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

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GENERAL SECRETARIAT
ORGANIZATION OF AMERICAN STATES
WASHINGTON, D.C.

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**ANNUAL REPORT OF THE OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF
EXPRESSION 2012**

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ACHPR:	African Commission on Human and Peoples' Rights
American Convention:	American Convention on Human Rights
American Declaration:	American Declaration of the Rights and Duties of Man
Declaration of Principles:	Declaration of Principles on Freedom of Expression
European Convention:	European Convention on Human Rights and Fundamental Freedoms
European Court:	European Court of Human Rights
IACHR:	Inter-American Commission on Human Rights
ICCPR:	International Covenant on Civil and Political Rights
ILO:	International Labor Organization
Inter-American Court:	Inter-American Court of Human Rights
OAS:	Organization of American States
OSCE:	Organization for Security and Cooperation in Europe
Office of the Special Rapporteur:	Office of the Special Rapporteur for Freedom of Expression
UN:	United Nations
UNESCO:	United Nations Educational, Scientific and Cultural Organization

ANNUAL REPORT OF THE OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION 2012

INTRODUCTION

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

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

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

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

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

6. The intense efforts of the Office of the Special Rapporteur have allowed it to become an expert office charged with promoting and monitoring respect for freedom of expression in the hemisphere. This standing has generated, in turn, a substantial increase in the expectations of the hemispheric community with regard to the work of the Office of the Special Rapporteur. In order to meet this demand, it is necessary to pay attention not only to the institutional and political support of the Office of the Special Rapporteur, but also its financial support, since without this support it cannot function and carry out the

activities required by its mandate. It is important to once more urge OAS Member States to follow those countries that have responded to the call of the hemispheric summits to support the Office of the Special Rapporteur. The Plan of Action approved by the Heads of State and Government at the Third Summit of the Americas, held in Québec in April of 2001, establishes that “[t]o strengthen democracy, create prosperity and realize human potential, our Governments will... [c]ontinue to support the work of the inter-American human rights system in the area of freedom of expression through the Special Rapporteur for Freedom of Expression of the IACHR[.]”

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

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

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

CHAPTER I GENERAL INFORMATION

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

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

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

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

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

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

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

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

¹ Declaration of Santiago. Second Summit of the Americas. April 18-19, 1998. Santiago, Chile. "Official Documents of the Summit Process from Miami to Santiago." Volume I. Office of Summit Follow-up. Organization of American States.

² Plan of Action. Second Summit of the Americas. April 18-19, 1998. Santiago, Chile. "Official Documents of the Summit Process from Miami to Santiago." Volume I. Office of Summit Follow-up. Organization of American States.

³ Plan of Action. Third Summit of the Americas. April 20-22, 2001. Québec, Canada. Available at: http://www.summit-americas.org/iii_summit/iii_summit_poa_en.pdf

5. The OAS General Assembly has on various occasions expressed its support for the work of the Office of the Special Rapporteur and entrusted it with follow-up or analysis of some of the rights that comprise freedom of expression. Thus, for example, in 2005 the OAS General Assembly approved Resolution 2149 (XXXV-O/05), in which it reaffirms the right to freedom of expression, recognizes the important contributions made in the Office of the Special Rapporteur's 2004 annual report, and urges follow-up on the issues included in that report, such as the evaluation of the situation regarding freedom of expression in the region; indirect violations of freedom of expression; the impact of the concentration in media ownership; and the way hate speech is addressed in the American Convention.⁴ The Office of the Special Rapporteur has analyzed these issues in different annual reports, in the context of its evaluation of the state of freedom of expression in the region and in fulfillment of its task of creating expertise and promoting regional standards in this area.

6. In 2006, the OAS General Assembly reiterated its support for the Office of the Special Rapporteur in its Resolution 2237 (XXXVI-O/06). In this resolution, the General Assembly reaffirmed the right to freedom of expression, recognized the important contributions made in the Office of the Special Rapporteur's 2005 annual report, and urged follow-up on the issues mentioned in the report. These included, among others, public demonstrations as an exercise of freedom of expression and freedom of assembly, as well as freedom of expression and the electoral process.⁵ As in the previous case, the Office of the Special Rapporteur has followed up on these issues in its annual evaluation of the situation regarding freedom of expression in the region. In the same resolution, the General Assembly called for convening a special meeting of the Committee on Juridical and Political Affairs to delve deeper into existing international jurisprudence regarding the subject matter of Article 13 of the American Convention, and to specifically address issues such as public demonstrations and freedom of expression, as well as the development and scope of Article 11 of the American Convention. That meeting was held on October 26-27, 2007.

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

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

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

⁴ IACHR. Annual Report 2004. OEA/Ser.L/V/II.222. Doc. 5 rev. 23 February 2005. Chapters II, V and VII. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=459&IID=1>

⁵ IACHR. Annual Report 2005. OAS/Ser.L/V/II.124 Doc. 7. 27 February 2006. Chapter V and VI. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=662&IID=1>

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

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

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

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

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

⁶ IACHR. Office of the Special Rapporteur for Freedom of Expression. Estudio Especial sobre el Derecho de Acceso a la Información. August, 2007. Available at: <http://www.cidh.oas.org/relatoria/section/Estudio%20Especial%20sobre%20el%20derecho%20de%20Acceso%20a%20la%20Informacion.pdf>

15. In that same resolution, the General Assembly entrusted the Department of International Law, with the collaboration of the Office of the Special Rapporteur, the Inter-American Juridical Committee and the Department of State Modernization and Governance, as well as the cooperation of Member States and civil society, with drafting a Model Law on Access to Public Information and a guide for its implementation, in keeping with the Inter-American standards on the issue. In order to comply with this mandate, a group of experts was formed - in which the Office of the Special Rapporteur took part - that met three times during the year to discuss, edit and finalize the documents. The final versions of the two instruments were approved by a group of experts in March 2010 and presented to the Committee on Political and Juridical Affairs of the Permanent Council in April of 2010. In May of 2010, the Permanent Council submitted a resolution and the text of the Model Law to the General Assembly, which issued resolution AG/RES 2607 (XL-O/10) in June of 2010. This resolution approved the text of the Model Law⁷ and reaffirmed the importance of the annual reports of the Office of the Special Rapporteur.

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

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

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

B. Mandate of the Office of the Special Rapporteur

19. The Office of the Special Rapporteur for Freedom of Expression is a permanent office with its own operative structure and functional autonomy, which operates within the legal framework of the IACHR.⁸

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

- a. Advise the IACHR in evaluating cases and requests for precautionary measures, as well as in preparing reports;
- b. Carry out promotional and educational activities on the right to freedom of thought and expression;
- c. Advise the IACHR in conducting on-site visits to OAS member countries to expand the general observation of the situation and/or to investigate a particular situation having to do with the right to freedom of thought and expression;
- d. Conduct visits to OAS Member Countries;
- e. Prepare specific and thematic reports;

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

⁸ See Articles 40 and 41 of the American Convention and Article 18 of the Statute of the IACHR.

- f. Promote the adoption of legislative, judicial, administrative, or other types of measures that may be necessary to make effective the exercise of the right to freedom of thought and expression;
- g. Coordinate with ombudsman's offices or national human rights institutions to verify and follow up on conditions involving the exercise of the right to freedom of thought and expression in the Member States;
- h. Provide technical advisory support to the OAS bodies;
- i. Prepare an annual report on the situation regarding the right to freedom of thought and expression in the Americas, which will be considered by the full Inter-American Commission for its approval and inclusion in the IACHR's annual report, presented annually to the General Assembly;
- j. Gather all the information necessary to prepare the aforementioned reports and activities.

21. In 1998, the Commission announced a public competition for the post of Special Rapporteur. Once the process was completed, the IACHR decided to designate as Special Rapporteur the Argentine attorney Santiago A. Canton, who assumed the post on November 2, 1998. In March 2002, the IACHR named Argentine attorney Eduardo A. Bertoni as Special Rapporteur. Bertoni occupied this position from May 2002 to December 2005. On March 15, 2006, the IACHR chose Venezuelan attorney Ignacio J. Alvarez as Special Rapporteur. In April 2008, the IACHR announced a competition to select Álvarez's successor. During the period in which the post was vacant, the Office of the Special Rapporteur was under the responsibility of then-Commission Chairman Paolo Carozza. The competition was closed on June 1, 2008, and the pre-selected candidates to occupy this post were interviewed in July, during the IACHR's 132nd period of sessions. Following the round of interviews, on July 21, 2008, the IACHR selected Colombian attorney Catalina Botero Marino as Special Rapporteur.⁹ The new Special Rapporteur assumed the post on October 6, 2008. During its 141st session, the IACHR decided to renew the mandate of the Special Rapporteur, pursuant to the provisions of Article 15.4 of its Rules of Procedure.¹⁰

C. Principal Activities of the Office of the Special Rapporteur

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

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

1. Individual Case System

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

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

⁹ IACHR. July 21, 2007. Press Release No. 29/08. *IACHR Elects Catalina Botero Marino as Special Rapporteur for Freedom of Expression*. Available at: <http://www.cidh.org/Comunicados/English/2008/29.08eng.htm>

¹⁰ IACHR. April 1, 2011. Press Release No. 28/11. *IACHR Concludes Its 141st Regular Session*. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2011/028.asp.

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

- *Case of “The Last Temptation of Christ” (Olmedo-Bustos et al.) v. Chile*. Judgment of February 5, 2001. This case dealt with prohibition of prior censorship. The Court’s decision led to an exemplary constitutional reform in Chile and to the establishment of an important hemispheric standard in this area.
- *Case of Ivcher-Bronstein v. Peru*. Judgment of February 6, 2001. The petitioner was a naturalized citizen of Peru who was a majority shareholder in a television channel that aired a program that was severely critical of certain aspects of the Peruvian government, including cases of torture, abuse and acts of corruption committed by the Peruvian Intelligence Services. As a result of these reports, the State revoked the petitioner’s Peruvian citizenship and removed his shareholding control of the channel. The judgment of the Inter-American Court found that the government’s actions had violated the right to freedom of expression through indirect restrictions and ordered the State to restore the victim’s rights.
- *Case of Herrera-Ulloa v. Costa Rica*. Judgment of July 2, 2004. This case involved a journalist who had published several articles reproducing information from various European newspapers on alleged illegal conduct by a Costa Rican diplomat. The State convicted the journalist on four defamation charges. The Inter-American Court found that the conviction was disproportionate and that it violated the right to freedom of expression, and ordered, among other things, the nullification of criminal proceedings against the journalist.
- *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. During the 1993 presidential campaign in Paraguay, candidate Ricardo Canese made statements to the media against candidate Juan Carlos Wasmosy, whom he accused of being involved in irregularities related to the construction of a hydroelectric plant. Canese was prosecuted and sentenced in the first instance to four months in prison, among other restrictions to his basic rights. The Inter-American Court found that the conviction was disproportionate and violated the right to freedom of expression. The Court also underscored the importance of freedom of expression during election campaigns, in the sense that people should be fully entitled to raise questions about candidates so that voters can make informed decisions.
- *Case of Palamara-Iribarne v. Chile*. Judgment of November 22, 2005. Palamara, a former military official, had written a book that was critical of the National Navy. The book gave rise to a military criminal trial for “disobedience” and “breach of military duties,” and led the State to withdraw from circulation all existing physical and electronic copies. The Court ordered a legislative reform that would ensure freedom of expression in Chile, as well as publication of the book, restitution of all copies that had been seized, and reparation of the victim’s rights.
- *Case of Claude-Reyes et al. v. Chile*. Judgment of September 19, 2006. This case addresses the State’s refusal to provide Marcelo Claude Reyes, Sebastián Cox Urrejola and Arturo Longton Guerrero with certain information that they requested from the Foreign Investment Committee regarding forestry company Trillium and the Río Cóndor project. In this ruling, the Inter-American Court recognized that the right to access to information is a human right protected under Article 13 of the American Convention.
- *Case of Kimel v. Argentina*. Judgment of May 2, 2008. The decision refers to the conviction of journalist Eduardo Kimel who in a book had criticized the conduct of a criminal judge in charge of investigating a massacre. The judge initiated a criminal

proceeding in defense of his honor. The Inter-American Court found that the journalist's punishment was disproportionate and violated the victim's right to freedom of expression. In its decision, the Inter-American Court ordered the State to, among other things, provide the victim with reparations and reform its criminal legislation on the protection of honor and reputation, finding that it violated the principle of criminal definition or strict legality.

- *Case of Tristán Donoso v. Panama.* Judgment of January 27, 2009. This judgment refers to the proportionality of the sanctions imposed on a lawyer convicted of the crimes of defamation and slander for having declared during a press conference that a State official had recorded his private telephone conversations and had disclosed them to third parties. The Inter-American Court concluded that the State violated the lawyer's right to freedom of expression, since the criminal conviction imposed as a form of subsequent liability was unnecessary. The Inter-American Court also established criteria on the intimidating and inhibiting nature of disproportionate civil sanctions.
- *Case of Ríos et al. v. Venezuela.* Judgment of January 28, 2009. The judgment refers to different public and private acts that limited the journalistic endeavors of the workers, management, and others associated with the RCTV television station, as well as to certain declarations by agents of the State against the station. The Inter-American Court found that statements were incompatible with the freedom to seek, receive, and impart information "since they could have resulted intimidating for those linked with that communication firm." The Inter-American Court also found that the State's responsibility for the other acts that were alleged had not been proven, but reiterated its doctrine on indirect restrictions to freedom of expression. Finally, the Inter-American Court ordered the State to diligently conduct investigations and criminal proceedings for acts of violence against the journalists and to adopt "the necessary measures to avoid illegal restrictions and direct or indirect impediments to the exercise of the freedom to seek, receive, and impart information."
- *Case of Perozo et al. v. Venezuela.* Judgment of January 28, 2009. This judgment involved statements by public officials and other alleged hindrances to the exercise of freedom of expression, such as acts of violence by private actors against individuals linked to the Globovisión television station. The Inter-American Court found that statements made by high-level public officials and State authorities' omissions in terms of their obligation to act with due diligence in investigating acts of violence against journalists constituted violations of the State's obligation to prevent and investigate the facts. The Inter-American Court found that the State's responsibility for the other acts that were alleged had not been proven, but reiterated its doctrine on indirect restrictions to freedom of expression. Finally, the Court ordered the State to diligently conduct investigations and criminal proceedings for acts of violence against journalists and to adopt "the necessary measures to prevent the undue restrictions and direct and indirect impediments to the exercise of the freedom to seek, receive, and impart information."
- *Case of Usón Ramírez v. Venezuela.* Judgment of November 20, 2009. Usón, a retired military officer, was convicted of the crime of "slander against the National Armed Forces," after appearing on a television program and expressing critical opinions regarding the institution's reaction in the case of a group of soldiers who had been severely injured while in a military establishment. The Inter-American Court found that the criminal law used to convict Usón did not comply with the principle of legality because it was ambiguous, and concluded that the application of the criminal law in the case was not appropriate, necessary and proportional. The Inter-American Court ordered the State, *inter alia*, to vacate the military justice proceedings against the victim and modify, within a reasonable time, the criminal prevision employed in his case.

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

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

involves learning the truth of what happened in cases of serious human rights violations like forced disappearance and extrajudicial execution, as was the case here.

- *Case of Fontevecchia and D'Amico v. Argentina*. Judgment of November 29, 2011. The case refers to the civil punishment imposed on Messrs. Jorge Fontevecchia and Hector D'Amico, director and editor, respectively, of the magazine *Noticias*, through judgments issued by Argentine courts as subsequent liability for the publication of two articles, in November of 1995. These publications referred to the existence of an unrecognized son of Carlos Saúl Menem, then President of the Nation, with a congresswoman; the relationship between the President and the congresswoman; and the relationship between the President and his son. The Supreme Court of Justice of the Nation found that the right to privacy of Mr. Menem had been violated by the publications. The Inter-American Court found that the information published was of public interest and that it was already in the public domain. Therefore, there was no arbitrary interference with the right to privacy of Mr. Menem. Thus, the measure of subsequent liability imposed did not comply with the requirement of being necessary in a democratic society, and constituted a violation of Article 13 of the American Convention.

- *Case of González Medina and relatives v. Dominican Republic*. Judgment of February 27, 2012. In this judgment, the Court found the Dominican State responsible for violating Narciso González Medina's rights to personal liberty, personal integrity, life, and recognition of juridical personality. In May 1994, the lawyer, professor, and journalist Narciso González Medina was forcibly disappeared, and his whereabouts were still unknown as of the date of the Court's decision. Days before his disappearance, González had published an opinion piece in a magazine called *La Muralla* and had given a speech at the Autonomous University of Santo Domingo (UASD, in its Spanish acronym), in both of which he had denounced corruption and electoral fraud. The Court was able to establish that the context of González Medina's disappearance was characterized by "an extremely tense political climate owing to the alleged electoral fraud" in the May 1994 elections in the Dominican State; that the country "was almost under military control" at that time; and that "repressive methods were used against those who protested," as were practices involving "harassment and surveillance of journalists and those who criticized the Government." Although the Commission alleged that González Medina's exercise of freedom of expression and his forced disappearance were related, the Court did not find the Dominican State responsible for violating Article 13 because, according to the Court, it lacked competence *ratione temporis* in this case. The Court found that even though in previous cases "it has recognized that when the purpose of the violation of the rights to life, and to personal liberty or integrity is to impede the legitimate exercise of another right protected by the Convention (...), such as freedom of association (...) [or] freedom of expression, there is also an autonomous violation of these rights," in this case it was not possible to establish international responsibility because "the beginning of the forced disappearance [had been] prior to the acceptance of the Court's jurisdiction," and the Dominican Republic had not acquiesced to the facts or acknowledged its responsibility during the process. Thus, the Court "lacks competence [*ratione temporis*] to examine the alleged violation of the freedom of expression of [...] González Medina as an autonomous violation."

- *Case of Vélez Restrepo and Family v. Colombia*. Judgment of September 3, 2012. The case has to do with the attack perpetrated against journalist Luis Gonzalo "Richard" Vélez Restrepo by soldiers of the Colombian National Army while he was filming a protest demonstration in which soldiers from that institution beat several of the protesters. The case also involves the threats and harassment suffered by the journalist and his family, and the attempted arbitrary deprivation of liberty of the journalist, which occurred as Mr. Vélez tried to advance the judicial proceedings against his attackers. The Inter-American Court found the Colombian State responsible for violating the journalist's right to personal integrity and freedom of expression. It also found the State responsible for

not having adequately protected Mr. Vélez, given the threats he had received, and for not having effectively investigated the attack he suffered and the subsequent harassments. The Court noted that “journalism can only be exercised freely when those who carry out this work are not victims or threats or physical, mental or moral attacks or other acts of harassment”; therefore, States “have the obligation to provide measures to protect the life and integrity of the journalists who face [a] special risk.” Among other reparation measures, the Court ordered the State to incorporate into its human rights education programs for the Armed Forces a special module on the protection of the right to freedom of thought and expression and on the work of journalists and media workers.

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

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

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

2. Precautionary Measures

29. The Office of the Special Rapporteur has worked, within its mandate, with the IACHR Protection Group with regard to recommendations on the adoption of precautionary measures in the area of freedom of expression. In this regard, the IACHR has requested on multiple occasions that OAS Member States adopt precautionary measures to protect the right to freedom of expression. It did so, for example, in the cases of (i) Matus Acuña (Chile);¹¹ (ii) Herrera Ulloa v. Costa Rica;¹² (iii) López Ulacio v. Venezuela;¹³ (iv) Peña v. Chile;¹⁴ (v) Globovisión v. Venezuela;¹⁵ (vi) Tristán Donoso v. Panama;¹⁶ (vii) Yáñez Morel v. Chile;¹⁷ (viii) Pelicó Pérez v. Guatemala;¹⁸ and (ix) Rodríguez Castañeda v. Mexico;¹⁹ (x) Leo Valladares Lanza and Daysi Pineda Madrid v. Honduras;²⁰ (xi) Journalists of La Voz de Zacate Grande (Honduras),²¹ y (xii) Lucía Carolina Escobar Mejía, Cledy Lorena Caal Cumes, Gustavo Girón v. Guatemala.²² Similarly in 2012, precautionary measures were granted by the IACHR, *inter alia*, in the cases of Emilio Palacio, Carlos Nicolás Pérez Lapentti, Carlos Pérez Barriga, and César Pérez Barriga v.

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

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

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

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

¹⁵ IACHR decisions of October 3 and October 24, 2003, requesting that the State of Venezuela suspend administrative decisions to seize operating equipment from the Globovisión television station and that it guarantee an impartial and independent trial in this case.

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

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

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

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

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

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

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

Ecuador;²³ 15 workers of Radio Progreso v. Honduras,²⁴ and Yoani María Sánchez Cordero v. Cuba.²⁵ A more detailed description of these facts can be found in the IACHR's 2012 annual report.

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

3. Public Hearings

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

32. On March 26, 2012, during the 144th period of sessions of the IACHR, a public hearing was held on "Access to Information in the Investigation of Cases involving Grave Human Rights Violations in Peru," at the request of the Asociación Pro Derechos Humanos (APRODEH) and with the participation of the State of Peru. In addition, on March 27 a public hearing was held on the "Situation of the Right to Freedom of Expression in Venezuela," at the request of the organization Espacio Público, the Human Rights Center at Andrés Bello Catholic University, the National Association of Journalists, and the National Press Workers Union. Representatives of the State of Venezuela also attended the hearing.

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

4. Seminars and Workshops with Strategic Actors in the Region

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

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

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

²⁵ IACHR decision of November 9, 2012, asking the State of Cuba to adopt the necessary measures to guarantee the life and physical integrity of Yoani María Sánchez and her family; to come to an agreement with the beneficiary and her representatives on the measures to be adopted; and to inform the IACHR on the actions taken to investigate the facts that gave rise to the adoption of precautionary measures.

many cases with the cooperation of universities, government institutions, and nongovernmental organizations.

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

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

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

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

39. On February 16-17, attorney Michael Camilleri participated in the event “The Media World after WikiLeaks and News of the World,” in a panel discussion on “Government- Media Relations after WikiLeaks,” held in Paris, France, and organized by UNESCO in partnership with the World Press Freedom Committee, the World Association of Newspapers & News Publishers (WAN-INFRA), the World Editors Forum, and the International Press Institute. Those attending the event included journalists, directors of institutions, and academic experts on freedom of expression from a number of countries.

40. On February 17, attorney Lorena Ramírez participated in the 49th session of the “North American Invitational Model United Nations,” with a presentation of the Office of the Special Rapporteur for Freedom of Expression on the situation of press freedom in the Americas and the social implications of the war on drugs.

41. On February 25, The Special Rapporteur for Freedom of Expression participated via video conference in an event organized for officials of the Ombudsman of Panama regarding inter-American standards on freedom of expression.

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

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

discuss the challenges the region is facing today in the area of freedom of expression. The event was held at the Continental Hotel in Panama City.

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

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

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

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

48. On May 21, attorney Lisl Brunner, participated in the seminar "Freedom of the Press in Latin America," organized by the Latin American Institute at the University of California, Los Angeles (UCLA), in California. The Office of the Rapporteur's presentation focused on the major challenges involving freedom of expression in the Americas.

49. On May 21-22, the Special Rapporteur for Freedom of Expression participated in the "Austin Forum," an event organized by the Knight Center for Journalism in Austin, Texas. The Special Rapporteur participated in a panel titled "Strategy to Improve Safety and Protection Mechanisms to Combat Impunity."

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

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

well as a conference at the Ibero-American University (UNIBE in its Spanish acronym) in Asunción. On May 25, a seminar on freedom of expression in the inter-American human rights system was held at the Autonomous University of Encarnación.

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

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

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

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

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

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

58. The Special Rapporteur for Freedom of Expression offered a course, June 12-15, on "Freedom of Expression in the Inter-American Human Rights System," at American University's

Washington College of Law. It was part of the summer program offered by the university's Academy on Human Rights and Humanitarian Law.

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

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

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

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

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

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

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

66. On September 18, the Special Rapporteur participated as a panelist, via videoconference, in the event "Freedom of Expression and the Media: Toward a Protection Mechanism for Journalists." The purpose of the forum was to discuss how to help create a culture of respect for and

guarantee of freedom of expression. The event was organized by the Technical Committee for Assisting and Protecting Journalists in Veracruz.

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

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

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

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

71. On October 11, the Special Rapporteur participated in a seminar titled “Access to Information and Accountability: A Global Context,” with the aim of exchanging points of view on the right of access to information and its use by civil society to increase governments’ accountability. The Special Rapporteur participated in a panel entitled “The Right for Access to Information: a Cross-border Experience.” The event was organized by the Woodrow Wilson International Center and held in Washington, DC.

72. The Special Rapporteur carried out a visit November 21-22 to Lima, Peru. On November 21, she participated in a working breakfast at the Palace of the Government, in which she gave the conference “The rules of the inter-American system governing freedom of expression.” The breakfast was held for directors of media outlets. During the same visit, the Special Rapporteur spoke at an international seminar on “Children, Adolescents, and the Media,” organized by the Office of the Human Rights Ombudsman.

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

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

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

Associates, Association for Progressive Communications (APC), Instituto NUPEF and the Ford Foundation.

5. Annual report and development of expert knowledge

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

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

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

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

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

- *Reparations for the Violation of Freedom of Expression in the Inter-American System (approved in the 2011 annual report)*, which contains a systematic analysis of inter-American rulings on freedom of expression, particularly of the orders for reparations issued as of October 2011 in cases that have involved violations or illegitimate restrictions of the freedom established in Article 13 of the Convention.
- *Principles on the Regulation of Government Advertising and Freedom of Expression (approved in the 2010 report)*. This report seeks to present the principles that should regulate government advertising in order to prevent their use as a mechanism for indirect censorship.
- *The Right to Access to Information in the Americas: Inter-American Standards and Comparison of Legal Frameworks*. (2011 annual report). This report presents an overview of the legal framework surrounding the right to access to information provided by specialized laws on the subject Antigua and Barbuda, Argentina, Canada, Chile, Colombia, Ecuador, El Salvador, the United States, Guatemala, Jamaica, Mexico, Nicaragua, Panama, Peru, the Dominican Republic, Trinidad and Tobago, and Uruguay.

6. Special statements and declarations

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

of the Special Rapporteur receive wide coverage and constitute one of its most important work mechanisms.

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

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

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

85. On June 25, 2012, the Special Rapporteur, in coordination with the United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Representative on Freedom of the Media of the Organization for Security and Cooperation in Europe (OSCE), and the Special Rapporteur on Freedom of Expression of the African Commission on Human and Peoples' Rights (ACHPR), produced a joint declaration on *Crimes against Freedom of Expression*.²⁷

86. In 2012, the Office of the Special Rapporteur issued 31 press releases²⁸ calling attention to incidents related to freedom of thought and expression. The statements highlight especially worrying

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

²⁷ Joint Declaration on Crimes Against Freedom of Expression. June 25, 2012. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artiD=906&IID=1>

²⁸ In 2012, the IACHR Office of the Special Rapporteur issued the following press releases: IACHR. Office of the Special Rapporteur for Freedom of Expression. December 4, 2012, [Press Release R143/12](#); November 29, 2012, [Press Release R139/12](#); November 20, 2012, [Press Release R136/12](#); October 26, 2012, [Press Release R128/12](#); October 16, 2012, [Press Release R123/12](#); August 3, 2012, [Press Release R101/12](#); July 11, 2012, [Press Release R86/12](#); July 6, 2012, [Press Release R77/12](#); June 25, 2012, [Press Release R74/12](#); June 18, 2012, [Press Release R70/12](#); June 13, 2012, [Press Release R65/12](#); June 12, 2012, [Press Release R63/12](#); June 11, 2012, [Press Release R62/12](#); May 31, 2012, [Press Release R56/12](#); May 21, 2012, [Press Release R53/12](#); May 17, 2012, [Press Release R52/12](#); May 16, 2012, [Press Release R49/12](#); May 11, 2012, [Press Release 46/12](#); May 14, 2012, [Press Release 47/12](#); May 4, 2012, [Press Release R44/12](#); May 1, 2012, [Press Release R42/12](#); April 30, 2012, [Press Release R41/12](#); April 26, [Press Release 40/12](#); March 19, 2012, [Press Release R29/12](#); March 8, 2012, [Press Release R26/12](#); March 1, 2012, [Press Release R24/12](#); February 16, 2012, [Press Release R20/12](#); February 15, 2012, [Press Release R18/12](#); February 13, 2012, [Press Release R17/12](#); February 7, 2012, [Press Release 13/12](#); and January 20, 2012, [Press Release R06/12](#).

incidents and local best practices, and explain the corresponding regional standards. The press releases issued during 2011 can be accessed through the website of the Office of the Special Rapporteur, available at: <http://www.cidh.org/relatoria>.

D. Funding

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

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

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

²⁹ Santiago Declaration. Plan of Action. Second Summit of the Americas. April 18-19, 1998. Santiago, Chile. In: Official Documents of the Summit Process, from Miami to Santiago. Volume I. Office of Summit Follow-Up. OAS.

³⁰ All the information is available at: OAS. Board of External Auditors. Report to the Permanent Council Annual Audit of Accounts and Financial Statements for the years ended December 31, 2011 and 2010. Section II. Specific Funds. Statement by programs. Pp. 78-79; Report to the Permanent Council. Annual Audit of Accounts and Financial Statements for the years ended December 31, 2011 and 2010. Specific Funds. Statement by programs. Pp. 77-79; Report to the Permanent Council Annual Audit of Accounts and Financial Statements for the years ended December 31, 2009 and 2008. Pp. 71-73; Report to the Permanent Council. Annual Audit of Accounts and financial statements for the years ended December 31, 2008, and 2007. Section II. Specific Funds. Pp. 69-70; Report to the Permanent Council. Annual Audit of Accounts and Financial Statements for the years ended December 31, 2007 and 2006. Section II. Specific Funds. Pp. 79-80; Report to the Permanent Council. Annual Audit of Accounts and Financial Statements for the years ended December 31, 2006 and 2005. Section II. Specific Funds. P. 69; Report to the Permanent Council. Annual Audit of Accounts and Financial Statements for the years ended December 31, 2005 and 2004. Section II. Specific Funds. P. 61; Report to the Permanent Council. Annual Audit of Accounts and Financial Statements for the years ended December 31, 2004 and 2003. Section II. Specific Funds. P. 42; Report to the Permanent Council. Annual Audit of Accounts and Financial Statements for the years ended December 31, 2003 and 2002. Section II. Specific Funds. P. 41; Report to the Permanent Council. Annual Audit of Accounts and Financial Statements for the years ended December 31, 2002 and 2001. Section II. Specific Funds. Statement of changes in Fund Balance. P. 54; Report to the Permanent Council. Annual Audit of Accounts and Financial Statements for the years ended December 31, 2001 and 2000. Specific Funds Statement of changes in Fund Balance January 1, 2001 to December 31, 2001. Section II. P. 52; Report to the Permanent Council. Annual Audit of Accounts and Financial Statements for the years ended December 31, 2001 and 2000. Specific Funds Related to regular Activities. Statement of changes in Fund Balance January 1, 2000 to December 31, 2000.

