned individuals were covering allegations of medical negligence in the Claudio Zin Hospital in the Malvinas Argentinas municipality of Buenos Aires.\textsuperscript{24}


\textsuperscript{20} The handwritten message about the journalist Gustavo Raffin read: “Rafin take care of your tongue and your life. Stop screwing around with whores we know where you and your family go there will be consequences that you will regret (sic). We know how to do it.” Foro de Periodismo Argentino (FOPEA). May 13, 2012. FOPEA alerta sobre graves amenazas de muerte a dos periodistas de Reconquista. Available at: http://fopea.org/inicio/FOPEA_alerta_sobre_graves_amenazas_de_muerte_a_dos_periodistas_de_Reconquista; La Arena. May 12, 2012. Periodistas santafesinos denuncian amenazas. Available at: http://www.laarena.com.ar/el_pais-periodistas_santafesinos_denuncian_amenazas-75150-113.html


\textsuperscript{22} The perpetrator allegedly warned the journalist: “[s]top screwing around wanting to publish the rest of the information that we know you have or you will be a small fish to fry. Today I won’t kill you or hurt you. Understand the message? Jerk: Take care of your daughters, we know where they go to school, where they live and what they do. The next time, you know it, you’ll be fried.” Perfil. May 29, 2012. Amenazan con un arma a un periodista mientras hacía su programa. Available at: http://www.perfil.com/contenidos/2012/05/29/noticia_0022.html; Cadena Nueve. May 29, 2012. Amenazaron al periodista Gustavo Tinetti. Available at: http://www.cadenanueve.com/2012/05/29/amenazaron-al-periodista-gustavo-tinetti/


17. On June 14, Marcelo Massimini, producer and host of the program Cono Sur Noticias, was attacked at his home in Longchamps, Buenos Aires province, one week after doing a televised report on unhealthy conditions in a public school and their impact on students.25

18. The Office of the Special Rapporteur was informed that on July 30, distributors of the newspaper Hoy in La Plata were followed by a vehicle and the posters they had placed at a distribution point to promote the newspaper were stolen. According to the information, two men approached the stand, took the publicity posters and said that if they did not stop criticizing public officials "we're going to burn these stands, one by one."26 During the early morning hours of November 8, a sales kiosk for the newspaper Hoy and other publications was destroyed by fire after the copies of that newspaper were delivered to it.27

19. On August 3, a reporting team with Canal 13 program 'Periodismo para todos' was attacked by a group of people while doing an investigation on housing built by the Túpac Amaru political group in the province of Jujuy. According to the information, the attackers wore clothing identifying them with the Túpac Amaru organization and stole the cameras and recorded material.28

20. The Office of the Special Rapporteur was informed that on August 14, Hernán García, a journalist and director of broadcaster FM Uno, was attacked by a communal authority in the Sancti Spiritu locality, Santa Fe province. According to the information, the alleged perpetrator put a pistol in the journalist’s mouth after he made critical comments on a radio program.29 In addition, on August 20, unknown individuals threw a firebomb at the home of journalist Silvio Novelino, director of monthly newspaper El Pepiri in Bernardo de Irigoyen, Misiones province. The provincial police ordered security for the communicator’s home.30 According to information received, on August 29, a businessman and two of his employees beat journalist Aníbel Palma, attacking him with a cattle prod and threatening to cut out his tongue for "having messed with the company" on his radio program.31 On September 26, approximately

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100 people gathered in front of Radio Vos, in Salta, where they shouted insults at journalist Adrián Valenzuela, presumably because of a report raising questions about the conduct of a provincial official.  

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

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

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

24. The Office of the Special Rapporteur was also informed that on November 10, journalist Mario Fedorischak was struck and threatened by alleged members of the Radio Command in Posada, Misiones province, while filming the transfer of a group of detainees to Police Station 13. According to the


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information, the agents destroyed his video camera and seized other work items.\textsuperscript{37} On November 20, journalist Javier Rivarola of \textit{FM Radio 21}, from Caleta Olivia, Santa Cruz, received threatening phone calls accusing him of inciting a demonstration in front of a provincial legislator’s residence. According to the information, the journalist filed a criminal complaint against the legislator for threatening behavior.\textsuperscript{38} Additionally, journalist Sergio Villegas, with \textit{FM Dimensión}, with the website \textit{Ahora Cafalete}, and with the newspaper \textit{La Opinión Austral}, was allegedly physically and verbally assaulted by demonstrators while he was covering a union march in El Calafate, Santa Cruz province, on November 21.\textsuperscript{39}

25. The Office of the Special Rapporteur was also informed of a number of journalists who were arrested in the course of their work. On January 15, Franco Farías, a correspondent with radio station \textit{Estación de Villa del Totoral}, in Córdoba, was arrested and held by provincial police for nine hours after he used his telephone to record the violent arrest of a person at a bus station.\textsuperscript{40} On May 15, journalist Sergio Miranda was arrested and held for two hours after trying to report on a traffic accident in Mendoza.\textsuperscript{41} Additionally, on September 22, Pablo Peralta, a journalist with \textit{FM Frecuencia Zero} in Saavedra, Buenos Aires province, was physically attacked and held for several hours after trying to interview a Dufaur municipal official.\textsuperscript{42} On September 25, \textit{Television Canal 4} cameraman Hildo Martínez was arrested in Misiones while recording a traffic accident.\textsuperscript{43}

26. In May, information was received on an alleged campaign to discredit \textit{Clarin} editor and journalist Daniel Santoro and \textit{TN} journalist Guillermo Lobo. According to reports, certain individuals close
to the government accused Santoro - who was investigating cases of corruption - and Lobo of being involved in a Russian spy network.44

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

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

C. Access to information

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

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

31. The Office of the Special Rapporteur learned that on May 13 and 14, dozens of journalists asked the government to hold formal press conferences in which questions formulated by the press would be answered. According to reports received, the journalists claim that official press

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conferences at all levels usually do not provide a space for questions, a situation that has had a negative impact on the right to access to information.47

D. Legal reforms

32. The Office of the Special Rapporteur was informed of the December 27, 2011, passage and promulgation of Law 26.736, which declares the production, sale and distribution of newsprint to be in the public interest.48 The purpose of the law is “to ensure for domestic industry the regular and reliable manufacturing, sale and distribution of wood pulp and paper for newsprint” and to give the Ministry of Economy and Public Finance the authority to regulate the production, use, import and export of newsprint, in order, among other reasons, to “guarantee equal opportunity and access to paper supply without discrimination.”49 The Ministry will be advised by a Federal Advisory Commission made up of newspaper representatives, consumers and workers. Among its functions is to “propose measures toward broadening the spectrum of diversity, democratization and federalization of the print media.”50 The law also creates a national registry of manufacturers, distributors and sellers of pulp and paper for newspapers and requires transparency in the administration of the companies that produce it.51 It orders the main company dedicated to the production of newsprint, Papel Prensa S.A., to “operate, at a minimum, at full operative capacity or at the level of domestic demand for paper (when that demand is less than operative capacity),” and to periodically implement “an investment plan toward fully satisfying domestic demand for newsprint.”52 Finally, it establishes a regime for sanctions, which vary from fines to the closure or confiscation of companies. The sanctions are to be applied by the Ministry of Economy and Public Finance.53

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


50 Law 26.736. Articles 12, 16(e).
52 Law 26.736. Article 40.
notable importance for the exercise of freedom of expression, is enforced in keeping with the international standards on the subject.\textsuperscript{54}

E. Government Advertising

34. On August 14, 2012, the Federal Contentious Administrative Chamber ordered the National State to comply with the ruling of the Supreme Court of Justice requiring the State to place advertising in the publications of Editorial Perfil S.A. in keeping with the criteria of maintaining a “reasonable balance.” Editorial Perfil had filed a complaint in April of 2011 to the effect that the State had failed to comply with the aforementioned ruling, and in March of 2012, the lower court fined the State for its failure to comply.\textsuperscript{55} The Chamber revoked the fine and gave the State 15 days to present an outline for how it would distribute official advertising in a way that would include Perfil and another two magazines and “that faithfully follows the guidelines of proportionality and equity established by this Chamber and by the Supreme Court of the Nation […] such that the judge can irrefutably determine whether an ‘equitable balance’ has been reached among them and those classified as having ‘analogous characteristics.’”\textsuperscript{56} As of this report’s publication deadline, the Office of the Special Rapporteur had not learned of the results of the application of the ruling in question.

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

36. As the Office of the Special Rapporteur has expressed on prior occasions, it has received information indicating concern among private sector media with regard to the absence of established standards for placing government advertisement and the increase in the budget for this advertisement on both the federal and provincial levels. However, with regard to this, on March 2, 2011, the Supreme Court


of Justice had already handed down a ruling reiterating the State obligation to adopt a government advertising policy that is nondiscriminatory and uses objective standards.\(^{58}\)

### F. Other situations

37. The Office of the Special Rapporteur learned that workers from a number of different unions blocked entrances and exits to buildings where the newspapers *Clarín* and *La Nación*, among others, are printed. On August 18 and 19, the workers prevented the trucks that distribute newspapers in Buenos Aires from departing.\(^{59}\) Additionally, the Office of the Special Rapporteur was informed of harassment, threats and theft of newspapers, all directed at the vendors of those newspapers in different parts of Buenos Aires.\(^{60}\) Argentine courts have granted precautionary measures to ensure the free distribution of *La Nación* and *Clarín* in response to similar incidents that have taken place since December, 2010.\(^{61}\) On this occasion, a civil judge ordered the Ministry of Security to comply with the precautionary measures in force.\(^{62}\) However, another blockade of the two newspapers’ distribution center took place in the early morning hours of October 29, 2012.\(^{63}\) The Office of the Special Rapporteur was informed that on November 28 and 29, individuals presumed to be union members of newspapers deliverers blocked the entrance to the circulation plant of newspaper *El Día* in La Plata, Buenos Aires province, and prevented the newspaper from being delivered.\(^{64}\)

38. The Office of the Special Rapporteur was informed of the execution of a search warrant at the Radio Horizonte offices in San Carlos de Bariloche, Río Negro, carried out on November 23 under an order issued by Civil and Commercial Court No. 1. According to the information available, the local

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mayor filed a criminal complaint against Marcelo Parra, owner of the broadcaster, for damages. The order called for the confiscation of recordings of two programs hosted by Parra.65

39. According to information received, on November 22, Grupo Clarín filed a criminal complaint against a number of people for the crimes of incitement to collective violence and aggravated coercion, established in articles 12 and 149 bis of the Penal Code, to the detriment of the company. The complaint, which cites a series of alleged instances of harassment of Grupo Clarín media holdings, indicated six journalists and social communicators, as well as several public officials, as those allegedly responsible for the violations indicated.66 Later, Grupo Clarín announced it was dropping the suit with regard to the six journalists and indicated that there was no "intent to bring criminal charges against any journalist."67

40. The Office of the Special Rapporteur was also informed of the decision of the First Instance National Court on Civil and Comercial Federal Law Number 1, which declared constitutional articles 41, 45, 48 (second paragraph) and 161 of Law 26.522 on Audiovisual Communication Services68. Group Clarín appealed the lower court's decision.69 Furthermore, article 16170 had been temporarily


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

[“Adecuación. Los titulares de licencias de los servicios y registros regulados por esta ley, que a la fecha de su sanción no reúnan o no cumplan los requisitos previstos por la misma, o las personas jurídicas que al momento de entrada en vigencia de esta ley fueran titulares de una cantidad mayor de licencias, o con una composición societaria diferente a la permitida, deberán
suspended through a precautionary measure. The Office of the Special Rapporteur takes note of the high degree of polarization that surrounds the aforementioned judicial decisions and the difficulties that it may present for those who have the crucial task of administering justice. The Office of the Special Rapporteur has already highlighted important decisions that the Argentinian courts have adopted on freedom of expression and finds it of the utmost importance that there be a return to a climate in which operators of justice can evaluate the cases assigned to them in proper conditions. In this sense, the Office of the Special Rapporter respectfully calls on the institutions involved in this matter, as well as the media, to resolve the conflicts that have emerged within the framework of the legal order in a manner respectful of the autonomy of the judicial branch.

2. Bolivia

A. Progress

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

B. Attacks and threats

ajustarse a las disposiciones de la presente en un plazo no mayor a un (1) año desde que la autoridad de aplicación establezca los mecanismos de transición. Vencido dicho plazo serán aplicables las medidas que al incumplimiento —en cada caso— correspondiesen. // Al solo efecto de la adecuación prevista en este artículo, se permitirá la transferencia de licencias. Será aplicable lo dispuesto por el último párrafo del artículo 41).


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

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

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

45. On February 4, two police officers and a private security guard, who were apparently inebriated, chased and threatened Juan Carlos Ferrufino, a priest and director of Radio Esperanza in Aiquile, Cochabamba. In addition to attacking the priest, the shots they fired injured three other people. The incident was condemned by the government and at least two suspects were arrested.77 Additionally, according to information received, on February 16, Bolivia TV cameraman Nelson Escalante was forcibly removed from a meeting of supporters of suspended Beni governor Ernesto Suárez.78 Also, on April 22, a group of people took over radio broadcaster Arrairru Sache in the San Ignacio de Moxos municipality and attacked its director, Gregorio Nuni. According to information received, Nuni read a statement from a police technician Karen Arce suffered serious burns and were hospitalized. According to the information received, the Government of Bolivia condemned the attack and launched an investigation; the police have arrested three of the alleged perpetrators of the attack.73


group of protesters opposing the construction of a highway. The government condemned the attack and announced an investigation into the facts.\textsuperscript{79}

46. The Office of the Special Rapporteur learned of attacks on journalists covering confrontations between the police, doctors and medical students in La Paz. On May 3, Red Uno technician Abraham Pareja was injured when a tear gas projectile presumed to have been launched by the police broke through the window of his vehicle.\textsuperscript{80} On May 16, CNN Bolivia cameraman Cristián Rosendi was wounded in the face, Fides newswire photographer Gastón Brito was wounded in the leg, and Unitel network journalist Carolina Ulloa passed out from teargas inhalation.\textsuperscript{81}

47. According to information received, Página Siete newspaper editor Marcelo Tedesqui received telephone threats against his family during the month of May. The threats began after the publication of a series of articles on supposedly suspect income received by dozens of cadets of the National Police Academy.\textsuperscript{82}

48. As reported by a variety of organizations, a number of journalists were attacked during protests held by the police toward the end of June of 2012. For example, on June 22 and 23, police officers participating in protests prevented journalists with Bolivia TV from doing their jobs. On June 25, Radio Patria Nueva journalist Helen San Román was beaten in La Paz, while PAT network journalist Irene Tórrez was beaten in Oruro.\textsuperscript{83}

49. The Office of the Special Rapporteur received information on a series of attacks against community radio broadcasters in Bolivia. On June 14, explosive devices were set off at the facilities of broadcasters Radio Vanguardia and Radio Cumbre in the Colquiri area in the context of a conflict between miner groups.\textsuperscript{84} On June 26, an explosion damaged the broadcasting antenna of community radio station Radio Emisora Bolivia in Oruro, a station that broadcasts programming that is often critical

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regarding the needs of the peasant population. The broadcaster was put temporarily out of service.\textsuperscript{85} Additionally, on August 26, broadcaster \textit{FM Comunitaria} in Buenavista, Santa Cruz, was taken over by a group of people who allegedly beat radio broadcaster Hugo Rojas and stole communications equipment.\textsuperscript{86}

50. The Office of the Special Rapporteur was informed that \textit{Fides TV} cameraman Alejandro Estívariz was arrested on August 14 while covering a protest by La Paz custodians. According to the information, Estívariz was held for two hours in the Family Reconciliation Unit for allegedly having filmed police officers. Before allowing him to leave, a police colonel warned him that since “there had been violence between the parties” the incident “would remain on [Estívariz’] criminal record.”\textsuperscript{87}

51. Journalist Jimmy Arias and cameraman Johnny Callapa, with the official State channel \textit{Bolivia TV}, were held on August 18 while providing news coverage in the Isiboro Sécure National Park Indigenous Territory (TIPNIS in its Spanish acronym). According to the information received, a group of individuals opposed to a popular consultation on the construction of a highway prevented the communicators from boarding an airplane that would take them back to the city. The group threatened them and held them until other people helped them escape.\textsuperscript{88} Additionally, on October 9, a news team from \textit{Cadena A} reporting on a military operation in Challapata, in the Oruro department, was harassed by law enforcement personnel who temporarily confiscated the material they had recorded.\textsuperscript{89}

52. According to information received, on October 11, a bullet struck the house of journalist Humberto Vacaflor Ganam, in Tarija. Vacaflor alleged that it was the second time in two years that unknown individuals had fired on his home.\textsuperscript{90} On October 13, Wilson García Mérida, the editor and owner of \textit{El Sol de Pando}, and Silvia Antelo, the manager of the publication, sought refuge for a number of days in Brasilea - a border town in the Republic of Brazil - after having been harassed by certain individuals who stated their intention to arrest him in exercise of public authority.\textsuperscript{91} The Office of the Special
Rapporteur was also informed of a violent attack on Ghilka Sanabria, editor of El Diario, which took place on November 5. In the attack, an individual slammed her head against a wall as she was leaving her office.92

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

C. Subsequent liability

54. On March 4, the Third Judgment Court of the Judicial District of La Paz convicted journalist Rogelio Vicente Peláez Justiniano and sentenced him to two years and six months in prison, on finding him guilty on charges of defamation [difamación, calumnia], and propagation of insults to the detriment of Waldo Molina Gutiérrez, while acquitting him of one of the defamation charges [injurya]. The journalist was given a suspended sentence. The case was based on an article published in April of 2010 in monthly magazine Larga Vista, directed by Peláez Justiniano, calling into question the size of the fees received by Mr. Molina as attorney for the National Committee for the Defense of Contributions to the Public Employee Retirement Fund. At the same time, the accused had opted for a trial in the regular court system and not under the Press Law.93

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


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

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

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

D. Stigmatizing statements

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

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


E. Other situations

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

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

3. Brazil

A. Progress

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


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

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

65. According to information received, a first instance civil judge in Porto Alegre rejected a company's request that information about the company be removed from the digital newspaper AntiCartel.com. The information indicates that based on official and court documents, AntiCartel.com revealed a number of irregular company operations. The judge concluded that the articles in question were "protected by the exercise of the right to information and opinion" and that the request to have them removed could be understood as "censorship and violation of the fundamental right to free expression."\textsuperscript{107}

66. On July 25, a regional federal court acquitted José Eduardo Rocha Santos, owner of a community radio station in the Ilha das Flores area, Sergipe state, who had been convicted by a lower court and sentenced to two years and six months in prison for operating a radio broadcaster without the authorization of the National Telecommunications Agency (Anatel). According to the information, the Regional Federal Court of the 5\textsuperscript{th} Region found that operating non-profit, low-power, and limited-coverage community radio stations without a permit was not a crime but rather an administrative infraction. The court and the Office of the Public Prosecutor also recognized that the broadcaster was not operating secretly and played an important social role in its community.\textsuperscript{108}

67. The São Paulo Tribunal of Justice ruled on August 8 that the press has the right to reveal information of any type that is leaked by State agents. It found that legal action against the press for this is not admissible, and that respect for confidentiality refers only to the judicial or police authorities responsible for keeping the material secret. The ruling came in response to a civil suit against the TV Globo network, which had been sued for releasing the contents of a telephone call that had been recorded by the police. The call linked the allegedly injured party to individuals involved in criminal activity.\textsuperscript{109}


68. On August 7, the Third Chamber of Private Law of the São Paulo Tribunal of Justice ruled that the remedy requesting damages from network TV Globo for having released a 2001 report on the alleged irregularities in the sale of property under judicial receivership was inadmissible. The tribunal ruled that "the journalist's text does not have any defamatory [injuriosa] connotation that would require indemnity for damages, as no abuse of the right/obligation to inform has been proven." 110

69. According to the information received, the Working Group on the Human Rights of Media Workers in Brazil was created on October 18, 2012, following the approval of a resolution by the Human Rights Secretariat of the Office of the President of the Republic. The group is comprised by state authorities, members of the Office of the Public Prosecutor, and representatives of civil society. Its duties include examining complaints of violence against media workers in the performance of their work; proposing measures to help shape public policies and create a system for monitoring complaints of human rights violations against media workers; and proposing guidelines for the safety of media workers in situations where they are at risk because of the practice of their profession. 111

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

B. Murders

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

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

73. The Office of the Special Rapporteur was informed of the April 23 murder of Brazilian journalist and political blogger Décio Sá. The murder took place in the city of São Luís, capital of Maranhão state. According to the information provided, Sá was in a restaurant when a gunman entered and shot him several times in the back. Aluísio Mendes, Maranhão’s public security minister, stated that the crime was a contract killing whose purpose was simply to execute the journalist. The minister ordered the immediate formation of a special task force to investigate the attack and identify those responsible, and promised that all the investigations connected to the case would be carried out to prevent impunity. Sá worked as a journalist covering politics for newspaper O Estado do Maranhão and authored his own blog called Blog do Décio, through which he issued allegations of corruption. The blog had become one of the most read in the region.115 On June 13, police authorities in Maranhão state presented six suspects to the press who had been arrested as alleged perpetrators and masterminds of the crime. A Military Police captain was also arrested. Certain things published by the journalist on his blog were said to have been the motive behind the crime.116

74. Sports journalist Valério Luiz de Oliveira was murdered on July 5 in Goiânia, capital of Goiás state, in Brazil. According to the information received, a motorcyclist shot the communicator several times as he was leaving the broadcaster where he worked, Rádio Jornal 820. The information indicates that Valério Luiz was considered to be a critical voice in sports journalism in his region. Because of some of his comments, he was banned from entering the facilities of a Goiás soccer team and had recently received death threats. Luiz also worked at the channel PUC TV. Goiás police authorities immediately began an investigation.117


75. The Office of the Special Rapporteur was also informed of the murder of Eduardo Carvalho, the owner and editor of electronic newspaper *UH News*. The murder took place on November 21 in the city of Campo Grande, the capital of Mato Grosso do Sul. According to the information received, an unidentified individual shot Carvalho outside his home in Campo Grande. According to the information, the journalist had received serious threats over articles he had published accusing police officers and local Mato Grosso do Sul officials of wrongdoing.\(^{118}\)

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

C. Attacks on and threats against journalists and media outlets

77. According to information received, on December 30, 2011, individuals presumed to be private security guards intimidated reporters of the newspaper *Diário do Litoral* after it published a report on abuses committed by a guard service at luxury condominiums. According to reports, a condominium security team stopped the vehicle in which the reporters were traveling, asked them for explanations about the report and requested the whereabouts of the author.\(^{119}\)

78. The Office of the Special Rapporteur was informed of a series of attacks on media facilities. According to information received, in the early morning hours of February 4, two men on a motorcycle fired three times at the offices of *TV Oeste*, a broadcaster affiliated with the *TV Bahia* network, in Barreiras, Bahia state. The attack, which took place in the context of a Military Police strike, did not result in any injuries and damaged the facade and main door of the building.\(^{120}\) The Office of the Special Rapporteur received information on a February 8 fire that destroyed the equipment of community radio station *Ibicoara FM*, in Ibicoara, Bahia. According to the information received, in the early morning hours, unidentified individuals broke into the station, used flammable liquid and set fire to the equipment. Emerson Silva Bispo, the radio station’s director, said that in the preceding month, the station had been broadcasting criticisms of local authorities.\(^{121}\) On that same day, another fire partially destroyed the building out of which the newspaper *Folha do Boqueirão*, in Curitiba, Paraná state, operates. The newspaper is owned by councilman Francisco Garcez, who presides over the Municipal Chamber’s


Council of Ethics. According to the information received, prior to the fire, the newspaper’s director had received a number of threats. 122 Additionally, on September 13, an explosive device destroyed the facilities of Rádio Farol, located in União dos Palmares, Alagoas state. The station belonged to federal deputy João Caldas and broadcast programming that was critical of the local mayor. 123

79. According to the Associação Brasileira de Jornalismo Investigativo (Abraji), on July 23, a senior official with the city of Redenção, Pará state, told a journalist and photographer with the newspaper O Globo that they could turn up dead; the journalists were researching accusations of corruption in the city. 124 Also during the month of July, André Caramante, a reporter with newspaper Folha de São Paulo, was threatened on a Facebook page after publishing a report criticizing the violent speech of a former Military Police chief and candidate for city council. 125 On August 18, security guards with the Bacabal municipality, in Maranhão, attacked Romário Alves, a cameraman with broadcaster TV Difusora, while he was recording the inauguration of a public plaza. According to the information, the cameraman refused to leave the public place. In response to this, individuals presumed to be local authorities struck him and broke his camera. 126 According to information received, on August 30, a TV Aratu television channel vehicle was fired upon in the neighborhood of Pirajá in Salvador, State of Bahia. 127 On September 1, Monize Taniguti, the director of weekly publication O Jornal de Guaira, São Paulo, was beaten while transporting hundreds of copies of her publication in her vehicle for distribution. The attackers stole the newspapers and threatened her. 128 Also, the Office of the Special Rapporteur was informed of the death threats against André Caramante - a journalist who is an expert in security issues - and his family. The threats, received in the month of September, forced him to leave the country. They are assumed to be related with a news item that he published criticizing a former police official and deputy-elect in the city of São Paulo. 129

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

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

82. The Office of the Special Rapporteur expresses special concern over the situation of journalist Mauri König, who had to leave the city with his family following the graves threats received against him, after the publication of a series of investigative reports on alleged acts of police corruption. According to the information received, on December 17, 2012, multiple phone calls were made to the offices of the newspaper *Gazeta do Povo*, of Curitiba warning the journalist that he was at risk. In at least one of the calls, the caller identified himself as a police agent, and warned König that alleged members of...
the police had been planning to attack him. According to the information available, the journalist had been receiving threats since May, 2012, when the mentioned series of reports on alleged acts of corruption were first published.136

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

D. Subsequent liability

84. The Office of the Special Rapporteur received information on the February 2012 closure of newspaper JÁ as a result of a 2003 civil indemnity awarded for nonpecuniary damages. JÁ is a monthly newspaper published in Porto Alegre, Rio Grande do Sul, with a 26-year history and circulation of 5,000 copies. According to the information received, the case began with an article in May of 2001 alleging misuse of public funds by a state company in which the family of a governor had participated. Elmar Bones da Costa, the author of the report and founding director of JÁ, won two journalism awards in Brazil for the investigation. The family named in the report filed a criminal complaint against the journalist and a civil suit against JÁ. In 2002, the journalist was acquitted of defamation charges [calúnia e difamação] in first and second instance criminal courts. In the judgment, the judges noted the absence of criminal intent in the publication and the fact that what was at issue was a matter of public interest. In the civil proceedings, the newspaper was convicted on appeal. The ruling, however, did not reference the acquittal in the criminal proceedings, nor did it apply the actual malice criteria to establish the newspaper’s liability. In 2005, the courts ordered the confiscation of the company’s property. In 2009, when the payment JÁ was ordered to make amounted to US $32,000, the court ordered 20% of the newspaper’s gross revenue garnished, and in 2010 the personal accounts of Bones and his partner, journalist Kenny Braga, were frozen. In 2009, the accusers offered the newspaper a deal, which was rejected by the journalists. The deal would have meant paying the indemnity in 100 monthly payments, publishing a note about the plaintiffs, and withdrawing from circulation the edition of the newspaper recounting the story of the court case. In 2012, due to accumulated debts and financial insolvency, Elmar Bones decided to close the newspaper.137

85. In October, a judge filed a suit against blogger Leonardo Sakamoto seeking moral damages based on an article in which Sakamoto criticized one of the judge’s rulings for allegedly having violated the rights of workers at an agricultural enterprise. The court purportedly dismissed a request for an injunction asking for the aforementioned blog post to be removed and to prohibit Sakamoto’s articles from mentioning the judge.138

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

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

E. Legal reforms

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

F. Internet and freedom of expression

89. In 2012, the Office of the Special Rapporteur followed with interest the debates in Brazil over Draft Bill No. 2126/2011, also known as the “Civil Rights Framework for the Internet,” under debate in the National Congress. The project is the result of an initiative led by the Ministry of Justice of Brazil and the Center for Technology and Society of the Getulio Vargas Foundation. The project has included broad and public consultation of Brazilian society. The project establishes freedom of expression as


143 [http://direitorio.fgv.br/civilrightsframeworkforinternet](http://direitorio.fgv.br/civilrightsframeworkforinternet)
one of the principles of Internet regulation and contains provisions related to intermediary responsibility, net neutrality and promotion of Internet access, among other things. The Office of the Special Rapporteur considers this initiative to be important, as the adoption of a regulatory framework that is clear and respectful of freedom of expression allows the exercise of this right under conditions of greater transparency, legal certainty and protection guarantees. This project is also important taking into account that during 2012, there were a number of noteworthy cases in which intermediaries that provide Internet applications were subjected to court orders, as described hereinafter.