Office of the Special Rapporteur (13.6% of all funds executed by the office) must be designated for central administration of the OAS as indirect cost recovery or ICR.³¹

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

E. Staff

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

³¹ OEA. Normas Generales para el Funcionamiento de la Secretaría General de la Organización de Estados Americanos. Capítulo IV (Disposiciones Generales de Naturaleza Financiera y Presupuestaria). OEA/Ser.D/I.1.2 Rev.16. 4 de junio de 2012. Artículo 80. Disponible en: <http://www.oas.org/legal/spanish/normas/espanol/VerDefNorm1Index.htm>; OEA. Secretario General. Orden Ejecutiva 07-01 Rev 1. Policy on Indirect Cost Recovery [Política de Recuperación de Costos Indirectos]. 29 de mayo de 2007. Disponible en inglés: <http://www.oas.org/legal/english/gensec/EXOR0701REV1.pdf>

³² Office of the Special Rapporteur for Freedom of Expression. Staff. Available at: <http://www.oas.org/en/iachr/expression/mandate/staff.asp>

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.¹ Additionally, on June 7 the Access to Public Information Act was passed by the Chamber of Representatives of the Province of Misiones.²

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.³ The request was made in the context of Decree 1172/03 on Access to Public Information, which applies to the National Executive Branch.⁴ 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.⁵

¹ Government of Catamarca. Decree GJ No. 2089. November 30, 2011. *Reglaméntese la Ley No. 5.336 “Acceso a la Información Pública”*. Available at: <http://www.digesto.catamarca.gov.ar/cod/Leyes1/Ley5336/a1.html>; IFEX/ Foro de Periodismo Argentino (FOPEA). March 8, 2012. *Reglamentan ley provincial de acceso a la información en Catamarca*. Available at: http://www.ifex.org/argentina/2012/03/08/catamarca_avance/es/. According to Article 9 of Law 5.336, the law will enter into force once the authorities dictate “the norms that establish the legal framework governing actions and procedures” [*las normas que establezcan los regímenes de actuación y procedimientos*]. Law No. 5.336 – Decree No. 1369, Regulations pursuant to Article 11 of the Provincial Constitution (Catamarca). August 11, 2011. Available at: <http://www.digesto.catamarca.gov.ar/cod/Leyes1/Ley5336/5336.html>

² Law IV No. 58. *Free Access to Public Information (Libre Acceso a la Información Pública)*. June 7, 2012. Available at: http://www.infojus.gov.ar/index.php?kk_seccion=documento®istro=LEYPROV&docid=LEY%2520N%2520000058%25202012%252006%252007; Chamber of Representatives of the Province of Misiones. June 8, 2012. *Misiones cuenta con una ley de libre acceso a la información pública*. Available at: http://www.diputadosmisiones.gov.ar/content.php?id_content=1082; Foro de Periodismo Argentino (FOPEA). June 12, 2012. *Aprueban por unanimidad Ley Provincial de Acceso a la Información*. Available at: http://fopea.org/Inicio/Aprueban_por_unanimidad_Ley_Provincial_de_Acceso_a_la_Informacion

³ Supreme Court of Justice of the Nation of Argentina. A. 917. XLVI. *Asociación de Derechos Civiles v. EN – PAMI – (dto. 1172-03) on amparo Law 16.986*. December 4, 2012. Available for consultation at: <http://www.cij.gov.ar/nota-10405-La-Corte-Suprema-reconocio-el-derecho-de-los-ciudadanos-de-acceso-a-la-informacion-publica.html>; Legal Information Center. News Agency of the Judiciary. December 4, 2012. *La Corte Suprema reconoció el derecho de los ciudadanos de acceso a la información pública*. Available at: <http://www.cij.gov.ar/nota-10405-La-Corte-Suprema-reconocio-el-derecho-de-los-ciudadanos-de-acceso-a-la-informacion-publica.html>. See also, *La Nación*. December 5, 2012. *Reconoció la Corte el derecho a acceder a la información pública*. Available at: <http://www.lanacion.com.ar/1533508-reconocio-la-corte-el-derecho-a-acceder-a-la-informacion-publica>

⁴ Republic of Argentina. Decree 1172/2003. Annex VII. General Regulations for Access to Public Information for the National Executive Branch. December 3, 2003. Page 19/26 *et seq.* Available at: http://www.orsna.gov.ar/pdf/Decreto%201172_2003.pdf

⁵ Supreme Court of Justice of the Nation of Argentina. A. 917. XLVI. *Asociación de Derechos Civiles v. EN – PAMI – (dto. 1172-03) on amparo Law 16.986*. December 4, 2012. Pp. 14, 17 and 22. Available for consultation at: <http://www.cij.gov.ar/nota-10405-La-Corte-Suprema-reconocio-el-derecho-de-los-ciudadanos-de-acceso-a-la-informacion-publica.html>

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

B. Attacks on and threats against media outlets and journalists

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

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

⁶ Página12. September 5, 2012. *El crimen del periodista de la Villa 31*. Available at: <http://www.pagina12.com.ar/diario/sociedad/3-202677-2012-09-05.html>; Perfil. September 4, 2012. *Condenan a 18 años de prisión al asesino del periodista de la Villa 31*. Available at: http://www.perfil.com/contenidos/2012/09/04/noticia_0035.html; Telam. September 4, 2012. *Condenan a 18 años de prisión al acusado de matar a un periodista boliviano*. Available at: <http://www.telam.com.ar/nota/36937/>

⁷ Prensa Jujuy. December 13, 2011. *Atacaron a Nora Ruiz, periodista de El Tribuno de Jujuy*. Available at: <http://prensajujuy.com.ar/2011/12/atacaron-a-nora-ruiz-periodista-de-el-tribuno-de-jujuy-repudio-del-sindicato-de-prensa/>; IFEX/ Foro de Periodismo Argentino (FOPEA). December 29, 2011. *FOPEA repudia agresiones a periodistas en La Mendieta, Jujuy*. Available at: http://www.ifex.org/argentina/2011/12/29/la_mendieta_agresiones/es/; El Tribuno. December 10, 2011. *Repudiable agresión a periodista de nuestro diario*. Available at: <http://www.eltribuno.info/jujuy/106994-Repudiable-agresion-a-periodista-de-nuestro-diario.note.aspx>; El Tribuno. December 21, 2011. *Trabajadores de prensa agredidos en La Mendieta*. Available at: <http://www.eltribuno.info/jujuy/110858-Trabajadores-de-prensa-agredidos-en-La-Mendieta.note.aspx?origen=metarefresh>

⁸ IFEX/ Foro de Periodismo Argentino (FOPEA). January 2, 2012. *Canal 7 journalist and camera operator attacked*. Available at: http://www.ifex.org/argentina/2012/01/02/canal_7_agresiones/; Diario Uno de Mendoza. December 29, 2011. *El relato de Julián Chabert*. Available at: <http://www.youtube.com/watch?v=qmsTJSFhTC8>

⁹ Jai 96.3. January 12, 2012. *Acusan a Szpolski de amenazar a un periodista*. Available at: http://www.radiojai.com.ar/OnLine/notiDetalle.asp?id_Noticia=58349; Knight Center for Journalism in the Americas. January 15, 2012. *Argentine media mogul threatens editor who wrote about newspaper's internal conflicts*. Available at: <http://knightcenter.utexas.edu/blog/argentine-media-mogul-threatens-editor-who-wrote-about-newspapers-internal-conflicts>; La Nación. January 8, 2012. *Acusan a Szpolski de amenazar a un periodista*. Available at: <http://www.lanacion.com.ar/1438790-acusan-a-szpolski-de-amenazar-a-un-periodista>; Urgente 24. January 11, 2012. *Por amenazas de Szpolsky, Alfie tendrá protección policial*. Available at: <http://web2.urgente24.com/noticias/val/19525-138/por-amenazas-de-szpolsky-alfie-tendra-proteccion-policial.html>; Grupo E Medios. January 12, 2012. *Por amenazas del empresario de medios kirchnerista Szpolsky, Alfie tendrá protección policial*. Available at: <http://www.grupoemidios.com/noticia.php?id=55044>

¹⁰ Foro de Periodismo Argentino (FOPEA). January 23, 2012. *Fopea repudia agresión física y verbal a periodista de Victorica, La Pampa*. Available at: http://fopea.org/Comunicados/2012/Fopea_repudia_agresion_fisica_y_verbal_a_periodista_de_Victorica_La_Pampa; La Reforma. January 21, 2012. *Familiares del viceintendente de Victorica agredieron al periodista Cristian Acuña*. Available at: http://www.diariolareforma.com.ar/20d2/noticias_detalle.php?id=12733

¹¹ Clarín. January 26, 2012. *Denuncian agresión física a un periodista radial en Santa Cruz*. Available at: http://web.clarin.com/politica/Denuncian-agresion-periodista-Santa-Cruz_0_634736575.html; Infoglaciár. January 27, 2012. *El intendente de Los Antiguos repudió el atentado a Martínez y criticó a la prensa*. Available at: Continues...

12. The Office of the Special Rapporteur was informed that five hooded men used firearms to threaten and intimidate journalism students Omar Millalongo and Lilen 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 Rodríguez, a reporter with *Canal América* program ‘Caiga Quien Caiga’, while he was trying to interview the mayor about a housing project. Later, Guillermo López, the host of the program, received telephoned threats warning him not to return to Pinamar.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

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http://www.infoglaciario.com.ar/index.php?option=com_content&view=article&id=18600%3Ael-intendente-de-los-antiguos-repudio-el-atentado-a-martinez-y-critico-a-la-prensa&Itemid=27

¹² Foro de Periodismo Argentino (FOPEA). February 17, 2012. *Grave amenaza con armas de fuego a periodista en La Plata*. Available at: http://www.fopea.org/Inicio/Grave_amenaza_con_armas_de_fuego_a_periodista_en_La_Plata; Diagonales. February 17, 2012. *Cinco encapuchados armados amenazan de muerte a dos periodistas*. Available at: <http://diagonales.infonews.com/nota-173660-Cinco-encapuchados-armados-amenazaron-a-dos-periodistas.html>

¹³ Salta 21. April 3, 2012. *Amenazaron al periodista Rubén Darío Heredia de Rosario de la Frontera*. Available at: <http://www.salta21.com/Amenazaron-al-periodista-Ruben.html>; Informatesalta. April 3, 2012. *Amenazan a un periodista de Rosario de la Frontera*. Available at: <http://www.informatesalta.com.ar/noticia.asp?q=35274>

¹⁴ A note that appeared under the door of a neighbor read “[y]ou’re going to know what it is to lose.” Rosario3. April 3, 2012. *Un periodista recibió amenazas*. Available at: <http://www.rosario3.com/noticias/policiales/noticias.aspx?idNot=109537&Un-periodista-recibio%2C%3B3-amenazas>; El Litoral. April 4, 2012. *El gobernador se reunió con el periodista amenazado Hernán Lascano*. Available at: http://www.ellitoral.com/index.php/id_um/74246-el-gobernador-se-reunio-con-el-periodista-amenazado-herman-lascano

¹⁵ La Voz. April 5, 2012. *CQC: El video de la agresión a Gonzalito*. Available at: <http://vos.lavoz.com.ar/tv/cqc-video-agresion-gonzalito>; ABC Hoy. April 6, 2012. *La UCR repudia la agresión a Gonzalo Rodríguez, de CQC, en Pinamar*. Available at: <http://www.abchoy.com.ar/leernoticias.asp?id=85298&t=La+UCR+repudia+la+agresi%26%23243%3Bn+a+Gonzalo+Rodr%26%23237%3Bquez%2C+de+CQC%2C+en+Pinamar>; Canal América. April 4, 2012. *Infama: “Gonzo Rodríguez fue agredido en Pinamar por un informe de CQC”*. Available at: <http://www.youtube.com/watch?v=SYMWCt1hP-M>

¹⁶ Foro de Periodismo Argentino (FOPEA). April 27, 2012. *FOPEA repudia agresión verbal y física a periodistas*. Available at: http://fopea.org/Inicio/Fopea_repudia_agresion_verbal_y_fisica_a_periodistas; La República. April 27, 2012. *Perversa agresión a una periodista*. Available at: <http://www.diariolarepublica.com.ar/notix/noticia.php?i=180682>

¹⁷ Infonews. April 19, 2012. *Misiones: concejal golpea a un periodista que leía la Constitución*. Available at: <http://www.infonews.com/2012/04/19/sociedad-18507-misiones-concejal-golpea-a-un-periodista-que-leia-la-constitucion.php>; Actualidad Sur. April 19, 2012. *ADEPA condena enérgicamente la agresión a periodista en Candelaria, Misiones*. Available at: <http://www.actualidadsur.com/noticia.php?id=11431>

¹⁸ Foro de Periodismo Argentino (FOPEA). May 9, 2012. *Nueva agresión a periodista en Candelaria*. Available at: http://fopea.org/Inicio/Nueva_agresion_a_periodista_en_Candelaria; La Nación. May 9, 2012. *Otra vez atacaron a periodistas en la legislatura de Misiones*. Available at: <http://www.lanacion.com.ar/1471794-querian-destituirlo-por-atacar-a-un-periodista-y-agreden-a-un-fotografo>

turn up cut to pieces in a ditch” if he did not stop reporting about a local mayor.¹⁹ Additionally, on May 10 and 11, journalists Gustavo Raffin and Ester Lutz with *Radio Diez* in Reconquista, Santa Fe, received death threats after denouncing alleged irregularities in the local municipality.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.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.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.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.²⁴

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

¹⁹ El Patagónico. May 8, 2012. *Periodista denunció presiones y amenaza de muerte*. Available at: <http://www.elpatagonico.net/nota/122544-periodista-denuncio-presiones-y-amenaza-de-muerte/>; Knight Center for Journalism in the Americas. May 10, 2012. *Two more Argentine journalists harassed by public officials*. Available at: <http://knightcenter.utexas.edu/en/blog/00-10054-two-more-argentine-journalists-harassed-public-officials>

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

²¹ Región Hoy. May 16, 2012. *Ceres: Amenaza a radio*. Available at: <http://www.regionhoy.com.ar/2012/05/16/ceres-amenaza-a-radio/>; Página 12. May 20, 2012. *Amenazas*. Available at: <http://www.pagina12.com.ar/diario/suplementos/rosario/20-33870-2012-05-20.html>. Asociación de Prensa Santa Fe. May 16, 2012. *Preocupación por amenazas a programa y radio de Ceres*. Available at: http://www.apsf.org.ar/index.php?option=com_flexicontent&view=items&cid=18:derechos-humanos&id=393:preocupacion-por-amenazas-a-programa-y-radio-de-ceres&Itemid=28

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/>

²³ Presidency of the Nation. June 2, 2012. *Repudió Abal Medina la agresión a periodistas de 678*. Available at: <http://www.prensa.argentina.ar/2012/06/02/31194-repudio-abal-medina-la-agresion-a-periodistas-de-678.php>; Cadena 3. June 3, 2012. *Agredieron a equipo de televisión del programa de TV 678 que cubría “cacerolazo” porteño*. Available at: <http://www.cadena3.com/contenido/2012/06/02/97994.asp>

²⁴ Inter-American Press Association (IAPA-SIP). June 6, 2012. *IAPA denounces attacks on Argentine journalists*. Available at: http://www.sipiapa.org/v4/comunicados_de_prensa.php?seccion=detalles&id=4725&idioma=us; Reporters Without Borders. June 8, 2012. *Attacks on journalists a tangible symptom of growing polarization*. Available at: http://en.rsf.org/argentine-attacks-on-journalists-a-tangible-08-06-2012_42757.html

²⁵ IFEX/ Foro de Periodismo Argentino (FOPEA). June 16, 2012. *Journalist attacked, threatened with having his house burned down*. Available at: http://www.ifex.org/argentina/2012/06/16/argentina_fopea_repudio/; InfoRegion. June 15, 2012. *Asaltaron y golpearon al periodista Marcelo Massimini en Longchamps*. Available at: <http://www.inforegion.com.ar/vernota.php?id=256866&dis=1&sec=4>; Política del Sur. No date. *El periodista Marcelo Massimini fue Continues...*

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 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.³²

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atacado en su casa en Longchamps. Available at: http://www.politicadelsur.com/index.php?option=com_content&view=article&id=2510:el-periodista-marcelo-massimini-fue-atacado-en-su-casa-de-longchamps&catid=99:almirante-brown&Itemid=477

²⁶ Foro de Periodismo Argentino (FOPEA). August 1, 2012. *FOPEA alerta sobre el robo de afiches y amenazas a repartidores del diario Hoy*. Available at: http://www.fopea.org/Inicio/FOPEA_alerta_sobre_el_robo_de_afiches_y_amenazas_a_repartidores_del_diario_Hoy; Diario Inédito. July 31, 2012. *Denuncian agresiones y amenazas contra el Diario Hoy de La Plata*. Available at: <http://www.diarioinedito.com/Nota/9673>

²⁷ IFEX/ Foro de Periodismo Argentino (FOPEA). November 14, 2012. *Newspaper kiosk fire is latest threat to daily in Argentina*. Available at: http://ifex.org/argentina/2012/11/14/argentina_fopea_alerta/; Hoy. November 8, 2012. *Atentado contra un puesto del diario Hoy*. Available at: <http://diariohoy.net/politica/atentado-contra-un-puesto-del-diario-hoy-819>

²⁸ La Nación. August 4, 2012. *Denuncian ataques a periodistas del equipo de Lanata*. Available at: <http://www.lanacion.com.ar/1496199-denuncian-ataques-a-periodistas-del-equipo-de-lanata>; Los Andes. August 3, 2012. *Agredieron a periodistas del programa de Lanata en Jujuy*. Available at: <http://www.losandes.com.ar/notas/2012/8/3/agredieron-periodistas-programa-lanata-jujuy-658613.asp>

²⁹ Committee to Protect Journalists (CPJ). August 21, 2012. *In Argentina, two local journalists attacked within a week*. Available at: <http://cpi.org/2012/08/in-argentina-two-local-journalists-attacked-within.php>

³⁰ Foro de Periodismo Argentino (FOPEA). August 23, 2012. *Atentan con bomba molotov contra el domicilio de periodista en Argentina*. Available at: http://www.ifex.org/argentina/2012/08/23/molotov_attack/es/; Committee to Protect Journalists (CPJ). August 21, 2012. *In Argentina, two local journalists attacked within a week*. Available at: <http://cpi.org/2012/08/in-argentina-two-local-journalists-attacked-within.php>; Reporters Without Borders. August 24, 2012. *Journalists suffer new threats as atmosphere of impunity prevails*. Available at: http://en.rsf.org/argentina-journalists-suffer-new-threats-as-24-08-2012_43279.html

³¹ Foro de Periodismo Argentino (FOPEA). August 31, 2012. *FOPEA repudia grave ataque a propietario de radio*. Available at: http://www.fopea.org/Inicio/FOPEA_repudia_grave_ataque_a_propietario_de_radio; El Comercial. September 1, 2012. *Ing. Juárez: periodista denuncia haber sido ‘picaneado’*. Available at: http://www.elcomercial.com.ar/index.php?option=com_content&view=article&id=86464:ing-juarez-periodista-denuncia-haber-sido-picaneado-y-golpeado&catid=9:edicion-digital&Itemid=65&cpage=30

³² Foro de Periodismo Argentino (FOPEA). October 3, 2012. *FOPEA alerta por dos graves hostigamientos a periodistas*. Available at: http://www.fopea.org/Inicio/Fopea_alerta_por_dos_graves_hostigamientos_a_periodistas; Capital FM 97.7. September 26, 2012. *Escraache a Valenzuela en apoyo a Barreto*. Available at: <http://www.fmcapitalsalta.com/noticias/1922/escraache-valenzuela-en-apoyo-barreto.html>

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

22. The Office of the Special Rapporteur was informed that during the months of October and November, journalist Daniel Polaczinski of *Radio U* received a series of threats through text 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.³⁴

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

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

³³ IFEX/ Foro de Periodismo Argentino (FOPEA). October 22, 2012. *Hostigamientos a la prensa por parte de intendencia local en Argentina*. Available at: http://www.ifex.org/argentina/2012/10/22/argentina_fopea_graves/es/; *El Debate*. October 31, 2012. *Por el hostigamiento que sufrimos, hoy no apareció el diario impreso*. Available at: <http://www.eldebate.com.ar/despliegue.php?idnoticia=62456&idseccion=0>; Agencia Nova. November 2, 2012. *Por hostigamiento que sufrimos, hoy no apareció la edición impresa del diario*. Available at: http://www.agencianova.com/nota.asp?n=2012_11_2&id=34274&id_tiponota=10

³⁴ IFEX/ Foro de Periodismo Argentino (FOPEA). November 28, 2012. *Argentine journalist receives threats over his reporting*. Available at: http://ifex.org/argentina/2012/11/28/polaczinski_threats/; Misiones Online. November 22, 2012. *Aristóbulo del Valle: Se creó una comisión que investigará las denuncias de amenazas al dueño de Radio U*. Available at: <http://www.misionesonline.net/noticias/22/11/2012/aristobulo-del-valle-se-creo-una-comision-que-investigara-las-denuncias-de-amenazas-al-dueno-de-radio-u>

³⁵ Perfil. November 8, 2012. *8N / Agredieron a periodista de C5N*. Available at: http://www.perfil.com/contenidos/2012/11/08/noticia_0054.html; Diario Jornada. November 9, 2012. *La salvaje agresión de un “cacerolero” al periodista Néstor Dib de C5N*. Available at: http://www.diariojornada.com.ar/56721/Politica/La_salvaje_agresion_de_un_cacerolero_al_periodista_Nestor_Dib_de_C5N; InfoNews. November 9, 2012. *Agresiones a periodistas en la marcha opositora*. Available at: <http://www.infonews.com/2012/11/09/politica-46737-agresiones-a-periodistas-en-la-marcha-opositora-marcha-opositora.php>

³⁶ La Noticia 1. November 9, 2012. #8N: *Periodistas agredidos durante el cacerolazo*. Available at: <http://www.lanoticia1.com/noticia/8n-periodistas-agredidos-durante-el-cacerolazo-55943.html>; Press Workers Union of Buenos Aires [Unión de Trabajadores de Prensa de Buenos Aires] (UTPBA). No date. *Rechaza la UTPBA las agresiones contra periodistas*. Available at: <http://utpba.org/noticia/rechaza-la-utpba-las-agresiones-contra-periodistas>; Press Workers Union of Buenos Aires [Unión de Trabajadores de Prensa de Buenos Aires] (UTPBA). No date. *Agreden a Gerardo Mazzochi*. Available at: <http://utpba.org/noticia/agreden-gerardo-mazzochi>

³⁷ IFEX/ Foro de Periodismo Argentino (FOPEA). November 13, 2012. *Argentinian photographer beaten while covering police operation*. Available at: http://ifex.org/argentina/2012/11/13/fedorischak_beaten/; Actualidad Sur. November 12, 2012. *Cronista afirma que fue atacado por policías mientras cubría un procedimiento*. Available at: <http://www.actualidadsur.com/noticia.php?id=13356>; Nordeste Noticias. November 12, 2012. *Policías atacaron a golpes y patadas a un periodista de M4 en una comisaría*. Available at: <http://www.nordestenoticias.com/misiones/17046/Polic%C3%ADas-atacaron-a-golpes-y-patadas-a-un-periodista-de-M4-en-una-comisar%C3%ADa.html>

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.³⁸ Additionally, journalist Sergio Villegas, with *FM Dimensión*, with the website *Ahora Cafafate*, and with the newspaper *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 21.³⁹

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 *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.⁴⁰ On May 15, journalist Sergio Miranda was arrested and held for two hours after trying to report on a traffic accident in Mendoza.⁴¹ Additionally, on September 22, Pablo Peralta, a journalist with *FM Frecuencia Zero* in Saavedra, Buenos Aires province, was physically attacked and held for several hours after trying to interview a Dufaur municipal official.⁴² On September 25, *Televisión Canal 4* cameraman Hildo Martínez was arrested in Misiones while recording a traffic accident.⁴³

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

³⁸ Foro de Periodismo Argentino (FOPEA). November 23, 2012. *FOPEA alerta sobre amenaza de diputado a periodista*. Available at: http://www.fopea.org/layout/set/print/Inicio/FOPEA_alerta_sobre_amenaza_de_diputado_a_periodista; Santa Cruz Uno. November 23, 2012. *El Diputado Rubén Contreras amenazó a un Periodista de Caleta Olivia*. Available at: <http://santacruzuno.com.ar/noticias/provinciales/20121123462743213575.shtml>

³⁹ IFEX/ Foro de Periodismo Argentino (FOPEA). November 22, 2012. *Agreden a periodista argentino durante manifestación*. Available at: http://www.ifex.org/argentina/2012/11/22/argentina_fopea_repudio/es/; *Ahora Calafate*. November 22, 2012. *Generalizado repudio a los escraches y agresiones*. Available at: http://www.ahoracalafate.com.ar/index.php?option=com_content&view=article&id=13503:generalizado-repudio-a-los-escraches-y-agresiones&catid=37:locales&Itemid=90; Unión Cívica Radical Bloque Diputados. November 21, 2012. *La Diputada Elsa Álvarez repudió la agresión al periodista Sergio Villegas*. Available at: <http://diputados.ucr.org.ar/prensa/la-diputada-elsa-alvarez-repudio-la-agresion-al-periodista-sergio-villegas/>

⁴⁰ Foro de Periodismo Argentino (FOPEA). January 17, 2012. *FOPEA reclama que se investigue denuncia de periodista por apremios policiales*. Available at: http://fopea.org/Inicio/Fopea_reclama_que_se_investigue_denuncia_de_periodista_por_apremios_policiales; *La Voz Política*. January 18, 2012. *La Justicia investiga denuncia de agresión policial a periodista*. Available at: <http://www.lavoz.com.ar/noticias/politica/justicia-investiga-denuncia-agresion-policial-periodista>

⁴¹ Mendoza Opina. May 16, 2012. *Policía agrede a periodista que cubría un accidente*. Available at: <http://mendozaopina.com/sociedad/103-1/20094-policia-agrede-a-periodista-que-cubria-un-accidente>; *Informalargüe*. No date. *San Rafael: Intolerancia policial*. Available at: <http://www.infomalargue.com/sociales/65-sociedad/4862-san-rafael-intolerancia-policial.html>

⁴² Foro de Periodismo Argentino (FOPEA). October 3, 2012. *FOPEA alerta por dos graves hostigamientos a periodistas*. Available at: http://www.fopea.org/Inicio/Fopea_alerta_por_dos_graves_hostigamientos_a_periodistas; *La Noticia 1*. October 4, 2012. *Escándalo en Saavedra: Periodista agredido acusa al Intendente Corvatta*. Available at: <http://www.lanoticia1.com/noticia/escandalo-en-saavedra-periodista-agredido-acusa-al-intendente-corvatta-54809.html>

⁴³ Territorio Digital. September 25, 2012. *Detuvieron a un camarógrafo al acercarse a filmar un accidente en la Ruta 12*. Available at: <http://www.territorioidigital.com/nota3.aspx?c=2387893701795444>; *Iguazú Noticias*. September 25, 2012. *La policía detuvo a camarógrafo al acercarse a filmar accidente en la Ruta 12*. Available at: <http://iguazu-noticias.com/v2011beta/2012/09/la-policia-detuvo-a-camarografo-al-acercarse-a-filmar-accidente-en-la-ruta-12/>

⁴⁴ Foro de Periodismo Argentino (FOPEA). May 7, 2012. *FOPEA denuncia operaciones de desprestigio a periodistas*. Available at: http://www.fopea.org/Inicio/Fopea_denuncia_operaciones_de_desprestigio_a_periodistas; Knight Center for Journalism in the Americas. May 8, 2012. *Argentine journalist blames intelligence agency for creating plot to discredit him*. Available at: <http://knightcenter.utexas.edu/blog/00-10037-argentine-journalist-blames-intelligence-agency-creating-plot-discredit-him>; *El Aconquija*. May 11, 2012. *Acusan a dos periodistas del Grupo Clarín a ser espías rusos*. Available at: <http://www.elaconquija.com/notas/2012/5/11/acusan-periodistas-grupo-clarin-espias-rusos-3604.asp>

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 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

⁴⁵ Fundación Libertad de Expresión y Democracia (Fundación LED). December 3, 2012. *Pierde estado parlamentario el proyecto de Ley de Acceso a la Información Pública*. Available at: <http://www.fundacionled.org/informes-y-publicaciones/declaraciones/pierde-estado-parlamentario-el-proyecto-de-ley-de-acceso-a-la-informacion-publica>; Asociación por los Derechos Civiles (ADC). No date. *Ley de Acceso a la Información: otro año legislativo perdido*. Available at: http://www.adc.org.ar/sw_contenido.php?id=956

⁴⁶ La Nación. June 7, 2012. *Creatividad y coraje para informar*. Available at: <http://www.lanacion.com.ar/1479823-creatividad-y-coraje-para-informar>; Infórmate Salta. May 18, 2012. *Transmitió una sesión con celular que ató a una caña de pescar*. Available at: <http://www.informatesalta.com.ar/noticia.asp?q=36652>

⁴⁷ El Mundo/ EFE. May 14, 2012. *Periodistas argentinos piden al Gobierno ruedas de prensa con preguntas*. Available at: <http://www.elmundo.es/america/2012/05/14/argentina/1337013086.html>; La Voz. May 14, 2012. *#QueremosPreguntar es el reclamo de la prensa a Cristina*. Available at: <http://www.lavoz.com.ar/noticias/politica/queremospreguntar-es-reclamo-prensa-cristina>; La Nación. May 14, 2012. *Reclamo para ejercer la libertad de prensa*. Available at: <http://www.lanacion.com.ar/1473100-reclamo-para-ejercer-la-libertad-de-prensa>; Radio Televisión España (RTVE). May 16, 2012. *Cinco años frente de Argentina y Cristina Fernández solo ha dado cinco ruedas de prensa*. Available at: <http://www.rtve.es/alacarta/videos/telediario/cinco-anos-frente-argentina-cristina-fernandez-solo-dado-cinco-ruedas-prensa/1407386/>

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 notable importance for the exercise of freedom of expression, is enforced in keeping with the international standards on the subject.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

⁴⁸ Official Bulletin of the Republic of Argentina. December 28, 2011. No. 32.305. Law 26.736 *Pulp and Paper for Newsprint [Pasta Celulosa y Papel para Diarios]*. Available at: <http://www1.hcdn.gov.ar/BO/boletin11/2011-12/BO28-12-2011leg.pdf>; Página 12. December 22, 2011. *La producción de papel para diarios ya es de interés público*. Available at: <http://www.pagina12.com.ar/diario/ultimas/20-183971-2011-12-22.html>

⁴⁹ Law 26.736. Articles 3, 11.