90. According to information received, an electoral court in the state of Mato Grosso do Sul ordered videos that included comments critical of a mayoral candidate in Campo Grande to be removed from YouTube (property of Google). In response to an alleged failure to comply with the court ruling, on September 26, 2012, Fabio José Silva Coelho, director of Google Brasil, was briefly detained. The ruling of the Regional Electoral Tribunal also ordered YouTube blocked in the city of Campo Grande or in all of Mato Grosso do Sul for 24 hours.144

91. The information received also indicated that a judge with the electoral courts in the state of Paraíba ordered YouTube to remove a video containing content critical of a mayoral candidate in Campina Grande. In response to an alleged failure to comply with the order, Edmundo Luiz Pinto Balthazar, financial director for Google Brazil, was ordered arrested on September 14.145 The arrest warrant was revoked the following day through the granting of an injunction.146

92. The Office of the Special Rapporteur was informed that an electoral judge in Amapá ordered the newspaper O Estado de São Paulo to withdraw a newspaper published on the blog of journalist João Bosco Rabello for an alleged electoral law violation. The measure was challenged by the Office of the Public Prosecutor and revoked by the same judge on September 25.147 On September 25, the Tribunal of Justice of São Paulo ordered YouTube to remove videos containing scenes of the movie “The Innocence of the Muslims” in a ruling on a suit brought by the National Union of Islamic Entities. The order, based on the violent response to the video in other countries and the video’s offensive nature, included a 10,000 reais (about US $5,000) fine for every day compliance was delayed.148 Additionally, the

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information received indicates that an electoral court in the state of São Paulo ordered certain content considered to be offensive to the mayor of Ribeirão Preto to be removed from the blog of journalists Marcio Francisco (hosted on Blogspot.com, property of Google). On September 28, a judge once again ordered the arrest of Edmundo Luiz Pinto Balthazar in response to an alleged failure to comply with the court order.\textsuperscript{149} On the following day, the arrest warrant was suspended after an injunction was granted.\textsuperscript{150}

93. The Office of the Special Rapporteur recalls that in the Joint Declaration on Freedom of Expression and the Internet adopted in 2011, the United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, established that “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.”\textsuperscript{151}

4. Canada

A. Progress

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


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

96. The Office of the Special Rapporteur included information in its 2010 annual report on the excessive use of force by police authorities in response to peaceful demonstrations during the G20 Summit in Toronto in June 2010.154 The following year, this Office took note of the report from the Canadian Parliament recommending a judicial investigation be carried out in order to determine the responsibility of officials at all levels of government for the alleged civil rights violations, and also noted reports prepared by the Ontario Ombudsman and nongovernmental organizations.155 The Office of the Special Rapporteur learned that in May of 2012, the Office of the Independent Police Review Director issued its report on the incidents. The report concluded that official planning for the G20 Summit was inadequate and incomplete, and that the Public Works Protection Act had been applied incorrectly.156 Additionally, it determined that the Incident Commander referred to the demonstrators as “terrorists/demonstrators,” which led to the detention of approximately 1,100 people, the majority of whom were peaceful demonstrators. Likewise, an independent citizen review ordered by the Toronto police reached similar conclusions in its report, published in June, 2012.157 According to information received, as a result of those investigations, the authorities decided to carry out disciplinary proceedings against at least 31 Toronto police officials for their actions in the context of demonstrations during the G20 summit.158

B. Attacks on and threats against media outlets and journalists


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

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

C. Subsequent liability

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

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

D. Access to information

101. The Office of the Special Rapporteur takes note of an open letter sent to Canadian authorities on February 17 by Canadian Journalists for Free Expression (CJFE) and five other journalism and scientific organizations asking the government to lift the restrictions preventing federal scientists from speaking freely with the media. According to the information, the organizations claim that federal scientists may not speak to the media without prior approval from public-relations officials. These officials

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purportedly deny consent routinely or cause unjustified delays in responding to requests for interviews. The organizations argue that Canadians have the right to know more about the work of the scientists whose work is funded by their taxes.162

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

E. Other situations

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

5. Chile

A. Progress

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

105. According to information received, the Supreme Court of Chile approved the request to extradite Ray Davis, a former American soldier who was stationed in Chile. The extradition request is part

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106. In April of 2012, the Justice Studies Center for the Americas (CEJA) published the seventh edition of its Index on Online Accessibility of Judicial Information [Índice de Accesibilidad a la Información Judicial en Internet] (IAcc), which analyzed the websites of the judicial branch and offices of the public prosecutor of 34 States members of the Organization of American States during the period between October and December 2011. The study identified Chile as second best country at providing access to judicial information on the Internet. According to the information received, the factors taken into account for preparing the Index included accessibility to institutional information; the publication of court judgments, institutional financial and physical resources; and tenders offered.\footnote{Justice Studies Center for the Americas [Centro de Estudios de Justicia de las Américas] (CEJA). Index on Online Accessibility of Judicial Information [Índice de Accesibilidad a la Información Judicial en Internet] (IAcc) - 7th version. 2011 Report. Available at: http://cejamerica.org/index-php/biblioteca/biblioteca-virtual/doc_download/6121-indice-de-accesibilidad-a-la-informacion-judicial-en-internet and at: http://www.consejotransparencia.cl/consejo/site/artic/20120417/asocfile/20120417164146/iacc_reporte_2011_final.pdf; Republic of Chile. Council for Transparency. April 19, 2012. Se presenta Índice de Accesibilidad a la Información Judicial en Internet. Available at: http://www.consejotransparencia.cl/se-presenta-indice-de-accesibilidad-a-la-informacion-judicial-en-internet/consejo/2012-04-17/164146.html}

107. The Office of the Special Rapporteur was informed of the January 16 request from the executive branch that the legislative branch eliminate the first subparagraph of the second article of the draft Act to Strengthen the Protection of Public Order.\footnote{Article 2(1) of the bill would modify Article 83 of the Code of Criminal Procedure by adding a part f) which would establish: “f) [confirm the existence and location of photographs, video and audio recordings, and generally other types of reproduction of images, voices or sounds that may have been taken, captured or recorded and that may contribute to clarifying events that constitute or could constitute a crime and voluntarily obtain the custody of the original or copies, in keeping with Article 181”, Presidency of the Republic. January 16, 2012. Oficio a la Presidencia de la Cámara de Diputados No. 444-359. Available at: http://www.camara.cl/pley/pdfpley.aspx?prmID=16883&prmTIPO=OFICIOPLEY; Presidency of the Republic. September 27, 2011. Mensaje de S.E. el Presidente de la República con el que inicia un proyecto de Ley que Fortalece el Resguardo del Orden Público. Available at: http://www.cámara.cl/pley/pdfpley.aspx?prmID=8169&prmTIPO=INICIATIVA} According to the information received, the subparagraph could mean limiting freedom of expression on granting security forces the authority to ask the media and private individuals to turn over recordings and images captured during meetings or demonstrations in public spaces without a prior order from the public prosecutor.\footnote{Radio Cooperativa. January 18, 2012. Gobierno retirará cláusula de “Ley Hinzpeter” para pedir grabaciones a medios sin orden judicial. Available at: http://www.cooperativa.cl/gobierno-retirara-clausula-de-ley-hinzpeter-para-pedir-grabaciones-a-medios-sin-orden-judicial/prontus_notis/2012-01-18/210928.html; Semanario Alternativas. January 20, 2012. Hinzpeter al banquillo: Corte de Apelaciones le dio 48 horas para respaldar acusaciones en contra de mapuche. Available at: http://www.semanarioalternativas.info/archivos/2012/1%20enero/201/internacionales/paginas_%20internacional/chile/articulos/Hinzpeter%20a%20banquillo.html} The text of the proposal was presented to the Chamber of Deputies on October 4, 2011, and was passed to that Chamber’s Commission on Citizen Security and Drugs.\footnote{On August 1, discussion of the draft began in}
the Plenary of the Chamber of Deputies. Journalism organizations and civil society have asked the National Congress to reject the Act in its totality, considering it a threat to freedom of expression.

108. The Office of the Special Rapporteur expresses its satisfaction at the June 13 decision of the Science and Technology Commission of the Chamber of Deputies eliminating Article 36, B(a) from General Telecommunications Act No. 18.168. That subparagraph punished with prison terms the operation or use of free-to-air telecommunications or radio broadcasting services or facilities without authorization of the corresponding authority. The decision was made in the context of approval of a law creating the Superintendent of Telecommunications. According to the information received, the reform “suspends prison terms for radio broadcasting without a license; changes its classification from a public order crime [...] to a private one, leaves in place fines, and calls for confiscation of equipment only in cases of recidivism.” Additionally, hereinafter only the Superintendent of Telecommunications shall act as plaintiff. The project moved forward to be examined by the Commission on Public Works and Telecommunications, after which it will be debated in the plenary before being sent to the Senate.

109. Regarding this, the Office of the Special Rapporteur recalls that laws on radio broadcasting must meet international standards and must be enforced through the use of proportional administrative penalties, not through the use of criminal law. The Office of the Special Rapporteur reiterates that “a restriction imposed on freedom of expression for the regulation of radio broadcasting must be proportionate in the sense that there is no other alternative that is less restrictive of freedom of expression for achieving the legitimate purpose being pursued. Thus, the establishment of criminal

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sanctions in cases of violations of radio broadcasting legislation does not seem to be a necessary restriction.” 176

B. Attacks and arrests

110. The Office of the Special Rapporteur was informed of a number of attacks suffered by communicators covering social protests in Santiago. According to the information, on February 24, 2012, individuals assumed to be public officials struck Félix Madariaga, a journalist with the Corporation for the Promotion and Defense of the Rights of the People (CODEPU in its Spanish acronym), while he was photographing a demonstration in support of protests in the Aysén region. 177 On March 1, police officers arrested American reporter Jason Suder of the Santiago Times while he was documenting the detention of a number of protesters in an activity supporting the Aysén protests. 178 Also, on March 15, police officers held Ricardo Uribe, a cameraman with Colombian channel NTN 24, while he was filming police actions against a student demonstration. 179

111. According to information received, a number of acts of violence have been committed against radio station Radio Santa María in Coyhaique, Aysén region, which gave broad coverage to the social protests in that region. On the night of March 20, Víctor Hugo Gómez, a cameraman with Radio Santa María, was held for several hours and assaulted by public officials. 180 According to the information received, on March 21, in the context of the protests, the broadcaster’s website was blocked on a number of occasions. 181 That same day, the intendent [intendenta] of Aysén and other local authorities blamed Radio Santa María, and specifically radio host Claudia Torres, for inciting disorder and violence while covering the protests and allegedly having called people to protest, instead of calling for calm. 182


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

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

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

C. Subsequent liability

115. The Office of the Special Rapporteur has learned of a number of criminal proceedings brought against community radio stations in Chile based on Article 36 B of the General Telecommunications Act, which as previously mentioned, punishes the use of radio broadcasting services

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without the corresponding license with prison, fines, and the confiscation of communication equipment.\textsuperscript{186} According to the information received, on December 2, 2011, the Guarantees Court of San Bernardo ordered equipment that had been confiscated in November of 2010 to be returned to community radio station Tentación in Paine, in the Santiago metropolitan area, and authorized the station to broadcast social and community events. Additionally, the court ordered Marcelo Núñez Fuentes, the radio station’s director, to appear before the court every six months for the next two years in the framework of a criminal proceeding against him. It also banned the station from broadcasting non-social service content.\textsuperscript{187} According to available information, the equipment of community radio station Vecina in Collipulli was confiscated and its director was arrested on August 28 in application of Article 36 B. Víctor Díaz, the station’s director, said that he had been trying to get a radio broadcasting concession for several years.\textsuperscript{188}

116. The Office of the Special Rapporteur was also informed of complaints over illegal broadcasting brought against community broadcasters Radio Lógica, in Peñalolén, Región Metropolitana, and Radio Galactika, in San Antonio in the Valparaíso region. Those complaints could lead to the application of aforementioned Article 36 B.\textsuperscript{189} As previously mentioned, the article in question is being reviewed by the legislative branch, which could lead to the elimination of the use of criminal law in these types of cases.

D. Other situations

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

[“Artículo 36 B: Comete delito de acción pública: a. El que opere o explote servicios o instalaciones de telecomunicaciones de libre recepción o de radiodifusión sin autorización de la autoridad correspondiente, y el que permita que en su domicilio, residencia, morada o medio de transporte, operen tales servicios o instalaciones. La pena será la de presidio menor en sus grados mínimo a medio, multa de cinco a trescientos unidades tributarias mensuales y comiso de los equipos e instalaciones”].


117. The Office of the Special Rapporteur was informed that on April 3, the Appeals Court of Coyhaique rejected a preventive *amparo* appeal to prevent the owner and director of *Canal 40 TV Aysén*, Samuel Chong Rivera, from being forced to turn over copies of images recorded during the social protests in March. According to the information received, on March 28, individuals dressed in civilian clothing visited the home of Chong Rivera, identified themselves as detectives, and asked him to turn over the images of the protests that took place starting in February, 2012 or face arrest. The court ruling concluded that the police officers acted in compliance with an order from the Office of the Public Prosecutor, for which reason their actions were not arbitrary.190

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

6. Colombia

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

A. Progress

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

121. The Office of the Special Rapporteur received information on the criminal proceedings over the kidnapping, torture and sexual abuse of journalist Jineth Bedoya that took place in 2000 while she was reporting on arms trafficking in the Model Prison of Bogotá [Cárcel Modelo de Bogotá]. On February 9, 2012, the Office of the General Public Prosecutor of the Nation announced that proceedings had been opened against three paramilitary members, something that was possible due to the confession of one of the paramilitary members in September of 2011.193 On September 20, the Office of the Public

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Prosecutor declared that the statute of limitations would not apply to the proceeding because the facts constituted a crime against humanity, in light of the fact that they took place in a context of systematic and widespread violence against journalists. 194

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

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

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

http://www.corteconstitucional.gov.co/secretaria/estados/ESTADOS%20JULIO%202012.php
manner with regard to a matter in the public interest,” understood as a component of the sexual and reproductive rights recognized by the Constitution and the Constitutional body of law. 199

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

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

B. Murders

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

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203 El Tiempo. No date. Condena de 21 años por asesinato de periodista en Dosquebradas. Available at: http://m.eltiempo.com/colombia/eje-cafetero/condena-de-21-anos-por-asesinato-de-periodista-en-dosquebradas/11467101; El Diario
128. On November 27, journalist Guillermo Quiroz was murdered in Sincelejo, Sucre department. According to the information received, Quiroz was covering a demonstration in San Pedro, Sucre, against the company Pacific Rubiales, when alleged members of the National Police stopped his motorcycle. According to statements given by Quiroz in a television interview, police officers placed him in an official vehicle, beat him, and threw him out of the vehicle while it was in motion. After seven days in intensive care in a local hospital, the journalist died. Although some local police officials initially denied the attack, more senior authorities later reported that the officers who presumably participated in the incidents were suspended and criminal and disciplinary investigations were opened. According to the information received, prior to these incidents, Quiroz had been threatened in connection with his work as a journalist. The Office of the Special Rapporteur requested the competent authorities to find out the motives behind the death of Guillermo Quiroz, identify and punish those responsible, and ensure all due reparations for his next of kin.204

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

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

C. Attacks on and threats against journalists and media outlets

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

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

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

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

135. According to information received, social activist and independent journalist Bladimir Sánchez Espitia received a death threat around the time he uploaded a video to YouTube titled “The


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

136. According to the information available, the director of community radio station Briceño Estéreo in Antioquia, Edilberto Agudelo, had to relocate after he received death threats in December, 2011. The threats had to do with accusations Agudelo had made about alleged links between local police officials and illegal armed groups. In April 2012, Dionisia Morales, a host on the same radio station, received death threats through telephone calls and text messages. The threat warned her that she had until the following day to leave.214 Additionally, on April 9, journalist Jesús Antonio Pareja, with community radio station Roncesvalles, in Tolima, received a phone call from someone presumed to be a member of the FARC warning him to leave the area in three days or he would be murdered for having broadcast government public service messages.215 In its remarks to the Office of the Special Rapporteur, the Colombian State reported that it had contacted Dionisia Morales to offer her protection measures. It also stated that it had opened a criminal investigation based on the threats received by Jesús Antonio Pareja.216

137. On June 5, Carlos Lozano, director of the newspaper Voz, denounced that he had been informed an armed illegal group that called itself “Los Urabeños” had a plan to murder him.217 Since July 17, the group had been distributing pamphlets in Tulua, Buga and Cali threatening journalists William Solano and Arlex Velasco with the Canal Univ program ‘Aló Buga,’ which broadcasts allegations live.218 Likewise, on June 5, Díro César González, a journalist and the director of the newspaper La Tarde in Barrancabermeja, received a letter with a death threat signed by the illegal armed group “Los Rastrojos.” Gonzalez has been receiving threats since 2006 and benefits from measures of protection granted by the

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138. According to information received by the Office of the Special Rapporteur, Juan Carlos Avella, director of the newspaper *Hechos*, was attacked with a knife on June 6 in Yopal, Casanare. In recent issues of *Hechos*, Avella printed accusations of alleged corruption among public officials and published an article mentioning connections between officials with the administration and paramilitary groups. Yopal police authorities do not rule out the attack being related with his journalism work.221

139. The Office of the Special Rapporteur was informed of the effects that the armed conflict has had on indigenous community radio stations *Voces de Nuestra Tierra* in Jambaló and Nasa Estéreo in Toribió. According to the information, on July 3, the broadcasting antenna of *Voces de Nuestra Tierra* was destroyed, while *Nasa Estéreo* decided to temporarily suspend its broadcasts due to its proximity to battles between the Army and the guerrillas.222 In its remarks, the Colombian State indicated that both community radio stations were currently operating.223 That same day, the guerrilla group National Liberation Army [*Ejército de Liberación Nacional*] (ELN in its Spanish acronym) distributed intimidating pamphlets in Arauca criticizing broadcasters Caracol and RCN.224 Additionally, on July 25, Élida Parra Alfonso, a journalist with radio station *Sarare FM Estéreo*, was kidnapped by members of the National Liberation Army [*Ejército de Liberación Nacional*] (ELN in its Spanish acronym) in Arauca. Parra Alfonso was working for the Bicentennial Oil Pipeline, a project that the group has raised questions about due to its social and environmental impact in the region. She was freed on August 13.225

140. According to information received by the Office of the Special Rapporteur, journalist Ronald Avellaneda denounced that on July 11, he was beaten by persons presumed to be police agents, stating that they took his camera and his cellular phone. He was trying to report on the news of a robbery. The journalist remained in detention overnight.226 On July 13, Paul Bacares, a journalist with public

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141. The Office of the Special Rapporteur was informed of a text message threat received on July 30 by Luis Fernando Montoya, a journalist and director of the newspaper El Puente. The newspaper has circulation in Tolima, Caldas and Cundinamarca. According to the report, the threat stated: “Journalist, quit talking shit about neighboring cities we give you 20 days to get out of here or we will take measures.”\footnote{In Communication from the State of Colombia, Official Letter MPC/OEA No.: 256/2013, dated February 22, 2013, that refers Note DIDHD/GAPDH No. 0234/0208, dated February 22, 2013, “Comments of the State of Colombia regarding Actions Undertaken to Ensure and Protect Freedom of Expression.” Para. 13(ii).} In its communication to the Office of the Special Rapporteur, the State of Colombia said that the criminal investigation into these events is active, although no one has been named as the direct perpetrator of the acts. The State added that Montoya is a beneficiary of the National Protection Unit and of measures provided by the police.\footnote{Federación Colombiana de Periodistas (FECOLPER). July 31, 2012. Periodista Luis Fernando Montoya, director del periódico El Puente, recibe nuevas amenazas contra su vida. Available at: http://www.fecolper.com.co/alertas/20759-periodista-luis-fernando-montoya-director-del-periódico-el-puente-recibe-nuevas-amenazas-contra-su-vida; Semana. August 2, 2012. Amenaza a un periodista: “Le damos 20 días para que se vaya”. Available at: http://www.semana.com/nacion/amenaza-periodista-damos-20-dias-para-vaya/181981-3.aspx}

142. According to information received, on August 12, a businessman who felt he had been mentioned in negative reports physically assaulted journalist Guillermo de Castro, with Revista Alerta in the city of Campoalegre.\footnote{In Communication from the State of Colombia, Official Letter MPC/OEA No.: 256/2013, dated February 22, 2013, that refers Note DIDHD/GAPDH No. 0234/0208, dated February 22, 2013, “Comments of the State of Colombia regarding Actions Undertaken to Ensure and Protect Freedom of Expression.” Para. 13(vii).} On August 21, Eduar Fábregas, a journalist and news host with broadcasters Mar Caribe and Radio Alegre was threatened by unknown individuals who warned him to stop reporting on alleged irregularities in the Soledad municipality. On August 25, the journalist received a card offering condolences for his death, and on the same day he received another warning via e-mail. Sources indicate that the Soledad police provided the journalist with measures of protection because of the threats.\footnote{Federación Colombiana de Periodistas (FECOLPER). August 15, 2012. Periodistas del Huila víctimas de la delincuencia y la intolerancia. Available at: http://www.fecolper.com.co/alertas/20769-periodistas-del-huila-victimas-de-la-delincuencia-y-la-intolerancia}

143. According to the information received, on October 12, five journalists were attacked and one was arrested during National Indignation Week [Semana Nacional de la Indignación] marches in Bogotá.\footnote{In Communication from the State of Colombia, Official Letter MPC/OEA No.: 256/2013, dated February 22, 2013, that refers Note DIDHD/GAPDH No. 0234/0208, dated February 22, 2013, “Comments of the State of Colombia regarding Actions Undertaken to Ensure and Protect Freedom of Expression.” Para. 13(i).} Additionally, on October 23, Ana María García, a photographer with El Tiempo, was assaulted by the police while covering a traffic accident in Bogotá. The Bogotá Police Chief publicly apologized and
indicated that a disciplinary investigation would be launched. In its communication to the Office of the Special Rapporteur, the State of Colombia indicated in relation to these events that a member of the police was found responsible for "very serious violations" and suspended for 12 months without pay. In addition, on October 28, journalist Daniel Martínez with RCN Televisión was beaten by individuals presumed to be members of the National Police while he was covering a street fight in Arauca.

144. According to information received, journalists and media workers of radio broadcaster Guasca FM Stéreo, in Tuluá, Valle del Cauca department, were subjected to phone threats and harassment in November after reporting on the alleged improper management of municipal resources. On November 22, a man warned a worker with the broadcaster that "we are going to cut out the tongue of [the workers] for being nosy, gossipy and tattletales."

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

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

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

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

D. Stigmatizing statements

The Office of the Special Rapporteur received information indicating that on June 13, former president Álvaro Uribe published a message on his Twitter account saying, “at 5 p.m., I will publish the Hit Man Cartel [Cartel de los Sicarios], Zuleta, Coronell, León Valencia, Cepeda.” The persons named are well-known journalists and a well-known opposition leader. According to the information received, Uribe gave a statement in August, 2011 in which he stated that Claudia Julieta Duque and other journalists had damaged the image of his government and manipulated and distorted reality, calling them “concealers of terrorism.” The aforementioned statements were given immediately after the publication of an article in The Washington Post in which the journalists alleged that Colombian government authorities had possibly used U.S. funding for illegal purposes. On February 20, 2012, Duque brought a criminal complaint against former president Uribe for the crime of defamation for having publicly claimed that she was linked to an armed group. During his term and in recent years, the former president has constantly made public statements that stigmatize independent journalists, as well as his critics and political opposition, and that have the potential to increase the risk to the lives and personal integrity of the individuals targeted.


E. Subsequent liability

150. The Office of the Special Rapporteur was informed that journalist Luis Agustín González was sentenced to 18 months in prison. The sentence was handed down on February 29, 2012, by the Criminal Chamber of the Superior Tribunal of the Judicial District of Cundinamarca. According to the information received, Gonzalez was convicted of the crime of defamation [injuria] and acquitted on another defamation charge [calumnia]. In addition to the prison term, Gonzalez must pay 17 minimum salaries (about US $5,000). ²⁴⁴ Leonor Serrano, the former governor of Camargo, brought the criminal complaint against the media worker and director of newspaper Cundinamarca Democrática. She had alleged that an editorial published in 2008 calling into question her Senate candidacy violated her honor and good name. In September of 2011, the journalist was found guilty of both crimes by the lower court judge. On October 15, 2011, President Juan Manuel Santos expressed his opposition to the conviction and categorically stated that criticism of public officials should not be penalized. ²⁴⁵ On April 26, Gonzalez presented a cassation remedy [recurso de casación] before the Supreme Court of Justice. ²⁴⁶

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

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


that, “[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as “desacato laws,” restrict freedom of expression and the right to information.”