⁵⁰ Law 26.736. Articles 12, 16(e).

⁵¹ Law 26.736. Articles 28, 18.

⁵² Law 26.736. Article 40.

⁵³ Law 26.736. Article 33.

⁵⁴ See, IACHR. Annual Report 2011. OEA/Ser.L/V/III. 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. 26. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/2012%2003%2021%20Annual%20Report%20RELE%202011pirnting.pdf>

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

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

F. Other situations

37. The Office of the Special Rapporteur learned that workers from a number of different unions blocked entrances and exits to buildings where the newspapers *Clarín* and *La Nación*, among others, are printed. On August 18 and 19, the workers prevented the trucks that distribute newspapers in Buenos Aires from departing.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

⁵⁵ Federal Contentious Administrative Chamber (Argentina). File No. 18.639/2006, *Editorial Perfil S.A. et al. v. EN – Jefatura Gabinete de Ministros – SMC on Amparo Law 16.986*. August 14, 2012. Available at: <http://www.cij.gov.ar/nota-9630-Caso-Perfil-la-Camara-ordeno-cumplir-con-el-fallo-de-la-Corte-Suprema-sobre-publicidad-oficial.html>; *Perfil*. March 7, 2012. *La Justicia multó al Estado por no otorgar publicidad oficial a Perfil*. Available at: http://www.perfil.com/contenidos/2012/03/07/noticia_0017.html; *La Nación*. March 7, 2012. *Multan al Estado por no asignar publicidad a Perfil*. Available at: <http://www.lanacion.com.ar/1454433-multan-al-estado-por-no-asignar-publicidad-a-perfil>

⁵⁶ Página 12. August 15, 2012. *La publicidad oficial*. Available at: <http://www.pagina12.com.ar/diario/elpais/1-201096-2012-08-15.html>; *La Nación*. August 14, 2012. *Intiman al Estado a cumplir el fallo de la Corte sobre publicidad para Perfil*. Available at: <http://www.lanacion.com.ar/1499197-intiman-al-estado-a-cumplir-el-fallo-de-la-corte-sobre-publicidad-para-perfil>

⁵⁷ Judicial Branch of the Autonomous City of Buenos Aires. Court for Contentious Administrative and Tribunalary Law No. 14. November 14, 2012. *Asociación por los Derechos Civiles (ADC) c/ GBCA s/ amparo (Art. 14 CCABA)*. File No. 45631/0. Available at: www.adc.org.ar/download.php?fileId=692

⁵⁸ On this subject, Cf. IACHR. Annual Report 2010. OEA/Ser.LV/III. Doc. 5. March 7, 2011. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter V (Principles on the Regulation of Government Advertising). Paras. 46 et seq. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%202010%20P%20ENG.pdf>

⁵⁹ Asociación de Entidades Periodísticas Argentinas (ADEPA). August 19, 2012. *Condena ADEPA nuevos bloqueos a diarios*. Available at: <http://www.adepa.org.ar/secciones/ldp/nota.php?id=939>; *La Nación*. August 19, 2012. *Se levantó el bloqueo, pero La Nación no se pudo distribuir*. Available at: <http://www.lanacion.com.ar/1500667-bloquean-las-plantas-impresoras-de-la-nacion-y-de-clarin>

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

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 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

⁶¹ IACHR. Annual Report 2010. OEA/Ser.L/V/II. Doc. 5. March 7, 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. 24. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%202010%20P%20ENG.pdf>

⁶² Perfil. August 24, 2012. *Intiman a Garré por el bloqueo de diarios*. Available at: http://www.perfil.com/contenidos/2012/08/24/noticia_0019.html; Clarín. August 24, 2012. *La Justicia intimó a Garré a que evite nuevos bloqueos a los diarios*. Available at: http://www.clarin.com/politica/Justicia-intimo-Garre-bloqueos-diarios_0_761324062.html; La Prensa. August 24, 2012. *Un juez intimó a la ministra Garré para que desactive eventuales bloqueos a plantas de diarios*. Available at: <http://www.laprensa.com.ar/395222-Un-juez-intimo-a-la-ministra-Garre-para-que-desactive-eventuales-bloqueos-a-plantas-de-diarios.note.aspx>

⁶³ Clarín. October 30, 2012. *Bloquearon de manera sorpresiva salida de Clarín y de La Nación*. Available at: http://www.clarin.com/politica/Bloqueo-diarios-gremio-Gobierno-apoya_0_801519868.html; Urgente 24. October 29, 2012. *No salieron Clarín y La Nación por un bloqueo del sindicato de canillitas*. Available at: <http://www.urgente24.com/206574-no-salieron-clarin-y-la-nacion-por-un-bloqueo-del-sindicato-de-canillitas>; Inter-American Press Association (IAPA-SIP). October 29, 2012. *IAPA deploras another blockade of newspaper distribution in Argentina*. Available at: http://www.sipiapa.org/v4/comunicados_de_prensa.php?seccion=detalles&id=4777&idioma=us

⁶⁴ La Noticia 1. November 29, 2012. *Bloqueo de canillitas al diario platense. El Día*. Available at: <http://www.lanoticia1.com/noticia/bloqueo-de-canillitas-al-diario-platense-el-dia-56549.html>; El Día. November 30, 2012. *Bloqueo a la rotativa del diario El Día e incidentes intimidatorios*. Available at: <http://www.eldia.com.ar/edis/20121130/Bloqueo-rotativa-diario-DIA-incidentes-intimidatorios-laprovincia9.htm>; Asociación de Entidades Periodísticas Argentinas (ADEPA). November 29, 2012. *Bloqueo al diario El Día*. Available at: <http://www.adepa.org.ar/secciones/ldp/nota.php?id=1037>

⁶⁵ IFEX/ Foro de Periodismo Argentino (FOPEA). November 30, 2012. *Allanamiento a radio argentino y hostigamiento del intendente local*. Available at: http://www.ifex.org/argentina/2012/11/30/allanamiento_bariloche/es/; El Ciudadano. November 27, 2012. *Atropello a la prensa: A pedido de Goye, la Justicia allana radio*. Available at: http://www.elciudadanobche.com.ar/interior.php?accion=ver_notas&id_notas=31876; Bariloche Digital. November 26, 2012. *El Viernes se allanó una emisora por orden judicial*. Available at: <http://www.barilochedigital.com/noticias-policiales/18094-el-viernes-se-allano-una-emisora-por-orden-judicial.html>

⁶⁶ The complaint is available at: <https://docs.google.com/file/d/0BxeZSd1G6ydfckxaZWw1SDZ0aWM/edit?pli=1>. See also, La Nación. November 26, 2012. *Clarín denunció a funcionarios y señaló a periodistas por "incitación a la violencia"*. Available at: <http://www.lanacion.com.ar/1530431-clarin-denuncio-a-funcionarios-y-periodistas-por-incitacion-a-la-violencia>; La Jornada. November 26, 2012. *Grupo Clarín denuncia penalmente a funcionarios, legisladores y periodistas*. Available at: <http://www.jornada.unam.mx/2012/11/26/mundo/028n2mun>; Foro de Periodismo Argentino (FOPEA). November 26, 2012. *FOPEA rechaza denuncia del grupo Clarín contra periodistas*. Available at: http://www.fopea.org/Inicio/FOPEA_rechaza_denuncia_del_grupo_Clarin_contra_periodistas

⁶⁷ Clarín. November 28, 2012. *Una rectificación imprescindible*. Available at: http://www.clarin.com/opinion/rectificacion-imprescindible_0_818918142.html

40. The Office of the Special Rapporteur was also informed of the decision of the First Instance National Court on Civil and Commercial 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 decision⁶⁹. Furthermore, article 161⁷⁰ had been temporarily suspended through a precautionary measure⁷¹. The Office of the Special Rapporteur takes note of the high degree of polarization that surrounds the aforementioned judicial decisions and the difficulties that it may present for those who have the crucial task of administering justice. The Office of the Special Rapporteur has already highlighted important decisions that the Argentinian courts have adopted on freedom of expression and finds it of the utmost importance that there be a return to a climate in which operators of justice can evaluate the cases assigned to them in proper conditions. In this sense, the Office of the Special Rapporteur respectfully calls on the institutions involved in this matter, as well as the media, to resolve the conflicts that have emerged within the framework of the legal order in a manner respectful of the autonomy of the judicial branch.

2. Bolivia

A. Progress

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

⁶⁸ Republic of Argentina. National Court on Civil and Commercial Federal Law N° 1. Judgement of December 14, 2012. "Group Clarín SA et al. v. National Executive Branch et al. Declarative Judgement." Case 119/2010. Available at: <http://www.cij.gov.ar/adj/pdfs/ADJ-0.944719001355520873.pdf>

⁶⁹ Republic of Argentina. National Court on Civil and Commercial Federal Law N° 1. Judgement of December 17, 2012. "Group Clarín SA et al. v. National Executive Branch et al. Declarative Judgement." Case 119/2010. Available at: <http://www.cij.gov.ar/adj/pdfs/ADJ-0.182156001355843102.pdf>

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 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".]

Law 26.522. Audiovisual Communication Services. October 10, 2009. Available at: <http://www.infoleg.gov.ar/infolegInternet/anexos/155000-159999/158649/norma.htm>

⁷¹ Republic of Argentina. National Court on Civil and Commercial Federal Law N° 1. Case N° 8836/2009. "Grupo Clarín S.A. et al. on/Precautionary Measures". December 6, 2012. Available for consultation at: <http://www.cij.gov.ar/nota-10434-Ley-de-Medios-la-Camara-prorrogo-la-medida-cautelar-hasta-que-se-dicte-sentencia-definitiva.html>

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*.⁷² 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

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

⁷² Plenary Chamber of the Plurinational Constitutional Tribunal of Bolivia. Plurinational Constitutional Judgment 1250/2012. September 20, 2012. File No. 00130-2012-01-AIC. Available at: http://www.tribunalconstitucional.gob.bo/modules/ver_resolucion/indexnew.php?id=125150. See also, IACHR. Office of the Special Rapporteur for Freedom of Expression. October 26, 2012. Press Release R128/12. *Office of the Special Rapporteur welcomes important advances in freedom of expression in the region*. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=912&ID=1>; El Diario. October 26, 2012. *Gobierno eliminó desacato para agravar figuras penales vigentes*. Available at: http://www.eldiario.net/noticias/2012/2012_10/nt121026/politica.php?n=67&gobierno-elimino-desacato-para-agravar-figuras-penales-vigentes

⁷³ Committee to Protect Journalists (CPJ). October 31, 2012. *Critical Bolivian journalist set on fire by masked men*. Available at: <http://www.cpj.org/2012/10/critical-bolivian-journalist-set-on-fire-by-masked.php>; IFEX/ Asociación Nacional de Prensa (ANP). October 31, 2012. *Bolivian journalists injured in fire bomb attack on station*. Available at: http://www.ifex.org/bolivia/2012/10/31/radio_ataque/

⁷⁴ El Deber. November 15, 2011. *Colonos destrozan radio comunitaria en Yapacaní*. Available at: <http://eldeber.com.bo/nota.php?id=111114221444>; Committee to Protect Journalists (CPJ). November 17, 2011. *In Bolivia, mayor's supporters attack TV, radio stations*. Available at: <http://cpj.org/2011/11/in-bolivia-mayors-supporters-attack-tv-radio-stati.php>

⁷⁵ La Razón. January 14, 2012. *Amenazan con bloqueos si Evo no echa a 3 autoridades en 48 horas*. Available at: http://www.la-razon.com/nacional/Amenazan-bloqueos-Evo-echa-autoridades_0_1541245903.html; Crónica Viva. January 19, 2012. *Bolivia: Policía golpea y decomisa equipos a periodistas*. Available at: <http://www.cronicaviva.com.pe/index.php/mundo/europa/34519-bolivia-policia-golpea-y-decomisa-equipos-a-periodistas>; IFEX/ Asociación Nacional de Periodistas. January 17, 2012. *Alerta Policía golpea a periodistas en Yapacaní*. Available at: http://www.ifex.org/bolivia/2012/01/17/yapacani_ataque/es/

⁷⁶ La Razón. January 31, 2012. *Indígenas golpean y hieren a 4 periodistas y 20 policías*. Available at: http://www.la-razon.com/nacional/Indigenas-golpean-hieren-periodistas-policias_0_1551444900.html; Página Siete. January 31, 2012. *La violencia marcó ingreso de indígenas a Plaza Murillo*. Available at: <http://www.paginasiete.bo/2012-01-31/Nacional/Destacados/2Nac00331-03.aspx>; EJU. January 31, 2012. *Violencia en la marcha del Conisur. Periodistas relatan agresiones*. Available at: <http://eju.tv/2012/01/violencia-en-la-marcha-del-conisur-periodistas-relatan-agresiones/>

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 group of protesters opposing the construction of a highway. The government condemned the attack and announced an investigation into the facts.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.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.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.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,

⁷⁷ *Página Siete*. February 6, 2012. *Denuncian que agresión policial en Aiquile fue para acallar radio*. Available at: <http://www.paginasiete.bo/2012-02-07/Nacional/Destacados/07seg-001-0207.aspx>; Los Tiempos. February 8, 2012. *La ANP protesta por la agresión a un radialista*. Available at: http://www.lostiempos.com/diario/actualidad/local/20120208/la-anp-protesta-por-la-agresion-a-un-radialista_159648_333513.html; IFEX/ Asociación Nacional de la Prensa (ANP). February 8, 2012. *ANP censura agresión a director de radioemisora*. Available at: http://www.ifex.org/bolivia/2012/02/08/anp_censura/es/

⁷⁸ Bolivian Information Agency. February 23, 2012. *Federación de la Prensa de La Paz condena agresiones a camarógrafos y anuncia juicios*. Available at: <http://www3.abi.bo/nucleo/noticias.php?i=2&j=20120223063846>; Bolivia Sol. February 18, 2012. *Seguidores de Suárez agreden a periodista*. Available at: <http://boliviasol.wordpress.com/2012/02/18/seguidores-de-suarez-agreden-a-periodista/>

⁷⁹ Plurinational State of Bolivia. Ministry of Communication. April 24, 2012. *Gobierno investigará incidente en Radio Arrairru Sache en San Ignacio de Moxos*. Available at: http://www.comunicacion.gob.bo/noticias/2012-04-24/gobierno_investigara_incidente_en_radio_arrairru_sache_de_san_ignacio_de_moxos_ac7d19faa9499140af063c0c2094851d.htm; Asociación Nacional de la Prensa. May 2, 2012. *Dos periodistas sufren agresiones*. Available at: http://red.anpbolivia.com/index.php?option=com_content&task=view&id=308&Itemid=28; El Diario. May 5, 2012. *Agresiones llegan a tres periodistas*. Available at: http://www.eldiario.net/noticias/2012/2012_05/nt120505/politica.php?n=57&-agresiones-llegan-a-tres-periodistas

⁸⁰ IFEX/ Asociación Nacional de la Prensa (ANP). May 8, 2012. *Técnico de TV herido por proyectil de gas lacrimógeno*. Available at: http://www.ifex.org/bolivia/2012/05/08/tecnico_herido/es/; Los Tiempos. May 3, 2012. *La Policía deja dos heridos en desbloqueo de la Autopista*. Available at: http://www.lostiempos.com/diario/actualidad/nacional/20120503/la-policia-deja-dos-heridos-en-desbloqueo-de-la_170125_357461.html

⁸¹ Reporters Without Borders. June 19, 2012. *Journalists caught up in violence of mining dispute and political protests*. Available at: http://en.rsf.org/bolivia-journalists-caught-up-in-violence-19-06-2012_42816.html; *Página Siete*. May 17, 2012. *Enfrentamiento entre policías y universitarios deja 16 heridos*. Available at: <http://www.paginasiete.bo/2012-05-17/Nacional/Destacados/3800000117.aspx>

⁸² *La Razón*. May 29, 2012. *Santiesteban espera citación de la Fiscalía*. Available at: http://www.la-razon.com/nacional/seguridad_nacional/Santiesteban-espera-citacion-Fiscalia_0_1622837736.html; Knight Center for Journalism in the Americas. May 29, 2012. *Bolivian journalist accused of extortion receives threats*. Available at: <http://knightcenter.utexas.edu/blog/00-10301-bolivian-journalist-accused-extortion-receives-threats>

Radio Patria Nueva journalist Helen San Román was beaten in La Paz, while *PAT* network journalist Irene Tórrez was beaten in Oruro.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.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 regarding the needs of the peasant population. The broadcaster was put temporarily out of service.⁸⁵ Additionally, on August 26, broadcaster *FM Comunitaria* in Buenavista, Santa Cruz, was taken over by a group of people who allegedly beat radio broadcaster Hugo Rojas and stole communications equipment.⁸⁶

50. The Office of the Special Rapporteur was informed that *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.”⁸⁷

51. Journalist Jimmy Arias and cameraman Johnny Callapa, with the official State channel *Bolivia TV*, were held on August 18 while providing news coverage in the Isiboro Sécre 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.⁸⁸ Additionally, on October 9, a news team from *Cadena A* reporting on a military operation in Challapata, in the Oruro department, was harassed by law enforcement personnel who temporarily confiscated the material they had recorded.⁸⁹

⁸³ Agencia de Noticias Fides (ANF). July 24, 2012. *ANP informa que 15 periodistas fueron agredidos durante conflicto policial*. Available at: <http://www.noticiasfides.com/g/sociedad/anp-informa-que-15-periodistas-fueron-agredidos-durante-conflicto-policia-3559/>; IFEX/ Asociación Nacional de la Prensa (ANP). June 27, 2012. *As protests continue, ANP condemns attacks on free expression and calls for calm*. Available at: http://www.ifex.org/bolivia/2012/06/27/protests_continue/; Los Tiempos. June 27, 2012. *ANP condena agresiones y convoca a la pacificación*. Available at: <http://www.lostiempos.com/diario/actualidad/nacional/20120627/anp-condena-agresiones-y-convoca-a-la-pacificacion-176498-372330.html>

⁸⁴ Reporters Without Borders. June 19, 2012. *Journalists caught up in violence of mining dispute and political protests*. Available at: <http://en.rsf.org/bolivia-journalists-caught-up-in-violence-19-06-2012-42816.html>; El Nuevo Diario/ AFP. June 15, 2012. *Choques entre mineros dejan 17 heridos y 2 radios destruidas*. Available at: <http://www.elnuevodiario.com.ni/internacionales/254769-choques-mineros-dejan-17-heridos-2-radios-destruidas>

⁸⁵ Committee to Protect Journalists (CPJ). June 28, 2012. *Three community radio stations attacked in Bolivia*. Available at: <http://cpj.org/2012/06/three-community-radio-stations-attacked-in-bolivia.php>; La Patria. June 27, 2012. *Explosión causa destrozos y acalla a Radio Emisoras Bolivia*. Available at: <http://lapatriaenlinea.com/?t=explosion-causa-destrozos-y-acalla-a-radio-emisoras-bolivia¬a=111329>

⁸⁶ Asociación Nacional de la Prensa (ANP). August 29, 2012. *Atacan a radioemisora rural*. Available at: http://red.anpbolivia.com/index.php?option=com_content&task=view&id=325&Itemid=28; El Deber. August 27, 2012. *En Buenavista golpean a exdirigente y sustraen equipos de radio*. Available at: <http://www.eldeber.com.bo/nota.php?id=120827163532>

⁸⁷ Asociación Nacional de la Prensa (ANP). August 15, 2012. *Camarógrafo fue detenido en oficinas policiales*. Available at: http://red.anpbolivia.com/index.php?option=com_content&task=view&id=320&Itemid=28; Correo del Sur. August 16, 2012. *Camarógrafo es detenido por filmar trabajo policial*. Available at: <http://www.correodelsur.com/2012/08/16/28.php>

⁸⁸ Inter-American Press Association (IAPA-SIP). August 22, 2012. *IAPA concerned at official announcement legal proceedings to be taken against news agency in Bolivia*. Available at: http://www.sipiapa.org/v4/comunicados_de_prensa.php?seccion=detalles&id=4752&idioma=us; Cambio. August 22, 2012. *AJENOS del Tipnis atacan a periodistas de Bolivia TV*. Available at: http://www.cambio.bo/consulta_pueblos_indigenas/20120822/ajenos-del-tipnis-atacan-a-periodistas-de-bolivia-tv-77799.htm

⁸⁹ Asociación Nacional de la Prensa (ANP). October 10, 2012. *Jefe militar arrebató video a equipo periodístico*. Available at: http://red.anpbolivia.com/index.php?option=com_content&task=view&id=339&Itemid=28; Los Tiempos. October 9, 2012. *Dos muertos y al menos cuatro heridos en operativo militar en Challapata*. Available at: Continues...

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.⁹⁰ On October 13, Wilson García Mérida, the editor and owner of *El Sol de Pando*, and Silvia Antelo, the manager of the publication, sought refuge for a number of days 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.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 [*injuria*]. The journalist was given a suspended sentence. The case was based on an article published in April of 2010 in monthly magazine *Larga Vista*, directed by Peláez Justiniano, calling into question the size of the fees received by Mr. Molina as attorney for the National Committee for the Defense of Contributions to the Public Employee Retirement Fund. At the same time, the accused had opted for a trial in the regular court system and not under the Press Law.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

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http://www.lostiempos.com/diario/actualidad/nacional/20121009/confirman-dos-muertos-y-al-menos-cuatro-heridos-en-operativo-militar-en-188252_399915.html

⁹⁰ IFEX/ Asociación Nacional de la Prensa (ANP). October 23, 2012. *Shot fired at journalist's home in Bolivia*. Available at: http://www.ifex.org/bolivia/2012/10/23/vacaflor_bullet/; El Día. October 18, 2012. *Periodistas denuncian ser acosados por el poder*. Available at: http://www.eldia.com.bo/index.php?c=&articulo=Periodistas-denuncian-ser-acosados-por-el-poder&cat=150&pla=3&id_articulo=101649

⁹¹ IFEX/ Committee to Protect Journalists (CPJ). October 23, 2012. *Bolivian journalists temporarily flee country after harassment*. Available at: http://www.ifex.org/bolivia/2012/10/23/bolivian_journalists/; El Día. October 18, 2012. *Periodistas denuncian ser acosados por el poder*. Available at: http://www.eldia.com.bo/index.php?c=&articulo=Periodistas-denuncian-ser-acosados-por-el-poder&cat=150&pla=3&id_articulo=101649

⁹² IFEX/ Asociación Nacional de la Prensa (ANP). November 8, 2012. *Bolivian editor, free expression activist brutally beaten*. Available at: http://www.ifex.org/bolivia/2012/11/08/sanabria_beaten/; Agencia de Noticias Fides (ANF). November 6, 2012. *Periodista de El Diario es atacada por un desconocido*. Available at: <http://www.noticiasfides.com/g/sociedad/periodista-de-el-diario-es-atacada-por-un-desconocido-6794/>

⁹³ Third Sentencing Court of the Judicial District of La Paz. March 8, 2012. Judgment No. 06/2012. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Reporters Without Borders. March 15, 2012. *30-month jail term for editor in libel case brought by lawyer*. Available at: <http://en.rsf.org/bolivia-30-month-jail-term-for-editor-in-15-03-2012.42126.html>. See video at: Eju. March 15, 2012. *Un periodista es sentenciado a dos años de cárcel por difamación y calumnia*. Available at: <http://eju.tv/2012/03/un-periodista-es-sentenciado-a-dos-aos-de-crcel-por-difamacin-y-calumnia/>; Radio Fides. March 15, 2012. *Periodista Peláez fue sentenciado como un ciudadano más*. Available at: http://www.radiofides.com/noticia/seguridad/Periodista_Pelaez_fue_sentenciado_como_un_ciudadano_mas; Joint Program: Promoting Change in Peace. Monitoring System of Radio and TV. March 14, 2012. Available at: <http://www.cambioenpaz.org/stock/MonitoreoFiles/noticias-radio-y-tv-14-marzo-12-meridiano.pdf>

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

⁹⁴ Ministry of Communication. July 16, (sic) 2012. *Preocupa e indigna al gobierno permanente distorsión de la Agencia de Noticias Fides*. Available at: http://www.comunicacion.gob.bo/noticias/20120816/preocupa_e_indigna_al_gobierno_permanente_distorsion_de_la_agencia_de_noticias_fides_1a73cfae0667cd5d33e443a2bac538f9.htm; Asociación Nacional de la Prensa (ANP). August 24, 2012. *ANP expresa protesta energética por juicio a tres medios*. Available at: http://red.anpbolivia.com/index.php?option=com_content&task=view&id=324&Itemid=1; Inter-American Press Association (IAPA-SIP). August 31, 2012. *IAPA sees legal action against Bolivia’s media as attempt at intimidation*. Available at: http://www.sipiapa.com/v4/comunicados_de_prensa.php?seccion=detalles&id=4756&idioma=sp; Alianza Regional por la Libre Expresión e Información. No date. *La Alianza Regional manifiesta su preocupación por el enjuiciamiento a tres medios de comunicación de Bolivia por el presunto delito de difusión e incitación al Racismo o discriminación*. Available at: http://anpbolivia.com/index.php?option=com_content&task=view&id=235&Itemid=1

⁹⁵ Agencia de Noticias Fides (ANF). October 23, 2012. *Roger Pinto el opositor con mayor número de denuncias por desacato*. Available at: <http://www.noticiasfides.com/g/politica/roger-pinto-el-opositor-con-mayor-numero-de-denuncias-por-desacato-6379/>; BBC. July 17, 2012. *Senador boliviano cumple 50 días de asilo en la embajada de Brasil en La Paz*. Available at: http://www.bbc.co.uk/mundo/ultimas_noticias/2012/07/120717_ultnot_brasil_bolivia_senador_asilo_pea.shtml; Radio FM Bolivia. No date. *Pinto tiene tras suyo 20 denuncias por desacato, corrupción y sedición*. Available at: <http://www.fmbolivia.net/noticia49065-pinto-tiene-tras-suyo-20-denuncias-por-desacato-corrupcin-y-sedicion.html>

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' alleged 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

⁹⁶ IFEX/ Asociación Nacional de la Prensa (ANP). September 7, 2012. *Mayor threatens "to bury" newspaper journalists in Bolivia*. Available at: http://www.ifex.org/bolivia/2012/09/07/amenaza_el_deber/; La Patria. September 4, 2012. *Alcalde cruceño acusa y amenaza al matutino boliviano "El Deber"*. Available at: <http://lapatriaenlinea.com/?t=alcalde-cruceno-acusa-y-amenaza-al-matutino-boliviano-el-deber¬a=118306>

⁹⁷ Asociación Nacional de la Prensa (ANP). July 20, 2012. *Vicepresidente acusa de "golpistas" a medios*. Available at: http://red.anpbolivia.com/index.php?option=com_content&task=view&id=316&Itemid=28; El País (Bolivia). July 20, 2012. *Álvaro cree que los medios tienen actitudes golpistas*. Available at: <http://www.opinion.com.bo/opinion/articulos/2012/0720/noticias.php?id=64532>; Los Tiempos. July 20, 2012. *Medios "inventan conflictos"*. Available at: <http://www.lostiempos.com/diario/actualidad/politica/20120720/medios-%E2%80%9Cinventan-conflictos%E2%80%9D-179107-378430.html>

⁹⁸ Últimas Noticias Bolivia. March 1, 2012. *Fiscalía desiste de enjuiciar a dos periodistas por omisión de denuncia*. Available at: <http://ultimasnoticiasbolivia.com/2012/03/01/fiscalia-desiste-de-enjuiciar-a-dos-periodistas-por-omision-de-denuncia/>; IFEX/ Asociación Nacional de la Prensa (ANP). March 1, 2012. *Fiscal cita a periodistas a declarar como testigos*. Available at: http://www.ifex.org/bolivia/2012/03/01/periodistas_testigos/es/; Los Tiempos. February 28, 2012. *Periodistas denuncian que la fiscalía antidrogas quiere amedrentarlos*. Available at: <http://www.lostiempos.com/diario/actualidad/local/20120228/periodistas-denuncian-que-la-fiscalia-antidrogas-quiere-161953-338959.html>

⁹⁹ Transportation and Telecommunications Authority of Bolivia (ATT). November 27, 2012. *Allanamiento y secuestro de equipos de Canal 33*. Available at: <http://att.gob.bo/index.php/78-mostrar-slides/280-allanamiento-y-secuestro-de-equipos-de-canal-33>

¹⁰⁰ IFEX/ Asociación Nacional de la Prensa (ANP). November 21, 2012. *Police storm Bolivian TV station critical of government*. Available at: http://www.ifex.org/bolivia/2012/11/21/police_storm_tv/; El Diario. November 21, 2012. *Periodista denuncia brutal intervención policial a teledifusora en Cochabamba*. Available at: <http://www.eldiario.net/noticias/2012/2012-11/nt121121/principal.php?n=140&-periodista-denuncia-brutal-intervencion-policial-a-teledifusora-en-co>

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 2011.¹⁰² According to the information received, in February authorities arrested Dailton Gomes Brasil and Josimar Soares da Silva, suspects in the April 9, 2011, murder of journalist Luciano Leitão Pedrosa. Authorities are investigating whether the crime was motivated by the constant accusations made by Pedrosa of actions of criminal gangs in the region.¹⁰³ On October 15, the mayor of Serra do Mel appeared before authorities, in response to a court order of preventive detention. The mayor is a suspect in the investigation into the June 15, 2011 murder of journalist Ednaldo Figueira.¹⁰⁴ Additionally, according to information received, on June 25 an 18-year-old man was arrested on suspicion of murdering journalist Auro Ida on July 21, 2011.¹⁰⁵

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.”¹⁰⁶

¹⁰¹ Inter-American Press Association (IAPA-SIP). Proyecto Impunidad. July 11, 2012. *Acusado pelo assassinato de Maria Nilce dos Santos Magalhães é condenado a 19 anos de prisão*. Available at: <http://www.impunidad.com/noticia.php?id=898&idioma=sp>; Folha Vitória. July 11, 2012. *Acusado de matar colunista social é condenado a 19 anos de prisão, mas não vai para a cadeia*. Available at: <http://www.folhavoria.com.br/policia/noticia/2012/07/acusado-de-matar-colunista-social-e-condenado-a-19-anos-de-prisao-mas-nao-vai-para-a-cadeia.html>; Tribunal of Justice of the State of Espírito Santo. Communications Office. November 7, 2012. *Júri Popular de réu do caso Maria Nilce é adiado*. Available at: http://www.tj.es.gov.br/index.php?option=com_content&view=article&id=5678:juri-de-reu-de-maria-nilce-e-adiado&catid=3:ultimasnoticias

¹⁰² See, 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. 54-59. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/2012%2003%2021%20Annual%20Report%20RELE%202011pirnting.pdf>

¹⁰³ Pernambuco.com. February 17, 2012. *Morte de radialista pode ter custado R\$24 mil*. Available at: <http://www.old.pernambuco.com/ultimas/nota.asp?materia=20120217110947>; A Voz da Vitória. February 14, 2012. *DHPP apresenta dois suspeitos de matar radialista Luciano Pedroza*. Available at: <http://www.avozdavoria.com/noticias/dhpp-apresenta-dois-suspeitos-de-matar-radialista-luciano-pedroza/>; Disque Denúncia. February 14, 2012. *Caso Luciano Pedroza: 2 presos*. Available at: <http://www.disquedenunciapc.com.br/clipping.php?id=354>

¹⁰⁴ Dnonline. October 15, 2012. *Prefeito do interior do RN é preso por descumprir decisão judicial*. Available at: http://www.dnonline.com.br/app/noticia/politica/2012/10/15/interna_politica.108803/prefeito-do-interior-do-rn-e-presos-por-descumprir-decisao-judicial.shtml; Pernambuco.com. October 16, 2012. *Prefeito do interior do RN é preso por descumprir decisão judicial*. Available at: http://www.diariodepernambuco.com.br/app/noticia/politica/2012/10/16/interna_politica.402388/prefeito-do-interior-do-rn-e-presos-por-descumprir-decisao-judicial.shtml

¹⁰⁵ Globo. June 26, 2012. *PM prende suspeito de encomendar morte de jornalista em Cuiabá*. Available at: <http://g1.globo.com/mato-grosso/noticia/2012/06/pm-prende-suspeito-de-encomendar-morte-de-jornalista-em-cuiaba.html>; Página Única. September 27, 2012. *Mandante da morte de Auro Ida pode ficar menos de três anos detido*. Available at: <http://www.paginaunica.com.br/TNX/conteudo.php?sid=179&cid=7563>; Várzea Grande Notícias. June 26, 2012. *Um dos suspeitos de assassinar jornalista Auro Ida é preso em Cuiabá*. Available at: <http://vgnoticias.com.br/2012/noticias/Ver/643/um-dos-suspeitos-de-assassinar-jornalista-auro-ida-e-presos-em-cuiaba>

¹⁰⁶ Republico of Brazil. Sixth Special Civil Court. Judgment of February 11, 2012. File No. 2011.01.1.200509-0. Available at: <http://congressoemfoco.uol.com.br/supersalarios/caso-sindilegis-leia-integra-da-decisao-do-juiz-ruitemberg-nunes-pereira/>; Continues...