**F. Other situations**

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

154. The Office of the Special Rapporteur was informed of a debate proposed by Councilman Marco Fidel Ramírez, with the Bogotá Counsel, regarding the management of *Canal Capital*, a public television channel in that city. According to the information provided, the debate was proposed by Councilman Ramírez in order to inquire into the sexual orientation of the individuals who work at the channel, as well as to harshly question the opening of the media outlet to segments of the population that are traditionally marginalized or discriminated against, such as the LGBTI community. Effectively, according to information provided, the councilman submitted a questionnaire to the channel manager on October 26 asking, among other things, for the identities of the LGBTI persons on the *Canal Capital* payroll, the type of work contracts they had, their salaries, and the CVs of the members of the production team for ‘El Sofá,’ a program about issues related with LGBTI persons. According to the information available, during the November 7 Council session in which the questionnaire was discussed, Councilman Ramírez expressed that *Canal Capital* “promotes explicitly vulgar, immoral and pornographic content.” The Office of the Special Rapporteur was also informed that other members of the Council and the secretary of the mayoralty fully rejected the questionnaire and the statements of Councilman Ramírez.\(^{249}\)

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

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7. Costa Rica

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

157. In April of 2012, the Justice Studies Center for the Americas (CEJA) published the seventh edition of its Index on Online Accessibility of Judicial Information [Índice de Accesibilidad a la Información Judicial en Internet] (IAcc), which analyzed the websites of the judicial branch and offices of the public prosecutor of 34 States members of the Organization of American States during the period between October and December 2011. The study identified Costa Rica as the country that best provides access to judicial information on the Internet. According to the information received, the factors taken into account for preparing the Index included accessibility to institutional information; the publication of court judgments, institutional financial and physical resources; and tenders offered.251

158. On December 28, 2011, a private security guard assaulted journalist Ariel Chaves in the Zapote bullring in San Jose while he was covering a bullfight. Later, other employees of the same company refused to identify the guard who caused the incident. The company apologized to Diario Extra, where Chaves works.252

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

160. The Office of the Special Rapporteur takes note of the entry into force of the Cyber Crimes Act, which amends the Penal Code.253 Journalism organizations have raised questions about


253 Presidency of the Republic of Costa Rica. Law 9048. Reform of Various Article and Modification of Section VIII, known as Cyber Crimes and Related Matters, of Title VII of the Penal Code. Available at:
provisions of the law that increase punishments for accessing secret information, as well as for the ambiguous wording of Article 288 on espionage and State secrecy, among other provisions. They also question the fact that it makes the revelation of private information without the permission of the owner a crime, without taking into consideration the public relevance of the information made public or whether it has been acquired illegally. On November 8, a claim was filed in the Constitutional Chamber of the Supreme Court which alleged the unconstitutionality of the law. On the same day, the President of the Republic reported in a press release that she would present a bill to amend the law in order to reaffirm the right to freedom of expression and access to information, thereby addressing the concerns of a number of sectors of society at the law’s entry into force.

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


254 Article 288. – Espionage

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

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

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

La pena será de cinco a diez años de prisión cuando la conducta se realice mediante manipulación informática, programas informáticos maliciosos o por el uso de tecnologías de la información y la comunicación”].


258 The motion not to renew the contract indicated that “we are not willing, particularly, to accept personal attacks, which cause our families to suffer, the peace of our homes is negatively affected (...) Since the Honorable City Council took on its duties for the period of 2010-2016 and the mayor took office, these organs have been the object of criticism, the majority of which is not constructive, by Radio Cultural Turrialba, in the programs ‘OPINE USTED’ and a sports program. [“no estamos dispuestos, en especial, nosotros a aceptar ataques personales, pues nuestras familias sufren, la paz de nuestros hogares está afectada de
8. Cuba

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

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

As pointed out in the previous section, the IACHR received information on the various acts of harassment and detentions of the group “Ladies in White” [“Las Damas de Blanco”]. According to available information, on February 9, 2012, at least 15 members of the Ladies in White were prevented from leaving their homes or they would have been arrested to keep them from attending a workshop organized by blogger Yoani Sánchez. One of the women who attempted to attend, Aimé Cabrales, was reportedly beaten by women and several police officers who besieged her home. On February 19, the Archbishop of Santiago de Cuba, Monsignor Dionisio García Ibáñez, reportedly helped evacuate some 14 women from the Ladies in White who had taken refuge in the Basilica of the Virgin of Charity [Nuestra Señora del Cobre] after mass, and that they declared they were going on a hunger strike in response to being under siege by pro-government groups said to be threatening them. On February 23, a sizable group of pro-government demonstrators staged an act of repudiation [“mitín de repudio”] and for several hours blocked the entry and exit of the Ladies in White in Havana when some 40 women were in a building in commemoration of the second anniversary of the death of dissident Orlando Zapata. Several persons who participated in the tribute were said to have been detained by the political police. On March 17 and 18, 2012 nearly 70 Ladies in White were reported detained on commemorating the ninth anniversary of Black Spring [Primavera Negra]. On April 18, 13 of the Ladies in White were said to have been arrested to keep them from holding their monthly meeting, held the 18th of each month. Another group of women were kept from leaving their homes to attend the meeting. According to the information available, in April nearly 97 Ladies were arrested to keep them from attending Sunday mass in different cities. On May 27, 13 Ladies were reportedly arrested to keep them from attending Sunday mass in different parts of the country. That day five Ladies in White were detained in El Condado, Santa Clara. On June 15, nearly 30 Ladies in White were detained to keep them from attending a “literary tea” and celebrating Fathers Day in the different parts of Cuba. Twenty-two of these detentions were said to have been arrested to keep them from holding their monthly meeting, held the 18th of each month. According to the information available, in April nearly 97 Ladies were arrested to keep them from attending Sunday mass in different cities.
have occurred in Guantánamo and Granma, Palma Soriano, and Santiago de Cuba, and eight others in Villa Clara while the persons detained were traveling to Havana.\footnote{El Nuevo Herald. June 15, 2012.} On July 18, 30 Ladies in a group were detained at their homes to keep them from attending the “literary tea.” According to the information available, members of government security visited them at their homes, and threatened and warned them that if they attended that meeting they would be taken to jail for 72 hours.\footnote{Amnesty International. September 25, 2012.} On September 20, 50 Ladies in White were reportedly detained while on their way to Havana to participate in activities organized to commemorate the political activists who died the day of Our Lady of Ransom [la Virgen de la Merced] and released September 22 and 23.\footnote{Amnesty International. September 25, 2012.} On November 11, 44 women members of the organization were detained and beaten by police and State Security agents while attempting to attend Sunday mass.\footnote{Cubanet. October 5, 2012.} As of the writing of this report, the detentions of the Ladies in White continued to be systematic, impeding the exercise of their right to assembly and to demonstrate at the events convened by the organization.

164. The Commission was informed of the October 4 detention of Yoani Sánchez, an independent blogger and critic of the Government of Cuba, along with her husband, journalist Reinaldo Escobar, and blogger Agustín López Canino Díaz. According to the information received, the three persons detained were on their way to cover trial regarding the death of Cuban dissident Oswaldo Payá when they were detained, presumably so they would not interfere in the trial. They were released 30 hours after being detained.\footnote{Damas de Blanco.com. July 19, 2012.} The information available indicates that other journalists were detained allegedly in relation to the trial.\footnote{Inter-American Commission on Human Rights. November 9, 2012. Press Release No. 132/2012.} According to the information received, Sánchez was detained once again on November 8 along with bloggers and journalists Orlando Luis Pardo, Eugenio Leal, Julio Aleaga, Angel Santiesteban, Guillermo Fariñas, and Iván Hernández Carrillo, after demonstrating against the detention of other human rights defenders across from a police station in Havana.\footnote{Cubanet. October 5, 2012.}

165. In May 2012, journalist Gerardo Younel Ávila, a photo-journalist with \textit{Hablemos Press}, was said to have been detained on leaving his house in the municipality of Cerro. Later, he was reportedly detained again on June 23, July 14, and July 28. Journalist Enyor Díaz Allen of the same agency was detained when travelling from Cuba to Guantánamo. On July 23 he was detained for 72 hours. On June 11 editor Ernesto Aquino of \textit{Hablemos Press} was said to have been summoned by the authorities. On June 23 journalist Magaly Norvis Otero was also said to have been summoned to a police station where she was reportedly warned that should would be jailed if she continued her journalism and “enemy propaganda.” These events are said to have occurred after the news agency \textit{Hablemos Press} had begun the weekly publication of a Newsletter.\footnote{Puente Informativo. November 13, 2012. Informe mensual de violaciones de derechos humanos - Mayo de 2012: El Nuevo Herald. June 4, 2012.}
166. According to the information received, on July 24 journalists and activists Guillermo Fariñas and Julio Aleaga Pesant were held for at least nine hours, along with several political dissidents, on concluding the mass in Havana for deceased opposition leader Oswaldo Payá. According to information received, detentions of political dissidents due to their exercise of the freedom of expression escalated in August. According to the Comisión Cubana de Derechos Humanos, that month there were 521 politically-motivated temporary detentions, which in most cases lasted a few hours or days. Among the persons detained were dissident leader José Daniel Ferrer, arrested on charges of “public disorderly conduct” [“desórdenes públicos”] on August 23 and released three days later. After July 24, Fariñas was reportedly detained on August 17, 19, 21, and 23. In addition, on September 1 blogger Orlando Luis Pardo was reportedly detained in Havana for nine hours when he was preparing to attend and participate as moderator in a roundtable discussion to analyze current issues in Cuba.

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

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

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

3. Subsequent liability

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

171. The Commission was informed of the detention of Calixto Ramón Martínez Arias, a journalist with the agency *Hablemos Press*, on September 16, in the context of a criminal proceeding against him for *desacato*. Martínez Arias had been detained at the international airport while investigating alleged irregularities in the handling of drugs provided to Cuba by the World Health Organization. According to the information received, he was beaten and sprayed with pepper spray in the custody of the National Revolutionary Police of Santiago de Las Vegas. Martínez Arias was said to have investigated and written on the cholera and dengue outbreaks in Cuba before the Government recognized the problem. The Commission learned that Martínez had reportedly been transferred to a punishment cell on November 20 and that he was on a hunger strike as of late November. Martínez had previously been detained on May 10 in Havana while covering an activity organized by opposition groups and was later said to have been transferred against his will to the province of Camaguey.

4. Other relevant situations

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

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

174. On May 12, bloggers Eugenio Leal and Miriam Celaya were said to have been intercepted by the Police, who kept them from participating in a public activity convened by the social network Observatorio Crítico. The IACHR was informed that the Cuban authorities had threatened to prevent a concert from being held that was organized by the group Por Otra Cuba; its purpose was to promote ratification by Cuba of the human rights treaties of the United Nations. According to the information received, the concert was held on September 28.

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

9. Ecuador

A. Murders

176. The Office of the Special Rapporteur condemns the murder of photographer Byron Baldeón, which took place on July 1, 2012 in El Triunfo, a town near Guayaquil. According to the information received, two armed men on a motorcycle shot the photographer several times when he arrived at his house. Last May, practicing his profession, Baldeón had taken photographs of the scene of a robbery. The judicial investigation revealed that several policemen were involved in the robbery. Later, Baldeón was called to testify as a witness to the crime. The photographer worked with the newspaper Extra, where the pictures were published. At the time, the Office of the Special Rapporteur urged state authorities to act in a timely manner to identify the perpetrators and motive of this crime, to prosecute and punish the responsible parties, and to demand that they provide adequate reparations to the victim’s next 286 Inter-American Press Association (IAPA-SIP). April 2012 Information by Country: Cuba; CubaEncuentro. March 30, 28, 2012. Cuba denies visas to foreign press, arrests journalists during Pope’s visit. 287 Primavera Digital. March 28, 2012. Detenido y posteriormente deportado a la capital el periodista Julio Alega Pesant.


of kin. The Office of the Special Rapporteur notes with satisfaction that on July 3, the Minister of Interior, José Serrano, announced that a team from the National Police had been specially assigned to investigate the photjournalist’s murder.

B. Legal Reforms Enacted or under Discussion

177. The Office of the Special Rapporteur views with concern some of the provisions of the Organic Law Amending the Law on Elections and Political Organizations of the Republic of Ecuador, Democracy Code [Código de la Democracia], published on February 6, 2012, which could result in disproportionate limitations of freedom of expression during electoral processes. The last paragraph of Article 21 of this law established that, during the 45 days of the election campaign, “[t]he media shall abstain from engaging in direct or indirect propaganda, whether through reports, specials, or any other type of message, that tends to have a positive or negative effect on particular candidates, positions, options, electoral preferences, or political views.”


202 This provision reportedly originated with the exercise of the authority of the President of the Republic to challenge draft laws, established in Articles 137 and 138 of the Constitution of the Republic of Ecuador. National Assembly. Objections, Reports, and Vetoes. Official Letter No. T.4165-SNJ-12-14. January 4, 2012. Available at: http://documentacion.asambleanacional.gob.ec/alfresco/service/api/node/workspace/SpacesStore/55d729ed-c4c0-4cbc-9805-b3696923ca14/content? alf_ticket=TICKET_35c86e39d70ff1c52d17e59eae0d3d53d19b573; Constitution of the Republic of Ecuador. Article 138: “(…) In the event that the objection is partial, the President of the Republic shall present an alternative text, which may not include matters not contained in the bill; the same restriction shall apply to the National Assembly in its approval of the suggested changes.// The Assembly shall examine the partial objection within thirty days, counted from the date of its submission, and may, in a single debate, accept it and amend the bill with the favorable vote of the majority in attendance at the session. The Assembly may also enact the initially approved bill, with the favorable vote of two-thirds of its members.” Available at: http://www.asambleanacional.gov.ec/documentos/constitucion_de_bolsillo.pdf

203 Official Gazette. Ecuador Government Body. Second Supplement to Official Gazette No 634. February 6, 2012. Organic Law Amending the Law on Elections and Political Organizations of the Republic of Ecuador; Democracy Code. Article 21. “Article 203 shall be replaced by the following: Art. 203. - Advertising or propaganda by state institutions, at all levels of government, is prohibited during the election campaign, except for the following: // 1. The dissemination of information on programs or projects that are being carried out, or which because of their timing must be carried out during that period. // 2. When required for public works, to inform the public of road closures or openings, or alternate works, or alternate places; // 3. In emergency situations or natural disasters, when it is necessary to inform the public of security measures, evacuations, road closures, or the opening of alternate routes. // 4. When it is necessary to inform the public of issues of national importance, such as: prevention, vaccination, or public health campaigns, the start or suspension of school sessions, public safety, or other similar matters. // Additionally, the placement and dissemination of propaganda and advertising by private legal persons referring to the election process in print, radio, television, billboards, or any other medium, is prohibited during the election campaign. // The media shall abstain from engaging in direct or indirect propaganda, whether through reports, specials, or any other type of message, that tends to have a positive or negative effect on particular candidates, positions, options, electoral preferences, or political views. The National Electoral Council shall order the media to immediately suspend any advertising or propaganda that fails to comply with the exceptions provided in this article, without the need for prior notice to the advertiser, or, if appropriate, shall order the advertiser to change the advertising or propaganda, without prejudice to prosecution pursuant to this Law.” Available at: http://www.derechoecuador.com/index.php?view=article&catid=362%3Afebrero&id=6535%3Aregistro-oficial-no-634-lunes-6-de-febrero-de-2012-segundo-suplemento&format=pdf&option=com_content&Itemid=622
178. According to information received, on October 17, the Constitutional Court ruled on the unconstitutionality actions challenging the Organic Law Amending the Law on Elections and Political Organizations, and examined the constitutionality of Article 21 of the law. With respect to the ban on the media engaging in direct or indirect propaganda for or against a candidate, the Court found that the measure is not contrary to the Constitution, as its aim is “for the media not to side with any candidate or political platform,” and it enables the candidates to exercise their right to make themselves known “through the fair allocation of advertising by the National Electoral Council.” However, the Court held that “the enunciation of the forms that direct or indirect propaganda might take” could “give rise to interpretations that infringe upon the right to freedom of information.” Therefore, it eliminated the phrase “whether through reports, specials, or any other type of message” from the article’s final paragraph. The current provision of the final paragraph of Article 21 of the law thus establishes that, during the campaign, “the media shall abstain from engaging in direct or indirect propaganda that tends to have a positive or negative effect on particular candidates, positions, options, electoral preferences, or political views.”

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

180. The information received by the Office of the Special Rapporteur also indicates that the National Assembly is currently debating other legislative proposals that would supplement the abovementioned legal framework. In October 2011, the Government introduced a Telecommunications and Postal Services Bill. This bill establishes, among other things, the authority of the government to issue a declaration of public interest, for purposes of expropriation, with respect to “assets that are the subject of a concession, assets necessary for the installation and operation of public telecommunications networks and services, to guarantee access and universal service and the uniform provision of services in rural areas or deprived urban areas.” Expropriations would be carried out “in accordance with the


295 Article 202 of the Law on Elections and Political Organizations establishes: “Art. 202. - In announcing direct elections, the National Electoral Council shall determine the beginning and ending dates of the election campaign, which may not exceed forty-five days.” Available at: http://aceproject.org/ero-en/regions/americas/EC/ecuador-ley-organica-electoral-codigo-de-la/view


The bill also creates the Telecommunications Oversight and Regulatory Agency within the executive branch, and assigns special punitive powers to it. Those powers include the possibility of ordering the revocation of licenses from media outlets for the commission of extremely serious violations. The penalty of revocation entails the “termination of the respective contract and the reversion of all tangible and intangible assets that are the subject of the concession.” In addition, the applicable regulations.

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Agency would have the authority to choose an appraisal firm to establish the value of those assets in the event that the medium and the Agency fail to agree on a responsible firm. However, the appraisal of the assets subject to reversion would not undergo any type of administrative or judicial review.

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

303 National Assembly of Ecuador. October 14, 2011. *Telecommunications and Postal Services Bill*. Draft of Article 130. “Article 130.- Parameters of Reversion.- Without prejudice to what the Telecommunications Oversight and Regulatory Agency may order in its resolutions, the following parameters must be met for purposes of reversion: // 1. Reversion may occur only through the respective administrative procedure. (…) // 5. Once the respective appraisal has been performed, the Telecommunications Oversight and Regulatory Agency shall pay the original price, minus depreciation and amortization, of all the assets that are the subject of the service and the concession in question, bearing in mind what is stated in the books used by the operator for income tax return purposes. // 6. The appraisal performed in accordance with this article shall not be subject to administrative or judicial challenges of any kind.” Available at: http://conatel.gob.ec/site_conatel?option=com_content&view=article&id=1461:proyecto-de-ley-organica-de-telecomunicaciones-y-de-servicios-postales&catid=449:publicaciones-2011&Itemid=450
181. In the same month of October 2011, the Government reportedly introduced the draft Comprehensive Criminal Code to the legislature. According to reports, this bill proposes to repeal the laws known as “desacato,” which is an important step forward. Nevertheless, the law keeps offenses such as defamation against public servants and extends their application to insults made in private or abroad. The bill, which unifies the Criminal Code, the Code of Criminal Procedure, and the Code of Execution of Sentences and Social Rehabilitation in a single text, prescribes prison terms of up to 3 years for persons who make accusations against authorities that amount to defamation [injurias calumniosas o no calumniosas], prohibits the defense of truth for persons accused of defamation that does not constitute the imputation of criminal conduct [injuria no calumniosa], and imposes criminal liability against foreign authors or facilitators of “defamatory” articles that are reprinted in Ecuador, as well as against those responsible for publishing or reprinting such information abroad, among other provisions.

182. The Office of the Special Rapporteur received information that the Attorney Code of Professional Conduct drafted by the Transitional Council of the Judiciary (CJT) was presented at the end of June. In the wake of the constitutional referendum and the plebiscite of May 7, 2011, it was suggested that the professional ethics rules of legal practice in Ecuador be redefined. With respect to this proposal, the Office of the Special Rapporteur notes the content of Articles 13 and 14 of the bill. Article 13 provides that “the attorney may not disclose, through any advertising medium, matters he is handling that are still pending before the courts and tribunals, except to correct the morals and justice violated. Upon the conclusion of the case, he may publish the filings and records of the proceedings, making his remarks in the draft Comprehensive Criminal Code.

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

305 National Assembly of Ecuador. Draft Comprehensive Criminal Code. October, 2011. “Article 121.- Defamatory accusations against an authority [imputación calumniosa a la autoridad].- Any person who makes accusations against an authority that constitute the defamatory imputation of criminal conduct [injuria calumniosa] shall be punished by a term of imprisonment ranging from one to three years, and a fine ranging from one to ten times the general minimum monthly wage. / If the accusations against the authority constitute serious defamation, but not the imputation of criminal conduct [injuria no calumniosa], the term of imprisonment shall range from six months to two years, and the fine shall range from one to ten times the general minimum monthly wage.” Available at: http://documentacion.asambleanacional.gov.ec/alfresco/d/d/workspace/SpacesStore/233c7e51-a5a7-4c0e-a848-79e6ead2a9c/Ley%20del%Código%20Orgánico%20Integral%20Penal; Buró de Análisis Informativo. Draft Comprehensive Criminal Code. October 15, 2012. Available at: http://www.burodeanalisis.com/2011/10/15/proyecto-de-codigo-penal-integral/


307 National Assembly of Ecuador. Draft Comprehensive Criminal Code. October, 2011. “Article 126.- Defamation published abroad [injurias publicadas en el extranjero].- Defamatory statements, whether or not they constitute the imputation of criminal conduct [injurias calumniosas o no], published in foreign advertising 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.” Available at: http://documentacion.asambleanacional.gov.ec/alfresco/d/d/workspace/SpacesStore/233c7e51-a5a7-4c0e-a848-79e6ead2a9c/Ley%20del%Código%20Orgánico%20Integral%20Penal; Buró de Análisis Informativo. Draft Comprehensive Criminal Code. October 15, 2012. Available at: http://www.burodeanalisis.com/2011/10/15/proyecto-de-codigo-penal-integral/


a respectful and measured manner." In addition, Article 14 considers it "professionally unethical for an attorney to use his expertise to answer questions on the radio, television, or other media, issuing opinions on specific legal cases, regardless of whether his services are provided free of charge." 311

183. The information available indicates that on October 3, the Council of Citizen Participation approved the regulations for the selection of the new Council of the Judiciary. Article 15 of the regulations establishes the requirement that, to be admissible, public challenges to the candidates nominated must not adversely affect the constitutional rights of the challenged candidate. During the approval process, the councilmembers reportedly disagreed with the article, particularly with regard to the potential rejection of challenges that adversely affect the "good name" of the challenged candidates; nevertheless, the article was adopted by a four-vote majority. 312

C. Subsequent liability

184. The Office of the Special Rapporteur views with concern the increased use during recent years of criminal laws that define conduct such as desacato or insults against a public servant as criminal offenses, as well as civil laws that could lead to the imposition of disproportionate penalties against individuals who have publicly expressed criticism of high-ranking government officials in Ecuador. In 2011, the Office of the Special Rapporteur learned of criminal defamation convictions against seven people who allegedly criticized public servants, in addition to other criminal cases related to the exercise of freedom of expression. 313 Additionally, the Office of the Special Rapporteur has expressed its concern


312 Republic of Ecuador. Council of Citizen Participation. October 3, 2012. Regulations for the Appointment of Members of the Council of the Judiciary. "Art. 15.-Evaluation of challenges. - The plenary session of the CPCCS shall evaluate challenges within a period of three days. It shall accept the challenges it considers admissible, and shall reject those that fail to comply with the specified requirements, lack public relevance, and/or adversely affect the constitutional rights of the challenged candidate. The parties shall be notified of decisions within two days, in accordance with Article 3 of these regulations." Available at: http://www.participacionycontrolsocial.gob.ec/c/document_library/get_file?uuid=74ef67eb-46f3-4bfa-9c34-d86c7df8f8b&group_id=10136

313 On February 1, indigenous leader and former director of the community radio station La Voz de Arutam, José Acacho, was arrested on criminal charges alleging sabotage and terrorism, because of messages that were broadcast on that station. On April 27, journalist Wálter Vite Benitez was arrested in Esmeraldas when he was convicted on appeal and sentenced to a year in prison and a $500 fine. On September 20, the convictions of the directors of the newspaper El Universo, Carlos Nicolás Pérez Lapentti, Carlos Pérez Barriga, and César Pérez Barriga, and journalist Emilio Palacio, were affirmed on appeal. The defendants were sentenced to three years in prison and ordered to pay US $40 million (US $30 million to be paid by the defendants, and US $10 million by the company). On November 25, indigenous leader Mónica Chují was sentenced to one year in prison and ordered to pay a fine of US $100,000, for having referred to the Minister of Public Administration as a "nouveau riche." IACHR. Annual Report 2011. OEA/SER.L/V/II. Doc. 69. December 30, 2011. 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. 160, 163, 164 & 173. Available at: http://www.oas.org/es/cidh/expresion/docs/informes/anuales/2012%2003%2021%20Informe%20Anual%20RE%202011%20imprimir.pdf; On December 21, the director of the newspaper Hoy, Jaime Mantilla Anderson, was sentenced to three months in prison and ordered to pay a fine of US $25, because of several articles that called into question the supposed authority of the Chairman of the Board of the Central Bank to make important economic decisions. IACHR. Office of the Special Rapporteur for Freedom of
over the existence of criminal defamation laws that in 2011 empowered the authorities to arrest and prosecute citizens who expressed opposition to President Rafael Correa during his public appearances.314

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

186. On February 6, the Fifth Civil Court of Pichincha Province reportedly ordered journalists Juan Carlos Calderón Vivanco and Christian Gustavo Zurita Ron to pay US $2 million (US $1 million each) for pain and suffering. According to the information received, the case stemmed from publication of the book El Gran Hermano [Big Brother], in which the journalists reportedly referred to President Rafael Correa’s alleged knowledge of contracts awarded by the State to companies tied to his brother Fabricio Correa.315 On February 28, 2011, President Correa reportedly brought suit against the journalists, alleging that the book contains “false facts” that would tarnish his good name.316

187. On February 16, the Special Criminal Division of the National Court of Justice affirmed the criminal and civil judgments against the directors of the newspaper El Universo, Carlos Nicolás Pérez Lapentti, Carlos Pérez Barriga, and César Pérez Barriga, sentencing them to three years in prison and ordering them to pay US $40 million (US $30 million to be paid by the defendants, and US $10 million by the company).317 The directors, and journalist Emilio Palacio, were convicted of the offense of defamation of a public authority [injuria calumniosa contra autoridad pública] for the publication of an offensive column about President Rafael Correa, and on December 27, 2011, the same court rendered the decision with respect to Palacio final and unappealable. The case was based on a column Palacio published on February 6, 2011, entitled “NO to Lies” [“NO a las mentiras”], in which he harshly questioned decisions allegedly made by President Correa during the events of September 30, 2010. The President rejected Palacio’s assertions and was of the opinion that they harmed his reputation; therefore, he filed the complaint on March 21, 2011, requesting time in prison for the author of the column and the directors of the newspaper, as well as the award of damages amounting to US$ 80 million in his favor.318


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


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

On May 17, the Fifth Court of Criminal Guarantees of Pichincha issued precautionary measures against four of the members of an independent investigation group [veeduría] created by the Council of Citizen Participation and Social Oversight (CPCCS), in a criminal case alleging the commission of a crime involving public instruments. The defendants were prohibited from traveling outside the country and were required to appear before the Court every two weeks. The independent investigation group had been created at the request of President Rafael Correa, to “monitor the transparency of the termination of contracts dealings between the Ecuadorean State and Engineer Fabricio Correa Delgado,” his brother. The independent investigation group, originally comprised by 5 principals and 5 alternates, began its work on July 4, 2009, and on February 3, 2011, it reportedly submitted its final report to the Comptroller General of the Republic. In that report, some of the members of the group reportedly demanded heavy damages, jail terms. Available at: http://cnnespanol.cnn.com/2012/02/27/rafael-correa-habla-sobre-la-sentencia-contra-el-diario-el-universo/; La Opinión/ EFE. February 27, 2012. Correa: ‘Hay perdón, pero no olvido’. Available at: http://www.laopinion.com/article/20120228/NEWS04/120229565

Available for consultation at: http://www.funcionjudicial-pichincha.gob.ec/index.php/consulta-de-procesos

Available at: http://www.participacionycontrolsocial.gob.ec/web/guest/boletines/-/asset_publisher/b2Kh/content/conformacion-de-la-veeduria-ciudadana:-caso-fabricio-correa?redirect=%2Fweb%2Fguest%2Fboletines%3Fp_id%3D101_INSTANCE_b2Kh%26p_lifecycle%3D0%26p_state%3Dnormal%26p_mode%3Dview%26p_col_id%3Dcolumn-3%26p_col_count%3D1%26101_INSTANCE_b2Kh_delta%26101_INSTANCE_b2Kh_keywords%3D%26101_INSTANCE_b2Kh_advancedSearch%3Dfalse%26101_INSTANCE_b2Kh_andOperator%3Dtrue%26cur%3D9; Hoy. February 21, 2011. Polémica por informe de veeduría. Available at: http://www.hoy.com.ec/noticias-ecuador/polemica-por-informe-de-veeduria-459884.html

Available at: http://www.participacionycontrolsocial.gob.ec/web/guest/boletines/-/asset_publisher/b2Kh/content/conformacion-de-la-veeduria-ciudadana:-caso-fabricio-correa?redirect=%2Fweb%2Fguest%2Fboletines%3Fp_id%3D101_INSTANCE_b2Kh%26p_lifecycle%3D0%26p_state%3Dnormal%26p_mode%3Dview%26p_col_id%3Dcolumn-3%26p_col_count%3D1%26101_INSTANCE_b2Kh_delta%26101_INSTANCE_b2Kh_keywords%3D%26101_INSTANCE_b2Kh_advancedSearch%3Dfalse%26101_INSTANCE_b2Kh_andOperator%3Dtrue%26cur%3D9; Hoy. February 21, 2011.

Available at: http://www.participacionycontrolsocial.gob.ec/web/guest/boletines/-/asset_publisher/b2Kh/content/conformacion-de-la-veeduria-ciudadana:-caso-fabricio-correa?redirect=%2Fweb%2Fguest%2Fboletines%3Fp_id%3D101_INSTANCE_b2Kh%26p_lifecycle%3D0%26p_state%3Dnormal%26p_mode%3Dview%26p_col_id%3Dcolumn-3%26p_col_count%3D1%26101_INSTANCE_b2Kh_delta%26101_INSTANCE_b2Kh_keywords%3D%26101_INSTANCE_b2Kh_advancedSearch%3Dfalse%26101_INSTANCE_b2Kh_andOperator%3Dtrue%26cur%3D9; Hoy. February 21, 2011.

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

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

191. The Office of the Special Rapporteur was informed that on September 25 a complaint alleging serious non-calumnious defamation (injurias no calumniosas graves) against the executive director of the newspaper La Nación, Yaco Marlon Martínez, was admitted by the Second Court of Criminal Guarantees of Carchi. The complaint, filed by the then-governor of the Province of Carchi, was based on the alleged harm to her honor caused by the journalist’s criticism of certain matters related to her position.
192. On October 2, the Family, Women, Infancy and Juvenile Judicial Unit No. 3 of the Canton of Guayaquil imposed a fine of US $500 against El Universo for having published a photograph of the (minor) grandchildren of former President Abdalá Bucaram and their parents during a visit to President Rafael Correa at Carondelet. The publication of that photograph was reportedly authorized by the children's parents. Upon its publication, the Ministry of Social and Economic Inclusion reportedly took steps to obtain protective measures in court against the newspaper and the parents of the minors, apparently to prevent the children's image from being used for political purposes. Based, among other dispositions, on article 52 of the Juvenile Code 329 (prohibition against using children for purposes of political propaganda), the court ordered the newspaper not to publish images of children again without taking account of their rights. It also prohibited the “reproduction of the decision by any medium,” finding that it could adversely affect the judicial protection provided for therein. 330

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

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

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


the publication would not create in its readers the impression of being “a reply” from the government to
the publications under scrutiny but a “judicial rectification” of constitutional nature”.333

195. The Office of the Special Rapporteur has been informed that government officials have
advised the media of their intention to open criminal investigations against them based on criticism
published by readers in the “readers’ remarks” space. The information received indicates that on
September 18, in reaction to reader comments published in the online edition of the newspaper El
Comercio, National Secretary of Communications Fernando Alvarado warned the newspaper that he
reserved “the right to request information on the individuals whose comments may be defamatory,
offensive, or prejudicial, and which may amount to a criminal offense, in which case the courts will
determine the liability of the person and, if appropriate, the recovery of financial damages.” Based on this
letter, El Comercio reportedly omitted the comments option on its website.334 Subsequently, during
episode 292 of his program Enlace Ciudadano on October 6, President Correa expressed his approval of
the Minister’s letter for purposes of possibly having the newspaper provide the names of those who had
made the comments considered insulting.335

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

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

D. Stigmatizing statements

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

http://www.funcionjudicial-pichincha.gob.ec/index.php/consulta-de-procesos
O. Available at: http://www.pixelperpetua.net/docs/NOTA-ELCOMERCIO.pdf; El Diario. October 1, 2012. Diario El comercio cancela
la opcion de comentarios en su sitio web. Available at: http://www.eldiario.com.ec/noticias-manabi-ecuador/243993-diario-el-
ratifica pedido para que se entregue los nombres de quienes comentan en la web de diario. Available at: http://www.ifex.org/ecuador/2012/10/16/comercio_request/es/
335 Office of the President of the Republic of Ecuador. Enlace Ciudadano 292. October 6, 2012. Available at:
guito&catid=43:enlaces-ciudadanos-todos&Itemid=67 [from 2:38:56].
336 National Secretariat of Communications of Ecuador. Enlace Ciudadano. Available at:

199. According to information received, during episode 253 of Enlace Ciudadano, on January 7, 2012, President Correa alluded to the alleged animosity of the newspaper El Comercio toward the leader of the Liberal Revolution, Eloy Alfaro, on the occasion of the 100th anniversary of his January 28, 1912 assassination. The President reportedly conjured up the involvement of a “corrupt press,” in clear
allusion to *El Comercio* in those “fateful days” of January, 1912.\(^{348}\) The information received also indicates that starting on January 23, 2012 graffiti against private media outlets began to appear on walls around the city of Quito. The graffiti reportedly included the following: “Weapons of mass destruction: *El Comercio*, *El Universo*, Teleamazonas;” “We are reborn every day by killing revolutions (signed) *El Comercio*;” “If you buy *El Comercio*, you burn me again (signed) Eloy Alfaro;” “Bonfires yesterday, defamation today, ashes tomorrow (signed) *El Comercio*.\(^{349}\)

200. The Office of the Special Rapporteur learned that in *Enlace Ciudadano* 255, of January 21, President Correa presented a short video meant to “disprove” a report by Fausto Yépez of Teleamazonas. The video refers to Teleamazonas as “a channel where unethical journalists make false remarks,” to Yépez’s report as “a big lie,” and to Yépez as a journalist who “limits himself to copying others.”\(^{350}\) In his report, the journalist investigated alleged “parallel intelligence” operations in the government, and the supposed existence of a “network of espionage” in the Ministry of Labor Relations. Apparently, a similar video had been released on January 24 as a presidential broadcast aired during the interview program ‘Los desayunos 24 horas’ and the ‘Comunidad de Teleamazonas’ news broadcast.\(^{351}\)

201. According to the information received, in *Enlace Ciudadano* 271, of May 12, 2012, President Correa reportedly discredited the 2011 Report on Human Rights in Ecuador by the Universidad Andina Simón Bolívar, calling it “an academic fraud.”\(^{352}\) President Correa’s criticism focused on a subsection of the human rights “balance sheet,” which indicated that in 2011 there were 204 cases of prosecution for sabotage and terrorism against individuals who had reportedly taken part in social protests. The President stated: “It is shameful for the Andina University to sponsor this type of research (…) if we are lying (…) I give the floor [to the president of Universidad Andina] to tell us, here are the 204 sabotage and terrorism cases in 2011 (…) this is an academic fraud, it’s a huge embarrassment (…) Universidad Andina’s source for its big investigation, to say that there are 204 people being prosecuted


for sabotage and terrorism, is a press release from CONAIE—what an embarrassment.”

President Correa reiterated similar criticism in *Enlace Ciudadano* 272 of May 19, in the following terms: “This is shameful. This is a compilation from a bunch of rags, without any academic rigor, bald-faced lies from opponents trying to harm the government (...) this is an academic fraud that they have not been able to explain.” On this issue, the coordinator of the report clarified that – as indicated in the respective report – the figure mentioned by the President did not correspond to the number of cases filed, but to the number of people that were prosecuted. The Chancellor of the University noted that the lack of available public information was an obstacle to the elaboration of the report. According to data presented in the report, 21% of the State bodies that were consulted did not respond to the information requests, while 64% of the consulted institutions presented partial information in response to the requests made by the University.

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

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

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

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

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360 Office of the President of the Republic of Ecuador. *Enlace Ciudadano* 295. October 27, 2012. Available at Ecuador TV: http://www.ecuadortv.ec/programasecuadortv.php?c=1314 [157:35]. “Get these people some psychiatrists. Starting with the other, Gonzalito, who we all know is sick, oh please, in addition to being extremely slow-witted. This guy used to call me “my brother” on *Radio Democracia*—that’s what he used to call me before the 2006 elections. But since I don’t know if he’s his compadre, but he called León Roldós—who came in fourth place in 2006—his compadre, and he started calling me a spoiler candidate who could never win (…) And the worst thing is that we beat him, we thrashed him, and from then on he’s hated me to death, and he uses his microphone to vent this sick hatred, and in addition to being mediocre, he’s semi-ignorant, he’s terribly incompetent.”
206. The Office of the Special Rapporteur was informed that in *Enlace Ciudadano* 298 of November 24, President Rafael Correa publicly disparaged the newspaper *El Universo* for opinions published in the paper about Pedro Delgado, head of the Central Bank. In his speech, the President stated that the newspaper’s recent publications had omitted Delgado’s statements, and therefore the newspaper “prints whatever it finds convenient.” After recounting some events related to the supposed “persecution” of Delgado, the President stated in reference to *El Universo*, “They don’t know what to do anymore, I mean, the evil, you see when, the lack of ethics in the media—but that is not by accident—there’s money there, there’s someone paying there.” Next, President Correa ripped up a copy of *El Universo* and stated: “the corrupt press is useless, comrades.”

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

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

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209. The Office of the Special Rapporteur received information relating to government challenges to the organization Fundamedios during the month of April, 2012. According to reports, in *Enlace Ciudadano* 268, on April 21, the President claimed that the organization had contacts with the United States Embassy in Quito.\(^{366}\) These allegations were reiterated in *Enlace Ciudadano* 269, on April 28.\(^{367}\) In *Enlace Ciudadano* 276 of June 16, a video was presented that alluded to Fundamedios as a “foundation considered to be an informant to the American Embassy, according to the Wikileaks cables.”\(^{368}\) Later, in the June 23 episode of the program, the President reportedly referred to Fundamedios and other NGOs as “informants of the embassies,” and reportedly claimed that they received millions of dollars from USAID to strengthen the political opposition.\(^{369}\) On that same episode of *Enlace Ciudadano*, President Correa also referred to César Ricaurte’s speech before the IACHR, in


which he reportedly said that “there was no freedom of association” in Ecuador because the government had suggested that it was necessary for NGOs to be accountable to the government. 370

210. Additionally, the Office of the Special Rapporteur learned that César Ricaurte, in his capacity as Executive Director of Fundamedios, reportedly published an “open letter” to President Correa regarding his statements about the Wikileaks cables. In that letter, Ricaurte reportedly said, among other things, that the Wikileaks cable 371 to which President Correa was apparently referring had to be read “in an unbiased manner,” that it reflected the American Embassy’s perception of the status of freedom of the press in Ecuador based on public information from press organizations such as Fundamedios, and that the cable did not state that Fundamedios was operating as an agent of the embassy. 372

211. The Office of the Special Rapporteur was informed that on May 4, Ecuador’s Ministry of Foreign Affairs issued Press Release No. 23, “regarding statements of the President of the United States of America on the occasion of World Press Freedom Day.” In that press release, the Ministry “rejects the unfounded accusation of President Obama in reference to [the threats and harassment of César Ricaurte], about [which] he was evidently misinformed.” In addition, the Ministry refers to Fundamedios as a “known informant of the United States Embassy” and as an organization that is “part of a campaign of disparagement against the State and its institutions.” 373

212. According to information received, on November 29, during a radio interview, the Communications National Secretary reportedly called Colombian documentary filmmaker Santiago Villa a “paid liar” and an “assassin of the truth,” and reportedly suggested that the documentary could result in


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

372 Fundamedios. April 26, 2012. *Carta abierta de Fundamedios al Presidente Correa*. Available at: http://www.fundamedios.org/portada/libertades/boletines/libertad-de-expresion/ultimos/item/carta-abierta-de-fundamedios-al-presidente-correa-2.html. The letter reads: “(…) Currently, his attacks [referring to President Correa] are saying that we have supposedly been a “contact” or are “informants” of the Embassy of the United States in Ecuador. He cites a Wikileaks cable in support of his assertions. Nevertheless, if the cable is reviewed in an unbiased manner, what it says is that the concerns about the state of freedom of the press, and the restrictions thereto, expressed in that cable, are based on information from press organizations such as Fundamedios or AEDEP. In our case, those concerns are not a secret and have no conspiratorial connotation. Furthermore, we have expressed such information, as well as the respective assessments, publicly and openly.” El Comercio. April 28, 2012. *Fundamedios aclara cable de Wikileaks*. Available at: http://www.elcomercio.com/politica/Fundamedios-aclara-cable-de-Wikileaks_0_689931217.html

213. According to information received, on December 6, the National Journalists' Union [Unión Nacional de Periodistas] (UNP, in its Spanish acronym) expressed its concern over the fragile state of freedom of expression in Ecuador. In a press release, the UNP’s Board of Directors spoke out about the continuation of “an aggressive policy and an orchestrated campaign to remove journalists from their jobs who refuse to remain silent in light of denunciations against the powers that be.” In that press release, the UNP also recalled the “repeated verbal violence” aimed at “denigrating the profession of journalism,” and it rejected “the pressures exerted upon journalists who cause discomfort in different spheres of power”—pressures that, in its opinion, have led several journalists to withdraw from news reporting.375

214. As in its prior annual reports, the Office of the Special Rapporteur reiterates the importance of “creating a climate of respect and tolerance for all ideas and opinions.” The Office of the Special Rapporteur recalls that “diversity, pluralism, and respect for the dissemination of all ideas and opinions are essential conditions for the proper functioning of any democratic society. Accordingly, the authorities must contribute decisively to the building of a climate of tolerance and respect in which all people can express their thoughts and opinions without fear of being attacked, punished, or stigmatized for doing so. In addition, the State’s duty to create the conditions for all ideas and opinions to be freely disseminated includes the obligation to properly investigate and punish those who use violence to silence journalists or the media.”376 The Office of the Special Rapporteur additionally recalls that freedom of expression must be guaranteed not only with respect to the dissemination of ideas and information that are received favorably or considered inoffensive or indifferent but also in cases of speech that is offensive, shocking, unsettling, unpleasant, or disturbing to the State or to any segment of the population.377

215. The Office of the Special Rapporteur additionally recalls that public servants have the duty to ensure that their statements do not infringe upon the rights of those who contribute to the public discourse through the expression and dissemination of their thoughts, such as journalists, media outlets, and human rights organizations. They must bear in mind the context in which they express themselves, in order to ensure that their expressions are not, in the words of the Court, “forms of direct or indirect
interference or harmful pressure on the rights of those who seek to contribute [to] public deliberation through the expression and [dissemination] of their thoughts.\textsuperscript{378}

E. Assaults and attacks on the media and journalists

216. The Office of the Special Rapporteur views with concern the increased harassment of journalists and media workers in a highly polarized social environment.

217. According to information received by the Office of the Special Rapporteur, on January 17, journalists Hubel and Alcibiades Onofre, television news correspondents for Gama and TC Televisión, were reportedly verbally attacked and threatened by unknown persons in the city of Babahoyo. According to the journalists, this event was related to the publication of a news item that romantically linked a congressman to a woman accused of being the mastermind of a triple murder.\textsuperscript{379}

218. On March 7, alleged relatives of an individual arrested in an anti-drug operation reportedly threw rocks at the cameraman from the television station Canela TV, Geovanny Vinueza, who was covering the police action in south Quito. According to reports, Vinueza was attacked until police officers came to his aid.\textsuperscript{380} On March 12, Javier Granados, a journalist and the owner of the weekly newspaper La Noticia, was reportedly physically attacked by a professional athlete, apparently as a result of the publication of an item in a satirical column in the paper.\textsuperscript{381} Moreover, on March 19, in the central park of Ambato, journalist Máximo Barba of Ecuador TV was reportedly prevented from covering the indigenous peoples’ Plurinational March to Quito. One individual reportedly told him that the pro-government media had restricted coverage of the march, and shortly thereafter, demonstrators allegedly assaulted the journalist and his cameraman.\textsuperscript{382} According to information received, on March 28, the director of the newspaper El Telégrafo, Orlando Pérez, reported having received death threats after publishing an opinion column in which he criticized an opposition member of the National Assembly.\textsuperscript{383}

219. On June 19, journalists from various media outlets were reportedly verbally assaulted during a press conference organized by the mayor of Cuenca. According to information received, the journalists were received with verbal expressions such as “the prefect’s dog,” “corrupt press,” “get out of here, sellout press.” The journalists from Radio Católica, Splendid, Visión, Ondas Azuayas, Cómplice, and the channels Unión TV and Austral TV decided to leave the room.\textsuperscript{384} According to information


received, on July 25, blogger Pablo Villegas reportedly received an intimidating message on his blog Con voz y sin voto, containing death threats against his son. The blogger reportedly received protection from the Ministry of Interior.\(^{385}\) In addition, on June 26, Yadira Romo, the press officer at the Office of the Governor of Carchi, reported having received death threats directed at her and her family after taking photographs of an altercation between two journalists who were interviewing the provincial prefect. She also reportedly received protection from the authorities.\(^{386}\)

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

221. According to information received, on September 4, Antonio Medrano, a journalist for El Universo in Babahoyo, reportedly received death threats by phone.\(^{389}\) On September 23, journalist Alejandro Escudero of the weekly Independiente in the city of Nueva Loja was reported to have been threatened by two unknown individuals who entered his office, one of whom showed him a handgun.\(^{390}\) In addition, on September 25, Gonzalo Rosero, journalist and director of the program ‘Democracia’ on the EXA FM radio station, stated publicly that he had been the victim of “systematic” attacks and threats throughout the entire year, and that they had intensified during the month of September.\(^{391}\)
222. The Office of the Special Rapporteur was informed of the decision of journalist Janet Hinostroza to leave the program ‘La Mañana de 24 Horas’ on the Teleamazonas channel as a result of serious threats. The news program had reportedly been subject to government interruptions in the past, in the form of the airing of presidential broadcasts. In mid-September, 2012, Hinostroza reported on alleged irregularities in a loan granted by the State-run COFIEC Bank to an Argentine businessman. After receiving telephone threats, Hinostroza decided not to present the final chapter of the report, and announced that she was leaving the program temporarily. According to the information available, the Communications National Secretary expressed his rejection of the threats against Hinostroza, and the Ministry of Interior offered protection measures to the journalist. On September 22, President Correa publicly condemned the threats and stated that the proper investigations were being conducted. He expressed his solidarity, and lamented what had happened, but without changing his opinion of the reporter, who he considered to be “a terrible journalist,” “political,” and a “political intriguer.”

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

224. The Office of the Special Rapporteur also learned that on May 30 the email account of Edgar Llerena, director of the weekly newspaper Radimpa, in the city of Macas, had allegedly been hacked and used to send mass emails to his contacts. According to information received, the director stated at a press conference that the paper had been subject to a campaign to undermine it since October 2011.

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

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

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

227. The Office of the Special Rapporteur learned that on March 27, a presidential radio broadcast ordered by the National Secretariat of Communications [Secretaría Nacional de Comunicación] (SECOM, in its Spanish acronym) reportedly interrupted a news program on the radio station Democracia-Exa FM in order to refute the information disseminated and to criticize the journalistic work of Gonzalo Rosero, the program’s host. The presidential broadcast, which interrupted only the program in question, was meant to refute “blatant lies” and to clarify “information that is far from the truth” relating to issues discussed on the program.\footnote{Alert No. 448: Cadena de gobierno interrumpe espacio informativo para rebatir y aclarar “mentiras”. Available at: http://www.fundamedios.org/portada/libertades/alertas/historico/2012/item/cadena-de-gobierno-interrumpe-espacio-informativo-para-rebatir-y- aclarar-mentiras.html}

228. On May 24, a presidential radio broadcast ordered by the SECOM reportedly interrupted the news on the television station Ecuavisa in order to criticize its editorial line and to disparage a former Army intelligence chief who had been interviewed on the news program regarding air defense and drug trafficking matters. The presidential broadcast was reportedly aired during this program’s time slot, and it asserted that the former official “was separated from the Army for innumerable problems with his performance,” and that he was “the last former official who should talk about security matters.”\footnote{Gobierno dedica cadena para descalificar a estación televisiva y un entrevistado. Available at: http://www.fundamedios.org/portada/libertades/alertas/historico/2012/item/gobierno-dedica-cadena-para-descalificar-estacion-telesivista-y-un-entrevistado.html; Youtube. La verdadera cara del Coronel Mario Pazmino. Posted by bolivartelevision on June 7, 2012. Available at: http://www.youtube.com/watch?v=0n-vE9gAGAo}

229. The Office of the Special Rapporteur was informed that on September 9, a nation-wide presidential broadcast was issued, calling into question the accuracy of several articles and reports published by El Universo.\footnote{ADEPA. September 17, 2012. Gobierno de Ecuador critica a medios por cadena nacional. Available at: http://www.adepa.org.ar/secciones/noticias/nota.php?id=971; Youtube. Cadena El Universo el mayor diario. Posted by ComunicacionEcuador on September 13, 2012. Available at: http://www.youtube.com/watch?v=JKPK2QeO_tA&feature=plcp} On September 11, another broadcast reportedly interrupted the Teleamazonas program ‘Los Desayunos de 24 Horas’ to refute the supposedly erroneous remarks that a
guest on the program had made about President Correa’s breakfast during a visit to Loja. On September 13, another national presidential broadcast was reportedly dedicated to explaining the reasons for the seizure of assets from the magazine *Vanguardia*. Additionally, on October 8, a presidential broadcast reportedly cut into the broadcasts of five radio stations in order to explain the reasons for which the Electoral Tribunal had sanctioned the magazine *Vistazo*. On October 10, another broadcast was reportedly issued to assert that some media outlets were not complying with the labor laws. The broadcast reportedly criticized Fundamedios, claiming that it failed to protect journalists. This broadcast was apparently issued around the same time Fundamedios had challenged a government policy in court.

230. The Office of the Special Rapporteur learned that on November 6 and 9, various radio broadcasts ordered by the National Secretariat of Communications reportedly interrupted the programming of some radio stations to take issue with the opinions and news disseminated by Gonzalo Rosero on the *Democracia* station. In the first case, the broadcast intended to challenge the opinion of jurist Ramiro Aguilar in relation to the funding of the “Development Bonus,” one of the Ecuadorian Government’s public social programs. The purpose of the second one was to contest what Álvaro Vargas Llosa had said about economic growth data for Ecuador in comparison to Peru.

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

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232. The Office of the Special Rapporteur has recognized the authority of the President of the Republic and high-ranking government officials to use the media for purposes of informing the public of prevailing matters of public interest; nevertheless, the exercise of this power is not absolute. The information that governments convey to the public through the presidential broadcasts must be strictly necessary to meet the urgent need for information on issues that are clearly and genuinely in the public interest, and for the length of time strictly necessary for the conveyance of that information. In this respect, both the IACHR and its Office of the Special Rapporteur, as well as some national bodies of States party to the American Convention, applying international standards, have indicated that not just any information justifies the interruption by the President of the Republic of regularly scheduled programming. Rather, it must be information that could be of interest to the masses by informing them of facts that could be of public significance and that are truly necessary for real citizen participation in public life. Additionally, the fifth principle of the IACHR’s Declaration of Principles states that: “prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”

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

G. Access to public officials and government buildings

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


235. The Office of the Special Rapporteur received information that on June 16, President Rafael Correa affirmed his decision to prohibit his ministers and State officials from giving interviews to certain privately-held media outlets. According to information received, the President justified his decision on news reports that were made “in bad faith” with the intention of “destroying the honor” of high-ranking public officials and their families. He also asserted that the government could not contribute to the business of the privately owned press. This Office of the Special Rapporteur was also informed that the Minister of Policy Coordination and the National Secretary of Communications reportedly made sure that the members of the president’s cabinet would not give interviews to privately-held media. According to information received, on September 5, the Human Rights Center of the Pontífica Universidad Católica del Ecuador and the NGO Fundamedios reportedly filed a writ [acción de protección] seeking to invalidate that policy; the action was dismissed by the trial court judge on September 20.