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."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 5th Region found that operating non-profit, low-power, and limited-coverage community radio stations without a permit was not a crime but rather an administrative infraction. The court and the Office of the Public Prosecutor also recognized that the broadcaster was not operating secretly and played an important social role in its community.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.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

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Fórum de Direito de Acesso a Informações Públicas. February 15, 2012. *Juiz Absolve Congresso em Foco no Caso Sindilegis*. Available at: http://www.informacaopublica.org.br/node/2120?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+acessopublico+%28F%3%B3rum+de+Direito+de+Acesso+a+Informa%C3%A7%C3%B5es+P%C3%ABlicas%29&utm_content=Google+FeedfetherM; Congresso em Foco. February 3, 2012. *Juiz decide unir ações contra Congresso em Foco*. Available at: <http://congressoemfoco.uol.com.br/noticias/manchetes-anteriores/juiz-decide-unir-aco-es-contra-congresso-em-foco/>; See also: Republic of Brazil. Sixth Special Civil Court. Interlocutory Decision. February 1, 2012. File No. 2011.01.1.200509-0. Available at: <http://congressoemfoco.uol.com.br/supersalarios/leia-a-integra-da-decisao-de-ruitemberg-nunes-pereira/>

¹⁰⁷ Judiciary of Rio Grande do Sul. 2nd Civil Court of the 4th District Regional Forum. June 14, 2012. Judgment of June 14, 2012. File No. 001/1.12.0134180-0 (CNJ: 0004671-94.2012.8.21.1001). Available for consultation at: <http://www.trjrs.jus.br/busca/?tb=proc>; Associação Brasileira de Jornalismo Investigativo (Abraji). July 30, 2012. *Jornalista é alvo de ação para retirar reportagens de site*. Available at: http://www.abraji.org.br/?id=90&id_noticia=2134

¹⁰⁸ Republic of Brazil. Office of the Federal Public Prosecutor. July 25, 2012. *Decisão judicial absolve proprietário de rádio comunitária irregular*. Available at: http://www.prr5.mpf.gov.br/pr5/index.php?opcao=9.5.1&pagina=exibeNoticias_2012¬ic=2012_050_07_25; Federal Regional Court of the 5th Region. Criminal Appeal 7736 - SE (2005.85.00.004229-0). Available at: http://www.trf5.jus.br/archive/2012/07/200585000042290_20120726_3722519.pdf

¹⁰⁹ Judiciary of São Paulo. Tribunal of Justice of the State of São Paulo. August 8, 2012. Resolution. File: 2012.0000397331. Available at: <https://conjur.com.br/dl/decisao-globo2.pdf>; Consultor Jurídico. August 15, 2012. *Imprensa tem direito de divulgar material sob sigilo*. Available at: <http://www.conjur.com.br/2012-ago-15/imprensa-divulgar-dados-sigilosos-vazados-agentes-estado>

¹¹⁰ Judiciary of São Paulo. Tribunal of Justice of the State of São Paulo. August 7, 2012. Resolution. File 2012.0000384930. Available at: <https://conjur.com.br/dl/acordao-apelacao-9286888-5420088260000.pdf>; Consultor Jurídico. August 21, 2012. *TJ-SP rejeita ação de R\$7 milhões contra a TV Globo*. Available at: <http://www.conjur.com.br/2012-ago-21/tj-sp-rejeita-pedido-indenizacao-milhoes-acao-globo>

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 Randolph 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 Randolph 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

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 Rocaró, 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

¹¹¹ Office of the President of the Republic of Brazil. Secretariat of Human Rights. Human Rights Defense Council. October 18, 2012. Resolution No. 07. Available at: http://www.sedh.gov.br/conselho/pessoa_humana/resolucoes-1/Resolucao_07_Profissionais%20de%20Comunicacao.pdf

¹¹² Judiciary of Brazil. National Justice Council. November 13, 2012. Resolution No. 163. Available at: http://www.cnj.jus.br/images/resol_gp_163_2012.pdf. Agência CNJ de Notícias. November 13, 2012. *Criado fórum para monitorar processos relativos à liberdade de imprensa*. Available at: <http://www.cnj.jus.br/noticias/cnj/22167-criado-forum-para-monitorar-processos-relativos-a-liberdade-de-imprensa>

¹¹³ IACHR. Office of the Special Rapporteur for Freedom of Expression. February 13, 2012. Press Release R17/12. *Office of the Special Rapporteur condemns murder of journalist in Brazil*. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=882&IID=1>; Committee to Protect Journalists (CPJ). February 10, 2012. *Journalist who covered corruption murdered in Brazil*. Available at: <http://cpj.org/2012/02/journalist-who-covered-corruption-murdered-in-braz.php>; Associação Nacional de Jornais (ANJ). February 10, 2012. *ANJ repudia assassinato de jornalista em Barra do Piraí (RJ)*. Available at: <http://www.anj.org.br/sala-de-imprensa/noticias/anj-repudia-assassinato-de-jornalista-em-barra-do-pirai-rj/>

¹¹⁴ IACHR. Office of the Special Rapporteur for Freedom of Expression. February 15, 2012. Press Release R18/12. *Office of the Special Rapporteur condemns a new murder of a journalist in Brazil*. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=883&IID=1>; Folha de São Paulo. February 16, 2012. *Polícia diz* Continues...

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 Luis, 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

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acreditar que jornalista de MS foi morto por vingança. Available at: <http://www1.folha.uol.com.br/poder/1049396-policia-diz-acreditar-que-jornalista-de-ms-foi-morto-por-vinganca.shtml>; Associação Nacional de Jornais (ANJ). February 14, 2012. *ANJ pede rápida apuração sobre assassinato de jornalista*. Available at: <http://www.anj.org.br/sala-de-imprensa/noticias/anj-pede-rapida-apuracao-sobre-assassinato-de-jornalista/>

¹¹⁵ IACHR. Office of the Special Rapporteur for Freedom of Expression. April 26, 2012. Press Release R40/12. *Office of the Special Rapporteur condemns murder of journalist and political Blogger in Brazil*. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=890&IID=1>; Reporters Without Borders. April 24, 2012. *Popular blogger Décio Sá gunned down in Maranhão state*. Available at: http://en.rsf.org/brazil-popular-blogger-decio-sa-gunned-24-04-2012_42352.html; UN High Commissioner for Human Rights. April 27, 2012. *OHCHR concerned over disturbing trend of killing journalists that is damaging the exercise of freedom of expression in Brazil*. Available at: <http://acnudh.org/en/2012/04/ohchr-concerned-over-disturbing-trend-of-killing-journalists-that-is-damaging-the-exercise-of-freedom-of-expression-in-brazil/>

¹¹⁶ Government of the State of Maranhão. Civil Police. No date. *SSP apresenta mandantes e executor da morte do jornalista Décio Sá*. Available at: http://www.policiacivil.ma.gov.br/index.php?option=com_content&view=article&id=333:policia-civil-apreende-aparelhagem-de-som-durante-plantao-da-poluicao-sonora-&catid=35:noticias&Itemid=58; Estadão. June 13, 2012. *Polícia maranhense esclarece caso de assassinato de jornalista e prende 7*. Available at: <http://m.estadao.com.br/noticias/nacional.policia-maranhense-esclarece-caso-de-assassinato-de-jornalista-e-prende-7,885912.htm>

¹¹⁷ IACHR. Office of the Special Rapporteur for Freedom of Expression. July 11, 2012. Press Release R86/12. *Office of the Special Rapporteur condemns killing of sports commentator in Brazil*. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=908&IID=1>; Reporters Without Borders. July 9, 2012. *Sports reporter gunned down in Goiânia, police investigating link to work*. Available at: http://en.rsf.org/brazil-sports-reporter-gunned-down-in-09-07-2012_42988.html; UNESCO. July 18, 2012. *Director-General calls for investigation into the killing of Brazilian journalist Valério Luiz de Oliveira*. Available at: http://www.unesco.org/new/en/media-services/single-view/news/director-general_calls_for_investigation_into_the_killing_of_brazilian_journalist_valerio_luiz_de_oliveira/

¹¹⁸ IACHR. Office of the Special Rapporteur for Freedom of Expression. November 27, 2012. Press Release R139/12. *Office of the Special Rapporteur condemns killing of journalist in Brazil*. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=914&IID=1>; Committee to Protect Journalists (CPJ). November 26, 2012. *Brazilian journalist killed in Campo Grande*. Available at: <http://www.cpj.org/2012/11/brazilian-journalist-killed-in-campo>

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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

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[grande.php](http://g1.globo.com/mato-grosso-do-sul/noticia/2012/11/jornalista-e-morto-tiros-em-frente-de-casa-em-campo-grande.html); Globo. November 22, 2012. *Jornalista é morto a tiros em frente de casa em Campo Grande*. Available at: <http://g1.globo.com/mato-grosso-do-sul/noticia/2012/11/jornalista-e-morto-tiros-em-frente-de-casa-em-campo-grande.html>

¹¹⁹ Sindicato dos Jornalistas Profissionais no Estado de São Paulo. January 3, 2012. *Sindicato repudia ameaças aos jornalistas do Diário do Litoral, no Guarujá*. Available at: http://www.sjsp.org.br/index.php?option=com_content&view=article&id=3521:sindicato-repudia-ameacas-aos-jornalistas-do-diario-do-litoral-no-guaruja&catid=36:destaque; Portal Imprensa. January 3, 2012. *Diário do Litoral denuncia ameaças a jornalistas no Guarujá (SP)*. Available at: <http://portalimprensa.uol.com.br/noticias/brasil/46487/diario+do+litoral+denuncia+ameacas+a+jornalistas+no+guaruja+sp>

¹²⁰ Correio. February 4, 2012. *TV Oeste, afiliada da Rede Bahia, é alvo de tiros em Barreiras*. Available at: <http://www.correio24horas.com.br/noticias/detalhes/detalhes-3/artigo/tv-oeste-afiliada-da-rede-bahia-e-alvo-de-tiros-em-barreiras/>; TV Globo. February 4, 2012. *Homens atiram contra sede da TV Oeste, afiliada da TV Bahia*. Available at: <http://g1.globo.com/bahia/noticia/2012/02/homens-atiram-contrasede-da-tv-oeste-afiliada-da-tv-bahia.html>

¹²¹ Iteberaba Notícias. February 9, 2012. *Rádio Comunitária é incendiada no interior da Bahia*. Available at: <http://www.iteberabanoticias.com.br/crimes/radio-comunitaria-e-incendiada-no-interior-da-bahia>; Correio. February 8, 2012. *Rádio comunitária é incendiada no município de Ibicoara*. Available at: <http://www.correio24horas.com.br/noticias/detalhes/detalhes-1/artigo/radio-comunitaria-e-incendiada-no-municipio-de-ibicoara/>

¹²² Paraná Online. February 8, 2012. *Incêndio causa destruição em sede de jornal*. Available at: <http://www.parana-online.com.br/editoria/cidades/news/591788/?noticia=INCENDIO+CAUSA+DESTRUICAO+EM+SEDE+DE+JORNAL>; Knight Center for Journalism in the Americas. February 8, 2012. *Possible arson destroys the newspaper offices of a Brazilian councilman*. Available at: <http://knightcenter.utexas.edu/blog/00-8965-possible-arson-destroys-newspaper-offices-brazilian-councilman>

¹²³ Reporters Without Borders. September 17, 2012. *Attack on radio station a worrying development in run-up to local elections*. Available at: http://en.rsf.org/brazil-attack-on-radio-station-a-worrying-17-09-2012_43395.html; Tribuna Hoje. September 13, 2012. *Criminosos explodem Rádio Farol, de deputado federal em União*. Available at: <http://www.tribunahoje.com/noticia/39439/interior/2012/09/13/criminosos-explodem-radio-farol-de-deputado-federal-em-uniao.html>

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

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.¹³⁰ On September 16, Wal Alencar, a reporter with television channel *Sistema Monólitos*, was beaten by supporters of a mayoral candidate in

¹²⁴ Associação Brasileira de Jornalismo Investigativo (Abraji). July 26, 2012. *Equipe de Globo é ameaçada em município do interior do Pará*. Available at: http://Abraji.org.br/?id=90&id_noticia=2132; Associação Brasileira de Imprensa (ABI). July 27, 2012. *DH investiga ameaça a jornalistas do "Globo"*. Available at: <http://www.abi.org.br/primeirapagina.asp?id=4814>

¹²⁵ Brasil de Fato. July 19, 2012. *Repórter da Folha relata ameaças depois de denúncia contra a PM*. Available at: <http://www.brasildefato.com.br/node/10144>; Sindicato dos Jornalistas Profissionais no Estado de São Paulo. July 17, 2012. *Sindicato repudia intimidações de coronel PM a jornalista*. Available at: http://www.sjsp.org.br/index.php?option=com_content&view=article&id=3832&catid=3832

¹²⁶ Associação Brasileira de Imprensa (ABI). August 20, 2012. *ABI repudia violencia no Maranhão*. Available at: <http://www.abi.org.br/primeirapagina.asp?id=4844>; Gazeta da Ilha. August 20, 2012. *Equipe de TV é agredida em Bacabal*. Available at: <http://www.gazetadailha.com.br/2012/08/20/equipe-de-tv-e-agredida-em-bacabal/>

¹²⁷ Folha de São Paulo. August 31, 2012. *Carro de equipe de reportagem é alvo de tiros na Bahia*. Available at: <http://www1.folha.uol.com.br/cotidiano/1146272-carro-de-equipe-de-reportagem-e-alvo-de-tiros-na-bahia.shtml>; Bahia Notícias. August 30, 2012. *Carro da TV Aratu é atingido por seis tiros no Boiadeiro*. Available at: <http://www.bahianoticias.com.br/principal/noticia/121899-carro-da-tv-aratu-e-atingido-por-seis-tiros-no-boiadeiro.html>

¹²⁸ Associação Brasileira de Jornalismo Investigativo (Abraji). September 4, 2012. *Jornalista é agredida e tem jornais roubados no interior de SP*. Available at: http://www.Abraji.org.br/?id=90&id_noticia=2164; Globo. September 2, 2012. *Diretora de jornal é agredida em canal de Guaira, SP*. Available at: <http://g1.globo.com/sp/ribeirao-preto-franca/noticia/2012/09/diretora-de-jornal-e-agredida-em-canavial-de-quaira-sp.html>

¹²⁹ Associação Brasileira de Jornalismo Investigativo (Abraji). October 9, 2012. *Abraji lamenta afastamento de André Caramante e cobra investigação rápida das ameaças*. Available at: http://www.Abraji.org.br/?id=90&id_noticia=2196; Época. October 8, 2012. *Um repórter ameaçado de morte*. Available at: <http://revistaepoca.globo.com/Sociedade/eliane-brum/noticia/2012/10/um-reporter-ameacado-de-morte.html>

¹³⁰ Época. September 22, de 2012. *As práticas eleitorais arcaicas que ainda persistem no Brasil*. Available at: <http://revistaepoca.globo.com/Brasil/noticia/2012/09/praticas-eleitorais-arcaicas-que-ainda-persistem-no-brasil.html>; Knight Center for Journalism in the Americas. September 19, 2012. *Fists fly as Brazilian journalists face attacks while covering municipal elections*. Available at: <https://knightcenter.utexas.edu/blog/00-11462-fists-fly-brazilian-journalists-face-attacks-while-covering-municipal-elections>

the Quixadá municipality while he was covering a political event.¹³¹ 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.¹³² Additionally, after the results of the October 7 elections were published, individuals presumed to be associated with the mayor of Aquidauana, Mato Grosso do Sul attacked the home of journalist Armando de Amorim Anache with an explosive device. The journalist reported on issues involving corruption, and had been attacked and threatened with death on previous occasions.¹³³

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.¹³⁴ 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.¹³⁵

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

¹³¹ Associação Brasileira de Jornalismo Investigativo (Abraji). September 19, 2012. *Repórter é agredido ao cobrir suposto evento político no Ceará*. Available at: http://www.abraji.org.br/?id=90&id_noticia=2181; *Tribuna Hoje*. September 18, 2012. *Repórter é agredido e continua a gravar com rosto ensanguentado*. Available at: <http://www.tribunahoje.com/noticia/39952/politica/2012/09/18/reporter-e-agredido-e-continua-a-gravar-com-rosto-ensanguentado.html>

¹³² *Tribuna do Tocantins*. September 19, 2012. *Jornalista é agredido durante comício da candidata Verbena Macedo*. Available at: <http://www.tribunadotocantins.com.br/noticia/11275/jornalista-e-agredido-durante-comicio-da-candidata-verbena-macedo>; *Almanaque da TV*. September 25, 2012. *Em comício, jornalista da Record News é agredido violentamente*. Available at: <http://almanaque.datv.com/2012/09/agredido-em-comicio-jornalista-da-record-news-teve-cabeca-aberta.html>; You Tube/ Luis Schwelm. September 19, 2012. *Agressão a Reporter Luis Schwelm-Estreito/MA*. Available at: <http://www.youtube.com/watch?v=OFv843SEIK8>

¹³³ Associação Brasileira de Jornalismo Investigativo (Abraji). October 31, 2012. *Jornalista é ameaçado em Aquidauana, MS*. Available at: http://www.abraji.org.br/?id=90&id_noticia=2234; *Correio de Corumbá*. October 31, 2012. *Armando Anache denuncia "ataque" após eleição em Aquidauana*. Available at: <http://www.correiodecorumba.com.br/index.php?s=noticia&id=7533>

¹³⁴ PA 24hs Digital. November 24, 2012. *Repórter de TV ameaçada de morte em Xinguara*. Available at: <http://www.pa24hsdigital.com.br/materia.php?post=4497>; *Estado do Tapajós*. November 28, 2012. *Xinguara: repórter da TV Record está com medo de ser assassinada*. Available at: <http://www.estadodotapajos.com/2012/11/xinguara-reporter-da-tv-record-esta-com.html>

¹³⁵ IFEX/ Reporters Without Borders. December 4, 2012. *News website owner's home attacked in Brazil*. Available at: http://www.ifex.org/brazil/2012/12/04/brasil_actu_update_port/; *Asociación de Entidades Periodísticas Argentinas (ADEPA)*. December 6, 2012. *Atentan contra domicilio de periodista brasileño*. Available at: <http://www.adepa.org.ar/secciones/industria/nota.php?id=1045>

¹³⁶ *Committee to Protect Journalists (CPJ)*. December 18, 2012. *Brazilian Journalist König in hiding after threats*. Available at: <http://cpj.org/2012/12/brazilian-journalist-konig-in-hiding-after-threats.php>; *Knight Center for Journalism in the Americas*. December 19, 2012. *Threatened reporter advised to flee Brazil*. Available at: <https://knightcenter.utexas.edu/blog/00-12471-threatened-reporter-advised-flee-brazil/>; *International Press Institute (IPI)* December 19, 2012. *Prize-winning Brazilian journalist forced to leave home after threat*. Available at: <http://www.freemedia.at/home/singleview/article/prize-winning-brazilian-journalist-forced-to-leave-home-after-threat.html>

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

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.”

¹³⁷ Observatório da Imprensa. January 25, 2012. *Vitória da truculência. O jornal Já fechou*. Available at: http://www.observatoriodaimprensa.com.br/news/view/vitoria_da_truculencia_o_jornal_It_i_gt_It_i_gt_fechou; Sul21. January 16, 2012. *Elmar Bones: “Acordo com Rigotto seria tirar o jornalismo”*. Available at: <http://sul21.com.br/jornal/2012/01/elmar-bones-%E2%80%99Calguma-coisa-precisa-acontecer-no-jornalismo%E2%80%99D/>. You Tube/ Rudit, Ronaldo. September 11, 2011. *Jornal Já o caso Rigotto*. Available at: <http://www.youtube.com/watch?v=OvbX3CAOY2o>; Knight Center for Journalism in the Americas. February 12, 2012. *Community newspaper in Brazil forced to close after years of lawsuits*. Available at: <http://knightcenter.utexas.edu/blog/community-newspaper-brazil-forced-close-after-years-lawsuits>

¹³⁸ Consultor Jurídico. October 25, 2012. *Juíza processa blog por texto sobre decisão judicial*. Available at: <http://www.conjur.com.br/2012-out-25/juiza-processa-blog-texto-decisao-judicial>; Portal Imprensa. October 25, 2012. *Juíza processa blog do Sakamoto por texto sobre libertação de escravos*. Available at: <http://portalimprensa.uol.com.br/noticias/brasil/54496/juiza+processa+blog+do+sakamoto+por+texto+sobre+libertacao+de+escravos>; Blog do Sakamoto. October 25, 2012. *Juíza quer censurar este blog por relatar decisão em caso de libertação de escravos*. Available at: <http://blogdosakamoto.blogosfera.uol.com.br/2012/10/25/juiza-quer-censurar-este-blog-por-relatar-decisao-em-caso-de-libertacao-de-escravos/>

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”.¹³⁹

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.¹⁴⁰ 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.¹⁴¹

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.¹⁴² 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.¹⁴³ The project establishes freedom of expression as one of the principles of Internet regulation and contains provisions related to intermediary responsibility, net neutrality and promotion of Internet access, among other things. The Office of the Special Rapporteur considers this initiative to be important, as the adoption of a regulatory framework that is clear and respectful of freedom of expression allows the exercise of this right under conditions of greater transparency, legal certainty and protection guarantees. This project is also important taking into account that during 2012, there were a number of noteworthy cases in which intermediaries that provide Internet applications were subjected to court orders, as described hereinafter.

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

¹³⁹ I/A Court H.R. *Case of Tristán Donoso v. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. Para. 129.

¹⁴⁰ Federal Senate of Brazil. No date. Proposed Constitutional Amendment. Nº 33 of 2009. Available at: http://www.senado.gov.br/atividade/materia/detalhes.asp?p_cod_mate=92006; Globo. August 7, 2012. *Senado aprova exigência de diploma para jornalistas*. Available at: <http://g1.globo.com/politica/noticia/2012/08/senado-aprova-exigencia-de-diploma-para-jornalistas.html>; Último Segundo. August 7, 2012. *Senado aprova diploma obrigatório para jornalista*. Available at: <http://ultimosegundo.ig.com.br/educacao/2012-08-08/senado-aprova-diploma-obrigatorio-para-jornalistas.html>

¹⁴¹ See IACHR. Annual Report 2009. OEA/Ser.LV/II. Doc. 51. December 30, 2009. *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. 62. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%20Anual%202009%20%20ENG.pdf>

¹⁴² National Congress of Brazil. Proposed Law No. 2126/2011. Available at: http://www.camara.gov.br/proposicoesWeb/prop_mostrarintegra;jsessionid=8CDB523697CEF9B42904DAD7079E63A8.node2?codt eor=912989&filename=PL+2126/2011

¹⁴³ Fundação Getulio Vargas. September 27, 2011. *Civil Rights Framework for Internet in Brazil*. Available at: <http://diretorio.fgv.br/civilrightsframeworkforinternet>

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 news item published on the blog of journalist João Bosco Rabello for an alleged electoral law violation. The measure was challenged by the Office of the Public Prosecutor and revoked by the same judge on September 25.¹⁴⁷ 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 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.¹⁴⁹ On the following day, the arrest warrant was suspended after an injunction was granted.¹⁵⁰

¹⁴⁴ BBC Mundo. September 25, 2012. *Ordenan la detención del presidente de Google Brasil*. Available at: http://www.bbc.co.uk/mundo/ultimas_noticias/2012/09/120925_ultnot_ordenan_detencion_presidente_google_brasil_bd.shtml; Globo. September 26, 2012. *Após ser ouvido na PF, diretor-geral no Brasil é liberado, diz Google*. Available at: <http://g1.globo.com/sao-paulo/noticia/2012/09/apos-ser-ouvido-na-pf-diretor-geral-no-brasil-e-liberado-diz-google.html>

¹⁴⁵ Último Segundo. September 14, 2012. *Juiz eleitoral da Paraíba manda PF prender diretor do Google no Brasil*. Available at: <http://ultimosegundo.ig.com.br/politica/2012-09-14/juiz-eleitoral-da-paraiba-manda-pf-prender-diretor-do-google-no-brasil.html>; Globo. September 14, 2012. *Juiz eleitoral da PB decreta prisão de diretor do Google Brasil*. Available at: <http://g1.globo.com/pb/paraiba/eleicoes/2012/noticia/2012/09/juiz-eleitoral-da-pb-decreta-prisao-de-diretor-do-google-brasil.html>; Migalhas. September 18, 2012. *Revogada ordem de prisão contra diretor do Google*. Available at: <http://www.migalhas.com.br/Quentes/17,MI164213,51045-Revogada+ordem+de+prisao+contra+diretor+do+Google>

¹⁴⁶ Electoral Judiciary of the State of Paraíba. Judge Miguel De Britto Lyra Filho. Preliminary order of September 15, 2012. Available at: http://www.migalhas.com.br/arquivo_artigo/art20120918-05.pdf

¹⁴⁷ Associação Brasileira de Jornalismo Investigativo (Abraji). September 25, 2012. *Abraji lamenta censura a blog de O Estado de S. Paulo*. Available at: http://www.abraji.org.br/?id=90&id_noticia=2185; Knight Center for Journalism in the Americas. September 24, 2012. *Electoral court in Brazil censors blog post about arrested mayoral candidate*. Available at: <http://knightcenter.utexas.edu/blog/00-11520-electoral-court-brazil-censors-blog-post-about-arrested-mayoral-candidate>; Estadão. September 25, 2012. *Ministério Público pede revogação da censura ao blog*. Available at: <http://blogs.estadao.com.br/joao-bosco/ministerio-publico-pede-revogacao-da-censura-ao-blog/>; Estadão. September 25, 2012. *Juiz revoga censura que ele próprio impôs ao blog*. <http://blogs.estadao.com.br/joao-bosco/juiz-revoga-censura-que-ele-proprio-impos-ao-blog/>

¹⁴⁸ Correio. September 26, 2012. *Tribunal de Justiça de SP determina ao Youtube a retirada do ar de trechos de filme anti-Islã*. Available at: <http://www.correio24horas.com.br/noticias/detalhes/detalhes-1/artigo/tribunal-de-justica-de-sp-determina-ao-youtube-a-retirada-do-ar-de-trechos-de-filme-anti-islã/>; BBC Mundo. September 26, 2012. *Tribunal brasileiro ordena a You Tube remover videos que causaron protestas*. Available at: http://www.bbc.co.uk/mundo/ultimas_noticias/2012/09/120926_ultnot_youtube_islam_brasil_nc.shtml

¹⁴⁹ Migalhas. September 27, 2012. *Juiz em Ribeirão Preto adverte que também poderá pedir prisão de diretor do Google*. Available at: <http://www.migalhas.com.br/Quentes/17,MI164814,101048-Juiz+em+Ribeirao+Preto+adverte+que+tambem+podera+pedir+prisao+de>; Electoral Judiciary of the State of São Paulo. Judge Sylvio Ribeiro de Souza Neto. File No. 144-80.2012.6.26.0305. September 27, 2012. Available at: http://www.migalhas.com.br/arquivo_artigo/art20121001-02.pdf

¹⁵⁰ Migalhas. October 1, 2012. *TRE/SP suspende persecução criminal contra diretor do Google*. Available at: <http://www.migalhas.com.br/Quentes/17,MI164886,81042-TRESP+revoga+ordem+de+prisao+contra+diretor+do+Google>; Regional Electoral Tribunal of São Paulo. Habeas Corpus No. 627-55.2012.6.26.0000. September 28, 2012. Available at: http://www.migalhas.com.br/arquivo_artigo/art20121001-01.pdf

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

¹⁵¹ The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special 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. June 1, 2011. *Joint Declaration on Freedom of Expression and the Internet*. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=849&IID=1>

¹⁵² Canada News Centre. January 13, 2012. *Harper Government Committed to Repealing Dated Ban on Early Communication of Election Results*. Available at: <http://news.gc.ca/web/article-eng.do?nid=650729>; Huffington Post. January 13, 2012. *Canada Election Gag Law to Be Lifted, Allowing Sharing of Federal Results*. Available at: http://www.huffingtonpost.ca/2012/01/13/canada-election-gag_n_1204157.html?ref=canada#s610599&title=Tim Uppal; The National Post. January 13, 2012. *Twitter and Facebook force end to Canada's election night Internet gag*. Available at: <http://news.nationalpost.com/2012/01/13/law-banning-communication-of-election-results-while-polls-open-repealed-by-harper-government/>; Canada Elections Act. S.C. 2000, c. 9. Available at: <http://laws-lois.justice.gc.ca/eng/acts/E-2.01/index.html>

¹⁵³ Radio Canada. March 1, 2012. *Le journaliste Alain Gravel n'aura pas à révéler ses sources*. Available at: <http://www.radio-canada.ca/nouvelles/National/2012/03/01/002-gravel-jugement-source.shtml>; La Presse. March 1, 2012. *Affaire Louisbourg: Alain Gravel n'aura pas à dévoiler sa source*. Available at: <http://www.lapresse.ca/actualites/Québec-canada/justice-et-faits-divers/2012/03/01/4501378-affaire-louisbourg-alain-gravel-naura-pas-a-devoiler-sa-source.php>

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.¹⁵⁹ Between May 22 and 24, the Canadian police arrested hundreds of demonstrators and used tear gas and sound grenades to break up the protests.¹⁶⁰

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

¹⁵⁴ IACHR. Annual Report 2010. OEA/Ser.L/V/II. Doc. 5. March 7, 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. 99. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%202010%20P%20ENG.pdf>

¹⁵⁵ 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. 82-83. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/2012%2003%2021%20Annual%20Report%20RELE%202011pirnting.pdf>

¹⁵⁶ Office of the Independent Police Review Director. May, 2012. *Policing the Right to Protest: G20 Systemic Review Report*. Available at: https://www.oiprd.on.ca/CMS/oiprd/media/image-Main/PDF/G20_Report_ENG_single.pdf

¹⁵⁷ Independent Civilian Review into Matters Relating to the G20 Summit. June, 2012. Available at: <http://www.g20review.ca/docs/report-2012-06-29.pdf>

¹⁵⁸ Toronto Sun. May 23, 2012. *Toronto Police officers now facing G20 hearings now totals 31*. Available at: <http://www.torontosun.com/2012/05/23/toronto-police-officers-now-facing-g20-hearings-now-totals-31>; CBC News. May 18, 2012. *G20 ‘kettling’ commander among 45 officers to be charged*. Available at: <http://www.cbc.ca/news/canada/toronto/story/2012/05/17/g20-officers-discipline.html>

¹⁵⁹ Fédération Professionnelle des Journalistes du Québec. May 21, 2012. *Semaine difficile pour la liberté de Presse au Québec*. Available at: [http://www.fpqj.org/index.php?id=single&tx_ttnews\[pS\]=1343256885&tx_ttnews\[tt_news\]=29021&tx_ttnews\[backPid\]=42&cHash=1c0ce8c3c](http://www.fpqj.org/index.php?id=single&tx_ttnews[pS]=1343256885&tx_ttnews[tt_news]=29021&tx_ttnews[backPid]=42&cHash=1c0ce8c3c)

¹⁶⁰ CTV News. May 22, 2012. *Tear gas dispersed as thousands march in Montreal*. Available at: <http://www.ctvnews.ca/tear-gas-dispersed-as-thousands-march-in-montreal-1.830429>; The New York Times/ Associated Press (AP). May 24, 2012. *Canada: Hundreds are arrested in Québec at a protest over tuition increase*. Available at: http://www.nytimes.com/2012/05/25/world/americas/canada-hundreds-arrested-in-Québec-at-a-protest-over-tuition-increases.html?_r=1; The Guardian. May 24, 2012. *Canada student protests erupt into political chaos with mass arrests*. Available at: <http://www.guardian.co.uk/world/2012/may/24/canada-student-fee-protest-arrests>

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.¹⁶¹

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.”

¹⁶¹ CBC News. October 18, 2012. *RCMP using ‘extraordinary measures’ to silence critic*. Available at: <http://www.cbc.ca/news/canada/british-columbia/story/2012/10/18/bc-rcmp-search-warrant-bondage.html>; Vancouver 24 Hours. October 29, 2012. *Judge unseals search warrant related to Mountie*. Available at: <http://vancouver.24hrs.ca/2012/10/29/judge-unseals-search-warrant-related-to-mountie>

D. Access to information

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

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

E. Other situations

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

5. Chile

A. Progress

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

¹⁶² Canadian Journalists for Free Expression (CJFE). February 17, 2012. *Prime Minister: Please stop muzzling scientists and researchers*. Available at: http://www.cjfe.org/resources/protest_letters/prime-minister-please-stop-muzzling-scientists-and-researchers; IFEX. February 22, 2012. *Government muzzles its scientists, says Canadian Journalists for Free Expression*. Available at: http://www.ifex.org/canada/2012/02/22/muzzling_scientists/; BBC. February 17, 2012. *Canadian government is 'muzzling its scientists'*. Available at: <http://www.bbc.co.uk/news/science-environment-16861468>

¹⁶³ Office of the Information Commissioner of Canada. Press Release. September 28, 2012. *Canada's Information Commissioner Opens a Dialogue on the Access to Information Act*. Available at: http://www.oic-ci.gc.ca/eng/media-room-salle-media_news-releases-communiqués-de-presse_2012_7.aspx; Access to Information Act. (R.S.C., 1985, c A-1). Available at: <http://laws-lois.justice.gc.ca/eng/acts/A-1/>

¹⁶⁴ Assemblée Nationale Québec. May 18, 2012. Bill No 78: An Act to enable students to receive instruction from the postsecondary institutions they attend. Sections 16, 26-27, 30. Available at: <http://www2.publicationsduQuébec.gouv.qc.ca/dynamicSearch/telecharge.php?type=5&file=2012C12A.PDF>; IFEX. May 30, 2012. *Quebec's "truncheon law" explained*. Available at: http://www.ifex.org/canada/2012/05/30/bill_78_faq/

¹⁶⁵ CBC News. June 27, 2012. *Quebec court rejects Bill 78 injunction request*. Available at: <http://www.cbc.ca/news/canada/montreal/story/2012/06/27/bill-78-injunction.html>; Montreal Gazette. June 28, 2012. *Students lose first round in court*. Available at: <http://www.montrealgazette.com/news/Students+lose+first+round+court/6850744/story.html>

injury to his right eye. The victim announced his intent to appeal the judgment, considering the sanction applied to be insufficient.¹⁶⁶

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

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

107. The Office of the Special Rapporteur was informed of the January 16 request from the executive branch that the legislative branch eliminate the first subparagraph of the second article of the draft Act to Strengthen the Protection of Public Order.¹⁶⁹ According to the information received, the 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.¹⁷⁰ The text of the

¹⁶⁶ European Pressphoto Agency (EPA)/ EFE. January 27, 2012. *Un tribunal militar chileno condenó a un carabnero que agredió a un fotógrafo.* Available at: <http://www.google.com/hostednews/epa/article/ALeqM5qmGiBoaG18FNQ8yq1CMjNqX18Faw?docId=1703818>; Radio U Chile. January 27, 2012. *Fiscalía militar condena a carabnero que golpeó en un ojo a fotógrafo.* Available at: <http://radio.uchile.cl/noticias/139255/>; El Mostrador. January 27, 2012. *Juez militar condena a carabnero por agredir a fotógrafo el 21 de mayo de 2008 en Valparaíso.* Available at: <http://www.elmostrador.cl/noticias/pais/2012/01/27/juez-militar-condena-a-carabnero-por-agredir-a-fotografo-el-21-de-mayo-de-2008-en-valparaiso/>

¹⁶⁷ Judicial Branch. Republic of Chile. October 18, 2012. *Corte Suprema solicita extradición a EEUU de Ray Davis por homicidios de Charles Horman y Frank Teruggi.* Available at: http://www.poderjudicial.cl/modulos/Home/Noticias/PRE_txtnews.php?cod=4549; La Razón/ AFP. October 18, 2012. *Chile pedirá la extradición de exmilitar de EEUU por muerte de 2 periodistas.* Available at: http://www.la-razon.com/mundo/Chile-extradicion-exmilitar-EEUU-periodistas_0_1708029241.html; El Mostrador. October 18, 2012. *Corte Suprema solicita extradición de Ray Davis por homicidios de dos ciudadanos norteamericanos tras golpe de Estado.* Available at: <http://www.elmostrador.cl/noticias/pais/2012/10/18/corte-suprema-solicita-extradicion-de-ray-davis-por-homicidios-de-dos-ciudadanos-norteamericanos-tras-golpe-de-estado/>

¹⁶⁸ 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://cejamericas.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>

¹⁶⁹ Article 2(1) of the bill would modify Article 83 of the Code of Criminal Procedure by adding a part f) which would establish: "f) [c]onfirm 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&prmiTIPO=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.camara.cl/pley/pdfpley.aspx?prmiD=8169&prmiTIPO=INICIATIVA>

¹⁷⁰ 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_notas/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.semanario-Continues...>

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.¹⁷¹ On August 1, discussion of the draft began in the Plenary of the Chamber of Deputies.¹⁷² Journalism organizations and civil society have asked the National Congress to reject the Act in its totality, considering it a threat to freedom of expression.¹⁷³

108. The Office of the Special Rapporteur 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.¹⁷⁴

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.¹⁷⁵ The Office of the Special Rapporteur reiterates that "a restriction imposed on freedom of expression for the regulation of radio broadcasting must be proportionate in the sense that there is no other alternative that is less restrictive of freedom of expression for achieving the legitimate purpose being pursued. Thus, the establishment of criminal

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alternativas.info/archivos/2012/1%20enero/201/internacionales/paginas_%20internacional/chile/articulos/Hinzpeter%20a%20banquillo.html

¹⁷¹ Chamber of Deputies of Chile. *Proyecto de Ley que Fortalece el Resguardo del Orden Público*. Available for consultation at: http://www.camara.cl/pley/pley_detalle.aspx?prmID=8371&prml=7975-25; IACHR. Annual Report 2011. OEA/Ser.L/V/III. 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. 96. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/2012%2003%2021%20Annual%20Report%20RELE%202011pirnting.pdf>

¹⁷² Telesur. August 1, 2012. *Parlamento chileno retoma examen sobre ley de orden público*. Available at: <http://www.telesurtv.net/articulos/2012/08/01/parlamento-chileno-retoma-examen-sobre-ley-de-orden-publico-9556.html>

¹⁷³ Colegio de Periodistas de Chile. January 18, 2012. *Colegio de Periodistas pide que diputados no aprueben proyecto de la llamada "Ley Hinzpeter"*. Available at: <http://www.colegiodeperiodistas.cl/index.php/component/content/article/2-uncategorised/158>; La Tercera. January 19, 2012. *Gobierno se compromete a eliminar artículo que faculta a la Policía a pedir material periodístico*. Available at: <http://www.latercera.com/noticia/nacional/2012/01/680-425561-9-gobierno-se-compromete-a-eliminar-articulo-que-faculta-a-la-policia-a-pedir.shtml>; Republic of Chile. National Institute on Human Rights. July 18, 2012. *ONGs llaman a parlamentarios a rechazar el llamado proyecto de "ley Hinzpeter"*. Available at: <http://www.indh.cl/ongs-llaman-a-parlamentarios-a-rechazar-el-llamado-proyecto-de-ley-hinzpeter>

¹⁷⁴ Library of the National Congress of Chile. October 2, 1982. *General Telecommunications Law*. Available at: <http://www.leychile.cl/Navegar?idNorma=29591>; Chamber of Deputies of Chile. November 10, 2011. *Bill to Create the Superintendent of Communications*. Available for consultation at: http://www.camara.cl/pley/pley_detalle.aspx?prmID=8428&prml=8034-15; Asociación Mundial de Radios Comunitarias (AMARC). June 14, 2012. *AMARC Chile respalda eliminación de penas de cárcel contra radios comunitarias*. Available at: <http://legislaciones.item.org.uy/index?q=node/5234>; Radio Tierra. June 13, 2012. *Avanza derogación de "radiodifusión ilegal" y defensa de principios de Libertad de Expresión*. Available at: <http://www.radiotierra.com/node/4516>; Radio Universidad de Chile. June 14, 2012. *Derogan artículo que penaliza la radiodifusión comunitaria sin licencia*. Available at: <http://radio.uchile.cl/noticias/156732/>

¹⁷⁵ IACHR. Annual Report 2010. OEA/Ser.L/V/III. Doc. 5. March 7, 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). *2010 Special Report on Freedom of Expression in Mexico*. Para. 766. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%202010%20P%20ENG.pdf>

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 intendant [*intendente*] 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

¹⁷⁶ IACHR. Annual Report 2010. OEA/Ser.L/V/II. Doc. 5. March 7, 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. 113. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%202010%20P%20ENG.pdf>

¹⁷⁷ IFEX/ Reporters Without Borders. March 20, 2012. *Aysén protests and student rallies have worrying impact on journalists’ safety*. Available at: http://ifex.org/chile/2012/03/20/ayesen_protests/; Mapuexpress/ Corporación de Promoción y Defensa de los Derechos del Pueblo (CODEPU). February 29, 2012. *Comunicado: CODEPU denuncia agresión a Periodista en manifestación por Aysén*. Available at: <http://www.mapuexpress.net/?act=publications&id=6191>

¹⁷⁸ The Huffington Post. March 6, 2012. *How to Be Arrested In Chile Without Breaking the Law*. Available at: http://www.huffingtonpost.com/jason-suder/chile-freedom-of-press_b_1324547.html; IFEX/ Reporters Without Borders. March 20, 2012. *Aysén protests and student rallies have worrying impact on journalists’ safety*. Available at: http://ifex.org/chile/2012/03/20/ayesen_protests/

¹⁷⁹ El Nuevo Herald/ Associated Press (AP). March 16, 2012. *La policía arremete contra protesta estudiantil en Chile*. Available at: <http://www.elnuevoherald.com/2012/03/15/1153383/la-policia-arremete-contra-protesta.html#storylink=rss>; IFEX/ Reporters Without Borders. March 20, 2012. *Aysén protests and student rallies have worrying impact on journalists’ safety*. Available at: http://ifex.org/chile/2012/03/20/ayesen_protests/

¹⁸⁰ La Tercera. March 20, 2012. *Manifestantes se enfrentan con Carabineros tras ingreso a Coyhaique*. Available at: <http://latercera.com/noticia/nacional/2012/03/680-438981-9-manifestantes-se-enfrentan-con-carabineros-tras-ingreso-a-coyhaique.shtml>; Radio Tierra. March 20, 2012. *Carabineros agrede a camarógrafo de Radio Santa María durante noche de represión en Coyhaique*. Available at: <http://www.radiotierra.com/node/4147>

¹⁸¹ Reporters Without Borders. March 22, 2012. *Radio silenced, police crack down as battle for hearts and minds rages in Aysén*. Available at: http://en.rsf.org/chile-aysen-protests-and-student-rallies-19-03-2012_42158.html; Observatorio del derecho a la comunicación de los pueblos indígenas. March 23, 2012. *Chile. Urgente llamado a defender la libre expresión de Radio Santa María*. Available at: <http://clacpi.org/observatorio/?p=936>

¹⁸² La Tercera. March 21, 2012. *Intendente de Aysén repudió actos violentos ocurridos en Coyhaique y los calificó de delictuales*. Available at: <http://latercera.com/noticia/nacional/2012/03/680-439092-9-intendente-de-aysen-repudio-actos-violentos-ocurridos-en-coyhaique-y-los.shtml>; IFEX/ Asociación Mundial de Radios Comunitarias (AMARC). March 23, 2012. *AMARC llama a defender la libre expresión de Radio Santa María*. Available at: http://ifex.org/chile/2012/03/23/defender_torres/es/; La Nación. March 21, 2012. *Bomberos: Radio Santa María “está incitando a que salgan a las calles”*. Available at: <http://www.lanacion.cl/bomberos-radio-santa-maria-esta-incitando-a-que-salgan-a-las-calles/noticias/2012-03-21/001456.html>

Degollados in the early morning hours of August 29. The apprehension took place after a day of national protests on which Arce had reported.¹⁸³ That same day, Esteban Garay, a photographer with *La Nación*, was held while covering protests in downtown Santiago when he refused to leave the place of the protests.¹⁸⁴

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

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

C. Subsequent liability

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

¹⁸³ La Nueva Provincia. August 30, 2012. *Chile: periodista denunció que fue secuestrado por carabineros durante marchas estudiantiles*. Available at: <http://www.lanueva.com/elmundo/nota/95e2671eed/21/128705.html>; La Radio del Sur. August 30, 2012. *Reportan detención irregular de periodista chileno por Carabineros*. Available at: <http://laradiodelsur.com/?p=111237>; Agencia de Noticias Medio a Medio. August 30, 2012. *Comunicador independiente denuncia a Carabineros por “secuestro”* (video). Available at: <http://www.agenciadenoticias.org/?p=23315>

¹⁸⁴ La Nación. August 28, 2012. *En libertad reportero gráfico de Nacion.cl detenido en manifestaciones*. Available at: <http://www.lanacion.cl/en-libertad-reportero-grafico-de-nacion-cl-detenido-en-manifestaciones/noticias/2012-08-28/204752.html>; Reporters Without Borders. September 10, 2012. *“Real pluralism cannot develop in conditions inherited from Pinochet era”*. Available at: <http://en.rsf.org/chile-real-pluralism-cannot-develop-in-10-09-2012.43359.html>

¹⁸⁵ Republic of Chile. National Institute on Human Rights. January-August, 2012. Report on the Human Rights Program and Police Function. Pages 10-11 and 28. Available at: <http://bibliotecadigital.indh.cl/bitstream/handle/123456789/259/ddhh-funcion-policial?sequence=1>; National Institute on Human Rights. October 25, 2012. *INDH emite Informe Programa de Derechos Humanos y Función Policial*. Available at: <http://www.indh.cl/indh-emite-informe-programa-de-derechos-humanos-y-funcion-policial>

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 Continues...

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.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.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.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

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."

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en sus grados mínimo a medio, multa de cinco a trescientos unidades tributarias mensuales y comiso de los equipos e instalaciones"].

General Telecommunications Law No. 18.168 of October 2, 1982. Available at: <http://www.leychile.cl/Navegar?idNorma=29591&buscar=Ley+18.168>; Radio Universidad de Chile. December 2, 2011. *Dos radialistas comunitarios arriesgan penas de presidio*. Available at: <http://radio.uchile.cl/noticias/132553/>

¹⁸⁷ El Boyaldía. December 18, 2011. *Rádios comunitarias luchan por no ser acalladas*. Available at: <http://www.elboyaldia.cl/noticia/sociedad/radios-comunitarias-luchan-por-no-ser-acalladas>; Radio Tierra/ Asociación Mundial de Radios Comunitarias (AMARC). December 2, 2011. *Juzgado San Bernardo: Autoriza transmisión de contenidos comunitarios y devolver equipos incautados a radio comunitaria sin licencia*. Available at: <http://www.radiotierra.cl/node/3835>

¹⁸⁸ Agencia de Noticias/ Radio Tierra. September 10, 2012. *Allanan radio comunitaria de Collipulli y detienen a su representante*. Available at: http://www.agenciadenoticias.org/?p=23760&utm_source=rss&utm_medium=rss&utm_campaign=allanan-radio-comunitaria-de-collipulli-y-detienen-a-su-representante; Pulsar. September 12, 2012. *Decomisan nueva radio comunitaria en Chile*. Available at: <http://agenciapulsar.org/nota.php?id=21029>

¹⁸⁹ Asociación Mundial de Radios Comunitarias (AMARC). June 12, 2012. *Se reanuda persecución a Radios Comunitarias en Chile*. Available at: <http://legislaciones.item.org.uy/index?q=node/5207>; Radio Universidad de Chile. June 13, 2012. *Denuncian nueva persecución en contra de radios comunitarias*. Available at: <http://radio.uchile.cl/noticias/156507/>

¹⁹⁰ Court of Appeals of Coyhaique. *Amparo Action*. Resolution of April 3, 2012. Available at: <http://www.poderjudicial.cl/noticias/File/COYHAQUIE%20AMPARO%20PERIODISTA.pdf>; La Nación. April 4, 2012. *Corte rechaza recurso de amparo a periodista en Coyhaique*. Available at: <http://www.lanacion.cl/corte-rechaza-recurso-de-amparo-a-periodista-en-coyhaique/noticias/2012-04-04/182616.html>; Radio Bío Bío. April 4, 2012. *Rechazan recurso presentado por periodista tras incautación de imágenes del conflicto en Aysén*. Available at: <http://www.biobiochile.cl/2012/04/04/corte-rechaza-recurso-de-amparo-por-incautacion-de-imagenes-tomadas-durante-conflicto-en-aysen.shtml>

6. Colombia

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

A. Progress

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

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

122. On September 16, the trial of Ferney Tapasco González and another three individuals began before the Criminal Court of the Specialized Circuit of Pereira. They are accused of the murder of the assistant director of newspaper *La Patria*, José Orlando Sierra, which took place in 2002 in

¹⁹¹ 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."

¹⁹² Republic of Colombia. Office of the General Public Prosecutor of the Nation. February 6, 2012. *Condena por homicidio de periodista*. Available at: <http://fqn.fiscalia.gov.co/colombia/noticias/condena-por-homicidio-de-periodista/>; Fundación para la Libertad de Prensa (FLIP). February 7, 2012. *Condenan a ex integrante de autodefensas por crimen de periodista en Magdalena*. Available at: http://flip.org.co/alert_display/0/2546.html; Inter-American Press Association (IAPA-SIP). Proyecto Impunidad. February 8, 2012. *Paramilitary jailed for murder of journalist Álvaro Alonso Escobar*. Available at: <http://impunidad.com/noticia.php?id=648&idioma=us>; Committee to Protect Journalists (CPJ). December 23, 2001. *Álvaro Alonso Escobar*. Available at: <http://cpj.org/killed/2001/alvaro-alonso-escobar.php>

¹⁹³ Republic of Colombia. Office of the General Public Prosecutor of the Nation. February 9, 2012. *Casos relevantes por delitos cometidos en contra de periodistas*. Available at: <http://www.fiscalia.gov.co/colombia/noticias/casos-relevantes-por-delitos-cometidos-en-contra-de-periodistas/>; El Espectador. February 10, 2012. *La mano oculta del bloque Capital*. Available at: <http://www.elespectador.com/impreso/judicial/articulo-325988-mano-oculta-del-bloque-capital/>; El Universal. February 10, 2012. *Exparamilitar confiesa en caso de agresión a periodista colombiana*. Available at: <http://www.eluniversal.com.co/cartagena/nacional/exparamilitar-confiesa-en-caso-de-agresion-periodista-colombiana-64219/>; See also, IACHR. Annual Report 2000. OEA/Ser.L/V/II.111 Doc. 20 Rev. April 16, 2001. Chapter III (Precautionary measures). Available at: <http://www.cidh.org/annualrep/2000eng/TOC.htm>

¹⁹⁴ Republic of Colombia. Office of the General Public Prosecutor of the Nation. September 20, 2012. *Declaración del Fiscal General de la Nación, Eduardo Montealegre Lynett, sobre el caso de la periodista Jineth Bedoya, Neiva (Huila)*. Available at: <http://www.fiscalia.gov.co/colombia/seccionales/declaracion-del-fiscal-general-de-la-nacion-eduardo-montealegre-lynett-sobre-el-caso-de-la-periodista-jineth-bedoya-lima-neiva-huila-20-de-septiembre-de-2012/>; IFEX/ Fundación para la Libertad de Prensa (FLIP). September 13, 2012. *Caso de periodista colombiana secuestrada declarado crimen de lesa humanidad*. Available at: http://www.ifex.org/colombia/2012/09/14/bedoya_crimen_de_lesa_humanidad/es/; El Espectador. September 13, 2012. *Justicia en caso Jineth Bedoya*. Available at: <http://www.elespectador.com/impreso/judicial/articulo-374734-justicia-caso-jineth-bedoya>

Manizales. However, the trial had to be suspended on September 19 because the participation of five of the witnesses for the prosecution considered key for the case could not be confirmed.¹⁹⁵

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

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

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

¹⁹⁵ Republic of Colombia. Office of the General Public Prosecutor of the Nation. September 18, 2012. *Avanza juicio por homicidio del periodista Orlando Sierra*. Available at: <http://www.fiscalia.gov.co/colombia/noticias/avanza-juicio-por-homicidio-del-periodista-orlando-sierra/>; Fundación para la Libertad de Prensa (FLIP). September 21, 2012. *Suspensión del juicio contra Ferney Tapasco por el asesinato de Orlando Sierra*. Available at: http://flip.org.co/alert_display/0/2768.html

¹⁹⁶ National Printing Press of Colombia. Statutory Bill 156 of 2011 (Senate). Available at: http://servoaspr.imprenta.gov.co:7778/gacetap/gaceta.mostrar_documento?p_tipo=18&p_numero=156&p_consec=30631; Transparencia por Colombia. June 22, 2012. *Preguntas frecuentes: Ley Estatutaria de Transparencia y Acceso a la Información Pública*. Available at: <http://transparenciacolombia.org.co/NOTICIAS/tabid/134/ctl/Details/mid/755/ItemID/410/language/es-ES/Default.aspx>; El Espectador. June 19, 2012. *Se salva ley de Transparencia y Acceso a la Información Pública*. Available at: <http://www.elespectador.com/print/354069>

¹⁹⁷ General Secretariat of the Constitutional Court of Colombia. Roster No. 105. July 24, 2012. File No. PE-036. Order dated July 19, 2012. Available at: <http://www.corteconstitucional.gov.co/secretaria/estados/ESTADOS%20JULIO%202012.php>

¹⁹⁸ Constitutional Court of Colombia. Judgment T-627/12. File T-3.331.859. August 10, 2012. Para. 13. Available at: <http://www.corteconstitucional.gov.co/relatoria/2012/T-627-12.htm>

¹⁹⁹ Constitutional Court of Colombia. Judgment T-627/12. File T-3.331.859. August 10, 2012. Paras. 5, 6, 14, 56 y 65. Available at: <http://www.corteconstitucional.gov.co/relatoria/2012/T-627-12.htm>

²⁰⁰ Republic of Colombia. Unit for the Attention and Full Reparation of Victims. No date. *Gobierno consulta a periodistas víctimas del conflicto sobre proceso de reparación colectiva*. Available at: <http://www.atencionyreparacion.gov.co/186-gobierno-consulta-a-periodistas-victimas-del-conflicto-sobre-proceso-de-reparacion-colectiva>; El Mundo. October 9, 2012. *Reparación para periodistas víctimas*. Available at: http://www.elmundo.com/portal/noticias/derechos_humanos/reparacion_para_periodistas_victimas.php; Knight Center for Journalism in the Americas. September 24, 2012. *Colombian government consults journalists targeted by violence in reparation*. Continues...

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 Alexander Jaramillo García, who confessed to having received 1 million pesos (about US \$570) to commit the murder.²⁰² On March 30, Jaramillo García was convicted by the Criminal Court of the Specialized Joint Circuit of Pereira and sentenced to 21 years, two months and 15 days in prison.²⁰³

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

...continuation

process. Available at: <http://knightcenter.utexas.edu/blog/00-11515-colombian-government-consults-journalists-targeted-violence-reparation-process>

²⁰¹ Republic of Colombia. National Defense Ministry. National Police of Colombia. October 26, 2012. *Gremio periodístico y Policía Nacional, acuerdan acciones para el respeto mutuo de sus profesiones*. Disponible en: http://oasportal.policia.gov.co/portal/pls/portal/JOHN.NOTICIAS NUEVAS DETALLADAS.SHOW?p_arq_names=identificador&p_arq_values=323608; Colombia Federation of Journalists. (FECOLPER). October 23, 2012. *FECOLPER rechaza agresión a reportera gráfica, y anuncia reunión con Policía Nacional de Colombia para exigir respeto por la Libertad de Prensa*. Available at: <http://www.fecolper.com.co/alertas/20810-fecolper-rechaza-agresion-a-reportera-grafica-y-anuncia-reunion-con-policia-nacional-de-colombia-para-exigir-respeto-por-la-libertad-de-prensa>

²⁰² IACHR. Office of the Special Rapporteur for Freedom of Expression. March 19, 2012. *Press Release R29/12. Office of the Special Rapporteur condemns murder of journalist in Colombia*. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=887&IID=1>; RCN. March 20, 2012. *Confeso homicida de exalcalde de Dosquebradas, recibió un millón de pesos por el asesinato*. Available at: <http://www.rcnradio.com/noticias/editor/confeso-homicida-de-exalcalde-de-dosquebradas-144131>; Caracol Radio. March 19, 2012. *Un millón de pesos habrían pagado por muerte de periodista y dirigente cívico en Dosquebradas, Risaralda*. Available at: <http://www.caracol.com.co/noticias/judicial/un-millon-de-pesos-habrian-pagado-por-muerte-de-periodista-y-dirigente-civico-en-dosquebradas-risaralda/20120319/nota/1656789.aspx>

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-aos-por-asesinato-de-periodista-en-dosquebradas/11467101>; El Diario del Otún. March 31, 2012. *Estará 21 años en la cárcel por asesinar a Argemiro*. Available at: <http://www.eldiario.com.co/seccion/JUDICIAL/estar-21-a-os-en-la-c-rce-l-por-asesinar-a-argemiro120330.html>; Committee to Protect Journalists (CPJ). March 16, 2012. *Colombian radio journalist killed by gunman*. Available at: <http://cpj.org/2012/03/colombian-radio-journalist-shot-by-gunman.php>

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

²⁰⁴ IACHR. Office of the Special Rapporteur for Freedom of Expression. December 4, 2012. Press Release R143/12. *Office of the Special Rapporteur Urges the Authorities to Investigate Death of a Journalist in Colombia*. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=915&IID=1>; Reporters Without Borders. December 3, 2012. *COLOMBIA | Muere en extrañas circunstancias el periodista Guillermo Quiroz Delgado*. Available at: <http://www.rsf-es.org/news/colombia-muere-el-periodista-quillermo-quiroz-delgado/>

²⁰⁵ 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(ix).