236. This Office of the Special Rapporteur has received information that various journalists under different circumstances have reportedly been excluded from public places or official government ceremonies, and their journalistic work has been impeded. They have also reportedly been subject to...

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such obstacles during government ceremonies and in public places at the regional and local levels.\textsuperscript{416} For example, on September 25, journalist Franklin Morán of \textit{Teleradio} was apparently blocked from participating in one of the briefings that President Rafael Correa regularly holds with the press. Days


\textsuperscript{416} On February 5, in the town of La Concordia, where a plebiscite was being held, members of the military and the police reportedly barred a team of journalists from the television station \textit{Telecosta} from the city of Esmeraldas from entering the area where the votes were being counted. Radio Sucre. February 8, 2012. \textit{Periodistas fueron impedidos de cubrir proceso electoral en La Concordia}. Available at: http://radiosucre.com.ec/index.php?option=com_content&view=article&id=22143:periodistas-fueron-impedidos-de-cubrir-proceso-electoral-en-la-concordia&catid=1:politica&Itemid=73; IFEX/ Fundamedios. February 9, 2012. \textit{Local media team banned from covering referendum vote counting}. Available at: http://www.ifex.org/ecuador/2012/02/09/local_media_banned/. On March 31, journalists from both private and state-owned media were reportedly made to leave the place in Guayaquil where aspiring judges were taking exams. Metroecuador. April 4, 2012. \textit{Periodistas impedidos de realizar cobertura en Consejo de Judicatura}. Available at: http://www.metroecuador.com.ec/24653-periodistas-impedidos-de-realizar-cobertura-en-consejo-de-judicatura.html; Fundamedios. April 4, 2012. Alert No. 452: \textit{Se impide cobertura en un concurso público del Consejo de la Judicatura}. Available at: http://www.fundamedios.org/portada/libertades/alertas/historico/2012/item/se-impide-cobertura-en-un-concurso-publico-del-consejo-de-la-judicatura.html. On November 12, in Loja, several journalists were reportedly prevented from doing their jobs and excluded from the premises where an agreement was being signed between Ministry of Labor Relations and the University of Loja Employees Union. La Hora. November 13, 2012. \textit{Funcionaria del régimen echó en Loja a periodistas de una cobertura}. Available at: http://www.lahora.com.ec/index.php/noticias/show/110142400/1/Periodistas_lojanos%2C_ayer%2C_fueron_impedidos_de_realizar_la_cobertura_period%2C_periodica_de_una_firma_de_convenio_entre_el_Ministerio_de_Relaciones_Laborales_%28MRL%29_y_el_Sindicato_de_Trabajadores_de_la_Universidad_Nacional_de_Loja_%28UNL%29..html; Fundamedios. No date. \textit{Periodistas son impedidos de cubrir evento en universidad pública}. Available at: http://www.fundamedios.org/portada/libertades/alertas/historico/2012/item/periodistas-son-impedidos-de-cubrir-evento-en-universidad-publica.html
earlier, Morán had asked questions that apparently made some high-ranking government officials uncomfortable.417

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

H. Appropriation of media and seizure of equipment

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


419 On January 7, the radio broadcaster Perla Orense was reportedly shut down and its equipment was seized. In previous months, CONATEL had reportedly decided to terminate the concession early, because of late payments on the frequency license of over six months. Republic of Ecuador. National Telecommunications Council (CONATEL). September 24, 2010. Resolution RTV-575-18-Conatel-2010. Available at: http://www.conatel.gob.ec/site_conatel/index.php?option=com_docman&task=doc_download&gid=5065&Itemid=1. On March 16, CONATEL decided not to renew the frequency license of radio station Sucre of Portoviejo because the term of the concession had expired. National Telecommunications Council (CONATEL). Resolution RTV-159-06-CONATEL-2012. March 16, 2012. Available at: http://conatel.gob.ec/site_conatel/images/stories/resolucionesconatel/2012/RTV-159-06-SUCRE%20STEREO.pdf. On May 23, the radio station El Dorado in the city of Nueva Loja was shut down, and its broadcasting equipment was seized. In previous months, CONATEL had reportedly decided to terminate the concession early, because of late payments on the frequency license of over six months. National Telecommunications Council (CONATEL). Resolution RTV-574-18-CONATEL-2010. September 24, 2010. Available at: http://www.conatel.gob.ec/site_conatel/index.php?option=com_docman&task=doc_download&gid=5064&Itemid=
requirements necessary for operation of the concession, or that there was “late payment of six or more

consecutive payments for the leasing of the frequency allocated,” or that the term had expired.\textsuperscript{420} The Office of the Special Rapporteur has been informed that in some of the cases the frequency holders reportedly claimed that CONATEL’s decision was based on political criteria and was in retaliation for the editorial stance taken by the medium.\textsuperscript{421}

\begin{itemize}
\item\textsuperscript{420} Republic of Ecuador. Broadcasting and Television Act. Supreme Decree No. 256-A. Official Gazette No. 785. April 18, 1975. Article 67 of the Broadcasting and Television Act establishes: “Art. 67. - The concession of a channel or frequency for the establishment and operation of a radio or television broadcasting station shall end: // a) Upon the expiration of the term of the concession, unless the licensee has a right of renewal pursuant to this Act.// b) At the will of the licensee. // c) Upon the death of the licensee.// d) For failure to establish the station within the time period granted by the Ecuadorean Institute of Telecommunications in accordance with the Regulations. // e) For the recurrence of technical infractions that have been sanctioned with two fines and one suspension. // There shall be no finding of recurrence if the Ecuadorean Institute of Telecommunications grants the licensee a period of time, not to exceed six months, for the permanent correction of the technical problem, without prejudice to the issuance of an order suspending the station's operation during the extension period. // f) Upon the loss of the licensee’s legal personality or the dissolution of the licensee corporation.// g) Upon the conveyance, lease, or transfer of the station to a district or city other than the one where the concession was granted without the prior authorization of the Ecuadorean Institute of Telecommunications. // h) In the event of the violation of clause (i) of Article 58; and, // i) In the event of the late payment of six or more consecutive payments for the leasing of the frequency. // j) In the event of noncompliance with clause (c) of Article 58 of the Broadcasting and Television Act.”

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Information received indicates that on May 23, the public television station Telesangay, Canal 30, which is owned by the Provincial Government of Morona Santiago, was closed. According to reports, in a resolution passed on October 13, 2010, the National Telecommunications Council (CONATEL) reportedly decided to initiate the process of terminating the station’s concession contract for the frequency due to an alleged failure to comply with the technical parameters established therein. Felipe Marcelino Chumpi Jimpikit and Juan Francisco Cevallos Silva, Provincial Prefect and Attorney for the Provincial Government, respectively, reportedly presented a petition to the president of the National Telecommunications Council (CONATEL) to request the revocation of the resolution which—in their judgment—was based on an ambiguous technical report. CONATEL subsequently disallowed the legal grounds of defense asserted by the licensees and ruled to continue with the process. It declared the early and unilateral termination of the concession contract, signed on May 13, 2009, on the grounds established in clause (d) of Article 67 of the Broadcasting and Television Act. Once the administrative proceedings had been exhausted, on January 23, 2012, the petitioners reportedly brought suit to challenge the ruling in the District Court of Administrative Appeals on the theory that CONATEL’s resolutions constituted irregular administrative acts. The Office of the Special Rapporteur was additionally informed that members of the Pachakutik opposition party reportedly issued statements to this effect that the actions of the authorities could be politically motivated.
240. The Office of the Special Rapporteur was also informed that Radio Morena of Guayaquil was reportedly shut down on July 6, in a government raid that turned violent. The National Telecommunications Council [Consejo Nacional de Telecomunicaciones] (CONATEL) specified that the grounds for its closure were: failure to renew the concession, noncompliance with the technical requirements established by law and in the concession contract, and the late payment of fees. Luis Almeida Morán, the station owner’s son and a member of the National Assembly representing the opposition party Sociedad Patriótica, claimed that he had evidence that the station was up to date in its payments, and that when the authority stopped accepting payment of the fees (from September, 2011 to May, 2012), the payments had been deposited with the court of competent jurisdiction.

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

I. Other relevant situations

http://www.fundamedios.org/portada/libertades/alertas/historico/2012/item/estacin-de-tv-es-clausurada-y-sus-transmisores-decomisados.html


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

It was reported that on March 3, while they were inside a private building in the Luluncoto sector of Quito, ten youths were arrested and subsequently prosecuted and held in detention, accused of crimes against the domestic security of the State (sabotage and terrorism). According to the information disclosed at the court hearings held during the criminal case, the ten detainees had allegedly gathered in order to discuss the National “Buen Vivir” Plan and to take part in the public demonstrations that would take place in the month of March. The Public Prosecutor’s theory is that the detainees are members of the group called “Combatientes Populares” [“The People’s Combatants”], which has allegedly been responsible for various explosions during 2011 in the cities of Quito, Guayaquil, and Cuenca. The authorities did not find weapons or explosives in the place of arrest, or with the youths that were detained. Human rights organizations like Amnesty International, Ecumenical Human Rights Commission (CEDHU), The Project for Social-Environmental Reparation Environmental Clinic, and the Regional Institute of Human Rights (INREDH) and high profile figures such as Baltazar Garzón agreed that in this case the application of sabotage and terrorism laws could be disproportionate and in violation of human rights. In November 9, 2012, the Third Tribunal of Criminal Guarantees of Pichincha, scheduled the trial hearing for the following December 10. At the time this report went to press, the

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youths were still deprived of their liberty, nine of them in detention centers, the tenth with a substitute preventive detention measure for reasons related to maternity.442

243. The Office of the Special Rapporteur received information indicating that in Enlace Ciudadano 282 on July 28, President Rafael Correa reportedly reiterated his willingness to suspend government advertising in privately owned media. In relation to the decision that public servants should not give interviews to the private media, President Correa said: “why don’t they take away government advertising then? [the private media asks and the President replies] Marvelous. Send me the letter, and then I’ll take it away. I’m still waiting for the letter (…) but [Diego Cornejo, Executive Director of AEDEP, referring to the President] insists: if you want to use your option as the government to withdraw advertising, say it to me twice (…) very well, Diego, we’re going to use that option, and my dear Fernando Alvarado, director of the SECOM. From this point forward, do not send government advertising to the mercantilist media—because there is no reason for us, with Ecuadorians’ money, to benefit the business of six families in this country…” In these terms, President Correa apparently ordered the National Secretary of Communications to withdraw government advertising from some privately held media outlets.443

244. The Office of the Special Rapporteur received information indicating that the Ecuadorean Government had reportedly taken steps to trademark of the terms “30S,” “30-S,” and “never forget” [“prohibido olvidar”], commonly used in relation to the violent events that took place in Ecuador on September 30, 2010. According to reports, the Ecuadorian Institute of Intellectual Property (IEPI) began the process of trademarking the phrases as government property. The expression “30S” reportedly emerged from the social networks, and to date has been used widely and freely by the public. At this time, the extent to which the public may freely continue to use those terms is not clear.444

245. According to information received, on October 29, the National Assembly’s Special Political Control and Oversight Committee reportedly presented a report to the National Assembly in relation to the investigations into possible acts of corruption in the granting of loans by the COFIEC Bank. Among other relevant matters, the Committee proposed asking to Ombudsman of the People “to investigate and safeguard the rights of citizens to receive accurate, verified, contextualized, timely, and diverse information, without prior censorship.” In its view, the press had not verified the information regarding the alleged irregularities surrounding a loan granted to Argentine citizen Gastón Duzac. The Committee also suggested urging the Office of the Prosecutor General to investigate who provided the media with “information that was confidential and subject to banking secrecy.”445


10. **El Salvador**

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

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

248. On December 5, the Constitutional Chamber of the Supreme Court of Justice of El Salvador found four articles of the regulations of the Access to Public Information Act unconstitutional. In its 2011 annual report, the Office of the Special Rapporteur expressed its satisfaction at the passage of

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the Access to Public Information Act, which entered into force in January of 2012.\textsuperscript{449} The judgment of the Constitutional Chamber recognized the fundamental right to access information and observed that according to the principle of maximum transparency, exceptions to this right “must be provided for in a previously established formal, written and precise law,” citing the \textit{Case of Claude Reyes} of the Inter-American Court. The Chamber concluded that the establishment of grounds for confidentiality based on national security, political security, and national interest in articles 2 and 29 of the regulations were not compatible with the aforementioned principles given that they created exceptions to a right that were not established by law. Likewise, the Chamber determined that Article 73, which gives the President of the Republic authority to veto candidates for the Institute on Access to Public Information, was contrary to the goal of citizen oversight of the selection of commissioners as established in the law. Finally, it declared Article 75 unconstitutional. According to the article, “Each government entity calling for bids will prepare a set of internal guidelines establishing the mechanisms by which it will comply with what has been established in the act and in these regulations.” The Chamber determined that this provision provided “an excessive scope or flexibility” with regard to the regulation of aspects of the law that must be included in the general regulations.

249. The Office of the Special Rapporteur received information on threats and harassment toward digital newspaper \textit{El Faro} after it published a number of articles on the operation of organized crime in El Salvador.\textsuperscript{450} On March 14, \textit{El Faro} published information on possible negotiations between authorities and gang leaders.\textsuperscript{451} Three days later, the Minister of Justice and Security told the director of \textit{El Faro}, Carlos Dada, that the newspaper staff ran the risk of being attacked by gang members.\textsuperscript{452} On March 19, the national spokespersons for the country's main criminal groups issued a press release dismissing the publication in \textit{El Faro} and indicating that “we find it beyond belief that people like journalist Carlos Dada exist, […] people who want to toy with our lives and the lives of so many other innocents.”\textsuperscript{453} Later, \textit{El Faro} alleged that the newspaper's personnel were being followed.\textsuperscript{454} The Salvadoran government announced its willingness to protect the newspaper.\textsuperscript{455}


\textsuperscript{451} El Faro. March 14, 2012. \textit{Gobierno negoció con pandillas reducción de homicidios}. Available at: \url{http://www.elfaro.net/es/201203/noticias/7985/}


\textsuperscript{453} El Faro. No date. \textit{Los voceros nacionales de la mara salvatrucha MS13 y pandilla 18}. Available at: \url{http://www.elfaro.net/attachment/395/comaras.pdf?g_download=1}

\textsuperscript{454} Committee to Protect Journalists (CPJ). April 6, 2012. \textit{El Salvador government pledges to protect El Faro}. Available at: \url{http://www.cpj.org/blog/2012/04/el-salvador-presidential-spokesman-pledges-to-prot.php}

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

11. United States

A. Progress

251. The Office of the Special Rapporteur takes note of a ruling of the Supreme Court of the United States finding that a law establishing the sanction of up to one year in prison for false claims of receiving military decorations or medals was unconstitutional. In the case of United States v. Alvarez, the justices found that the broad terms of the law were not consistent with the constitutional protection of freedom of expression.456

252. On June 21, 2012, the Supreme Court of the United States handed down a ruling in the case of Federal Communications Commission, et al. v. Fox Television Stations, Inc., et al. In this judgment, the Supreme Court upheld the 2010 ruling of the Second Circuit Court of Appeals of the United States, agreeing that the rules applied by the Federal Communications Commission to broadcasting networks and affiliates were unacceptably vague. In its analysis of the cases, the Court found that the history of FCC regulation makes it clear that the policy in force at the time of the broadcasts in question did not provide reasonable warning to Fox or ABC that “fleeting expletives” or a brief image of nudity could be considered a violation of its rules. The Supreme Court ruled based on the requirement of proper notification in accordance with the due process clause, and did not refer to the implications of the First Amendment for the FCC’s indecency policies. However, the Court indicated that strict compliance with due process requirements is especially important when expression is involved, given the need to ensure that regulatory ambiguity does not inhibit protected speech.457

253. The Office of the Special Rapporteur expresses its satisfaction at the elimination of criminal libel from the laws of the state of Colorado on April 13, 2012. The law eliminating libel as a criminal offense was passed by the legislature, signed by the governor, and entered into force on September 1.458

B. Attacks on and threats against journalists and media outlets

254. Miguel Fernández, a Cuban journalist and Miami resident, received death threats on several occasions from individuals presumed to be members of the Cuban community in Florida after he published an article on a website on January 24, 2012, about the difficult living conditions faced by the mother of Cuban dissident Orlando Zapata. Zapata died in Cuba in 2010 after a hunger strike.459

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

C. Detentions

256. On January 28, the police arrested at least six journalists in Oakland during the mass arrest of demonstrators with the Occupy Oakland movement in California. According to the information, the journalists arrested were: Gavin Aronsen, with the magazine Mother Jones; Kristin Hanes with KGO Radio; Susie Cagle, an independent journalist; Yael Chanoff, with the San Francisco Bay Guardian; Vivian Ho, with the San Francisco Chronicle and John Osborn, with the East Bay Express. The arrests of the journalists took place even though they showed their credentials identifying them as journalists.460

257. On February 1, a coalition of media and journalists sent a letter to the New York Police Department reiterating the need to resolve the problem of journalists’ limited access to demonstrations. The department responded that it had taken actions to train its officers on media access to information and to investigate and punish officers involved in any incidents.461

258. According to information received, on January 29, police officers briefly detained Casey Monroe, a photographer with the ABC network, in Memphis, Tennessee, and erased images from his cellular phone that documented an arrest.462 Likewise, on February 1, Carlos Miller, an independent photographer, was arrested while filming the dispersion of demonstrators with the Occupy movement in Miami. According to reports, Miller was arrested for refusing to leave a public area and was accused of resisting arrest without violence. The images of the arrest were erased, but the journalist was able to recover them later.463 The Office of the Special Rapporteur was also informed of an attack on Robert Stolarik, of the New York Times, on August 4 while he was photographing the arrest of an adolescent. New York police officers assaulted, handcuffed and arrested Stolarik when he asked for their names and badge numbers. Stolarik is facing charges of obstructing public administration and resisting arrest.464

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

D. Subsequent liability

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

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

E. Legal reforms


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

263. As established in the Joint Declaration on Freedom of Expression and the Internet, issued on June 1, 2011 by the Special Rapporteurs of the UN and the IACHR, in conjunction with their colleagues in the Organization for Security and Cooperation in Europe (OSCE) and the African Commission on Human and Peoples’ Rights, although the right to freedom of expression - including expression over the Internet - is not absolute, responses to illicit content must be specifically focused in a way that also recognizes the unique nature of the Internet and its capacity to promote the enjoyment of freedom of expression. The Declaration indicates that intermediaries should not be required to control content generated by users and emphasizes the need to protect them from any liability unless they are directly involved with the content or refuse to comply with a court order that requires its elimination. The Declaration also expresses that jurisdiction with regard to cases connected to Internet content belongs exclusively to States in which cases have direct and genuine impact.\(^{(473)}\)

F. Other situations


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

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

12. Grenada

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

13. Guatemala


A. Progress

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

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

B. Attacks and threats against journalists and the media

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

270. On November 6, 2011, journalist Héctor Cordero and cameraman Diego Morales, of *Guatevisión*, were reportedly attacked by alleged bodyguards of a congressman after covering the national runoff elections in the town of Santa Cruz del Quiché. According to the information received, the journalists were attacked and beaten by several individuals, and their video equipment was destroyed. The journalists maintain that they recognized a brother of the governor of Quiché among their assailants.
The Office of the Special Rapporteur was informed of the injuries sustained by at least three photographers: Luis Soto of El Periódico, Estuardo Paredes of Prensa Libre, and Jorge Cente of Nuestro Diario, who were reportedly beaten while photographing a confrontation between students and the police on June 26 in Guatemala City. According to reports, Soto suffered serious injuries that required skull surgery. At the beginning of October, Prensa Libre columnist Carolina Vásquez Araya and journalist Ilka Oliva reportedly received death threats after publishing a column on the alleged sexual abuse of girls by the manager of a cotton farm in the department of Escuintla. The Office of the Special Rapporteur also learned of several death threats reportedly received on October 5 by journalist Jorge Jacobs, host of the Libertopolis radio programs “A Todo Pulmón” and “Más Negocios,” after he had published a column in Prensa Libre concerning the operations of a multinational corporation.

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

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

C. Subsequent liability

According to information received, three journalists, who over the course of their careers have exposed human rights violations committed during the armed conflict in Guatemala, were reportedly accused (along with 49 other individuals) of alleged involvement, by action or omission, in crimes committed by guerrilla groups. According to the information received, a coffee entrepreneur filed the complaint. The accused journalists are Marielos Monzón, a columnist for Prensa Libre, Miguel Ángel Albizures, a columnist for El Periódico and president-elect of the Guatemalan Association of Journalists, and Jorge Cente of Prensa Libre.


277. http://www.elmercuriodigital.net/2012/10/guatemala-amenazan-de-muerte-al-columnista-jorge-jacobs

278. http://www.youtube.com/watch?v=PaemuAqs_MM


(APG), and Iduvina Hernández, director of the non-governmental organization Security in Democracy (Seguridad en Democracia - SEDEM) and a columnist for the digital media outlet Plaza Pública. Press organizations consider the complaint to be without merit and allege that it can only be interpreted as intimidation against the journalists.489

D. Legal reforms

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

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

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


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

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

279. On July 10, members of Congress from the LIDER party introduced a bill to amend the Criminal Code in order to punish, with six to ten years in prison and the confiscation of broadcast equipment, “any person or entity that uses the radio spectrum belonging to the State of Guatemala without the license or the pertinent authorization issued by the Superintendence of Telecommunications, for sound or audiovisual broadcasting, or any other use of communications.” 495 On August 16, the congressional Committee on Legislation and Constitutional Issues rendered a favorable opinion of the draft bill 4.479. Taking account of the March 14, 2012 judgment of the Constitutional Court, it stated that, “prior to the punishment of persons or entities that use the radio spectrum without the proper official authorization, the final non-appealable judgment of the Constitutional Court must be observed.” 496

280. As indicated on prior occasions, the use of criminal law to punish violations of broadcasting regulations may be problematic in light of the American Convention on Human Rights. 497 In this respect, the Office of the Special Rapporteur reiterates that the establishment of criminal penalties applicable to commercial or community broadcasters—which may face an infraction for the lack or misuse of a license—is a disproportionate reaction. In addition, “the State has the obligation to establish a regulatory framework that encourages free, open, plural, and uninhibited speech. Private media must be

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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."\footnote{IACHR. Annual Report 2011. OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Para. 467. Available at: \url{http://www.oas.org/en/iachr/expression/docs/reports/annual/2012%2003%2021%20Annual%20Report%20RELE%202011printing.pdf}}

E. Other relevant situations


282. According to information received, Guatemalan press organizations denounced the April 25 suspension of six local channels that were being broadcast on a cable network from Mazatenango, Suchitepéquez. They attributed the shutdown to pressure from the local mayor’s office. According to reports, the service provider company explained that the suspension was due to an “administrative readjustment.” Apparently, the company had already ordered the temporary shutdown of one of the channels in January, after it had broadcast unfavorable remarks regarding the mayor’s office, and according to the public complaint, it had authorized the channel’s reopening on the condition that it not criticize local authorities or air opinion programs.\footnote{Prensa Libre. May 3, 2012. *Controversia por denuncias de censura*. Available at: \url{http://www.prensalibre.com/suchitepequez/Controversia-denuncias-censura_0_693530670.html}; Noticias. May 9, 2012. *Suchitepéquez. Denuncian cierre de canales de televisión por presuntas presiones de alcalde*. Available at: \url{http://noticias.com.gt/departamentales/20120509-suchitepequez-denuncian-cierre-de-canales-de-television-por-presuntas-presiones-de-alcalde.html}}

283. According to information received, the program *Libre Expresión* on *Canal 14*, in Nueva Concepción, Escazú, was shut down on August 17. According to reports, after the program’s host Evaristo García Escobar interviewed a person who criticized the mayor, municipal officials allegedly...

14. Guyana


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


15. Haiti
288. The Office of the Special Rapporteur was informed of the murder of journalist Jean Liphète Nelson, which took place on March 5, 2012, in Cité Soleil. According to the information received, the journalist was traveling in a vehicle when he was intercepted by two unknown individuals who shot at him several times. Jean Liphète Nelson survived and was taken to hospital, where he died. Two other people accompanying the communicator were also gravely wounded. Nelson was the director of community radio station Boukman (95.9 FM), which was created in 2006 with emphasis on social issues, civic education and the promotion of human and citizen values. Following his murder, the station suspended broadcasting temporarily. It began broadcasting again on March 20.

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

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

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

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292. In addition, on September 20, journalists Natasha Bazelaïs, Jean Marc Abelard and Jeanty Augustin, with the newspaper *Le Nouvelliste*, were retained by alleged police officers for, apparently; fail to agree to turn over their photography and video equipment.\(^{513}\)

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

16. **Honduras**\(^{514}\)

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

1. **Progress**

295. The IACHR takes note of the criminal ruling to convict handed down on September 11, 2012, over the murder of journalist Jorge Alberto Orellana. Orellana was murdered on April 20, 2010, after leaving the offices of the *Televisión de Honduras* TV channel, where he hosted an opinion program on current affairs. The investigations carried out determined that the journalist’s murder was not related to his professional activity.\(^{515}\)

296. Likewise, on March 20, 2012, an ex-member of the National Police was arrested in Tegucigalpa for being suspected of having participated in the murder of journalist Israel Zelaya Díaz, which took place on August 24, 2010, in Villanueva, Cortés department.\(^{516}\)

297. In addition, the IACHR observes with satisfaction the decision of the National Human Rights Commissioner to provide protection for journalist Ariel D’Vicente after the allegations of corruption that he made on August 2, 2012, regarding alleged acts of corruption by public officials.\(^{517}\)

298. Likewise, the IACHR views positively the public apology made by a police officer via the media to Sandra Sarybel Sánchez, a journalist and director of *Radio Gualcho* and correspondent with German news agency *Deutsche Welle*, as the result of a reconciliation agreement reached in the national


\(^{514}\) This section corresponds to the section on freedom of expression in Honduras in Chapter IV, Volume I, of the IACHR 2012 annual report, assigned to the Office of the Special Rapporteur for Freedom of Expression.


criminal courts. The officer apologized for “the outrage she suffered during a police operation” and voluntarily agreed to take a training course on the subject of freedom of expression. On March 21, 2011, police officers intimidated the journalist and destroyed her camera while she was covering a teachers demonstration in Tegucigalpa. The Public Prosecutor’s Office issued a summons to the police officer.