²⁰⁶ IACHR. Office of the Special Rapporteur for Freedom of Expression. May 1, 2012. Press Release R42/12. *Office of the Special Rapporteur expresses concern for kidnapping of French journalist in Colombia*. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=892&IID=1>; IACHR. Office of the Special Rapporteur for Freedom of Expression. May 31, 2012. Press Release R56/12. *Office of the Special Rapporteur celebrates Liberation of French journalist in Colombia*. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=899&IID=1>; IFEX/ Fundación para la Libertad de Prensa (FLIP). May 31, 2012. *FARC releases French journalist Romeo Langlois*. Available at: http://www.ifex.org/colombia/2012/05/31/langlois_released/

²⁰⁷ IACHR. Office of the Special Rapporteur for Freedom of Expression. May 31, 2012. Press Release R56/12. *Office of the Special Rapporteur celebrates Liberation of French journalist in Colombia*. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=899&IID=1>

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,

²⁰⁸ IACHR. Office of the Special Rapporteur for Freedom of Expression. May 16, 2012. Press Release R49/12. *Office of the Special Rapporteur condemns attack in Colombia*. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=896&IID=1>; Committee to Protect Journalists (CPJ). May 16, 2012. *Murder attempted on Colombian ex politician, radio host*. Available at: <http://cpj.org/2012/05/murder-attempted-on-colombian-ex-politician-and-ra.php>

²⁰⁹ El Espectador. September 6, 2012. *Capturan a otro implicado en atentado contra Fernando Londoño*. Available at: <http://www.elespectador.com/noticias/judicial/articulo-373022-capturan-otro-implicado-atentado-contra-fernando-londono>; El Tiempo. September 6, 2012. *Capturan en Córdoba otra persona por atentado contra Londoño*. Available at: http://www.eltiempo.com/justicia/capturado-en-crdoba-otra-persona-por-atentado-contra-londoo_12200028-4

²¹⁰ Fundación para la Libertad de Prensa (FLIP). January 12, 2012. *Nuevas intimidaciones y seguimientos contra la periodista Claudia Julieta Duque*. Available at: http://flip.org.co/alert_display/0/2488.html; Vanguardia. January 13, 2012. *Denuncian nuevas intimidaciones contra periodista Claudia Julieta Duque*. Available at: <http://www.vanguardia.com/actualidad/colombia/139218-denuncian-nuevas-intimidaciones-contra-periodista-claudia-julieta-duque>

²¹¹ IACHR. Annual Report 2011. OEA/Ser.LV/III. 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. 113 and 116-118. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/2012%2003%2021%20Annual%20Report%20RELE%202011pirnting.pdf>; IACHR. Annual Report 2010. OEA/Ser.LV/III. Doc. 5. March 7, 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. 149, 152, 162 y 164. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%202010%20P%20ENG.pdf>; IACHR. Annual Report 2009. OEA/Ser.LV/III. Doc. 51. December 30, 2009. *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. 139 and 144. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%20Anual%202009%20%20ENG.pdf>

²¹² 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(v).

²¹³ Reporters Without Borders. February 28, 2012. *Documentary video-maker flees Southwestern region after covering police violence*. Available at: http://en.rsf.org/colombia-documentary-video-maker-flees-28-02-2012_41953.html; Fundación para la Libertad de Prensa (FLIP). February 24, 2012. *Por amenazas sale del Huila el realizador de “El video que el gobierno colombiano no quiere que veamos”*. Available at: http://flip.org.co/alert_display/0/2584.html; You Tube/ Sanchez Espitia, Bladimir. February 20, 2012. *¡El vídeo que el gobierno colombiano no quiere que veamos!* Available at: <http://www.youtube.com/watch?v=BFv4HG8ALeA>

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 Velazco with the *Canal Une* program ‘Aló Buga,’ which broadcasts allegations live.²¹⁸ Likewise, on June 5, Diro César González, a journalist and the director of the newspaper *La Tarde* in Barrancabermeja, received a letter with a death threat signed by the illegal armed group “Los Rastrojos.” Gonzalez has been receiving threats since 2006 and benefits from measures of protection granted by the Ministry of the Interior.²¹⁹ According to the information provided by the Colombian State, Carlos Lozano is a beneficiary of the Protection Program of the National Protection Unit, and has “heavy security” for his protection.²²⁰

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

²¹⁴ Comité para la Protección de Periodistas (CPJ). 23 de abril de 2012. *Tres periodistas colombianos huyen en los últimos cuatro meses*. Disponible en: <http://www.cpj.org/es/2012/04/tres-periodistas-huyen-en-los-ultimos-cuatro-meses.php>; Reporteros Sin Fronteras (RSF). 25 de abril de 2012. *Tres periodistas se ven obligados a exiliarse en otras regiones tras recibir amenazas de muerte*. Disponible en: http://es.rsfor.org/colombie-tres-periodistas-se-ven-obligados-25-04-2012_42368.html; El Colombiano. 9 de mayo de 2012. *Periodista huye de “los Urabeños”*. Disponible en: http://www.elcolombiano.com/BancoConocimiento/P/periodista_huye_de_los_urabenos/periodista_huye_de_los_urabenos.asp

²¹⁵ Committee to Protect Journalists (CPJ). April 23, 2012. *Three Colombian journalists flee homes in recent months*. Available at: <http://www.cpj.org/2012/04/three-colombian-journalists-flee-their-homes-in-pa.php>; Reporters Without Borders. April 25, 2012. *Three journalists forced to flee*. Available at: http://en.rsfor.org/colombia-three-journalists-forced-to-flee-25-04-2012_42369.html; El Colombiano. May 9, 2012. *Periodista huye de “los Urabeños”*. Available at: http://www.elcolombiano.com/BancoConocimiento/P/periodista_huye_de_los_urabenos/periodista_huye_de_los_urabenos.asp

²¹⁶ 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), (iv).

²¹⁷ Telesur. June 5, 2012. *Periodista colombiano denuncia plan para asesinarlo*. Available at: <http://www.telesurtv.net/articulos/2012/06/05/periodista-colombiano-denuncia-plan-para-asesinarlo-7720.html>; Radio Santa Fe. June 5, 2012. *Carlos Lozano dice que altos mandos militares están atizando la guerra en Colombia*. Available at: <http://www.radiosantafe.com/2012/06/05/carlos-lozano-dice-que-altos-mandos-militares-estan-atizando-la-guerra-en-colombia/>

²¹⁸ Fundación para la Libertad de Prensa (FLIP). July 26, 2012. *Nuevas amenazas contra periodistas en Buga, Valle del Cauca*. Available at: http://www.flip.org.co/alert_display/0/2728.html; Knight Center for Journalism in the Americas. July 31, 2012. *Colombia guerrilla group claims responsibility for kidnapping of journalist*. Available at: <http://knightcenter.utexas.edu/blog/00-10909-colombian-guerrilla-group-claims-responsibility-kidnapping-journalist>; Goyes Wordpress. July 27, 2012. *Amenazan a Tres Periodistas y 10 Ciudadanos más en Guadalajara de Buga*. Available at: <http://goyes.wordpress.com/2012/07/27/amenazan-a-tres-periodistas-y-10-ciudadanos-mas-en-guadalajara-de-buga/>

²¹⁹ Fundación para la Libertad de Prensa (FLIP). June 8, 2012. *Nueva amenaza contra Diro César González, director del diario La Tarde en Barrancabermeja*. Available at: http://www.flip.org.co/alert_display/0/2699.html

²²⁰ 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(vi).

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 Toribío. 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, Élide Parra Alfonso, a journalist with radio station *Sarare FM Estéreo*, was kidnapped by members of the National Liberation Army [*Ejército de Liberación Nacional*] (ELN in its Spanish acronym) in Arauca. Parra Alfonso was working for the Bicentennial Oil Pipeline, a project that the group has raised questions about due to its social and environmental impact in the region. She was freed on August 13.²²⁵

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

²²¹ Municipio de Yopal. June 6, 2012. *Comunicado a la Opinión Pública*. Available at: <http://www.yopal-casanare.gov.co/noticias.shtml?apc=Cnxx-1-&x=2604212>; Fundación para la Libertad de Prensa (FLIP). June 7, 2012. *Periodista es herido con arma blanca en Yopal, Casanare*. Available at: http://www.flip.org.co/alert_display/0/2698.html

²²² Reporters Without Borders. July 10, 2012. *Cauca's indigenous community radios appeal for help*. Available at: <http://en.rsf.org/colombia-cauca-s-indigenous-community-10-07-2012.43002.html>; Asociación Mundial de Radios Comunitarias (AMARC). July 17, 2012. *No más violencia. Radios comunitarias por la paz en Colombia*. Available at: <http://legislaciones.item.org.uy/index?q=node/5425>; Otra América. July 9, 2012. *La guerra atrapa a los indígenas del Cauca*. Available at: <http://otramerica.com/radar/la-guerra-atrapa-a-los-indigenas-del-cauca/2143>

²²³ 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. 14.

²²⁴ Fundación para la Libertad de Prensa (FLIP). July 4, 2012. *Nuevos panfletos del ELN intimidan a la prensa en Arauca*. Available at: http://www.flip.org.co/alert_display/0/123.html; Knight Center for Journalism in the Americas. July 5, 2012. *Colombian guerrillas release pamphlets targeting two radio stations*. Available at: <http://knightcenter.utexas.edu/blog/00-10660-colombian-guerrillas-release-pamphlets-targeting-two-radio-stations>

²²⁵ Reporters Without Borders. August 14, 2012. *Guerrillas release journalist after holding her for three weeks*. Available at: <http://en.rsf.org/colombia-journalist-missing-25-07-2012.43106.html>; Committee to Protect Journalists (CPJ). August 14, 2012. *Rebel group releases kidnapped Colombian journalist*. Available at: <http://www.cpj.org/2012/08/rebel-group-releases-kidnapped-colombian-journalist.php>; El Espectador. August 13, 2012. *Liberan a mujeres secuestradas por ELN en Arauca*. Available at: <http://www.elespectador.com/noticias/paz/articulo-367191-liberan-mujeres-secuestradas-eln-arauca>; Semana. July 30, 2012. *ELN se atribuye secuestro de una periodista y una ingeniera*. Available at: <http://www.semana.com/nacion/eln-atribuye-secuestro-periodista-ingeniera/181789-3.aspx>

²²⁶ Federación Colombiana de Periodistas (FECOLPER). July 11, 2012. *Alerta FECOLPER. Policía agrede a periodista en Barranquilla*. Available at: <http://www.fecolper.com.co/alertas/20747-policia-agrede-a-periodista-en-barranquilla>; El Espectador. July 12, 2012. *En Barranquilla denuncian agresión a periodista por parte de la Policía*. Available at: <http://www.elespectador.com/noticias/nacional/articulo-359296-barranquilla-denuncian-agresion-periodista-parte-de-policia>

²²⁷ Reporters Without Borders. July 16, 2012. *"Warning" for Bogotá TV reporter doing story on paramilitaries*. Available at: <http://en.rsf.org/colombia-warning-for-bogota-tv-reporter-16-07-2012.43034.html>; Etcétera. July 17, 2012. *Periodista colombiano recibe amenazas de posibles paramilitares*. Available at: <http://www.etcetera.com.mx/articulo.php?articulo=13852>

²²⁸ 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).

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 Puento*. The newspaper has circulation in Tolima, Caldas and Cundinamarca. According to the report, the threat stated: “Journalist, quit talking shit about neighboring cities we give you 20 days to get out of here or we will take measures.”²²⁹ In its communication to the Office of the Special Rapporteur, the State of Colombia said that the criminal investigation into these events is active, although no one has been named as the direct perpetrator of the acts. The State added that Montoya is a beneficiary of the National Protection Unit and of measures provided by the police.²³⁰

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

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

²²⁹ Federación Colombiana de Periodistas (FECOLPER). July 31, 2012. *Periodista Luis Fernando Montoya, director del periódico El Puento, recibe nuevas amenazas contra su vida*. Available at: <http://www.fecolper.com.co/alertas/20759-periodista-luis-fernando-montoya-director-del-periodico-el-puento-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>

²³⁰ 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).

²³¹ Campoalegre Noticias. August 12, 2012. *Agredido periodista en Campoalegre*. Available at: <http://www.campoalegrenoticias.com/agredido-periodista-en-campoalegre/>; 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>

²³² Caracol Radio. August 27, 2012. *Amenazados dos periodistas en Soledad, Atlántico*. Available at: <http://www.caracol.com.co/noticias/regional/amenazados-dos-periodistas-en-soledad-atlantico/20120827/nota/1750746.aspx>; Federación Colombiana de Periodistas (FECOLPER). August 26, 2012. *Reiteran amenazas contra periodista Eduar Fábregas en Soledad (Atlántico). Recibe tres amenazas de muerte en menos de siete días*. Available at: <http://www.fecolper.com.co/alertas/20775-alerta-reiteran-amenazas-contra-periodista-eduar-fabregas-en-soledad-atlantico>; *El Heraldo*. August 27, 2012. *Amenazas sucesivas en contra de periodista en Soledad*. Available at: <http://www.elheraldo.co/judicial/amenazas-sucesivas-en-contra-de-periodista-en-soledad-7946>

²³³ Fundación para la Libertad de Prensa (FLIP). October 24, 2012. *Agresiones de la Policía contra periodistas durante cubrimiento*. Available at: http://www.flip.org.co/alert_display/0/2805.html; Reporters Without Borders. October 23, 2012. *Call for punishment of those responsible as police violence towards journalists grows*. Available at: <http://en.rsf.org/colombia-call-for-punishment-of-those-25-10-2012.43585.html>

²³⁴ Fundación para la Libertad de Prensa (FLIP). October 24, 2012. *Agresiones de la Policía contra periodistas durante cubrimiento*. Available at: http://www.flip.org.co/alert_display/0/2805.html; *El Tiempo*. October 23, 2012. *Policía pide perdón a la fotógrafa de EL TIEMPO que fue agredida*. Available at: http://www.eltiempo.com/colombia/bogota/policia-ordena-investigacion-por-agresion-a-fotografa-de-el-tiempo_12329481-4

²³⁵ 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(x).

addition, on October 28, journalist Daniel Martínez with *RCN Televisión* was beaten by individuals presumed to be members of the National Police while he was covering a street fight in Arauca.²³⁶

144. According to information received, journalists and media workers of radio broadcaster *Guasca FM Stéreo*, in Tuluá, Valle del Cauca department, were subjected to phone threats and harassment in November after reporting on the alleged improper management of municipal resources. On 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.”²³⁷

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.²³⁸ 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 systems²³⁹.

146. With respect to the investigation of crimes against freedom of expression, the State “reiterate[s] the intent of the Colombian State to establish the facts in cases involving journalists, making progress toward justice and the fight against impunity.” It reports that the National Human Rights Unit of the Office of the Prosecutor General has a special sub-unit for investigations concerning journalists, which as of January 2012 had 35 open cases, 16 cases in trial, 67 defendants, and 18 convictions.²⁴⁰

²³⁶ Cerigua. October 29, 2012. *Se registra nueva agresión contra periodista en Colombia*. Available at: http://cerigua.org/1520/index.php?option=com_content&view=article&id=11199:se-registra-nueva-agresion-contra-periodista-en-colombia&catid=48:libertad-de-expresion&Itemid=10; La Voz del Cinaruco. October 29, 2012. *Policías agreden a periodista de RCN Televisión en Arauca*. Available at: <http://www.lavozdelcinaruco.com/?id=7546>

²³⁷ Federación Colombiana de Periodistas (FECOLPER). November 26, 2012. *Amenazan a personal de la emisora Guasca F.M stéreo en Tuluá (Valle)*. Available at: <http://www.fecolper.com.co/alertas/20821-amenazan-a-personal-de-la-emisora-quasca-fm-stereo-en-tulua-valle>; Cartago Noticias. November 27, 2012. *Amenazan a personal de la emisora Guasca F.M etéreo en Tuluá Valle*. Available at: <http://www.cartagonoticias.com/noticias.php/2012112710/inicio/regional/amenazan-a-personal-de-la-emisora-quasca-f-m-stereo-en-tulua-valle/>

²³⁸ 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.” Paras. 5-9. *Ver también*, República de Colombia. Decreto 4912 de 2011. 26 de diciembre de 2011. Disponible en: <http://www.mininterior.gov.co/sites/default/files/normas/Decreto%204912%20de%202011.pdf>

²³⁹ 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. 5.

²⁴⁰ 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.” Paras. 10-11.

147. In its communication of February 22, 2013, the State indicated that “the National Office of Public Prosecutors, by means of Memorandum No. 036 of August 12, 2011, had implemented strategies for the investigation of cases involving threats against members of human rights organizations, trade unionists, indigenous persons, land restitution leaders, members of NGOs, and others, as a legal methodology designed to ensure the efficiency, effectiveness, and optimization of resources, and aimed at obtaining results in criminal investigations.”²⁴¹

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

D. Stigmatizing statements

149. 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, “[a]t 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.²⁴² 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 [*injuria y calumnia agravada*] for having publicly claimed that she was linked to an armed group.²⁴³ 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 Gonzalez was sentenced to 18 months in prison. The sentence was handed down on February 29, 2012, by the Criminal Chamber of the Superior Tribunal of the Judicial District of Cundinamarca. According to the information received, Gonzalez was convicted of the crime of defamation [*injuria*] and acquitted on another defamation charge [*calumnia*]. In addition to the prison term, Gonzalez must pay 17 minimum

²⁴¹ 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. 12.

²⁴² El Espectador. June 14, 2012. *¿Periodistas sicarios?* Available at: <http://www.elespectador.com/opinion/editorial/articulo-353250-periodistas-sicarios>; Semana. June 16, 2012. *¿Dónde está Ana María Uribe?* Available at: <http://www.semana.com/opinion/donde-esta-ana-maria-uribe/179042-3.aspx>

²⁴³ 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. 117. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/2012%2003%2021%20Annual%20Report%20RELE%202011pirnting.pdf>; Semana. February 20, 2012. *Uribe deberá responder por injuria y calumnia contra tres periodistas*. Available at: <http://www.semana.com/nacion/uribe-debera-responder-injuria-calumnia-contra-tres-periodistas/172475-3.aspx>; El Universal. February 20, 2012. *Por injuria y calumnia instauran querrela contra Alvaro Uribe Vélez*. Available at: <http://www.eluniversal.com.co/alvaro-uribe-por-injuria-y-calumnia-instauran-querrela-contra-alvaro-uribe-velez-65778>. See: The Washington Post. August 20, 2011. *U.S. aid implicated in abuses of power in Colombia*. Available at: http://www.washingtonpost.com/national/national-security/us-aid-implicated-in-abuses-of-power-in-colombia/2011/06/21/gIQABrZpSJ_story.html

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

²⁴⁴ Criminal Chamber of the Supreme Court of the Judicial District of Cundinamarca. Judgment of February 29, 2012. Available at: <http://www.flip.org.co/resources/documents/9126812d2768f887f4e2fc791772b8d2.pdf>; IACHR. Office of the Special Rapporteur for Freedom of Expression. March 1, 2012. Press Release R24/12. *Office of the Special Rapporteur expresses concern over conviction of journalist in Colombia*. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=885&IID=1>; El Espectador. February 29, 2012. *Confirman sentencia contra periodista Luis Agustín González*. Available at: <http://www.elespectador.com/impreso/judicial/articulo-329570-confirman-sentencia-contra-periodista-luis-agustin-gonzalez>;

²⁴⁵ Criminal Chamber of the Supreme Court of the Judicial District of Cundinamarca. Judgment of February 29, 2012. Available at: <http://www.flip.org.co/resources/documents/9126812d2768f887f4e2fc791772b8d2.pdf>; IACHR. Office of the Special Rapporteur for Freedom of Expression. March 1, 2012. Press Release R24/12. *Office of the Special Rapporteur expresses concern over conviction of journalist in Colombia*. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=885&IID=1>; El Comercio. February 29, 2012. *Condenan a 18 meses de prisión a director de diario en Colombia por injuria*. Available at: http://ww1.elcomercio.com/mundo/Condenan-prision-director-Colombia-injuria_0_655134605.html; IFEX/ Fundación para la Libertad de Prensa (FLIP). 1 March, 2012. *Tribunal ratifica condena por injuria contra periodista*. Available at: http://ifex.org/colombia/2012/03/01/condena_sentencia_gonzalez/es/; Semana. October 15, 2011. *De editoriales, candidatos y guerra sucia*. Available at: <http://www.semana.com/enfoque/editoriales-candidatos-guerra-sucia/165874-3.aspx>

²⁴⁶ Fundación para la Libertad de Prensa (FLIP). April 26, 2012. *Condena contra periodista Luis Agustín González es puesta a consideración de la Corte Suprema de Justicia*. Available at: http://www.flip.org.co/alert_display/0/2655.html; Andinarios. April 27, 2012. *Condena contra periodista Luis Agustín González es puesta a consideración de la Corte Suprema de Justicia*. Available at: http://www.andinarios.com/condena_en_consideracion_corte.html

²⁴⁷ El Espectador. June 8, 2012. *“Denuncia de Pacific Rubiales atenta contra la libertad de prensa”*: Héctor Mario Rodríguez. Available at: <http://www.elespectador.com/noticias/judicial/articulo-352040-denuncia-de-pacific-rubiales-atenta-contra-libertad-de-prensa-he>; Primera Página. June 8, 2012. *CPB y APE se solidarizan con editor de PP y se hicieron presentes en interrogatorio ante Fiscalía*. Available at: <http://www.primerapagina.net.co:9080/Primera/mostrarpagina.jsp?pagi=13&tipo=1&id=1&codigo=1319096>; Noticias Uno. June 11, 2012. *Petrolera demanda por cuarta vez a Héctor Mario Rodríguez*. Available at: <http://noticiasunolaredindependiente.com/2012/06/11/noticias/petrolera-demanda-por-cuarta-vez-a-hector-mario-rodriguez/>

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.

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

²⁴⁸ El Espectador. October 16, 2012. *La libertad de expresión prima*. Available at: <http://www.elespectador.com/opinion/editorial/articulo-381570-libertad-de-expresion-prima>; Knight Center for Journalism in the Americas. October 18, 2012. *Colombian newspaper claims Attorney General tried to censor it*. Available at: <http://knightcenter.utexas.edu/blog/00-11801-colombian-newspaper-claims-attorney-general-tried-censor-it>

²⁴⁹ Communication received from Colombia Diversa. November 23, 2012. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; El Espectador. November 7, 2012. *Concejal acusa a Canal Capital de promover programas "vulgares"*. Available at: <http://www.elespectador.com/noticias/bogota/articulo-385712-concejal-acusa-canal-capital-de-promover-programas-vulgares>; Semana. November 7, 2012. *Intención del Canal Capital no es acabar con la familia: Hollman Morris*. Available at: <http://www.semana.com/nacion/intencion-del-canal-capital-no-acabar-familia-hollman-morris/187773-3.aspx>; Caracol Radio. November 7, 2012. *Concejal que pidió lista de LGBTI propone liquidar Canal Capital*. Available at: <http://www.caracol.com.co/noticias/bogota/concejal-que-pidio-lista-de-lgbti-propone-liquidar-canal-capital/20121107/nota/1791913.aspx>

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 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,²⁵⁴ among other provisions. They also

²⁵⁰ Supreme Court of Justice of Costa Rica. Constitutional Chamber. September 7, 2012. Judgement 2012-12625. File No. 12-7227-0007-CO. Available for consultation at: www.poder-judicial.go.cr/salaconstitucional/Boletines/2012/09-2012_doc and at: <http://www.poder-judicial.go.cr/salaconstitucional/documento/salaenprensa/salaenprensa2012.pdf>; Semanario Universidad. October 3, 2012. *Ciudadanía sabrá nombres y montos de evasores de impuestos*. Available at: http://semanario.ucr.ac.cr/index.php?option=com_content&view=article&id=7468

²⁵¹ 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://cejamericas.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>

²⁵² *Diario Extra*. December 29, 2011. *Agreden a periodista de espectáculos Ariel Chaves*. Available at: <http://www.diarioextra.com/2011/diciembre/29/nacionales04.php>; Communication received by the Office of the Special Rapporteur for Freedom of Expression. February 21, 2012. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

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: http://www.presidencia.go.cr/images/stories/docs/Ley_Delitos_Informaticos.pdf; Presidency of the Republic of Costa Rica. July 10, 2012. *Presidenta firmó Ley de Delitos Informáticos*. Available at: <http://www.presidencia.go.cr/index.php/prensa/prensa-presidencia/1655-presidenta-firmo-ley-de-delitos-informaticos>

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.

Continues...

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.²⁵⁵ On November 8, a claim was filed in the Constitutional Chamber of the Supreme Court which alleged the unconstitutionality of the law.²⁵⁶ 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.²⁵⁷

161. The Office of the Special Rapporteur was informed that *Radio Cultural Turrialba* has alleged that the council members and mayor of that municipality agreed to not renew the agreement under which the broadcaster was able to operate from a municipal building. This presumably occurred as an act of retaliation by officials for critical comments broadcast by the station. According to the information received, in December, 2011, the Municipal Council decided that the agreement between the municipality and the Costa Rican Institute of Radio Teaching [*Instituto Costarricense de Enseñanza Radiofónica*] (ICER in its Spanish acronym) would be terminated in 2014 if the radio station did not desist from the alleged offenses. Nevertheless, on January 9, in a meeting between municipal officials and the radio broadcaster, it was decided to revoke the decision made in December and to strengthen the agreement between the municipality and the ICER, thereby allowing the radio station to continue operating in the municipal building.²⁵⁸

...continuation

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

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

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

²⁵⁵ La Nación. July 18, 2012. *Secretos de Estado*. Available at: <http://www.nacion.com/2012-07-18/Opinion/secretos-de-estado.aspx>; University of Costa Rica (UCR). August 21, 2012. *Expertos creen que Ley de Delitos Informáticos debe ser equilibrada en aspectos jurídicos y técnicos*. Available at: <http://www.ucr.ac.cr/noticias/2012/08/21/expertos-creen-que-ley-de-delitos-informaticos.html>; Colegio de Periodistas de Costa Rica (Colper). August 24, 2012. *COLPER solicita definición sobre Ley de Delitos Informáticos*. Available at: http://www.colper.or.cr/comunicados/comunicado_4812.htm; El País. November 8, 2012. *Presidencia publicó ley mordaza contra periodistas y medios de comunicación*. Available at: http://www.elpais.cr/frontend/noticia_detalle/1/74648

²⁵⁶ Constitutional Chamber of the Supreme Court of Justice of Costa Rica. November 8, 2012. File No. 12-014671-0007-CO. Available at: <https://pjenlinea.poder-judicial.go.cr/SistemaGestionEnLinea/Publica/wfpDetExped.aspx?c=20120007014796&d=0007>; Constitutional Chamber of the Supreme Court of Justice. November 2012. *Press Release: Ley Mordaza*. Available for consultation at: <http://www.poder-judicial.go.cr/salaconstitucional/prensa.htm>

²⁵⁷ Presidency of the Republic of Costa Rica. November 8, 2012. *Ejecutivo presentará reforma a la Ley de Delitos Informáticos la próxima semana*. Disponible en: <http://www.presidencia.go.cr/index.php/prensa/prensa-presidencia/1897-ejecutivo-presentara-reforma-a-ley-de-delitos-informaticos-la-proxima-semana>; Reporters Without Borders. November 9, 2012. *Government pledges cybercrime law will not apply to journalists*. Disponible en: <http://en.rsf.org/costa-rica-government-pledges-cybercrime-law-09-11-2012.43664.html>

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 manera negativa (...) Desde la entrada en labores del Honorable Concejo Municipal para el periodo 2010-2016 y de la toma del cargo de la Alcaldía, estos órganos han venido siendo objeto de crítica, en su mayoría no constructiva, por parte de la emisora *Radio Cultural de Turrialba*, en los programas OPINE USTED y un programa deportivo"]. Colegio de Periodistas de Costa Rica. January 17, 2012. *Acta 04-2012 de la Sesión Ordinaria de la Junta Directiva*. Pp. 7 y 8. Available at: http://www.colper.or.cr/userfiles/file/actas/2012/04_12.doc. Radio Monumental. Amelia Rueda. January 6, 2012. *Alcaldesa Turrialba: si paran ofensas convenio se extiende*. Available at: <http://www.ameliarueda.com/contenido/articulos/3925.html>; Radio Monumental. Amelia Rueda. January 11, 2012. *Municipalidad turrialbeña y emisora logran acuerdo*. Available at: <http://www.ameliarueda.com/contenido/articulos/3955.html>

8. Cuba²⁵⁹

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

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

163. As pointed out in the previous section, the IACHR received information on the various acts of harassment and detentions of the group “Ladies in White” [*Las Damas de Blanco*]. According to available information, on February 9, 2012, at least 15 members of the Ladies in White were prevented from leaving their homes or they would have been arrested to keep them from attending a workshop 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.²⁶⁰ On February 23, a sizable group of pro-government demonstrators staged an act of repudiation [*mitin de repudio*] and for several hours blocked the entry and exit of the Ladies in White in Havana when some 40 women were in a building in commemoration of the second anniversary of the death of dissident Orlando Zapata. Several persons who participated in the tribute were said to have been detained by the political police.²⁶¹ On March 17 and 18, 2012 nearly 70 Ladies in White were reported detained on commemorating the ninth anniversary of Black Spring [*Primavera Negra*].²⁶² 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.²⁶³ 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.²⁶⁴ On June 15, nearly 30 Ladies in White were detained to keep them from attending a “literary tea” and celebrating Fathers Day in the different parts of Cuba. Twenty-two of these detentions were said to have occurred in Guantánamo and Granma, Palma Soriano, and Santiago de Cuba, and eight others in Villa Clara while the persons detained were traveling to Havana.²⁶⁵ 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

²⁵⁹ This section corresponds to the section on freedom of expression in Cuba in Chapter IV, Volume I, of the IACHR 2012 annual report, assigned to the Office of the Special Rapporteur for Freedom of Expression.

²⁶⁰ Infobae. February 21, 2012. [Un arzobispo salvó de la represión a un grupo de Damas de Blanco](#); InfoCatólica. February 22, 2012. [Mons. García Ibáñez impidió que las Damas de Blanco fueran golpeadas por la policía de la dictadura cubana](#); El Nuevo Herald. February 21, 2012. [Arzobispo de Santiago de Cuba salva de paliza a mujeres disidentes](#).

²⁶¹ El Universal/Notimex. February, 23, 2012. [Bloquean sede de Damas de Blanco en Cuba](#); AFP/Noticias Univisión. February 24, 2012. [Damas de Blanco son repudiadas por oficialistas cuando homenajearon a Zapata](#); Cubanet. February 23, 2012. [41 Damas de Blanco continúan sitiadas en la casa sede del grupo](#).

²⁶² Centro de Información Hablemos Press. April 9, 2012. [Informe mensual de violaciones de derechos humanos – Marzo 2012](#); Primavera Digital. March 22, 2012. [Reprimen a Damas de Blanco en el noveno aniversario de la primavera negra](#).

²⁶³ Centro de Información Hablemos Press. May 2, 2012. [Informe mensual de violaciones de derechos humanos – Abril 2012](#); Cuba Blog Spot. April 19, 2012. [Cuba ve peligro en “Te literario” de las Damas de Blanco](#); La voz del destierro. April 23, 2012. [Más de dos docenas de mujeres arrestadas para impedirles asistir a la misa dominical](#).

²⁶⁴ Cuba Jutia. May 29, 2012. [Logran asistir a misa más de 90 damas de blanco](#); Desde Cuba. Un portal de periodismo ciudadano. May 29, 2012. [Noticias Semana del 26 al 31 de mayo: Arrestadas Damas de Blanco](#).

²⁶⁵ El Nuevo Herald. June 15, 2012. [El régimen cubano arresta a al menos 30 damas de blanco](#); La Nación. June 15, 2012. [Damas de Blanco denuncian el arresto de al menos 31 activistas en Cuba](#).

that if they attended that meeting they would be taken to jail for 72 hours.²⁶⁶ 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 23.²⁶⁷ 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.²⁶⁸ 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.²⁶⁹ The information available indicates that other journalists were detained allegedly in relation to the trial.²⁷⁰ According to the information received, Sánchez was detained once again on November 8 along with bloggers and journalists Orlando Luís 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.²⁷¹

165. In May 2012, journalist Gerardo Younel Ávila, a photo-journalist with *Hablemos Press*, was said to have been detained on leaving his house in the municipality of Cerro. Later, he was reportedly detained again on June 23, July 14, and July 28. Journalist Enyor Díaz Allen of the same agency was detained when travelling from Cuba to Guantánamo. On July 23 he was detained for 72 hours. On June 11 editor Ernesto Aquino of *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 *Hablemos Press* had begun the weekly publication of a Newsletter.²⁷²

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.²⁷³ According to

²⁶⁶ Damas de Blanco.com. July 19, 2012. [Detenidas unas 30 Damas para impedirles que asistan a un te literario](#); La voz del destierro. July 18, 2012. [Detienen a Damas de Blanco para impedirles asistir a un te literario](#).

²⁶⁷ Amnesty International. September 25, 2012. [Urgent Action. Dozens of Cuban Opposition Activists Detained](#); Centro de Información Hablemos Press. September 23, 2012. [Más de 50 Damas de Blanco detenidas este fin de semana](#); Amnesty International. October 2, 2012. [Urgent Action. Human Rights Activists Released in Cuba](#).

²⁶⁸ Centro de Información Hablemos Press. November 13, 2012. [Más de 40 damas de blanco detenidas, el domingo](#); Puente Informativo. November 13, 2012. [Mas de cuarenta Damas de Blanco detenidas el Domingo](#).

²⁶⁹ Cubanet. October 5, 2012. [Juicio de Carromero motiva detenciones de opositores y periodistas](#); Miami Herald. October 6, 2012. [Cuban dissident blogger Yoani Sanchez released after hours-long detention](#); International Press Institute (IPI)/IFEX. October 10, 2012. [Cuban blogger released after 30 hours in custody](#).

²⁷⁰ See, Comisión Cubana de Derechos Humanos y Reconciliación Nacional. November 5, 2012. [Algunos Actos de Represión Política en el Mes de octubre de 2012](#).

²⁷¹ Inter-American Commission on Human Rights. November 9, 2012. Press Release No. 132/2012. [IACHR Condemns Arbitrary Arrests of Human Rights Defenders in Cuba](#); Committee to Protect Journalists (CPJ). November 9, 2012. [Cuban reporter Flores arrested on anti-state charges](#); El País. November 9, 2012. [La bloguera Yoani Sánchez es puesta en libertad tras varias horas de arresto](#).

²⁷² Centro de Información Hablemos Press. June 4, 2012. [Informe mensual de violaciones de derechos humanos- Mayo de 2012](#); El Nuevo Herald. June 27, 2012. [SIP denuncia acoso a periodistas independientes en Cuba](#); La voz del Destierro. July 14, 2011. [Detenido violentamente foto reportero de Hablemos Press](#); Misceláneos de Cuba. July 30, 2012. [Cinco periodistas de hablemos press son detenidos en una semana](#); Penúltimos días. PD en Cuba. May 14, 2012. [¿Observadores críticos?](#)

²⁷³ BBC. July 25, 2012. [Police Free Cubans Detained at Oswaldo Paya's Funeral](#); La Razón. July 24, 2012. [Guillermo Fariñas y varios opositores cubanos detenidos en el velatorio de Oswaldo Payá](#); Knight Center for Journalism in the Americas. July 24, 2012. [Two Cuban journalists arrested during activist Oswaldo Payá's Funeral](#).

information received, detentions of political dissidents due to their exercise of the freedom of expression escalated in August. According to the Comisión Cubana de Derechos Humanos, that month there were 521 politically-motivated temporary detentions, which in most cases lasted a few hours or days.²⁷⁴ Among the persons detained were dissident leader José Daniel Ferrer, arrested on charges of “public disorderly conduct” [*desórdenes públicos*] on August 23 and released three days later. After July 24, Fariñas was reportedly detained on August 17, 19, 21, and 23.²⁷⁵ In addition, on September 1 blogger Orlando Luis Pardo was reportedly detained in Havana for nine hours when he was preparing to attend and participate as moderator in a roundtable discussion to analyze current issues in Cuba.²⁷⁶

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

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

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

3. Subsequent liability

170. On November 14, journalist José Antonio Torres of the official daily newspaper *Granma* was reportedly sentenced to 14 years in prison for espionage, and his university degree in journalism was

²⁷⁴ Comisión Cubana de Derechos Humanos y Reconciliación Nacional. September 2012. [Cuba: Algunos actos de represión política durante el mes de agosto](#); German Press Agency (DPA). September 4, 2012. [Cuba: más de 500 arrestos políticos en agosto](#).

²⁷⁵ BBC Mundo. August 27, 2012. [Liberado el disidente cubano José Daniel Ferrer](#); Radio Televisión Española (RTVE). August 27, 2012. [En Cuba prosiguen los arrestos y liberaciones de disidentes del régimen de Raúl Castro](#); German Press Agency (DPA). September 4, 2012. [Cuba: más de 500 arrestos políticos en agosto](#).

²⁷⁶ El Nuevo Herald. September 1, 2012. [Detienen cerca de 9 horas a bloguero cubano Orlando Luis Pardo](#); Knight Center for Journalism in the Americas. September 3, 2012. [Cuban dissident Blogger released after nine hours of detention](#).

²⁷⁷ Cubanet. October 1, 2012. [Arrestado por pintar a Fidel Castro con penacho de plumas](#); Sampsonia Way. October 15, 2012. [Reproducir a Fidel Castro](#).

²⁷⁸ Inter-American Commission on Human Rights. November 9, 2012. Press Release No. 132/2012. [IACHR Condemns Arbitrary Arrests of Human Rights Defenders in Cuba](#); Committee to Protect Journalists (CPJ). November 9, 2012. [Cuban reporter Flores arrester don anti-state charges](#); Cubanet. November 8, 2012. [Liberada la periodista de Cubanet Yaremis Flores](#).

²⁷⁹ Cubanet. February 1, 2012. [Amenazan con machetear a periodista independiente](#); Ciudadanos. February 2, 2012. [Amenazan de muerte al periodista independiente Odelín Alfonso Torna](#); Cubanet. February 10, 2012. [Cita Seguridad del Estado a periodista independiente](#).

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

171. The Commission was informed of the detention of Calixto Ramón Martínez Arias, a journalist with the agency *Hablemos Press*, on September 16, in the context of a criminal proceeding against him for *desacato*. Martínez Arias had been detained at the international airport while investigating alleged irregularities in the handling of drugs provided to Cuba by the World Health Organization. According to the information received, he was beaten and sprayed with pepper spray in the custody of the National Revolutionary Police of Santiago de Las Vegas. Martínez Arias was said to have investigated and written on the cholera and dengue outbreaks in Cuba before the Government recognized the problem.²⁸² The Commission learned that Martínez had reportedly been transferred to a punishment cell on November 20 and that he was on a hunger strike as of late November.²⁸³ Martínez had previously been detained on May 10 in Havana while covering an activity organized by opposition groups and was later said to have been transferred against his will to the province of Camaguey.²⁸⁴

4. Other relevant situations

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

173. The IACHR was informed of several actions by the authorities against independent journalists before and after the visit by Pope Benedict XVI, on March 27 and 28. According to the information received, the telephones of several journalists and dissidents had been disconnected, among them journalists Aini Martín Valero, José Antonio Fornaris, Luis Cino, Jorge Olivera, Juan González Febles, Dania Virgen García, Gustavo Pardo, Eugenio Leal, Calixto Ramón Martínez, and Roberto de Jesús Guerra. Journalists Alberto Méndez Castelló and Luis Felipe Rojas were said to have been

²⁸⁰ El Nuevo Herald. November 14, 2012. [Condennan por espía a periodista del diario oficialista cubano “Granma”](#); Martí Noticias. November 14, 2012. [Condennado a 14 años excorresponsal de Granma en Santiago](#); Diario de Cuba. November 14, 2012. [Santiago de Cuba: Condennado a 14 años un excorresponsal de “Granma” acusado de “espionaje”](#).

²⁸¹ Knight Center for Journalism in the Americas. January 24, 2012. [Reporter for official Cuban newspaper faces 10-year prison sentence on corruption charge](#); Red Protagónica Observatorio Crítico. January 23, 2012. [Periodista oficialista podría recibir 10 años de cárcel](#); International Press Institute (IPI). January 27, 2012. [Cuban Journalist Faces Decade in Prison](#); The Miami Herald. July 18, 2012. [Cuban journalist who wrote exposé of bungled aqueduct project reportedly faces espionage charges](#); Cubanet. July 18, 2012. [Piden 15 años de cárcel para ex periodista de Granma](#).

²⁸² Inter-American Press Association (IAPA)/IFEX. September 21, 2012. [Journalist charged after writing about cholera and dengue in Cuba](#); Martí noticias. August 22, 2012. [Acusarán de “desacato” a reportero estrella de Hablemos Press](#); Reports Without Borders. September 24, 2012. [RSF pide la puesta en libertad de Calixto Ramón Martínez Arias](#).

²⁸³ Hablemos Press. December 4, 2012. [Hablemos Press: El periodista Calixto Ramón sigue en huelga de hambre](#); Martí Noticias. November 30, 2012. [Periodista independiente cumple 20 días en huelga de hambre](#).

²⁸⁴ Reporters Without Borders. May 15, 2012. [Hablemos Press journalist awaits 10th deportation to home town](#); Pinceladas de Cuba. June 1, 2010. [Calixto Ramón Martínez Arias se declara en huelga de hambre](#).

²⁸⁵ EFE/Noticias Univisión. February 3, 2012. [Gobierno cubano deniega a Yoani Sánchez permiso de salida para viaje a Brasil](#); El País. January 26, 2012. [Rousseff da un visado para Brasil a Yoani Sánchez antes de visitar Cuba](#); Yoani Sanchez/ @yoanisanchez. February 3, 2012. [#Cuba](#); Knight Center for Journalism in the Americas. February 6, 2012. [Cuba denies critical Blogger Yoani Sánchez’s travel to Brazil](#).

detained by the Police for several hours.²⁸⁶ On March 23, journalist Julio Aleaga Pesant was reportedly detained for several hours and taken forcibly from the city of Santiago de Cuba to Havana to keep him from covering the Pope's visit.²⁸⁷

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

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

9. Ecuador

A. Murders

176. The Office of the Special Rapporteur condemns the murder of photographer Byron Baldeón, which took place on July 1, 2012 in El Triunfo, a town near Guayaquil. According to the information received, two armed men on a motorcycle shot the photographer several times when he arrived at his house. Last May, practicing his profession, Baldeón had taken photographs of the scene of a robbery. The judicial investigation revealed that several policemen were involved in the robbery. Later, Baldeón was called to testify as a witness to the crime. The photographer worked with the newspaper *Extra*, where the pictures were published. At the time, the Office of the Special Rapporteur urged state authorities to act in a timely manner to identify the perpetrators and motive of this crime, to prosecute and punish the responsible parties, and to demand that they provide adequate reparations to the victim's next of kin.²⁹⁰ The Office of the Special Rapporteur notes with satisfaction that on July 3, the Minister of

²⁸⁶ Inter-American Press Association (IAPA-SIP). [April 2012 Information by Country: Cuba](#); CubaEncuentro. March 30, 2012. [Activistas reclaman a ETECSA por interrupción del servicio telefónico](#); Knight Center for Journalism in the Americas. March 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 Aleaga Pesant](#).

²⁸⁸ Centro de Información Hablemos Press. June 4, 2012. [Informe mensual de violaciones de derechos humanos- Mayo de 2012](#); Penúltimos días. PD en Cuba. May 14, 2012. [¿Observadores críticos?](#)

²⁸⁹ Cubanet. September 27, 2012. [El régimen advierte que impedirá concierto en Estado de SATS](#); Estado de SATS. September 27, 2012. [Nota sobre amenazas de la Seguridad del Estado](#); Por otra Cuba. September 30, 2012. [Realizado ayer primer concierto Por otra Cuba](#); BBC Mundo. February 28, 2008. [Cuba firma pactos de DDHH de la ONU](#).

²⁹⁰ IACHR. Office of the Special Rapporteur for Freedom of Expression. July 6, 2012. Press Release R77/12. *Office of the Special Rapporteur Condemns Murder of Photographer in Ecuador*. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=907&IID=1>

Interior, José Serrano, announced that a team from the National Police had been specially assigned to investigate the photojournalist's murder.²⁹¹

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 campaign²⁹² “[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.”²⁹³

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

²⁹¹ Agencia Pública de Noticias del Ecuador y Suramérica (ANDES). July 3, 2012. *Ministerio del Interior garantiza investigaciones sobre crimen de reportero gráfico*. Available at: <http://andes.info.ec/judicial/3821.html>; Fundamedios. No date. *Fundamedios se solidariza con familiares de fotoperiodista asesinado y exhorta al estado para que cumpla con la promesa de no dejar el crimen en la impunidad*. Available at: <http://www.fundamedios.org/portada/libertades/alertas/historico/2012/item/fundamedios-se-solidariza-con-familiares-de-fotoperiodista-asesinado-y-exhorta-al-estado-para-que-cumpla-con-la-promesa-de-no-dejar-el-crimen-en-la-impunidad.html>

²⁹² This provision reportedly originated with the exercise of the authority of the President of the Republic to challenge draft laws, established in Articles 137 and 138 of the Constitution of the Republic of Ecuador. National Assembly. Objections, Reports, and Vetoes. Official Letter No. T.4165-SNJ-12-14. January 4, 2012. Available at: http://documentacion.asambleanacional.gob.ec/alfresco/service/api/node/workspace/SpacesStore/55d729ed-c4c0-4cbc-9805-b3696923ca14/content?alf_ticket=TICKET_35c88e39d70ff15c2d17e59aeab0d3d53d19b573; 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.gob.ec/documentos/constitucion_de_bolsillo.pdf

²⁹³ 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://documentacion.asambleanacional.gob.ec/alfresco/d/d/workspace/SpacesStore/9e32ddd3-21a3-44d1-a5f4-3799309ab938/Ley%20Reformatoria%20a%20la%20Ley%20Org%C3%A1nica%20Electoral%20o%20C%C3%B3digo%20de%20la%20Democracia> Also available for consultation 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

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.²⁹⁴ The current provision of the final paragraph of Article 21 of the law thus establishes that, during the campaign,²⁹⁵ “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.”²⁹⁶

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

180. The information received by the Office of the Special Rapporteur also indicates that the National Assembly is currently debating other legislative proposals that would supplement the abovementioned legal framework. In October 2011, the Government introduced a Telecommunications and Postal Services Bill. This bill establishes, among other things, the authority of the government to issue a declaration of public interest, for purposes of expropriation, with respect to “assets that are the subject of a concession, assets necessary for the installation and operation of public telecommunications networks and services, to guarantee access and universal service and the uniform provision of services in rural areas or deprived urban areas.” Expropriations would be carried out “in accordance with the applicable regulations.”²⁹⁸ The bill also creates the Telecommunications Oversight and Regulatory

²⁹⁴ Constitutional Court of Ecuador. October 17, 2012. Judgment No. 028-12-SJN-CC. Available at: <http://www.corteconstitucional.gob.ec/images/stories/pdfs/028-12-SIN-CC.pdf>; Constitutional Court of Ecuador. No date. *La Corte Constitucional garantiza la vigencia de derechos, libertades y obligaciones constitucionales durante la campaña electoral*. Available at: http://www.corteconstitucional.gob.ec/index.php?option=com_content&view=article&id=644:la-corte-constitucional-garantiza-la-vigencia-de-derechos-libertades-y-obligaciones-constitucionales-durante-la-campana-electoral&catid=38:boletines-cce-2012&Itemid=20

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>

²⁹⁶ Constitutional Court of Ecuador. October 17, 2012. Judgment No. 028-12-SJN-CC. Numeral 6 of the holding. Available at: <http://www.corteconstitucional.gob.ec/images/stories/pdfs/028-12-SIN-CC.pdf>

²⁹⁷ National Assembly of Ecuador. September 15, 2009. Communications bill. Available at: <http://documentacion.asambleanacional.gov.ec/alfresco/d/d/workspace/SpacesStore/5a45f9bb-0a4b-49ae-9dc1-550843869577/Ley%20Org%20a1nica%20Comunicaci%20c3%b3n>; IACHR. Annual Report 2011. OEA/Ser.LV/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. 209-213. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/2012%2003%2021%20Annual%20Report%20RELE%202011pirnting.pdf>; IACHR. Office of the Special Rapporteur for Freedom of Expression. Letter to the President of the National Assembly of the Republic of Ecuador concerning the Communications bill. December 8, 2009; IACHR. Office of the Special Rapporteur for Freedom of Expression. Letter to the President of the National Assembly of the Republic of Ecuador concerning the Communications bill. August 10, 2010; IACHR. Office of the Special Rapporteur for Freedom of Expression. Letter to the President of the National Assembly of the Republic of Ecuador concerning the Communications bill. September 15, 2011. All available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

²⁹⁸ National Assembly of Ecuador. October 14, 2011. *Telecommunications and Postal Services Bill*. Draft of Article 92. “Article 92. - Power of Expropriation.- The Governing Ministry and the Telecommunications Oversight and Regulatory Agency may issue a declaration of public interest with respect to assets that are the subject of a concession, assets necessary for the installation and operation of public telecommunications networks and services, to guarantee access and universal service and the uniform provision of services in rural areas or deprived urban areas. // Expropriations shall be carried out in accordance with the applicable regulations. Duly authorized operators that provide public telecommunications services or conduct activities that make up universal service may ask the Ministry or the Agency to issue a declaration of public interest for purposes of expropriation when there are reasons of public or social interest that justify it, in order to ensure the continual provision of service.” Available for consultation at: <http://documentacion.asambleanacional.gov.ec/alfresco/d/d/workspace/SpacesStore/1c5c26d1-463c-4a6b-baba-988cf8cf04f6/Ley%20Org%20a1nica%20de%20Telecomunicaciones%20y%20de%20Servicios%20Postales>; Republic of Ecuador. National Telecommunications Council (CONATEL). *Telecommunications and Postal Services Bill*. October 14, 2011. Continues...

laws known as “*desacato*,” which is an important step forward.³⁰⁴ Nevertheless, the law keeps offenses such as defamation against public servants³⁰⁵ and extends their application to insults made in private³⁰⁶ or abroad.³⁰⁷ 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*],³⁰⁸ prohibits the defense of truth for persons accused of defamation that does not constitute the imputation of criminal conduct [*injuria no calumniosa*],³⁰⁹ 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,³¹⁰ among other provisions.

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

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 [*injurias no calumniosas*], the term of imprisonment shall range from six months to two years, and the fine shall range from one to ten times the general minimum monthly wage.” Available at: <http://documentacion.asambleanacional.gov.ec/alfresco/d/d/workspace/SpacesStore/233c7e51-a5a7-4c0e-a848-79e6ead28a9c/Ley%20del%20Código%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/>

³⁰⁶ National Assembly of Ecuador. Draft Comprehensive Criminal Code. October, 2011. “Article 120.- Private accusations [*Imputación privada*].- Any person who makes such accusations privately, or in the presence of fewer than ten people, shall be punished by a term of imprisonment of one to six months, and a fine ranging from six to twelve United States dollars.” Available at: <http://documentacion.asambleanacional.gov.ec/alfresco/d/d/workspace/SpacesStore/233c7e51-a5a7-4c0e-a848-79e6ead28a9c/Ley%20del%20Código%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-a848-79e6ead28a9c/Ley%20del%20Código%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/>

³⁰⁸ National Assembly of Ecuador. Draft Comprehensive Criminal Code. October, 2011. Article 121. Available at: <http://documentacion.asambleanacional.gov.ec/alfresco/d/d/workspace/SpacesStore/233c7e51-a5a7-4c0e-a848-79e6ead28a9c/Ley%20del%20Código%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/>

³⁰⁹ National Assembly of Ecuador. Draft Comprehensive Criminal Code. October, 2011. “Article 125. - Inadmissibility of evidence [*Inadmisibilidad de prueba*].- In the case of a defendant charged with defamation that does not constitute the imputation of criminal conduct [*injuria no calumniosa*], evidence of the truth of the accusations shall not be admissible.” Available at: <http://documentacion.asambleanacional.gov.ec/alfresco/d/d/workspace/SpacesStore/233c7e51-a5a7-4c0e-a848-79e6ead28a9c/Ley%20del%20Código%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/>

³¹⁰ National Assembly of Ecuador. Draft Comprehensive Criminal Code. October 2011. Article 126. Available at: <http://documentacion.asambleanacional.gov.ec/alfresco/d/d/workspace/SpacesStore/233c7e51-a5a7-4c0e-a848-79e6ead28a9c/Ley%20del%20Código%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/>

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 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

³¹¹ La Hora. June 27, 2012. *Los abogados obligados a callar ante medios de comunicación*. Available at: http://www.lahora.com.ec/index.php/noticias/show/1101352397/-1/Abogados_obligados_a_callar_ante_medios_.html#.T-tWAdlSSa8; Pichincha Bar Association. *Attorney Code of Professional Conduct*. Available at: <http://www.colabpi.pro.ec/images/Pdf/codigodeconductaprofesionaldelaabogacia.pdf>

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=74efd7eb-46f3-4bfa-9c34-d86c7df8f9bf&groupId=10136

³¹³ On February 1, indigenous leader and former director of the community radio station *La Voz de Arutam*, José Acacho, was arrested on a criminal charges alleging sabotage and terrorism, because of messages that were broadcast on that station. On April 27, journalist Wálter Vite Benítez was arrested in Esmeraldas when he was convicted on appeal and sentenced to a year in prison and a \$500 fine. On September 20, the convictions of the directors of the newspaper *El Universo*, Carlos Nicolás Pérez Lapentti, Carlos Pérez Barriga, and César Pérez Barriga, and journalist Emilio Palacio, were affirmed on appeal. The defendants were sentenced to three years in prison and ordered to pay US \$40 million (US \$30 million to be paid by the defendants, and US \$10 million by the company). On November 25, indigenous leader Mónica Chuji was sentenced to one year in prison and ordered to pay a fine of a US \$100,000, for having referred to the Minister of Public Administration as a “nouveau riche.” 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/anauales/2012%2003%2021%20Informe%20Anual%20RELE%202011%20impr-esion.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 Expression. December 27, 2011. Press Release R134/11. *Office of the Special Rapporteur Expresses Concern over Criminal Verdict against Journalist in Ecuador*. Available at: <http://www.oas.org/en/iachr/expresion/showarticle.asp?artID=879&IID=1>

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/anauales/2012%2003%2021%20Informe%20Anual%20RELE%202011%20impr-esion.pdf>

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

188. On February 27, President Correa announced his decision to request the suspension of the convictions and to pardon the *El Universo* directors and columnist, as well as to drop the claim against Calderón and Zurita.³¹⁹ In his decision, expressed in a letter, President Correa used the

³¹⁵ Fifth Civil Court of Pichincha. February 6, 2012. Case No. 2011-0265. Available at: <http://www.funcionjudicial-pichincha.gob.ec/index.php/consulta-de-procesos>; An unofficial copy of the judgment can be viewed at the following link: http://www.elcomercio.com/politica/sentencia-Caso-Gran-Hermano_ECMFIL20120207_0015.pdf

³¹⁶ 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. 170. Available at: <http://www.oas.org/es/cidh/expresion/docs/informes/anales/2012%2003%2021%20Informe%20Anual%20RELE%202011%20imprेशन.pdf>

³¹⁷ Special Criminal Division of the National Court of Justice of Ecuador. February 16, 2012. Reading of the judgment ruling on the petition for cassation [*recurso de casación*] against the September 22, 2011. Decision of the Second Criminal and Traffic Division of the Provincial Court of Guayas. Case No. 09122-2011-0525. Youtube. *Juez Wilson Merino condena a 3 Años de Prisión y 40 Millones*. Posted by PrensaSinCensura. February 16, 2012. Available at: <http://www.youtube.com/watch?v=x2cF0CvukiU>

³¹⁸ Fifteenth Court of Criminal Guarantees of Guayas. Case No. 09265-2011-0457. March 21, 2011. Serious calumnious and non-calumnious defamation. Available for consultation at: http://www.funcionjudicial-quayas.gob.ec/portal/index.php?option=com_wrapper&view=wrapper&Itemid=63; Committee to Protect Journalists (CPJ). March 31, 2011. *Presidente de Ecuador demanda a diario crítico por difamación*. Available at: <http://www.cpj.org/es/2011/03/presidente-de-ecuador-demanda-a-diario-critico-por.php>; Reporters Without Borders. April 1, 2011. *President urged to withdraw two legal actions demanding heavy damages, jail terms*. Available at: <http://en.rsf.org/ecuador-president-urged-to-withdraw-two-01-04-2011.39938.html>

³¹⁹ El Ciudadano. February 27, 2012. *Carta Pública del Presidente anunciando la remisión a sentenciados en caso El Universo (CARTAS)*. Available at: http://www.elciudadano.gob.ec/index.php?option=com_content&view=article&id=30975:carta-publica-del-presidente-anunciando-la-remision-a-sentenciados-en-caso-el-universo&catid=40:actualidad&Itemid=63; CNN Español. February 27, 2012. *Rafael Correa perdona al diario El Universo y a sus dueños*. 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>

expression “There is forgiveness, but there is no forgetting. We must learn from the present and from history”.