299. The IACHR receives with satisfaction the information provided by the representatives of the State during the public hearing held at the IACHR on November 4, 2012, regarding Honduras’s creation of a special investigation unit focused on crimes against journalists and other vulnerable groups. The IACHR will continue to monitor closely the implementation of this program. In its observations to this draft report, the State provided information on the approval of the National Protection Plan for human rights defenders, journalists, media workers, and legal practitioners. The Honduran State indicated that the plan is “in the consultation phase,” and that “in order for the National Protection Plan to be properly implemented, an awareness Plan has also been approved for the respective national authorities, and a National Board of Human Rights Organizations, journalists, media workers, and legal practitioners has been established, with the involvement of 50 non-governmental organizations.”

300. In its observations to the draft report, the Honduran State remarked that “the Bill of the ‘Law for the Protection of Human Rights Defenders, Journalists, Media Workers, and Legal Practitioners’ has been introduced.” The State reported that the bill was the result of “a broad process of consultation and validation at the national level,” and was supported by civil society organizations, bar associations, professional journalists’ organizations, and government human rights bodies.

2. Murders

301. In its report to the IACHR, the State indicated that it is aware of its commitment to guarantee the diligent and exhaustive investigation of acts that violate freedom of expression, and that it “has requested the cooperation of friendly nations in order to strengthen its investigative teams with more personnel and the necessary logistical resources.” In this same vein, the State maintained that “to date, the Office of the Public Prosecutor has documented the deaths of 22 media workers, and 8 of those cases have been prosecuted.” Nevertheless, the State said that “the preliminary investigations confirm that the homicides are the result of common crime or organized crime, and it has not been determined that they were motivated by the opinions expressed by the media workers about the government.” In particular, the IACHR urges the State not to dismiss the theory that the victims may have been murdered in retaliation for exercising their right to freedom of expression, and to exhaust any line of investigation in that direction.


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

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

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

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regards these incidents, the authorities have identified and brought to trial five people as possibly responsible for the crimes of kidnapping and murder.531

305. The IACHR was informed that on August 28, 2012, spokesperson and deputy police inspector Julio César Guifarro Casaleno was murdered. According to the information received, one day prior to his death, the police spokesperson had publicized national statistics on arrests and confiscation of vehicles and motorcycles. The police indicated that the killing was a contract killing; however there is still no word on the motive behind crime.532 The Honduran State indicated with respect to this case that “the Office of the Public Prosecutor has requested several expert reports in order to obtain evidence, and therefore the investigation is ongoing.”533

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

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


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


307. The State subsequently provided information on the matters addressed at the November 4, 2012 hearing. With regard to the case of Matías Valle, the State indicated that “the Office of the Public Prosecutor requested that the Court exhume the body, which […] had been buried at Finca La Confianza,” and that, “the Court scheduled the exhumation for February 23 of this year.” Nevertheless, the State reported that it was not possible to conduct the exhumation due to the alleged lack of cooperation on the part of the victim’s relatives and other residents of the farm, and that the judge reportedly ordered the authorities to leave the property. In addition, the State provided information on the situation of Noel Valladares, stating that “he was not a journalist, nor was he an employee of any media outlet. He had been paying for airtime on television since January 30, 2012 […], and on his program he would predict winning numbers for the national lottery. Therefore, the investigation into his murder and the murder of his companions is being conducted by the Homicide Unit of the Office of the Prosecutor for Common Crimes, and not by the investigative team specializing in the death of journalists.” Finally, regarding the case of reporter Adonis Felipe Bueso, the State indicated that “statements have been taken from several individuals to investigate possible motives for the crime.”

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

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

3. Attacks on and Threats against Media Outlets and Journalists

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

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

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

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

314. Likewise, on January 23, 2012, Gilda Silvestrucci, a journalist with Radio Globo, received several calls on her cellular telephone. During one of them, the voice of an unidentified man mentioned personal information regarding her three children and explicitly told her, “we’re going to kill you.” Almost simultaneously, an unidentified person called one of her daughters and asked her what time her mother normally gets home. The journalist also noticed she was being followed by suspicious vehicles. Silvestrucci is an active member of the “Journalists for Life and Freedom of Expression” collective and participated in a demonstration organized by that group on December 13, 2011. In addition, the journalist took part in filing a criminal complaint against senior civilian and military officials on December 21, wherein a group of human rights defenders alleged to the Office of the Special Public Prosecutor for Human Rights that the President, the head of the Joint Chiefs of Staff of the Armed Forces, and the head of the Presidential Honor Guard were responsible for a series of human rights violations committed by the Presidential Honor Guard.
315. In that sense, on February 7, 2012, the IACHR sent a communication to the State of Honduras in keeping with the faculties established in Article 41 of the American Convention on Human Rights in which it requested information on the death threats received by Uriel Rodríguez, Itsmania Pineda and Gilda Silvestrucci. The request was repeated on March 12, 2012. On March 20, 2012, the State responded with information regarding the threats to Gilda Silvestrucci. According to the information provided by the State, following the filing of the complaint, on January 24, 2012, a series of steps were taken to investigate the origin of the threatening phone calls received by the journalist. The final action was taken on March 13, 2012, in which a Special Prosecutor on Organized Crime was asked to carry out “an investigation into the calls using a specialist in that area.” In addition, in its communication of February 22, 2013, the State reported that it was taking “the pertinent steps to identify the calls that were received.” With respect to the case of journalist Itsmania Pineda Platero, the State also indicated that “the Office of the Public Prosecutor has conducted several investigative proceedings aimed at identifying the individual participants, for which witness statements have been taken.” It further stated that “the progress of the complaint in the National Criminal Investigations Bureau (DNIC) has been verified.” Finally, the State reported that Itsmania Pineda Platero has been the beneficiary of protection measures since March 5, 2010.

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

317. According to the information received, on February 14, three journalists with the television channel Catedral TV, in Comayagua, who had been reporting on and investigating a fire in the Comayagua prison, received a number of threats and were harassed. According to the information, journalist Luis Rodríguez, cameraman Javier Villalobos and channel owner Juan Ramón Flores received a number of phone calls and messages on their cellular telephones warning them to stop reporting on the issue or they would be murdered. The videos and information revealed in the program entitled “Save Yourselves” showed images of and featured testimony on a number of irregularities in the penitentiary facility. According to the information received, Ramón Cabrera, the general manager of Digicable, was also threatened in order to force him to take Catedral TV out of its lineup. Regarding this matter, the

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State reported that “there is no record of any complaint filed with the Office of the Public Prosecutor […] and therefore they are asked to file the respective complaint before the national authorities.”  

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

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

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

321. Additionally, the IACHR learned of death threats and threats of sexual violence received on a number of occasions between February and April by Dina Meza Elvir, spokesperson for the

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Committee of Relatives of the Detained and Disappeared (COFADEH in its Spanish acronym). According to the information, on February 22, 2012 she received two text messages that said, “We are going to burn your pussy with lime until you scream and the whole squad is going to enjoy it.” CAM. And second: “you’ll to end up like the people in Aguán dead nothing better than fucking some bitches.” CAM is an acronym for Comando Álvarez Martínez with which other human right defenders were threatened after the 2009 coup d’état. Likewise, on April 6, Dina Meza saw two men photographing her while she walked down the street with her children, and on April 14 she received a phone call during which a man warned her, “Watch your pipa” (vagina). Later, in August 2012, she reported having received new telephone threats in the context of the violent breaking up of a peasant demonstration in El Aguán. Dina Meza Elvir has been the beneficiary of a IACHR precautionary measures since 2006.

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

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

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

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

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covered in his program that may have provoked the threats include alleged illegal cutting down of trees in Lancetilla National Park and alleged arbitrary actions taken by local authorities.  

326. The IACHR was informed that on April 12, at least two unidentified individuals entered the facilities of community radio stations La Voz Lenca and Radio Guarajambala and cut their power. According to information received, the attack took place after the broadcaster publicly backed the Lenca indigenous community in Santo Domingo, in Colomoncagua, in opposition to the construction of a private hydroelectric project. When the attackers entered the station, they said, “There has been too much criticism from these radio stations.” The stations belong to the City Council of Popular and Indigenous Organizations of Honduras (COPINH in its Spanish acronym) and they have suffered sabotage and attacks in the past.  

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

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

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

330. On June 13, Juan Vásquez and Sotero Chavarría, social communicators with the radio stations of the Council of Popular and Indigenous Organizations of Honduras (COPINH), were attacked by two individuals riding a motorcycle who fired at them twice and caused a car accident. According to the information received, the communicators were returning from a meeting with an indigenous community in Santa Bárbara over a land conflict.\(^{583}\) The IACHR was also informed of the July 27 attack on and arrest of Edwin Murillo, a cameraman with the channel Hable como Hable. According to the information, individuals presumed to be police officers handcuffed, beat and arrested the cameraman while he was covering information related to a crime committed in the Lempira de Comayagüela neighborhood, in the city of Tegucigalpa.\(^{584}\)

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

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

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

334. On August 3, 2012, two presumed police officers entered Radio Progreso during the broadcast of a discussion with peasant leaders of the Aguán Unified Peasant Movement (MUCA in its Spanish acronym). According to information, the officers entered asking “where are the peasants?” and only left when the station’s legal counsel informed them that the station was protected by IACHR.


precautionary measures. The information received also indicates that on August 17, 2012, Roberto García, a journalist and contributor to Radio Progreso, was threatened. The journalist also works as a defender of environmental rights and is particularly involved in the struggle against the installation of mining companies in the Atlántida department.

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

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

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

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


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

340. The IACHR was informed that on October 24, journalists Nery Arteaga y Ninfa Gallo, hosts of the program “News and debate” on Canal 51, were intercepted close to the country’s capital. According to information provided, unidentified individuals wearing official uniforms beat them and took their vehicle and their journalism material.  

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

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

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

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

4. Other relevant situations


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

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

347. According to information received, the mayor of the city of Talanga induced the suspension of cable broadcaster Telecentro and the mass purchase of copies of the newspaper El Heraldo on October 16 and 17 after it published a news item on the suspension of the broadcaster. According to the information, two cable television companies suspended the broadcast at the request of the mayor, who was bothered by criticism from his opposition. 604 According to available information, the Office of the Public Prosecutor on Human Rights is investigating the incidents and has called the mayor to testify regarding them. 605

348. On November 13, 2012, the Civic Council of Popular and Indigenous Organizations of Honduras (COPINH in its Spanish acronym) accused individuals assumed to be officials with the National Telecommunications Council (CONATEL in its Spanish acronym) of appearing at the offices of community radio station La Voz Lenca and threatening to confiscate its equipment if their frequency was not regularized within 10 days. According to the COPINH, the CONATEL action came after a complaint was filed by the owners of a local radio station in 2007 alleging that the community radio station was interfering with its frequency. However, they reported that the complaint was dismissed that same year. COPINH also indicated that in 2011, CONATEL sent them a communication indicating that it would be sending a technician to verify that there had been no interference with frequency. However, no visit was made, despite the fact that CONATEL had been asked for one on several occasions. According to this, they suggested that the threat was more of a warning designed to intimidate the community radio station. 606

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


603 IFEX. April 17, 2012. Dirigentes estudiantiles denuncian violaciones a la libertad de expresión y asociación.


17. Jamaica

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

351. The Office of the Special Rapporteur expresses its concern over the promotion, in some media outlets, of openly discriminatory and homophobic messages that could incite violence against persons belonging to LGBTI groups. According to information received, on at least two occasions in 2012, cartoons that could incite violence against LGBTI persons and cause profound social harm by disseminating negative messages based on discriminatory stereotypes that encourage hatred against members of that community, were published at least twice. Article 9 of the Inter-American Democratic Charter states that “[t]he elimination of all forms of discrimination, especially gender, ethnic and race discrimination, as well as diverse forms of intolerance, the promotion and protection of human rights of indigenous peoples and migrants, and respect for ethnic, cultural and religious diversity in the Americas contribute to strengthening democracy and citizen participation.” In this respect, the Office of the Special Rapporteur recalls that Article 13(5) of the American Convention prohibits the incitement to violence, and that Principle 6 of the IACHR Declaration of Principles on Freedom of Expression, adopted in 2000, establishes, inter alia, that journalistic activity must be guided by ethical conduct.

18. Mexico

A. Progress

352. The Office of the Special Rapporteur was pleased to receive the news that on June 6, the Permanent Commission of the Congress of the Union approved an amendment to Article 73 of the Political Constitution granting power to federal authorities to take over investigation of crimes committed in local jurisdictions when they are related with crimes against journalists, individuals or facilities that affect, limit or put at risk the right to information or freedom of expression or the press. 

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353. The Office of the Special Rapporteur was satisfied to learn of the promulgation of the Act for the Protection of Persons who Defend Human Rights and Journalists, passed by the Congress of the Union on April 30, 2012, signed by the president on June 22, and published in the Official Gazette of the Federation on June 25. The purpose of the Act is to guarantee and protect the lives, integrity and safety of human rights defenders and journalists through the creation of a mechanism that has the authority to apply protective measures for people at risk, as well as to prevent those risks from arising in the future. The Act is made up of 67 articles, and it establishes measures of protection such as evacuation, temporary relocation, assignment of bodyguards and armored cars for victims of violence, and provision of electronics and bulletproof vests. The law also allows for the application of sanctions against public officials who deliberately put human rights activists and journalists at risk or cause harm to them.  

354. According to information received, on January 18, the Supreme Court of Justice of the Nation ruled to take over the hearing of an amparo brought by petroleum businessmen suing for reparation of nonpecuniary damage over reports published in the magazines *Contralínea* and *Fortuna*. Between 2004 and 2008, the magazines published a series of articles on alleged irregularities in the tenders of parastatal petroleum company Petróleos Mexicanos (PEMEX). Based on the articles, private contractors sued Miguel Badillo - director of *Contralínea* and *Fortuna* - reporters Ana Lila Pérez and Nancy Flores, and cartoonist David Manrique. On January 3, 2011, the 54th Civil Court of the Federal District had found the magazines and the communicators guilty in first instance of having committed moral damage to the detriment of three oil businessman. The ruling was overturned by the First Civil Chamber of the Superior Tribunal of Justice of the Federal District, which acquitted the communicators on April 7, 2011; however, the plaintiffs presented an amparo. On June 4, the SCJN denied the amparo for businessmen involved in the case on finding that “the information distributed in the columns in question...
and the expressions used therein are of public relevance.\textsuperscript{614} For a number of years, journalists with Contralínea and Fortuna have faced a series of civil and criminal suits brought by the companies Zeta Gas, Oceanografía and Blue Marine, facts that have caused the Office of the Special Rapporteur and the National Human Right Commission (CNDH in its Spanish acronym) to express concern.\textsuperscript{615}

355. On August 15, the Federal Institute on Access to and Protection of Information (IFAI in its Spanish acronym) ruled on a remedy for review, whereby it ordered the President of the Republic to turn over the names of officials who had been assigned certain telephone numbers, in application of the Federal Access to and Protection of Information Act. The government had argued that the information was confidential, as its distribution could put the lives, health or safety of the officials at risk.\textsuperscript{616}

B. Murders

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

357. The Office of the Special Rapporteur was informed of the murder of three photographers and an administrative employee of a newspaper. Their bodies turned up in Veracruz, Mexico, on May 3. According to the information received, the photographers were Gabriel Hug and Guillermo Luna. They


were covering the police beat for a number of Veracruz media outlets and had disappeared on the afternoon of May 2. One day later, their bodies turned up wrapped in plastic bags in an area known as Canal de la Zamorana 1, in the port of Veracruz. Until 2011, the journalists worked for the newspaper Notiver. Also found with them were the bodies of Esteban Rodríguez, former photographer with the newspaper AZ and with TV Azteca, and Irasema Becerra, administrative employee of the newspaper El Dictamen, in Veracruz. In 2011, Huge, Luna and Rodríguez had left the state of Veracruz due to threats they had received.619

358. Regarding this situation, on August 10, the authorities arrested an alleged drug trafficker known by the alias of La Bertha. Among his belongings they found the ID card of Irasema Becerra.620 Apparently the authorities also captured another alleged drug trafficker, known by the aliases El Cronos and/or El Rayito, who, together with six other alleged drug traffickers, confessed to several dozen crimes, among them the murders of Huge, Luna, Rodríguez and Becerra. With this confession, the Office of the Public Prosecutor of Veracruz considers the murders of the four media workers to be solved. Organizations for the defense of freedom of expression expressed skepticism at the announcement of the resolution of the cases based on the confession of a suspected drug trafficker.621 The Office of the General Public Prosecutor of the Republic announced that it would take over the case to continue the investigation.622

359. According to information received, on May 18 the body of journalist Marcos Ávila García turned up in Sonora one day after he was kidnapped. According to the information, at least three armed masked men kidnapped the journalist on the afternoon of Thursday, May 17, while he was at a carwash in Ciudad Obregón, Sonora state. The authorities launched a significant police operation in an attempt to find him. The reporter turned up murdered at the side of a highway, with indications of torture and a message presumed to be from a criminal organization. Marcos Ávila covered the police beat for the newspaper El Regional de Sonora in Ciudad Obregón, and he was recognized for his seriousness and professionalism.623

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360. On June 14, police beat journalist Víctor Manuel Báez Chino was found murdered in Xalapa, Veracruz. According to the information received, three armed men in an SUV kidnapped the journalist on the night of June 13 when he was leaving his office in Xalapa. Police authorities immediately launched a search that concluded when his body was found the following morning on a downtown street, close to the Xalapa town hall and the headquarters of two local newspapers. Báez Chino was the editor responsible for the police report section of the Grupo Milenio newspaper Milenio - El Portal in Veracruz, as well as editor of news site Reporteros Policíacos.624 In August, the authorities captured an alleged drug trafficker, alias El Cronos and/or El Rayito, who, together with six other alleged drug traffickers, provided information on several dozen crimes. That information included the names of the alleged perpetrators of the murder of journalist Báez Chino.625 As with the aforementioned cases of media workers Huge, Luna, Rodríguez and Becerra, organizations for the defense of freedom of expression expressed skepticism at the announcement of the resolution of the cases based on the confession of a suspected drug trafficker, and the Office of the General Public Prosecutor of the Republic announced that it would take over the case to continue the investigation.626

361. According to information received, on October 15, Abel López Águilas was murdered in Tijuana. He was the director of news website Tijuana Informativo. It was later reported that the journalist’s son-in-law had confessed to the crime. However, a number of civil society organizations expressed concern at the way the investigation was handled, specifically citing alleged inconsistencies in the official information provided and the allegedly rushed dismissal of a line of investigation connected with the victim’s journalism work.627

362. On October 22, 2012, environmental rights defenders Ismael Solorio Urrutia and Manuelita Solís Contreras were murdered in Chihuahua. Both were leaders with the El Barzón agricultural producers group. According to information provided, the married couple had been attacked and threatened for allegations the organization had made regarding possible irregularities in the use of water resources in the region, as well as incidents of pollution and destruction of crops, issues they alleged were not taken care of by local officials.628


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

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

C. Attacks on and threats against media outlets and journalists

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

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

367. The Office of the Special Rapporteur learned of the December 9, 2011, publication of an anonymous spread in the newspaper El Debate, in Sinaloa, whose content was hostile and stigmatizing against an El Noroeste columnist, professor and researcher with the Universidad Autónoma de Sinaloa (UAS) Arturo Santamaría Gómez. The publication accused the journalist of “endangering the lives of the members of the University community” and being “a journalism hitman.” The spread was connected with

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Santamaría columns in which he raised questions over certain irregularities in the administration of a former UAS rector who was later elected mayor of the municipality of Culiacán. Days after the publication, Santamaría reported the presence of suspicious vehicles near his house whose occupants had been asking the neighbors about the journalist. University authorities denied any participation in the spread, and the mayor of Culiacán denied being the author of the text. Santamaría file a criminal complaint against the mayor for threats. 634

368. The Office of the Special Rapporteur learned of a series of allegations regarding attacks suffered by journalists and media workers in Ciudad Juárez. On January 29, individuals presumed to be Municipal Police officers held José González and Salvador Castro, reporters with the newspaper Norte. They were threatened with rifles and forced to erase photographs of patrol cars that had their identification numbers concealed. 635 On February 3, individuals presumed to be municipal police officers apprehended Joel González, a journalist with El Diario, in front of the newspaper's offices while he was watching the arrest of a woman and approached to ask what was going on. 636

369. On January 30, individuals presumed to be members of the Ministerial Police of Sinaloa assaulted Ararak Salomón, a reporter with the newspaper Noroeste, while he was photographing the arrest of officers of the Municipal Public Security Directorate of Guasave who had not responded to a call for help from soldiers who were being attacked by an armed group. The alleged attackers beat the communicator and erased the images. On January 19, Alberto Cruz Moreno, a journalist and editor of the newspaper Hablemos Claro, was apprehended, beaten and threatened by individuals presumed to be ministerial police officers with the Office of the General Public Prosecutor of the State of Mexico for having taken pictures of a public official under arrest. The images were erased. 638

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


with La Jornada, and Alejandro Villafañe, with the newspaper El Imparcial, who was taken to a hospital for medical attention due to his injuries.639

371. On March 19, a car bomb exploded in front of the offices of the newspaper Expreso, in Tamaulipas, injuring five people who were passing by and damaging a number of vehicles. The newspaper published an article on the attack on its website, but shortly afterward it had to remove the information and take the site down for a day. On March 26, an explosive device detonated next to the Televisa network building in the city of Matamoros.640

372. On May 11, a group of unidentified individuals used firearms and explosives to attack the offices of newspaper El Mañana, in Nuevo Laredo, Tamaulipas state. According to the information received, the attack damaged the newspaper building’s façade and vehicles in the parking lot; however, no one was injured.641 In response, the directors of El Mañana said in an editorial that the newspaper would refrain from publishing “any information related to the violent conflicts from which our city and other regions in the country are suffering.” According to the editorial, the decision was taken due to “the absence of the proper conditions for the free exercise of journalism.”642

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

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

375. According to information received, in the early morning hours of July 10, 2012, someone detonated an explosive outside the offices of supplement La Silla, of newspaper El Norte, in the city of


Monterrey. That afternoon, a branch of the same newspaper, headquarters of the supplement Linda Vista in the municipality of Guadalupe, north of Monterrey, was attacked with gunfire and a grenade. By late afternoon, a local branch of the same newspaper, sede of the supplement Linda Vista in the municipality of Guadalupe, north of Monterrey, was attacked with gunfire and a grenade. By late afternoon, a local branch of the same newspaper, sede of the supplement Linda Vista in the municipality of Guadalupe, north of Monterrey, was attacked with gunfire and a grenade. By late afternoon, a local branch of the same newspaper, sede of the supplement Linda Vista in the municipality of Guadalupe, north of Monterrey, was attacked with gunfire and a grenade.

At dawn on July 10, an explosive device detonated in front of the newspaper El Mañana in Nuevo Laredo. The Mañana reiterated its decision of self-censorship and stopped publishing information on the actions of organized crime. On the afternoon of Sunday, July 29, a number of attackers broke into the offices of supplement Sierra Madre, of newspaper El Norte, municipality of San Pedro, neutralized the security guard and set fire to the printing press in the first floor of the building. None of these attacks caused injuries. Likewise, on July 30, a group of armed subjects entered the printing and distribution center of Dipsas magazines and newspapers in Monterrey, setting fire to the facilities.

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

376. According to information received, on July 16, unidentified individuals searched the home of Hiram González Machi, a journalist with newspaper Nuevo Día and Canal 7, in Nogales, and left a note saying, “You’re going to die, reporter.” Cecilia Cota Carrasco, a journalist with Sinaloa’s El Diario, alleged having been threatened on July 27 by a former federal deputy candidate who warned her that he was capable of committing violence against her and her family.
377. On July 29, journalist Lydia Cacho, who is protected by IACHR precautionary measures, received new serious death threats directly related with her work.\(^{652}\) On August 3, Cacho left Mexico temporarily as a necessary measure to protect her life and integrity while journalism organizations implemented a security strategy for her.\(^{653}\)

378. The Office of the Special Rapporteur was informed of the August 13 disappearance of journalist Mario Segura, director of the newspaper *El Sol del Sur* in the city of Tampico, State of Tamaulipas. A complaint over his disappearance was filed on August 17.\(^{654}\)

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

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

381. The Office of the Special Rapporteur was informed of a number of incidents during the month of September. First, on September 13, a number of individuals entered the headquarters of the newspaper *La Jornada* in the city of Tampico, State of Tamaulipas. A complaint over his disappearance was filed on August 17.\(^{654}\)


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

382. According to information received, Hiram Moreno, a correspondent in the Tehuantepec Istmo with newspaper *La Jornada*, alleged having received death threats in September and October after publicizing information regarding alleged irregularities on transactions related to the free fuel provided to the state of Oaxaca by State oil company PEMEX, to distribute among fishing cooperatives.\(^660\)

383. The Office of the Special Rapporteur was informed of the apprehension of journalist Juan de Dios García Davish, with *Agencia de Noticias Quadratín* and a correspondent with *Milenio*. He was arrested on October 1, 2012, in Chiapas. According to the information, the journalist was beaten, held and had his photography material taken by individuals presumed to be members of the police force while he was covering a student protest in the Motozintla municipality. The journalist, who regained his freedom several hours later, has filed a complaint before the Human Rights Commission.\(^661\)

384. On October 12, the Office of the Special Rapporteur received information alleging a smear campaign against the Center for the Human Rights of Women (CEDEHM) and its general coordinator in Chihuahua, Luz Estela Castro Rodríguez. According to the CEDEHM, after issuing a press release on October 8 raising questions about an investigation in a case of femicide that took place in 2010, the State Public Prosecutor issued a public statement criticizing the defender and her organization.\(^662\) Later, the Secretary of the Government committed to issuing a public apology for the

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State’s declarations. Luz Estela Castro Rodríguez and all the members of the CEDEHM, along with their immediate families, have been covered by the precautionary measures of the IACHR since 2008.

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

386. On October 21, journalists Jesse Brena - with Milenio Puebla - and Gerardo Rojas - with website E-Consulta - were assaulted, robbed and detained for several hours in a patrol car by individuals presumed to be police officers. The incident took place in Puebla. According to the information, the reporters went to the Public Ministry to file complaints over the incidents and have received the cooperation of the Municipal Police. The Office of the Office of the General Public Prosecutor of the state of Puebla has opened an investigation to clarify the incident.

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

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


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

D. Other relevant situations

390. According to information received, on December 1, 2011, Juan José Hernández, the director of community broadcaster Radio Diversidad in the Paso del Macho municipality, Veracruz state, was arrested. Mr. Hernández and three other journalists with Radio Diversidad are defendants in a criminal proceeding originating in the operation of the aforementioned community radio station. For this reason, they are accused of the crime of “using, taking advantage of or exploiting property owned by the Nation without a permit or concession of the state,” as set forth in Article 150 of the General Law on National Property. The journalist was released six days later after paying a bail of 5000 pesos (about US $500).

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

392. Likewise, the Office of the Special Rapporteur has during recent years monitored the regulation of the broadcast spectrum and application of provisions on radio broadcasting in Mexico, and has identified certain difficulties with the existing legal framework due to the ambiguity of the provisions and the absence of adequate regulations. In this sense, the Office of the Special Rapporteur recalls that States must put in place a clear and precise legal framework that respects the standards on freedom of expression, nondiscrimination and due process, and that recognizes the special characteristics of each form of radio broadcasting, in keeping with international standards.
393. In this same sense, the Office of the Special Rapporteur observes that community broadcasters must operate legally; however, currently there are serious practical obstacles to the legalization of community broadcasters in Mexico. Thus, for example even though the Supreme Court of Justice declared the pertinent sections of the radio broadcasting law unconstitutional and identified some criteria to be taken into account to establish a proper procedure for granting permits or licenses to noncommercial radio and television stations, still no clear, precise and equitable procedures have been established whereby the community radio stations could request and obtain frequencies on which to operate.

19. Nicaragua

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

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

A. Progress

396. The Office of the Special Rapporteur observes with satisfaction the July 17, 2012 acquittal of TVN 2 journalists Siria Miranda, Eduardo Lim Yueng and Kelyneth Pérez. The ruling was handed down by the 17th Criminal Court. According to information received, the journalists were accused of distributing video of a police officer receiving a bribe from a driver. In applying inter-American standards, the court concluded that the defendants had no intention to violate the honor of the plaintiff and recognized that “the journalists were doing their job of revealing a fact that was of significance for society.” In this sense, the judgment indicated that “the incident was of considerable significance and merited the attention of the defendants in the work they were carrying out.” Likewise, the judgment found that “the defendants did not act with actual malice, as there is no indication of a ‘reckless disregard for the truth.’”

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

B. Attacks

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

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

C. Subsequent liability

According to information received, on March 19, 2012, former President Ernesto Pérez Balladares brought civil suit against the newspaper La Prensa, seeking US $5.5 million. According to the information, the former president considered two articles dated March 21 and March 22, 2011, that mention him in the context of investigations into money laundering being carried out by the Specialized Office of the Public prosecutor against Organized Crime as damaging to his honor. For their part, the newspaper’s attorneys indicated that the lawsuit lacks basis in law and explained that in a brief dated April 2, they had formally responded to the lawsuit. The Office of the Special Rapporteur was informed that on November 1, 2012, La Prensa received a second civil suit filed by a corporate group for allegedly having published contracts the group had with public entities.

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

D. Other situations

On January 21, 2012, Panamanian immigration authorities refused Canadian journalist Rosie Simms entry into the country. She was going to Panama to prepare for the arrival of a team from the Canadian Broadcasting Company (CBC) that would be producing a documentary on the activities and investments of Canadian mining companies. In 2011, as a student at McGill University, Simms completed a semester’s internship with the Center for Environmental Activism [Centro de Incidencia Ambiental] (CIAM in its Spanish acronym), after which she wrote several articles in the Canadian media.


raising questions about amendments to Panamanian laws that facilitate mining concessions for foreign companies. Immigration authorities argued that the journalist’s passport was invalid. On August 28, 2012, the CIAM submitted an amparo remedy on behalf of the journalist. The attorneys asked the National Immigration Service [Servicio Nacional de Migración] (SNM, in its Spanish acronym) for a copy of the case file.

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

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

21. Paraguay

A. Progress

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

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B. Attacks on and threats against media outlets and journalists

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

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

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

C. Other relevant situations

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


410. According to the information received, on June 23, the Radio Nacional program ‘Ápe ha pepe’ (‘Here and there’ in guarani) was suspended. It returned to the airwaves one week later. Likewise, on September 17, the program ‘RedPública’ - produced by public broadcaster Radio Nacional – did not have its contract renewed, and program director Carlos Goncalves was notified that he would no longer be working on it. The journalist had been informed that the SICOM was carrying out a special evaluation of the program.

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

412. According to available information, on June 24, the electricity to TV Pública was cut off during a broadcast of the program “Open Mic.” In a press release, the Secretariat of Information and Communication for Development (SICOM) reported that it will investigate the incident and will ask the National Electricity Administration (ANDE) for a corresponding technical report. Regarding this, the ANDE reported that the power outages in the area were pre-planned. Marcelo Martinessi, former minister of communication said that there would not be layoffs at TV Pública.

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director of TV Pública, stated that he was never notified of the power outages and that “they [the ANDE] hide behind this idea that the power outage was pre-planned.” The event was described as a “premeditated sabotage” by some media outlets and demonstrators present in front of TV Pública. Some claimed it was meant to disrupt the broadcast of the program ‘Micrófono Abierto’.

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

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

22. Peru

A. Progress

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

Available at: http://www.lanacion.com.py/articulo/77874-titular-de-la-ande-en-ningun-momento-se-quiso-boicotear-la-transmision-de-la-tv-publica.html


416. The information received indicates that later, on June 18, 2012, the 33rd Criminal Court of the Superior Court of Justice of Lima ruled to acquit journalist José Alejandro Godoy Mejía. In its ruling, the court found, *inter alia*, that given that the plaintiff was an individual holding a public position, he was subject to greater scrutiny. Likewise, it highlighted that the information indicated was already public, and that “what defendant Godoy Mejía did [was] distribute something that had already previously been distributed,” making use of his right to inform, pursuant to the “neutral reporting” doctrine.706

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

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

### B. Attacks on and threats against media outlets and journalists


419. Information received by the Office of the Special Rapporteur indicates that on November 30, 2011, a group of people attacked the offices of newspaper *El Sol de los Andes* in Huancayo, after the newspaper published information on alleged links between some members of the local police and criminal groups.\(^{709}\) On December 2, 2011, individuals presumed to be police officers beat Pedro Reyes, a journalist with *Canal 39*, along with Romario Reyes, a cameraman with that station, and Américo Huamán, a cameraman with *TV Perú Canal 7*, while they were covering protests against the expansion of a prison in the province of Cañete, in the Lima region.\(^{710}\) Likewise, on December 6, 2011, presumed members of the team of the mayor of the El Carmen district beat Armando Huamán Tasayco, a journalist with *Canal 33* and *Radio Nova* in Chinchas, confiscating his camera. He was reporting on alleged acts of unlawful enrichment by local authorities.\(^{711}\)

420. According to information received, on December 9, 2011, several persons beat Iván Julca Mendoza, director of biweekly newspaper *El Especial de Ancash* and *Radio Melodía* program ‘Ancash Opina’. According to the journalist, the attack took place following the publication of a news item on supposed irregularities committed by two councilmen.\(^{712}\) Likewise, on January 10, 2012, Carlos Monja Timañá, a journalist, host of *Radio Limón* program ‘El Investigador’ and a critic of the mayor's administration, was attacked by two people at the Olmos district municipality. One of the attackers was identified by the journalist as a municipal employee.\(^{713}\)

421. The Office of the Special Rapporteur learned of a death threats received on January 25, 2012 by Moisés Campos, a journalist and host of the weekly program “Noticias TV,” in Tocache, one day after publishing a report on alleged acts of corruption committed by local authorities.\(^{714}\) Likewise, the Office of the Special Rapporteur was informed of a campaign to discredit and threaten journalists Rosario Romaní, Esther Valenzuela and Gudelia Machaca - with the newspapers *La Calle* and *Estación Wari*, in Ayacucho - after their papers published a series of reports raising questions about the controversial


422. The Office of the Special Rapporteur was informed of e-mail threats received by Jaime Antonio Vásquez Valcárcel and Jorge Martín Carrillo Rojas, director and editor, respectively, of the newspaper Pro & Contra, in Iquitos. They denounced the threats on May 16, 2012. According to the information, in at least one of the e-mails received, the threat warns the journalists to stop reporting about the mayor of Maynas, over whom the newspaper had raised questions.\footnote{ Crónica Viva. May 19, 2012. Iquitos: amenazan de muerte a director y editor de diario. Available at: http://www.cronicaviva.com.pe/index.php/prensa/27-prensa/41422-iquitos-amenazan-de-muerte-a-director-y-editor-de-diario; Instituto Prensa y Sociedad (IPYS). May 19, 2012. Con correos electrónicos amenazan de muerte a director y editor de diario. Available at: http://www.ipys.org/alerta/1222}


424. According to information received, on June 17 a number of people beat Jaime Alfredo Núñez del Prado, a journalist as well as a director and host of news show “The Other Truth,” on Radio Color and Calca TV, in the Calca province, Cusco region. According to the information, the attack took place while the journalist was alleging that certain irregularities had been committed by the Calca mayor.\footnote{ IFEX/ Instituto Prensa y Sociedad (IPYS). May 25, 2012. Journalist shot in leg after threat from mayor's office. Available at: http://www.ifex.org/peru/2012/05/25/disparan_en_pierna; Knight Center for Journalism in the Americas. May 24, 2012. Peruvian journalist shot, another threatened after criticizing local mayor. Available at: http://knightcenter.utexas.edu/blog/00-10244-peruvian-journalist-shot-another-threatened-after-criticizing-local-mayor}  

425. According to information received, while covering protests against the Conga mining project in Cajamarca, a number of journalists were attacked, both by protesters and by individuals assumed to be public officials. Along with this, the Office of the Special Rapporteur received information indicating that on November 29, 2011, protesters cut the transmission cable of the Canal N satellite team to prevent a correspondent of the channel from broadcasting images.\footnote{ Crítica. June 19, 2012. Cusco: Periodista agredido culpa a alcalde de Calca. Available at: http://www.larepublica.pe/18-06-2012/periodista-agredido-culpa-alcalde-de-calca; IFEX/ Instituto Prensa y Sociedad (IPYS). June 22, 2012. Critical journalist attacked and seriously wounded in Cusco. Available at: http://www.ifex.org/peru/2012/06/22/nunez_atacado/} Likewise, on April 16, 2012, members of community defense organizations known as “ronderos” held and assaulted Éler Alcántara Rojas, a journalist with Radio El Edén news program ‘Free Expression’, in Celedín, for more than two hours. They beat, insulted and threatened him for supposedly taking the side of the company in charge of...

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

On June 2, 2012, at least five journalists were attacked by individuals assumed to be police officers. According to information received, Ramiro Sánchez, director of the newspaper El Mercurio, was struck several times. Likewise, photographer Frank Chavez Silva was injured, while reporter Francisco Landauri Miranda and cameraman Nestor Galarza Mandujano, with the television station ATV, and reporter Yudith Cruzado Lobato, with Radio Programas del Perú (RPP), were pushed and struck. The information received also indicates that on June 20 and 21, 2012, Jackqueline Fowks, a journalist and correspondent in Peru with Spanish newspaper El País, received several intimidating phone calls of a sexual nature that the journalist connected with her recent coverage of mining project protests.

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Likewise, on May 31, 2012, Alejandro Huamán, of TV Norte, was beaten by individuals assumed to be police officers. With regard to the incidents that took place on May 31, the Interior Minister regretted the overreach by the police and ordered an investigation. On June 14, 2012, individuals assumed to be police officers attacked journalists covering the conflict, among them Daniel Jayo of Sol TV, Luis Chilón of Radio Programas del Perú, Edwin Lozano of Frecuencia Latina TV, Karina Aliaga, of the channel ATV and Alejandro Huamán, of the program ’Gotas de Lluvia’ on TV Norte. On June 26, a group of unidentified individuals attacked Canal N and Canal ATV workers and technical teams.

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

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

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

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

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

C. Subsequent liability

432. The Office of the Special Rapporteur was informed that on June 5, the Twelveth Criminal Court of Lima handed down the criminal conviction of Juan Carlos Tafur, director of Diario 16, and

433. According to the information received, on November 5, the Third Criminal Court of Huamanga admitted a criminal complaint for the crime of defamation against journalists Esther Valenzuela Zorrilla, Rosario Romani Díaz and Manuel Ventura Mariluz, with the newspaper La Calle. The complaint was brought by the director of the Irrigation and Integral Rural Development Program [Programa de Irrigación y Desarrollo Rural Integral] (PRIDER in its Spanish acronym), with the regional Ayacucho government, Eduardo César Huacoto Díaz. He alleges that his honor has been damaged due to questions raised and criticisms leveled by the journalists regarding alleged irregularities in the exercise of his public authority.\footnote{Asociación Nacional de Periodistas del Perú (ANP). No date. Huamanga: querellan a periodistas que denunciaron irregularidades en gestión de gobierno regional. Available at: http://www.anp.org.pe/efp/alertas/989–huamanga-querellan-a-periodistas-que-denuncian-irregularidades-en-gestion-gobierno-regional; Crónica Viva. November 19, 2012. Huamanga: querellan periodistas por denunciar corrupción. Available at: http://www.cronicaviva.com.pe/index.php/prensa/27-prensa/55045-huamanga-querellan-periodistas-por-denunciar-corrupcion}433

434. The Office of the Special Rapporteur considers it relevant to indicate that these cases have taken place in a context in which President Ollanta Humala has declared publicly and repeatedly that he will not use criminal proceedings to block debate on matters of public interest. At the same time, the Congress of the Republic has studied a number of reforms that would eliminate crimes of defamation, at the least for public officials, or substitute prison sentences for fines. Parallel to this, the Supreme Court of Justice has handed down directives on the subject, and in recent rulings has overturned criminal convictions for the crime of defamation of public servants or former public servants.\footnote{IACHR. Office of the Special Rapporteur for Freedom of Expression. June 11, 2012. Press Release R62/12. Office of the Special Rapporteur Expresses Concern over Criminal Conviction against Two Journalists in Peru. Available at: http://www.oas.org/en/iachr/expression/showarticle.asp?artID=901&lID=1}

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

23. Dominican Republic

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

437. On March 1, the First Collegiate Court of First Instance of the Judicial District of Santiago ruled to acquit three individuals accused of murdering cameraman Normando García and a taxi driver who was speaking with him. The murders took place in August, 2008. According to information received, the judges found that the evidence provided was not sufficient, and they did not admit testimony from the lead police investigator in the case. Normando García had broadcast images of an alleged attack that one of the defendants committed against another individual. The Office of the Public Prosecutor announced that it would appeal the ruling.38

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

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

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

24. Suriname


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

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

25. Trinidad and Tobago

443. The Office of the Special Rapporteur expresses its satisfaction at the commitment expressed on June 26 by the Prime Minister of Trinidad and Tobago, Kamla Persad-Bissessar, to review criminal defamation laws and “bring them in line with international best practice”. According to the information received, the Prime Minister expressed her interest in amending the laws at the close of the General Assembly of members of the International Press Institute (IPI) in Port-of-Spain.740 Later, on November, 2012, during the annual Christmas media luncheon, the Prime Minister announced that the “now archaic defamation laws [were] currently under review, with the intention to bring them more in line with international best practice”.741 The Prime Minister informed that the process was being carried out by the Attorney General and that she would keep the journalists informed of all the review process. For his part, the Attorney General made remarks indicating that the aim of this process was to limit these types of laws and to abolish criminal libel.742

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

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the police to obtain the video was unnecessary and unjustified. Likewise, the police authorities themselves stated that the number of officers used to serve the warrant was excessive. 743

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

446. Finally, the Office of the Special Rapporteur was informed that in October of 2012, the private telephone records of journalist Anika Gumbs-Sandiford, with newspaper Trinidad Guardian, were leaked with the alleged purpose of tracking a source she used in an article published in September, 2012. 745

26. Uruguay

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

448. According to information received, on March 6, an Uruguayan court ordered the processing and arrest of a former police officer suspected of being an accomplice to the murder of


journalist and teacher Julio Castro. Castro was kidnapped, tortured and murdered in 1977 by members of the Information and Defense Service. Castro’s remains were found in 2011, buried at a military facility. According to the information, Judge Juan Carlos Fernández Lecchini denied a statute of limitations pleading brought by the defense and declined, due to lack of evidence, to process a member of the armed forces allegedly responsible who could be connected with the order to commit the crime.  

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

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

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

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

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

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

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

27. **Venezuela**

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

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

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

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

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

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

756 IFEX/ Instituto Prensa y Sociedad (IPYS). January 16, 2012. *Periodista ciberactivista es amenazado por Twitter y teléfono* [Online activist journalist threatened over Twitter and by telephone].


761 Colegio Nacional de Periodistas (CNP). February 9, 2012. *Periodistas de Aragua denuncian atropellos contra su desempeño profesional* [Journalists from Aragua complain of attacks on the practice of their profession]; Espacio Público. February
461. The IACHR learned that on February 19, 2012 a journalist working for the newspaper Visión Apureña, Mario Castillo, had allegedly been attacked by a member of the National Guard in a hospital in the city of San Fernando de Apure. According to the information received, the journalist attempted to photograph a member of the military who was being admitted to the hospital after sustaining an accidental bullet wound to the foot, whereupon the National Guardsman reportedly insulted and threatened the journalist.762

462. On March 5, 2012 several dozen supposed civil servants and members of a group known as Los Motilones, allegedly appeared at the Barinas radio station called La Barinesa 92.7 FM, as it was broadcasting the program called ‘Punto y Coma’, hosted by the journalist and candidate for the Bolívar Mayor’s Office, Adolfo Superlano. According to what was reported, the group’s presence at the station was intended to intimidate the station director after the station had carried, for several days, a program about the possible contamination of the Barinitas water supply. Superlano had reported the situation to the Public Prosecutor’s Office and had asked for protection.763

463. On March 11, 2012 unknown persons had reportedly set fire to the home of journalist José Ramón González, General Secretary of the Apure-Amazonas section of the National Association of Journalists [Colegio Nacional de Periodistas – CNP]. According to the information received, in the early morning hours the perpetrators had forcibly burst into the home, spread gasoline inside and set it on fire. Some days following the incident, González had received threats and attempts were made to extort money from him.764

464. Likewise, on March 11, 2012 alleged members of the La Piedrita Collective, an illegal armed group operating in a low-income neighborhood of Caracas, reportedly drove two hearses to the facilities of Globovisión; the coffins inside the hearses were said to contain the remains of two recently assassinated members of the group. According to what was reported, the La Piedrita Collective blamed Globovisión for the deaths of the two gang members. The group claimed that the two had been murdered by a paramilitary group. On March 10, another group known as Secretariado Revolucionario de Venezuela, demonstrated outside Globovisión’s facilities and blamed it for creating “violence through the media” and “glorifying” the violence that occurs in Caracas’ neighborhoods.765 In 2004, the Inter-American Court of Human Rights had ordered precautionary measures for Globovisión. In the process, the State was ordered to adopt such measures as might be necessary to “safeguard and protect the lives, safety, and freedom of expression of the reporters, executives and employees of Globovisión and of the other persons who are in the facilities of said broadcaster and who are directly linked to the journalistic

9, 2012. Agredida periodista de Globovisión en el Hospital Central de Aragua [Attacked Globovisión journalist in the Aragua Central Hospital].


763 Instituto Prensa y Sociedad (IPYS)/IFEX. March 9, 2012. Radio announcer reports being threatened by regional government personnel; Barinas, March 6, 2012. Gobernación intenta otro golpe contra la libertad de expresión [Government attempts to land another blow on freedom of expression].


operation of this broadcaster” as well as “to protect the perimeter of the head offices of the Globovisión social communications broadcaster.”

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

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

467. The IACHR was informed of attacks on five media outlets. According to reports, on the night of March 19, 2012 unidentified persons fired several shots at the newspaper Nuevo Día, in Coro, Falcon state. There were no casualties. The police who investigated the incident found that bullets had penetrated the main door to the newspaper’s headquarters. On October 5, unknown persons allegedly tossed an explosive device at the Nuevo Día building. One person who happened to be walking by was injured. This would be the third attack against a newspaper since June 2010.

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

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469. From the information received, it appears that in early June, María Isoliett Iglesias, Devis Ramírez, Tomás Ramírez González and Luis García – all journalists with El Universal newspaper - had filed a complaint with the Public Prosecutor’s Office because of a threatening anonymous message received at the newspaper which warned of an attack on the journalists who reported on the prison crisis that occurred at the La Planta prison.773

470. The IACHR was informed that on August 1, alleged members of the National Guard had seized camera equipment belonging to newspaper photographer Huanis Albaro, with the Diario De Frente, and had erased the photographs. Apparently, the photographer had shot photographs of violent incidents that occurred in a public place in the city of Barinas.774

471. According to information received, on August 22 journalist Delvalle Canelón and a photographer who accompanied her –both from Globovisión- were allegedly assaulted by private citizens as they attempted to report on incidents of violence occurring at a prison.775

472. Furthermore, on September 12, persons presumed to be military troops attacked journalist Haydeluz Cardozo and photographer Jairo Nieto, both from the newspaper El Impulso, as they were searching for information about the seizure of food trucks from the Lara state governor’s office. According to reports, the journalists were beaten and their camera equipment damaged when the military struggled with them to block their attempt to enter the facilities where the trucks were being kept.776

473. According to reports received, Bolivarian National Guardsmen supposedly attacked cameramen from Globovisión and DAT TV and confiscated their camera equipment when the journalists attempted to film an action taken by the National Guardsmen against persons participating in a student protest against the La Cabrera viaduct in Carabobo state.777

474. On September 20, National Guardsmen were alleged to have harassed Raúl Araque, photographer with the newspaper Notitarde, as he was trying to cover the fire at the El Palito refinery in the state of Carabobo. According to accounts, the photographer was doing his job when he was allegedly surrounded by a group of Guardsmen who pointed their guns at him and ordered him to hand over his equipment.778


777 Notitarde. September 18, 2012. GNB arremete contra estudiantes y periodistas en viaducto La Cabrera [GNB clashes with students and journalists on the La Cabrera Viaduct]; Agencia Carabobeña de Noticias (ACN). September 18, 2012. GNB detuvo a estudiantes y agredió equipo de Globovisión en protesta en Carabobo [GNB detained students and attacked Globovisión’s news team during protest in Carabobo].

475. According to information received, César Aponte, a journalist with ANTV public television, was assaulted on October 24 by security personnel at the Universidad Central de Venezuela, as he was trying to cover news about the University Council.779

476. The IACHR was told that on November 1, unknown persons allegedly fired shots at the offices of the newspaper El Regional del Zulia, in Maracaibo. According to accounts, the authorities conducted investigations at the scene of the events and allegedly claimed that this was an isolated incident.780

477. At the public hearings that the IACHR held on March 27 and November 1, 2012, on the subject of freedom of expression in Venezuela, the parties who had requested the hearing described how the assaults and intimidation had a deterrent effect on freedom of expression, which they attributed mainly to public servants or persons associated with the Government. They also underscored the fact that no one is made to answer for these violations. They expressed concern over the fact that the media in Venezuela are being discredited and about the lack of follow-up to the investigations conducted. They observed that the failure of the justice system to take action and the sheer number of attacks on the media in 2012 had an intimidating effect on the practice of journalism. For its part, the State said that the complaints filed in connection with these violations must be duly supported by sufficient evidence. It added that the restrictions on freedom of expression in Venezuela are not the work of the State; instead, they are a function of the power wielded by the private media.781

478. In addition, in its observations to this report, the State indicated that information regarding attacks and threats against journalists and the media is asserted in the “publications of Venezuelan media outlets and Venezuelan NGOs,” when “according to Venezuelan law, the only evidence in cases of attacks are the complaints filed before the Office of the Prosecutor General, [which is] the only way for a criminal investigation to be opened.” The State underscored that Venezuela has “a hundred media outlets, ninety percent of which are politically biased against the government of President Chávez, and their information is mostly false, in violation of the Constitution of the Bolivarian Republic of Venezuela, Article 58 of which [provides], ‘All persons have the right to timely, accurate, and impartial information […]’.”782

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

2. Election-related assaults

779 Noticias 24. October 24, 2012. Periodista de ANTV denunció agresión. “Es indigno que en la UCV ocurran hechos violentos” [ANTV journalist denounced the aggression. “It’s an outrage that the UCV should be the scene of violence]; ANTV. October 25, 2012. Agredido equipo reportero de ANTV en la Universidad Central de Venezuela [ANTV news team at the Universidad Central de Venezuela attacked];


480. The IACHR also received information concerning the spike in attacks on journalists and other media personnel during the electoral process. The IACHR continues to observe a climate of extreme polarization that obstructs and, in many cases, altogether prevents journalists from practicing their profession of keeping the public properly informed. For example, on February 14, 2012 Aragua police officers grabbed photographer Luis Rivas, with the newspaper El Aragüeño, and took away his camera equipment as he was covering the commotion related to the seizure of the voting records for the internal elections within the Mesa de la Unidad Democrática (MUD), an opposition party, in the municipality of Mario Briceño Iragorry. Later, the police returned the camera equipment, but without the memory card.783

481. According to information received, on March 3, 2012 alleged government supporters in Táchira state were said to have attacked journalist Luz Dary Depablos, a reporter from Globovisión, the only television channel critical of the Government, when she attempted to approach several government ministers in a political event.784 On March 4, in the San José de Cotiza neighborhood of Caracas, men wearing red shirts surrounded journalist Sasha Ackerman and cameraman Frank Fernández –both from Globovisión– and stole their equipment and the images they had captured when they filmed an incident in which unidentified persons fired shots into the air as opposition presidential candidate Henrique Capriles was at a march. One person with the politician allegedly sustained an injury to the forearm.785

482. According to information received, on March 12, 2012 opposition supporters in the community of Cabimas allegedly attacked a Catatumbo TV journalist, Fidel Madroñero, and his cameraman, Ricardo Carrillo, as they were trying to take pictures of supporters of President Hugo Chávez. According to what was reported, the alleged assailants tried to grab the recording equipment and had stolen some of the journalist’s personal effects.786 On March 17, supposed members of the San Agustín de Maracay Community Council in the state of Aragua, allegedly attacked journalist Julie Arévalo and cameraman Fernando Peña, from the network TVS, and journalist Lourdes Maldonado and photographer Javier Troconiz from the newspaper El Siglo, as they were trying to cover a demonstration staged by an opposition political party. The assailants had allegedly attacked Troconiz and threw stones at the TVS team, forcing both teams to leave the scene of the events.787

483. According to reports, on March 19, 2012 Llafrancis Carolina Colina Petit, a journalist from Ávila TV, allegedly filed a complaint with the Public Prosecutor’s Office against opposition deputy and candidate for the governorship of the state of Aragua, Richard Mardo, claiming that he had physically attacked her during a campaign event in La Victoria, Aragua.788 On March 21, supporters of presidential

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788 Public Prosecutor’s Office. March 19, 2012. MP investiga agresión contra reportera de VTV en Aragua [Public Prosecutor’s Office investigating attack against VTV reporter in Aragua]; Agencia Venezolana de Noticias (AVN). March 19, 2012. MP investiga agresión contra reportera de Ávila TV en Aragua [Public Prosecutor’s Office investigating attack on reporter from Ávila
candidate Henrique Capriles allegedly attacked Carolina Zapata, a journalist from *Venezolana de Televisión*, a state-run television channel, who was recording the statements made by the candidate while at a march in San Cristóbal, Táchira. On April 17, *Televén* cameraman Oneiver Rojas was allegedly beaten by an opposition leader, who had also attempted to attack Jorge Amorim, host of the “La Hojilla” program on *Venezolana de Televisión*, as they were covering a Capriles political event in Anzoátegui. On May 10, Danny Vargas, a cameraman from *Venezolana de Televisión*, was allegedly been beaten and his equipment taken as he was filming a campaign event organized by the candidate for the office of mayor of the municipality of Pedraza in Barinas. Likewise, on July 26, persons participating in an opposition political meeting in Guárico were alleged to have shoved Giovanina Guillén, a journalist with *Venezolana de Televisión* (VTV) public television, and attempted to grab the camera equipment from the cameraman who accompanied her.

484. On September 4, members of candidate Henrique Capriles’ press and security team allegedly attacked journalists Carolina Zapata and Blanca Castejón, correspondents from *Venezolana de Televisión* and *Radio Nacional de Venezuela*, as they were trying to interview the presidential candidate at a political event in Ureña, Táchira state. Similarly, on September 9, persons presumed to be members of the opposition attacked Lorena Benítez, a journalist with the National Public Media System. According to what was reported, the journalist was covering a campaign event staged by the opposition candidate in a Caracas neighborhood, when her assailants allegedly insulted her and threw some liquid on her. When she attempted to photograph the event, the journalist was reportedly beaten.

485. According to information received, on September 12 persons alleged to be supporters of President Hugo Chávez reportedly attacked the photographer from *Agence France Presse* (AFP), Geraldo Caso Bizama, as he was attempting to photograph the arrival of opposition candidate Henrique Capriles at the Puerto Cabello airport. According to what was reported, a group of persons wearing red shirts and the insignia of the governing party had allegedly surrounded the photographer to take away his credentials and equipment and threatened him with rocks. Similarly, on September 30, Cristian

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789 *Venezolana de Televisión* (VTV). March 23, 2012. *Seguidores de Capriles Radonski agredieron a corresponsal de VTV en Táchira* [Correspondent of VTV in Táchira: Radonski was aware of the entire attack].

790 *Corresponsal de VTV en Táchira: Capriles se percató de toda la agresión* [Capriles knew everything about the attack].


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


795 Radio Nederland. September 13, 2012. *Agreden a colaborador de AFP en escaramuza entre chavistas y opositores* [AFP collaborator attacked in skirmish between Chavez supporters and the opposition]; *Noticias 24*. September 12, 2012. *Agreden a colaborador de AFP en enfrentamiento entre chavistas y opositores* [AFP collaborator attacked in clash between Chávez supporters and opposition].
Hernández, a photographer with the Caracas newspaper *Tal Cual*, was allegedly verbally and physically assaulted by some 30 persons wearing red shirts, as he was on his way home after covering the march held to mark the close of the opposition candidate’s campaign.796

486. According to the information available, on October 4 and 7, groups of persons identified by the colors and insignia of the party in power, allegedly surrounded the headquarters of *Globovisión*, striking a threatening posture. *Globovisión*’s editorial position is critical of the Government.799 Against this backdrop, Kelvin Charles, a United States journalist with Miami’s *Martí TV* and *Mega TV*, was alleged to have been struck on the leg on October 4, as he was taping the crowd outside *Globovisión*’s headquarters.796

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

488. On October 7, a team from the newspaper *Últimas Noticias* was allegedly attacked and threatened with a gun by persons who reportedly identified themselves as “community communicators”, as the team was attempting to cover news of an episode of violence that occurred outside the polling station in the Kennedy housing development in Macarao.800

489. The IACHR was informed that on October 8, Argentine journalist Jorge Lanata and his news team from *Canal 13* were temporarily detained at Maiquetía International Airport, as they were getting ready to leave the country after covering the presidential elections. According to the reports, agents of the Bolivarian National Intelligence Service (SEBIN) allegedly held the journalist and his team *incommunicado* for several hours and seized their journalistic materials. According to Lanata, the agents reportedly interrogated him separately and accused him of “espionage.” When he entered the country on October 3, both the journalist and his news team had allegedly reported a similar situation, in which they were detained and questioned.801

490. According to the information received, Luis Alfonso Cabezas, director of Convite, a civil society organization, allegedly received telephone threats on October 11, after publishing an article in the October 7 edition of the newspaper *El Nacional*; the article was about the quality of hospital care in the

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

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


country. According to what was reported, music from the PSUV election campaign could be heard in the background of the threatening telephone calls he received.  

491. During the hearing held on November 1, 2012, the IACHR received information concerning an alleged practice of usurping the identities of human rights defenders, journalists, media outlets, state institutions, politicians and other public figures by way of their e-mail and social networking (Facebook and Twitter) accounts and websites. In most cases, the usurped accounts and websites have allegedly been used to send messages that call into question the activities of the account or website owner and of other public figures in Venezuelan society. In general, the messages reportedly have political overtones and are intended to drum up support for the government party’s nominee or candidate in the presidential elections. However, other statements reportedly announced the death of public figures, or made homophobic and anti-Semitic comments or insults. According to the information received, N33 is alleged to be the group behind these activities. In other cases, the perpetrators’ identity is unknown. For its part, the State claimed that the Government’s own websites had also been hacked.

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

493. Regarding attacks in the context of the elections, the State reiterated in its observations to this report that these “complaints based on news articles do not implicate the Venezuelan State.” In its

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

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


opinion, “If no complaints were filed before the Office of the Public Prosecutor, they do not constitute
evidence of any kind, for the reasons stated in the previous chapter.”

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

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

495. The IACHR has received information concerning the difficulties that opposition or
independent media encounter when trying to cover events of interest to the public, such as alleged the
contamination of the water supply in various communities. The IACHR was told that on March 21, 2012
Examining Court 25 of the Caracas Metropolitan Area agreed to a request from the Public Prosecutor’s
Office to require that “the national and regional print media and radio, television and digital news conduct
themselves with the utmost sense of responsibility when reporting information related to the alleged
contamination of the potable water supply in the country; the court held that any news reported on such
subjects must be based on the proper technical supports, backed by a competent institution.”\textsuperscript{808} [italics
added]. The request from the Public Prosecutor’s Office was prompted by various reports of an oil spill
said to have occurred in the Guarapiche River and complaints from a number of media outlets regarding
the quality of the water supply in some sectors of Caracas, Valencia and Maracay. On March 20, 2012,
one day before the court’s decision was delivered, President Hugo Chávez had reportedly urged the
Public Prosecutor’s Office and the Supreme Court to investigate those who had circulated information
concerning the alleged contamination. President Chávez had reportedly said the following: “I’m not a
judge, but I am the head of State and am compelled to call upon each and every sector of the
government to accept its responsibility. I am urging, demanding that the Attorney General of the Republic,
Dr. Luisa Ortega, accept her responsibility. I am respectfully urging the Chief Justice of the Supreme
Court, Dr. Luisa Estela Morales, to accept her responsibility. We cannot stand by idly as these campaigns
are waged.”\textsuperscript{809}

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

\textsuperscript{807} In communication from the State of Venezuela No. AGEV/ 000039 to the Executive Secretary of the IACHR, dated
section on “State respect and guarantee for the exercise of freedom of expression.” P. 21.

\textsuperscript{808} Public Prosecutor’s Office, Bolivarian Republic of Venezuela. March 21, 2012. \textit{Acuerdan medida cautelar innominada
que exige responsabilidad al difundir información sobre presunta contaminación del agua} [Agreement reached on untitled
precautionary measure that demands accountability when circulating information on alleged contamination of the water supply].

\textsuperscript{809} Noticias 24. March 20, 2012. \textit{Chávez pide a la Fiscal y a la presidenta del TSJ investigar campaña de “terrorismo”
sobre el agua} (Video) [Chávez asks the Prosecutor and the Chief Justice of the Supreme Court to investigate “terrorism” campaign
about the water supply]; Public Prosecutor’s Office, Bolivarian Republic of Venezuela. March 22, 2012. \textit{FGR: medida solicitada por
el Ministerio Público sobre el agua garantiza derechos de los venezolanos} [FGR: measure requested by Public Prosecutor’s Office
concerning the water supply guarantees Venezuelans’ rights]; Committee to Protect Journalists (CPJ). March 26, 2012. \textit{Venezuelan
para hablar sobre el agua potable} [Public Prosecutor’s Office demands “reliable technical support” before any talk about the water
supply].
disseminating information related to the alleged pollution of the country’s drinking water supply, and they should have the proper, accurate technical evidence backed by a competent body.”

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

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

499. On March 15, 2012 purported members of a community council in the region of Isla de la Culebra, in the state of Carabobo, violently disrupted the live broadcast of the Globovisión program ‘Radar de los Barrios’, and attempted to grab the microphone from the journalist when people from the area were complaining of problems with the quality of the town’s water supply.

500. According to information received, on March 20, 2012 the National Assembly reportedly approved a request from one of its members whereby the Ombudsperson’s Office would be ordered to conduct an investigation into the publication of an allegedly racist message in a caricature that appeared in the newspaper Tal Cual. The caricature, which appeared against the backdrop of complaints about the oil spill in various sectors of Venezuela, depicted a man in a military beret similar to the one worn by President Hugo Chávez, opening a tap that dispenses dark water, as he explains to two children: “Enough with white supremacy […] now we have Afro-descendant water.”

501. The IACHR was informed that three journalists and one photographer were allegedly held in the town of Freites, by persons presumed to be members of the Bolivarian Army and personnel of the PDVSA’s Department to Prevent and Control Losses. The journalists were reportedly returning from covering an oil spill in that community. According to what was reported, the supposed agents had allegedly detained Argel Fernández and Sergio Salazar, reporters from the newspaper El Tiempo, and

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Susana Quijada and photographer José González, both from Mundo Oriental. The agents claimed that the journalists had “taken information from a privately-owned oil area” and would therefore be required to make a statement. The journalists were reportedly released an hour and a half later.  

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

4. Journalistic Materials Withheld and Seized

503. On February 8, 2012 officials of the Bolivarian Militias allegedly held journalists Abrahán Carvajal and Jesús García, from the newspaper Últimas Noticias, in a Caracas hospital where the journalists were obtaining information for a campaign to prevent traffic accidents. According to the reports received, the journalists had permission from a head of traumatology, but even so the militia members took them away to the hospital’s security office, confiscated their equipment and notes, and forced them to take off some of their clothing to search for video memory cards. After holding the journalists incommunicado for three hours, the militia officials had allegedly allowed them to leave with their belongings.

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

505. In this same vein, the IACHR received information concerning the alleged detention of Daniel Guillermo Colina, a Globovisión journalist, and his cameraman and assistant; it was also told that the news material gathered by that team had been retained. According to what was reported, on the morning of May 17, 2012 Mr. Colina and his team were allegedly stopped by agents of the Caracas Police Force, as they were covering disturbances inside the La Planta preventive detention facility. Furthermore, the news material obtained by the team was confiscated. The authorities allegedly claimed that the purpose of the measure was to protect the journalists by getting them away from the area of the turmoil. According to information received, similar incidents involving Globovisión personnel covering news events at the detention facility had occurred on April 30 and May 8.
506. Furthermore, on August 28, supposed agents of the Bolivarian National Guard had held journalist Adriana Rivera and cameraman Raúl Romero from the newspaper *El Nacional*, for at least a half hour when they were trying to report on a fire at the Amuay Refinery Complex in Falcón state. 820

507. According to the information received, on October 22, persons presumed to be members of the Bolivarian National Guard allegedly detained the vehicle carrying a portion of the daily circulation of the newspaper *Extra de Monagas* and confiscated several thousand copies, which took a serious toll on the newspaper’s circulation in the region. According to what was reported, the military had claimed that security agencies were after the vehicle, which the newspaper’s executives denied. 821

508. The State reiterated in its observations that this was a matter of events “summarized in newspaper articles, without the proper complaint having been filed before the Office of the Public Prosecutor.” In its opinion, this information was reported “for purposes of having a false file opened in the Inter-American Human Rights System, and still disparaging (sic) country, which has committed the offense of failing to obey the government of the United States, the financial backer of the OAS.” 822

509. Principle 8 of the Declaration of Principles of Freedom of Expression, which the IACHR approved in 2000, provides that “[e]very social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential”.

5. Subsequent imposition of liability

510. The IACHR has repeatedly underscored the need to review the framework of laws in which the Venezuelan media operate. 823 In particular, the IACHR has called the authorities’ attention to laws written in ambiguous language and establishing disproportionate penalties, laws that give judicial and administrative authorities too much latitude or discretion, or that fail to offer sufficient guarantees to ensure that freedom of expression can be exercised without fear of reprisals. 824 Against the backdrop of polarization and juridical uncertainty described above, the events described in the following paragraphs were reported in 2012.

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According to the information received, on October 18, 2011, CONATEL’s Bureau of Social Responsibility allegedly fined Globovisión the sum of 9.3 million bolívares fuertes, the equivalent of 7.5% of its gross earnings for 2010. The official reports asserted that the fine was imposed because of violations of the final paragraph of Article 7, and subparagraphs 1, 2, 4 and 7 of Article 27 of the Law on Social Responsibility in Radio, Television and Electronic Media (Ley Resorte), alleged to be the result of the news reports the channel aired between June 16 and 19, 2011, in connection with the prison situation at the El Rodeo Penitentiary. In its decision, the Bureau of Social Responsibility had reportedly concluded that the television channel transmitted “messages that promote alterations of public order, justify crime, incite the existing legal regime, promote hatred for political reasons and foment panic among the citizenry during the days of June 16, 17, 18 and 19, 2011.” According to what was reported, on January 20, 2012, “a contentious-administrative petition was filed” with the Political-Administrative Chamber of the Supreme Court (TSJ). It was filed “together with a petition for injunctive relief and,

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

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

1. Incite or promote hate and intolerance for religious, political, gender-related, racist, or xenophobic reasons.

2. Incite or promote and/or advocate crime.

(…)

4. Foment anxiety in the population or affect the public order.

(…)

7. Incite or promote disobedience to the established legal order …”

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


secondarily, a petition seeking precautionary measures that would suspend the effects of the decision.829 These petitions were filed by Globovisión to challenge the decision of the Bureau of Social Responsibility. In its petition, Globovisión claimed violations of freedom of expression, not simply because a fine was imposed but also because of the size of the fine. According to Globovisión, it had simply broadcast a direct report on the events and the relevant government-sourced information. They asserted that the intent of that news was not to foment anxiety or affect the public order. Furthermore, they argued, the information that Globovisión imparted had no such effect. They asserted that articles 27 and 29 of the Law on Social Responsibility in Radio, Television and Electronic Media (Ley Resorte), which set forth the conduct that carries a penalty, were unconstitutional and violated the principle of legality, the principle of ex post facto law, the principle of proportionality and the principle of the rationality of public powers. Finally, they alleged that the penalty was imposed “without the benefit of any preliminary proceeding”.830 In a March 6 ruling the Political-Administrative Chamber denied the petition for injunctive relief and, in a March 15 ruling, declared the petition seeking a precautionary measure suspending the effects of the court decision to be out of order. However, as of the date of this report, the court had not yet ruled on the nullity petition.831

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

513. In its observations to this report, the State indicated with regard to this issue that “the radio spectrum is publicly owned—that is, administered by the Venezuelan State—and there is an institution called CONATEL, which sanctions radio and television stations that fail to comply with the Law on Social Responsibility in Radio, Television and Electronic Media. That law establishes sanctions for the media that violate its provisions. That is perfectly legal, and we have been explaining the situation to the Commission for several years.”834

514. The State further established that “up to the moment this report was presented,” the opposition media “have never been subject to measures involving shut-down, censorship, or the

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confiscation of publications, in spite of the fact that they have frequently engaged in prolonged campaigns calling for the overthrow of the government and have instigated political assassination, civil war, and ethnic and racial hatred.  

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

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

517. The Commission is not unaware of the duty of special protection that States have with respect to children and adolescents. However, an authority’s invocation of that obligation of special protection and of the principle of the child’s best interest as grounds for restricting another Convention-protected right must be based on objective reasons that have a clearly identified relationship to those obligations and principles in each specific case. In addition, such restrictions must abide by a regulatory framework that has the safeguards necessary to ensure that no discretionary use is made of excessively broad categories and that, in all instances, the sanctions are strictly proportionate.

518. According to what was reported, on October 10 Councilman Nelson Urbina of the Carirubana Municipality was convicted of defaming [difamación e injurias] the mayor of that community. He was sentenced to three years in prison. The criminal case against him reportedly started in 2007, when the mayor filed a complaint in response to articles critical of his performance in office, which the town councilmen reportedly published in an editorial opinion piece. Urbina was taken to the Coro Prison in the state of Falcón, to serve his sentence.


836 Article 74 reads as follows: “Printed or audiovisual materials, books, publications, videos, illustrations, photographs, readings and chronicles that are inappropriate for children and adolescents must have a wrapping to seal their content and a warning label stating that the material is not for children and adolescents. When the covers or packaging of these materials contain pornographic information or images, they must have an opaque wrapping.” National Assembly of the Bolivarian Republic of Venezuela. Organic Law for the Protection of Children and Adolescents. Official Gazette No. 5.859, Special Edition. December 10, 2007. Ombudsperson’s Office. April 26, 2012. A solicitud de la DdP Diario La Antena no podrá publicar imágenes cruentes [At the request of the Ombudsperson’s Office, La Antena newspaper may not publish crude images]; Últimas Noticias. April 26, 2012. Diario La Antena no podrá publicar fotos cruentes [La Antena newspaper can no longer publish crude photos].


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

520. For its part, the Inter-American Court has addressed the issue of civil liability and wrote that civil penalties in matters involving freedom of expression must be proportional so that they do not have a chilling effect on that freedom, since “the fear of a civil penalty, considering the claim […] for a steep civil reparation, may be, in any case, equally or more intimidating and inhibiting for the exercise of freedom of expression than a criminal punishment, since it has the potential to affect the personal and family life of an individual who accuses a public official, with the evident and very negative result of self-censorship both in the affected party and in other potential critics of the actions taken by a public official.”

6. Access to information

521. When the topic of access to public information came up in the public hearings that the IACHR held in March and November 2012 on the situation of freedom of expression in Venezuela, the petitioners spoke about the difficulties that journalists have in getting access to information that the State has in its possession, and to government events and offices. They also made the point that Venezuela does not have a law on access to public information and expressed concern over a Supreme Court decision that would require journalists to explain why they were requesting public information and how they planned to use the information they were seeking. The State, for its part, said that these limitations were legitimate; that journalists cannot be provided with every piece of information they ask for. It also argued that not every media outlet can be accommodated at every event, and access to information is guaranteed because Venezuela has public radio and television and official press releases are issued following government events and are accessible to everyone.

522. The IACHR received information concerning a petition filed with the Constitutional Chamber of the Supreme Court seeking nullification of the Internal Rules of Procedure and Debate of the National Assembly. The petition was filed by journalist organizations when amendments were introduced

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in December 2010 under which the National Assembly’s Fundación Televisora would be the only one authorized to be present for legislative sessions and provide the signal to private broadcasters. In 2012 various amparo petitions were brought by members of civil society in connection with requests for information filed with government agencies and never answered. In this connection, on March 16 a petition seeking constitutional relief for failure to answer a request for information filed with Petróleos de Venezuela concerning alleged oil spills in 2010 and 2011, was declared inadmissible by the Capital Region’s Sixth Superior Contentious-Administrative Law Court. Likewise, on May 23, the Constitutional Chamber of the Supreme Court dismissed a petition for amparo relief that was based on the fact that a request filed with the Ministry of the People’s Power for Women and Gender Equality seeking information on plans to treat and prevent violence against women went unanswered. On June 5, the Constitutional Chamber dismissed a petition seeking amparo relief where the petitioner wanted information turned over on the amount that the Ministry of the People’s Power for Communications and Information had spent on government advertising. On June 18, a petition seeking amparo relief because the Ministry of the People’s Power for Health had failed to answer a request seeking information on the importation, preservation and distribution of medications from Cuba, was also dismissed by the Constitutional Chamber. In all these cases, the court held that the petition seeking amparo relief was not the proper avenue to pursue to request access to public information.

According to reports received, on August 6 journalists from private media outlets were excluded from a Chávez campaign event in Guacara, Carabobo state. According to what was reported, the journalists had their credentials taken away and were told that they could not get into the event because it was being broadcast via the National Public Media System.
525. On October 2, the Second Contentious-Administrative Law Court handed down a decision blocking access to crime figures for 2008, 2009, 2010 and the first half of 2011. According to what was reported, the Court held that the Laboratory, Criminal and Forensic Investigation Corps (CICPC) does not have the authority to release that information to the public. The Court concluded that while the CICPC Law provides that one of this institution’s functions is to prepare statistics on crime, “there is nothing to suggest that one of the CICPC’s functions is to provide that information to private parties.”

526. On October 23, the Second Contentious-Administrative Law Court reportedly agreed to hear the petition that Espacio Público filed against the National Telecommunications Commission (CONATEL) for refusal to provide information. In a request dated April 30, 2012, Espacio Público had allegedly requested information concerning the proceedings prescribed under the Law on Social Responsibility in Radio, Television and Electronic Media (Resorte law) for administrative sanctions, and a list of the persons or organizations that pay taxes, rates and contributions under the Organic Telecommunications Act, and other information. As of the date of this report, the court had not yet issued its decision on the merits. It had asked CONATEL to issue a report explaining the reasons for the delay in handing over the information.

527. With regard to access to information, the State asserted that the issue had been “sufficiently explained in the hearings and memoranda presented since 2003.” At the hearing on the right to freedom of expression in Venezuela held at the IACHR on March 27, 2012, the petitioners argued, among other things, that only those media outlets in Venezuela that are part of the State and very few private media outlets are able to participate in press conferences and are granted access to information in the power of the Government. In their view, these limitations on the right to access to public information constitute a pattern of restrictions that characterizes a State policy. In this regard, the representative of the State maintained that, “every time there is a public ceremony, a press release is issued about what is taking place. It is also broadcast by State media and television stations, so that anyone who wishes to be informed of these public ceremonies in the most sufficient, complete, and total manner can redistribute it and even re-broadcast what airs on the public networks. And they do this, in fact, and the public system, which is very limited, has also in fact re-broadcast content from private media, and thus in this sense, there is no restriction of information.” At the hearing held on November 1, 2012, the petitioners again raised the absence of institutional mechanisms to guarantee the right to public information in Venezuela. The State’s representative held that “The Inter-American Convention on Human Rights itself says that there is a set of circumstances under which, for the security of the State, among other reasons, information can be restricted. It is not—in no State in the world is there a situation in which information requested by a journalist must necessarily be surrendered.”

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850 Second Contentious-Administrative Law Court. October 2, 2012. Expediente No. AP42-O-2012-000070 [Case No. AP42-O-2012-000070]; Office of the Public Prosecutor of the Bolivarian Republic of Venezuela. Ley del Cuerpo de Investigaciones Científicas, Penales y Criminalísticas [Law on the Laboratory, Criminal and Forensic Science Corps] (G.O. 38.598 of 01/05/07). Under Article 11.3, it is the function of the CICPC, “[t]o prepare and analyze crime statistics in coordination with the National Institute of Statistics, and then present those statistics to the ministry with competence in police affairs and justice, when so requested for the purpose of adopting policy on prevention and applying the measures necessary to ensure achievement of the State’s goal in the area of security.”


853 IACHR. 144th Period of Sessions. March 27, 2012. Hearing on the Right to Freedom of Expression in Venezuela. [31:00 – 32:00].

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

7. Other related developments

529. The IACHR received information to the effect that the authorities have shut down a number of radio and television stations for noncompliance with or violation of the established regulations. The IACHR is asking the authorities to meticulously apply the rules of due process given the impact that the enforcement of sanctions can have on the exercise of freedom of expression. According to the information received, between November and December 2011, the National Telecommunications Council (CONATEL) allegedly shut down at least 11 radio stations. In a number of these cases, the broadcasting equipment and materials used in broadcasting were also seized. CONATEL claimed that the stations were shut down because they were operating illegally.855 The IACHR was told that on orders from CONATEL, agents of the Venezuelan National Guard took over four radio stations in the state of Monagas on March 30, 2012 claiming that they were “enforcing an administrative penalty” because the radio stations in question were “allegedly broadcasting on a frequency without having the necessary permit and concession.” The authorities suspended the radio stations’ broadcasting and their equipment and materials were confiscated. One of the affected radio stations is Caicareña 100.5 FM, owned by the brother of the governor of Monagas. The other stations shut down that day were Venezuela Olímpica 97.9 FM, Única 104.9 FM and Líder 100.7 FM. Caicareña was allegedly shut down by force, and at least one person was injured. CONATEL announced that two of its employees had been injured during the operation.856 The Venezuelan Broadcasting Chamber supported the shutdown of the “clandestine” stations.857

530. In this respect, the State indicated that the aforementioned situation “refers to the shutdown of several radio and television stations by the competent authorities. We responded to the Commission about this at the proper time; they are stations that were operating without the proper authorization from CONATEL.”858

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855 Espacio Público. E-mail received on February 24, 2012. Available at: IACHR Archives; El Nacional. February 16, 2012. Conatel inicia procedimientos sancionatorios contra las emisoras Xtrema y Cosmo [CONATEL institutes proceedings to impose penalties on Xtreme and Cosmo stations].