189. On May 17, the Fifth Court of Criminal Guarantees of Pichincha issued precautionary measures against four of the members of an independent investigation group [*veeduría*] created by the Council of Citizen Participation and Social Oversight (CPCCS), in a criminal case alleging the commission of a crime involving public instruments. The defendants were prohibited from traveling outside the country and were required to appear before the Court every two weeks³²⁰. 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.³²¹ The independent investigation group, originally comprised by 5 principals and 5 alternates, began its work on July 4, 2009, and on February 3, 2011, it reportedly submitted its final report to the Comptroller General of the Republic.³²² In that report, some of the members of the group reportedly concluded that the President had knowledge of some of his brother’s contracts with the State. President Correa called the report “false,” and on March 31, 2011 he filed a complaint with the Office of the Public Prosecutor alleging that 4 of the members of the independent investigation group had made false statements: Pablo Chambers, Gerardo Portillo, José Quishpe, and Víctor Hidalgo.³²³ On May 15, 2012, the National Secretariat of Communications issued a broadcast on *Teleamazonas* to refute the assertions of Chambers and call his reputation into question.³²⁴ The four monitors reportedly sought asylum at different embassies.³²⁵ On September 13, the same Fifth Court of Criminal Guarantees of Pichincha issued an order to stand trial against the four members of the independent investigation group, for their alleged commission of the offenses described in Articles 354 and 355 of the Criminal Code (false statements and perjury).³²⁶

³²⁰ Fifth Court of Criminal Guarantees of Pichincha. May 17, 2012. Case No. 2012-0766. False Statements and Perjury. Available for consultation at: <http://www.funcionjudicial-pichincha.gob.ec/index.php/consulta-de-procesos>

³²¹ El Comercio. July 13, 2009. *La veeduría para F. Correa se organiza*. Available at: http://www.elcomercio.com/noticias/veeduria-Correa-organiza_0_78592166.html; Republic of Ecuador. July 1, 2009. Press Release No. 41: *Conformación de la Veeduría Ciudadana: Caso Fabricio Correa*. 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_p_id%3D101_INSTANCE_b2Kh%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-3%26p_p_col_count%3D1%26_101_INSTANCE_b2Kh_delta%3D20%26_101_INSTANCE_b2Kh_keywords%3D%26_101_INSTANCE_b2Kh_advancedSearch%3Dfalse%26_101_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>

³²² Republic of Ecuador. July 1, 2009. Press Release No. 41: *Conformación de la Veeduría Ciudadana: Caso Fabricio Correa*. 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_p_id%3D101_INSTANCE_b2Kh%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-3%26p_p_col_count%3D1%26_101_INSTANCE_b2Kh_delta%3D20%26_101_INSTANCE_b2Kh_keywords%3D%26_101_INSTANCE_b2Kh_advancedSearch%3Dfalse%26_101_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>

³²³ Fifth Court of Criminal Guarantees of Pichincha. May 17, 2012. Case No. 2012-0766. False Statements and Perjury. Available for consultation at: <http://www.funcionjudicial-pichincha.gob.ec/index.php/consulta-de-procesos>

³²⁴ Republic of Ecuador. National Secretariat of Communications. May 15, 2012. *Mentiras de Pablo Chambers son bienvenidas en Teleamazonas*. Available at: <http://www.youtube.com/watch?v=7cusZeB-xvY>; Ecuador En Vivo. May 15, 2012. *Coronel: La puerta de Los Desayunos de 24 horas está abierta para Fernando Alvarado*. Available at: <http://www.ecuadorenvivo.com/2012051591533/politica/coronel-la-puerta-de-los-desayunos-de-24-horas-esta-abierta-para-fernando-alvarado.html>

³²⁵ Ecuavisa/ EFE. May 17, 2012. *Prohíben salir del país a veedores de contratos de Fabricio Correa*. Available at: <http://www.ecuavisa.com/noticias/noticias-actualidad/49729-prohiben-salir-del-pais-a-veedores-de-contratos-de-fabricio-correa.html>; El Comercio. May 19, 2012. *Veedores del caso Gran Hermano pidieron asilo a 4 países más*. Available at: http://www.elcomercio.com/politica/Veedores-pidieron-asilo-paises_0_702529945.html

³²⁶ Fifth Court of Criminal Guarantees of Pichincha. September 13, 2012. Case No. 2012-0766. False Statements and Perjury. Available for consultation at: <http://www.funcionjudicial-pichincha.gob.ec/index.php/consulta-de-procesos>

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

191. The Office of the Special Rapporteur was informed that on September 25 a complaint alleging serious non-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.³²⁸

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

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

³²⁷ Ninth Court of Criminal Guarantees of Pichincha. August 31, 2012. Case No. 2011-0146. Available at: <http://www.funcionjudicial-pichincha.gob.ec/index.php/consulta-de-procesos>; *El Universo*. August 29, 2012. *Jaime Solórzano fue sentenciado por desacato, al ofender a funcionarios públicos*. Available at: <http://www.eluniverso.com/2012/08/29/1/1355/solorzano-fue-sentenciado-desacato.html>

³²⁸ Second Court of Criminal Guarantees of Carchi. September 25, 2012. Case No. 04252-2012-0112. Serious Defamation [*Injuria calumniosa y no calumniosa grave*]. Available for consultation at: <http://www.funcionjudicial-carchi.gob.ec/index.php/nombre>

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

³³⁰ Judicial Function of Guayas. Family, Women, Infancy and Juvenile Judicial Unit No. 3 of the Canton of Guayaquil. Case No. 09207-2012-0137. Judgment of October 2, 2012. Available for consultation at: http://www.funcionjudicial-quayas.gob.ec/index.php?option=com_wrapper&view=wrapper&Itemid=63

³³¹ Judiciary of Guayas. First Court of Criminal Guarantees. Case No. 09251-2009-0574. Available for consultation at: http://www.funcionjudicial-quayas.gob.ec/index.php?option=com_wrapper&view=wrapper&Itemid=63; Ministry of Foreign Affairs, Trade and Integration. Statement No. 061. *Colombia expulsada a Ecuador a ciudadano Fernando Balda Flores*. Available at: <http://www.mmrree.gob.ec/2012/com061.asp>

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

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

³³² La Hora. November 14, 2012. See Country Section. P. B1. Available at: http://issuu.com/la_hora/docs/diario_la_hora_el_oro_14_de_noviembre_2012

³³³ Twenty-first Civil Court of Pichincha. November 12, 2012. Case No. 2012-1410. Available at for consultation: <http://www.funcionjudicial-pichincha.gob.ec/index.php/consulta-de-procesos>

³³⁴ Office of the President of the Republic of Ecuador. September 18, 2012. Official Letter No. PR-SECOM-2012-000184-O. Available at: <http://www.pixelperpetua.net/docs/NOTA-ELCOMERCIO.pdf>; El Diario. October 1, 2012. *Diario El comercio cancela la opción de comentarios en su sitio web*. Available at: <http://www.eldiario.com.ec/noticias-manabi-ecuador/243993-diario-el-comercio-cancela-la-opcion-de-comentarios-en-su-sitio-web/>; IFEX/ Fundamedios. October 16, 2012. *Presidente ecuatoriano 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: http://www.elciudadano.gob.ec/index.php?option=com_content&view=article&id=36226:enlace-ciudadano-nro-292-desde-quito&catid=43:enlaces-ciudadanos-todos&Itemid=67 [from 2:38:56].

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”³³⁶—there is a section in which the President of the Republic discusses matters relating to freedom of expression in Ecuador. In that forum, the President has repeatedly referred to journalists and the media with epithets including: “corrupt press,”³³⁷ “hit men with ink,” [“*sicarios de tinta*”]³³⁸ “useless, corrupt press,”³³⁹ “mercantilist media,”³⁴⁰ “mercantilist press”³⁴¹ “little liars,”³⁴² “scoundrels,”³⁴³ “shameless,”³⁴⁴ “unethical,”³⁴⁵ “amorality,”³⁴⁶ “worst press in the world,”³⁴⁷ among others.

³³⁶ National Secretariat of Communications of Ecuador. *Enlace Ciudadano*. Available at: http://secom.gov.ec/index.php?option=com_content&view=article&id=49&Itemid=53

³³⁷ Office of the President of the Republic of Ecuador. *Enlace Ciudadano* 253. January 7, 2012. Originally available at: http://www.elciudadano.gob.ec/index.php?option=com_content&view=article&id=38400:enlace-ciudadano-nro-303-desde-buena-fe-los-rios&catid=43:enlaces-ciudadanos-todos&Itemid=67, and currently available on Ecuador TV: <http://www.ecuadortv.ec/programasecuadortv.php?c=1314> [158:50]; See also: Office of the President of the Republic of Ecuador. *Enlace Ciudadano* 257. February 4, 2012. Originally available at: http://www.elciudadano.gob.ec/index.php?option=com_content&view=article&id=38400:enlace-ciudadano-nro-303-desde-buena-fe-los-rios&catid=43:enlaces-ciudadanos-todos&Itemid=67, and currently available at Ecuador TV: <http://www.ecuadortv.ec/programasecuadortv.php?c=1314> [160:19]; See also: Office of the President of the Republic of Ecuador. *Enlace Ciudadano* 273. May 26, 2012. Originally available at: http://www.elciudadano.gob.ec/index.php?option=com_content&view=article&id=38400:enlace-ciudadano-nro-303-desde-buena-fe-los-rios&catid=43:enlaces-ciudadanos-todos&Itemid=67, and currently available on You Tube, Official YouTube Channel of the Presidency of the Republic of Ecuador: <http://www.youtube.com/watch?v=ZNCg6P10SpU> [1:26:49]; See also: Office of the President of the Republic of Ecuador *Enlace Ciudadano* 268. April 21, 2012. Originally available at: http://www.elciudadano.gob.ec/index.php?option=com_content&view=article&id=38400:enlace-ciudadano-nro-303-desde-buena-fe-los-rios&catid=43:enlaces-ciudadanos-todos&Itemid=67, currently available on You Tube, Official YouTube Channel of the Presidency of the Republic of Ecuador: <http://www.youtube.com/watch?v=09dbtmWi-2g> [2:57:44].

³³⁸ Office of the President of the Republic of Ecuador. *Enlace Ciudadano* 290. September 22, 2012. Available at: http://www.elciudadano.gob.ec/index.php?option=com_content&view=article&id=35852:enlace-ciudadano-nro-290-desde-napo&catid=43:enlaces-ciudadanos-todos&Itemid=67 [2:13:32].

³³⁹ Office of the President of the Republic of Ecuador. *Enlace Ciudadano* 273. May 26, 2012. Originally available at: http://www.elciudadano.gob.ec/index.php?option=com_content&view=article&id=38400:enlace-ciudadano-nro-303-desde-buena-fe-los-rios&catid=43:enlaces-ciudadanos-todos&Itemid=67, and currently available on You Tube, Official YouTube Channel of the Presidency of the Republic of Ecuador: <http://www.youtube.com/watch?v=ZNCg6P10SpU> [1:27:56].

³⁴⁰ Office of the President of the Republic of Ecuador. *Enlace Ciudadano* 276. June 16, 2012. Originally at: http://www.elciudadano.gob.ec/index.php?option=com_content&view=article&id=38400:enlace-ciudadano-nro-303-desde-buena-fe-los-rios&catid=43:enlaces-ciudadanos-todos&Itemid=67, and currently available on You Tube, Official YouTube Channel of the Presidency of the Republic of Ecuador: <http://www.youtube.com/watch?v=4Ta1WKvRrgs> [2:34:37].

³⁴¹ Office of the President of the Republic of Ecuador. *Enlace Ciudadano* 290. September 22, 2012. Available at: http://www.elciudadano.gob.ec/index.php?option=com_content&view=article&id=35852:enlace-ciudadano-nro-290-desde-napo&catid=43:enlaces-ciudadanos-todos&Itemid=67 [2:45:15].

³⁴² Office of the President of the Republic of Ecuador. *Enlace Ciudadano* 255. January 21, 2012. Originally available at: http://www.elciudadano.gob.ec/index.php?option=com_content&view=article&id=38400:enlace-ciudadano-nro-303-desde-buena-fe-los-rios&catid=43:enlaces-ciudadanos-todos&Itemid=67, and currently available at Ecuador TV: <http://www.ecuadortv.ec/programasecuadortv.php?c=1314> [159:50].

³⁴³ Office of the President of the Republic of Ecuador. *Enlace Ciudadano* 276. June 16, 2012. Originally available at: http://www.elciudadano.gob.ec/index.php?option=com_content&view=article&id=38400:enlace-ciudadano-nro-303-desde-buena-fe-los-rios&catid=43:enlaces-ciudadanos-todos&Itemid=67, and currently available on You Tube, Official Channel of Enlace Ciudadano Ecuador <http://www.youtube.com/watch?v=4Ta1WKvRrgs> [2:46:30].

³⁴⁴ Office of the President of the Republic of Ecuador. *Enlace Ciudadano* 276. June 16, 2012. Originally available at: http://www.elciudadano.gob.ec/index.php?option=com_content&view=article&id=38400:enlace-ciudadano-nro-303-desde-buena-fe-los-rios&catid=43:enlaces-ciudadanos-todos&Itemid=67; and currently available on You Tube, Official Channel of Enlace Ciudadano Ecuador: <http://www.youtube.com/watch?v=4Ta1WKvRrgs> [2:39:06]; See also: Office of the President of the Republic of Ecuador. *Enlace Ciudadano* 295. October 27, 2012. Available on YouTube, Official Channel of Enlace Ciudadano Ecuador: <http://www.youtube.com/watch?v=72Q14jVQO48> [6:05].

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

...continuation

³⁴⁵ Office of the President of the Republic of Ecuador. *Enlace Ciudadano* 283. August 4, 2012. Available at: http://www.elciudadano.gob.ec/index.php?option=com_content&view=article&id=34535:enlace-ciudadano-nro-283-desde-cotocollao-pichincha&catid=43:enlaces-ciudadanos-todos&Itemid=67 [2:45:03].

³⁴⁶ Office of the President of the Republic of Ecuador. *Enlace Ciudadano* 276. June 16, 2012. Originally available at: http://www.elciudadano.gob.ec/index.php?option=com_content&view=article&id=38400:enlace-ciudadano-nro-303-desde-buena-fe-los-rios&catid=43:enlaces-ciudadanos-todos&Itemid=67; and currently available on You Tube, Official Channel of Enlace Ciudadano Ecuador <http://www.youtube.com/watch?v=4Ta1WKvRrgs> [2:45:31].

³⁴⁷ Office of the President of the Republic of Ecuador. *Enlace Ciudadano* 276. June 16, 2012. Originally available at: http://www.elciudadano.gob.ec/index.php?option=com_content&view=article&id=38400:enlace-ciudadano-nro-303-desde-buena-fe-los-rios&catid=43:enlaces-ciudadanos-todos&Itemid=67; and currently available on You Tube, Official Channel of Enlace Ciudadano Ecuador <http://www.youtube.com/watch?v=4Ta1WKvRrgs> [2:46:19].

³⁴⁸ Office of the President of the Republic of Ecuador. *Enlace Ciudadano* 253. January 7, 2012. Originally available at: http://www.elciudadano.gob.ec/index.php?option=com_content&view=article&id=38400:enlace-ciudadano-nro-303-desde-buena-fe-los-rios&catid=43:enlaces-ciudadanos-todos&Itemid=67, and currently available at Ecuador TV: <http://www.ecuadortv.ec/programasecuadortv.php?c=1314>. Referring to the newspaper *El Comercio*: “[m]ay this sad anniversary serve to remind us of history and to reject— I can already imagine the highly favorable headlines ‘General Alfaro, the best Ecuadorean of all times,’ but without their first having apologized for the General’s murder. Because they were accomplices, instigators, accessories to the savage bonfire. Never forget.” [162:17]

³⁴⁹ Fundamedios. January 25, 2012. *Alert No. 413. Se Pintan Graffitis Contra Medios Privados Ecuatorianos*. Available at: <http://www.fundamedios.org/portada/libertades/alertas/historico/2012/item/se-pintan-graffitis-contra-medios-privados-ecuatorianos.html>; *Al Día*. January 31, 2012. Observatorio de Medios. Available at: <http://multimedios.evaluar.com/index.php/periodicoaldia/newsletter/174>

³⁵⁰ Office of the President of the Republic of Ecuador. *Enlace Ciudadano* 255. January 21, 2012. Originally available at: http://www.elciudadano.gob.ec/index.php?option=com_content&view=article&id=38400:enlace-ciudadano-nro-303-desde-buena-fe-los-rios&catid=43:enlaces-ciudadanos-todos&Itemid=67, and currently available on Ecuador TV. The video during the program is from [152:03] to [156:45]; and the segment on Fausto Yepes and *Teleamazonas*’s investigation is from [152:03] to [159:27]: <http://www.ecuadortv.ec/programasecuadortv.php?c=1314>

³⁵¹ Office of the President of the Republic of Ecuador. *Enlace Ciudadano* 255. January 21, 2012. Originally available at: http://www.elciudadano.gob.ec/index.php?option=com_content&view=article&id=38400:enlace-ciudadano-nro-303-desde-buena-fe-los-rios&catid=43:enlaces-ciudadanos-todos&Itemid=67, and currently available on Ecuador TV: <http://www.ecuadortv.ec/programasecuadortv.php?c=1314> [151:41]; IFEX. *Government attempts to discredit journalist and his investigation*. January 30, 2012. Available at: http://www.ifex.org/ecuador/2012/01/30/teleamazonas_videos/

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.”³⁵³ 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.”³⁵⁴ 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.³⁵⁵

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

³⁵² Office of the President of the Republic of Ecuador. *Enlace Ciudadano* 271. May 12, 2012. Originally available at: http://www.elciudadano.gob.ec/index.php?option=com_content&view=article&id=38400:enlace-ciudadano-nro-303-desde-buena-fe-los-rios&catid=43:enlaces-ciudadanos-todos&Itemid=67, and currently available on Ecuador TV: <http://www.ecuadortv.ec/programasecuadortv.php?c=1314> [169:04]; Universidad Andina Simón Bolívar. 2012. *Informe sobre Derechos Humanos. Ecuador 2011*. Available at: <http://www.uasb.edu.ec/UserFiles/369/File/PDF/Actividadespadh/Informedh2011.pdf>; El Telégrafo. May 19, 2012. *U. Andina asume que sus fuentes fueron las notas de prensa y Fundamedios*. Available at: http://www.telegrafo.com.ec/index.php?option=com_zoo&task=item&item_id=39854&Itemid=2; Ciudadanía Informada. May 19, 2012. *Universidad Andina ratifica cifras de violaciones de derechos humanos en el Gobierno*. Available at: http://www.ciudadaniainformada.com/noticias-politica-ecuador0/noticias-politica-ecuador/ir_a/politica/articulo/universidad-andina-ratifica-cifras-de-violaciones-de-derechos-humanos-en-el-gobierno.html

³⁵³ Office of the President of the Republic of Ecuador. *Enlace Ciudadano* 271. May 12, 2012. Originally available at: http://www.elciudadano.gob.ec/index.php?option=com_content&view=article&id=38400:enlace-ciudadano-nro-303-desde-buena-fe-los-rios&catid=43:enlaces-ciudadanos-todos&Itemid=67, and currently available on Ecuador TV: <http://www.ecuadortv.ec/programasecuadortv.php?c=1314> [168:34].

³⁵⁴ Office of the President of the Republic of Ecuador. *Enlace Ciudadano* 272. May 19, 2012. Originally available at: http://www.elciudadano.gob.ec/index.php?option=com_content&view=article&id=38400:enlace-ciudadano-nro-303-desde-buena-fe-los-rios&catid=43:enlaces-ciudadanos-todos&Itemid=67; and currently available on You Tube, Official YouTube Channel of the Presidency of the Republic of Ecuador: <http://www.youtube.com/watch?v=LKC8AbkxIss> [2:44:36]; Ecuador en Vivo. May 19, 2012. *Correa: Informe sobre DDHH de Universidad Andina es una “compilación de pasquines”*. See video Available at: <http://www.ecuadorenvivo.com/2012051991822/politica/correa-informe-sobre-ddhh-de-universidad-andina-es-una-compilacion-de-pasquines.html>

³⁵⁵ Universidad Andina Simón Bolívar. 2012. *Informe sobre Derechos Humanos. Ecuador 2011*, p. 17. Available at: <http://www.uasb.edu.ec/UserFiles/369/File/PDF/Actividadespadh/Informedh2011.pdf>; El Telégrafo. May 19, 2012. *U. Andina asume que sus fuentes fueron las notas de prensa y Fundamedios*. Available at: http://www.telegrafo.com.ec/index.php?option=com_zoo&task=item&item_id=39854&Itemid=2; Ciudadanía Informada. May 19, 2012. *Universidad Andina ratifica cifras de violaciones de derechos humanos en el Gobierno*. Available at: http://www.ciudadaniainformada.com/noticias-politica-ecuador0/noticias-politica-ecuador/ir_a/politica/articulo/universidad-andina-ratifica-cifras-de-violaciones-de-derechos-humanos-en-el-gobierno.html

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.³⁵⁶

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.³⁵⁷

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.³⁵⁸ 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.³⁵⁹

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

³⁵⁶ Office of the President of the Republic of Ecuador. *Enlace Ciudadano* 273. May 26, 2012. Originally available at: http://www.elciudadano.gob.ec/index.php?option=com_content&view=article&id=38400:enlace-ciudadano-nro-303-desde-buena-fe-los-rios&catid=43:enlaces-ciudadanos-todos&Itemid=67, and currently available on You Tube, Official YouTube Channel of the Presidency of the Republic of Ecuador: <http://www.youtube.com/watch?v=ZNCq6P10SpU> [1:26:33] to [1:28:22].

³⁵⁷ Office of the President of the Republic of Ecuador. *Enlace Ciudadano* 274. June 2, 2012. Originally available at: http://www.elciudadano.gob.ec/index.php?option=com_content&view=article&id=38400:enlace-ciudadano-nro-303-desde-buena-fe-los-rios&catid=43:enlaces-ciudadanos-todos&Itemid=67, and currently available on You Tube, Official YouTube Channel of the Presidency of the Republic of Ecuador: <http://www.youtube.com/watch?v=4BPymmi3-JQ> [2:11:17].

³⁵⁸ Office of the President of the Republic of Ecuador. *Enlace Ciudadano* 276. June 16, 2012. Originally available at: http://www.elciudadano.gob.ec/index.php?option=com_content&view=article&id=38400:enlace-ciudadano-nro-303-desde-buena-fe-los-rios&catid=43:enlaces-ciudadanos-todos&Itemid=67; and currently available at Ecuador TV: <http://www.ecuadortv.ec/programasecuadortv.php?c=1314> [145:31].

³⁵⁹ Office of the President of the Republic of Ecuador. *Enlace Ciudadano* 278. June 30, 2012. Originally available at: http://www.elciudadano.gob.ec/index.php?option=com_content&view=article&id=38400:enlace-ciudadano-nro-303-desde-buena-fe-los-rios&catid=43:enlaces-ciudadanos-todos&Itemid=67 and currently available on You Tube, Official YouTube Channel of the Presidency of the Republic of Ecuador: <http://www.youtube.com/watch?v=upyXln4tdM8> [2:37:03]; Letter from the Editor of *El Universo*, Gustavo Cortez Galecio. July 13, 2012. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

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."³⁶¹

207. According to information received, on June 28, the National Secretariat of Communications [*Secretaría Nacional de Comunicación*] (SECOM, in its Spanish acronym) disparaged the National Journalists' Union [*Unión Nacional de Periodistas*] (UNP, in its Spanish acronym), calling it an "opposition political actor," following a press release from the organization expressing its concern over the growing deterioration of relations between the government and the private media.³⁶² According to a statement released by the National Secretariat of Communications, the National Journalists' Union "has ceased to represent authentic journalists. Its leadership does not seek to defend the interests of true journalism and freedom of expression; it has abandoned the writers. Today the UNP is an opposition political actor that works under the guidance of the owners of mercantilist media with clear corporate aims."³⁶³

208. In its 2011 annual report, the Inter-American Commission stated that the Ecuadorean Government had reportedly put out at least two radio and television broadcasts calling into question the individuals—particularly César Ricaurte, the director of Fundamedios—who had attended the public hearing on the Situation of Freedom of Expression in Ecuador, held at IACHR headquarters on October 25, 2011.³⁶⁴ On November 3, 2011, the Inter-American Commission requested information from the State with regard to this matter. In its November 18 reply, the State indicated that the purpose of the presidential broadcast had been "to properly inform the Ecuadorean public of events that are not published in the privately-owned media."³⁶⁵

³⁶¹ Office of the President of the Republic of Ecuador. *Enlace Ciudadano* 298. November 24, 2012. Available at: http://www.elciudadano.gob.ec/index.php?option=com_content&view=article&id=37505:enlace-ciudadano-nro-298-desde-quito&catid=43:enlaces-ciudadanos-todos&Itemid=67; Also available on YouTube, Official YouTube Channel of the Presidency of the Republic of Ecuador: http://www.youtube.com/watch?v=GBI5iRrchnY&feature=player_embedded# [0:48:55] to [0:54:00]; Fundamedios. No date. *Presidente rompe ejemplar de periódico por cuarta ocasión*. Available at: <http://www.fundamedios.org/portada/libertades/alertas/historico/2012/item/presidente-rompe-ejemplar-de-periodico-por-cuarta-ocasin.html>

³⁶² Ecuador Inmediato. June 28, 2012. *Guerra de comunicados entre la UNP y la Secretaría de Comunicación*. Available at: http://www.ecuadorinmediato.com/index.php?module=Noticias&func=news_user_view&id=176361&umt=guerra_comunicados_entr_e_unp_y_secretaria_comunicacion; Fundamedios. June 29, 2012. *Secretaría de comunicación tilda de actor político de oposición a gremio periodístico*. Available at: <http://www.fundamedios.org/portada/libertades/alertas/historico/2012/item/secretara-de-comunicacin-tilda-de-actor-politico-de-oposicion-a-gremio-periodistico.html>

³⁶³ Office of the President of the Republic of Ecuador. July 1, 2012. *UNP un Gremio que no Representa al Periodismo*. Available at: http://www.elciudadano.gob.ec/index.php?option=com_content&view=article&id=33678:lunp-un-gremio-que-no-representa-al-periodismo&catid=40:actualidad&Itemid=63

³⁶⁴ 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. 192. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/2012%2003%2021%20Annual%20Report%20RELE%202011pirnting.pdf>. See also: Presidential Broadcast of November 1, 2011. *Lo que olvidó decir Fundamedios en la CIDH*. YouTube. Available at: <http://www.youtube.com/watch?v=vAi3L3DVbQs&feature=related>

³⁶⁵ 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. 193-195. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/2012%2003%2021%20Annual%20Report%20RELE%202011pirnting.pdf>

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 cable³⁷¹ 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

³⁶⁶ Office of the President of the Republic of Ecuador. *Enlace Ciudadano* 268. April 21, 2012. Originally available at: http://www.elciudadano.gob.ec/index.php?option=com_content&view=article&id=38400:enlace-ciudadano-nro-303-desde-buena-fe-los-rios&catid=43:enlaces-ciudadanos-todos&Itemid=67, and currently available on You Tube, Official YouTube Channel of the Presidency of the Republic of Ecuador: <http://www.youtube.com/watch?v=09dbtmWi-2g> [0:23:23].

³⁶⁷ Office of the President of the Republic of Ecuador. *Enlace Ciudadano* 269. April 28, 2012. Originally available at: http://www.elciudadano.gob.ec/index.php?option=com_content&view=article&id=38400:enlace-ciudadano-nro-303-desde-buena-fe-los-rios&catid=43:enlaces-ciudadanos-todos&Itemid=67, and currently available at Ecuador TV: <http://www.ecuadortv.ec/programasecuadortv.php?c=1314> [161:14]; Office of the President of the Republic of Ecuador. Communication to the Executive Secretary of the Inter-American Commission on Human Rights. May 24, 2012. Available at: Archives of the Inter-American Commission on Human Rights; El Telégrafo. April 25, 2012. *EE.UU. nutría sus informes con reportes de periodistas “clave”*. Available at: http://www.telegrafo.com.ec/index.php?option=com_zoo&task=item&item_id=37199&Itemid=2; Ecuador Inmediato. April 21, 2012. *Wikileaks reveló que Fundamedios era “contacto” de embajada estadounidense*. Available at: http://www.ecuadorinmediato.com/index.php?module=Noticias&func=news_user_view&id=171730&umt=wikileaks_revel3_que_fundamedios_era_27contacto27_de_embajada_estadounidense; El Comercio. April 28, 2012. *Fundamedios aclara cable de Wikileaks*. Available at: http://www.elcomercio.com/politica/Fundamedios-aclara-cable-Wikileaks_0_689931217.html

³⁶⁸ Office of the President of the Republic of Ecuador. *Enlace Ciudadano* 276. June 16, 2012. [2:49:08] Originally available at: http://www.elciudadano.gob.ec/index.php?option=com_content&view=article&id=38400:enlace-ciudadano-nro-303-desde-buena-fe-los-rios&catid=43:enlaces-ciudadanos-todos&Itemid=67; and currently available at Ecuador TV: <http://www.ecuadortv.ec/programasecuadortv.php?c=1314> [169:49].

³⁶⁹ Office of the President of the Republic of Ecuador. *Enlace Ciudadano* 277. June 23, 2012. Originally available at: http://www.elciudadano.gob.ec/index.php?option=com_content&view=article&id=38400:enlace-ciudadano-nro-303-desde-buena-fe-los-rios&catid=43:enlaces-ciudadanos-todos&Itemid=67, and currently available at Ecuador TV: <http://www.ecuadortv.ec/programasecuadortv.php?c=1314> [141:35]; BBC. June 20, 2012. *Los cables que Wikileaks filtró sobre Ecuador*. Available at: http://www.bbc.co.uk/mundo/noticias/2012/06/120620_ecuador_wikileaks_assange_correa_cables_pea.shtml

³⁷⁰ Office of the President of the Republic of Ecuador. *Enlace Ciudadano* 277. June 23, 2012. Originally available at: http://www.elciudadano.gob.ec/index.php?option=com_content&view=article&id=38400:enlace-ciudadano-nro-303-desde-buena-fe-los-rios&catid=43:enlaces-ciudadanos-todos&Itemid=67, and currently available at Ecuador TV: <http://www.ecuadortv.ec/programasecuadortv.php?c=1314> [148:12].

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
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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 legal actions against him. Those statements apparently stemmed from the Minister's objection to the content of a documentary made by Villa entitled *Rafael Correa: Portrait of a Father of the Nation* [*Rafael Correa: retrato de un padre de la patria*], which was to be broadcast on television in the United States.³⁷⁴

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

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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-Wikileaks_0_689931217.html

³⁷³ Republic of Ecuador. Ministry of Foreign Affairs, Trade and Integration. No date. Press Release No. 023. *Comunicado sobre las declaraciones del Presidente de los Estados Unidos, Barack Obama, con motivo del Día Mundial de la Libertad de Prensa*. Available at: <http://www.mmrree.gob.ec/2012/com023.asp>; Agencia Pública de Noticias del Ecuador y Suramérica. May 4, 2012. *Ecuador califica como infundada acusación de Obama sobre supuesta persecución a antiguo crítico de medios*. Available at: <http://andes.info.ec/pol%C3%ADtica/2068.html>

³⁷⁴ Andes. November 29, 2012. *Documental sobre Presidente Correa es un burdo montaje, sostiene Secretario de Comunicación y no descarta acciones judiciales* (video of the interview of Fernando Alvarado). [00:11:45 to 00:23:00] See in particular minute [00:22:00]. Available at: <http://andes.info.ec/pol%C3%ADtica/9568.html>; also available at: http://www.youtube.com/watch?feature=player_embedded&v=iwi5GV4CUnQ; *El Ciudadano*. November 29, 2012. *El Gobierno difundirá y aclarará las mentiras de documental de Santiago Villa*. Available at: http://www.elciudadano.gob.ec/index.php?option=com_content&view=article&id=37628:el-gobierno-difundira-y-aclarara-las-mentiras-de-documental-de-santiago-villa&catid=40:actualidad&Itemid=63

³⁷⁵ National Journalists' Union of Ecuador. December 6, 2012. *UNP denuncia que en Ecuador hay una persistente campaña para silenciar a periodistas*. Available at: http://www.unionnacionaldeperiodistas.com/index.php?option=com_content&view=article&id=211:comunicado-de-prensa-unp&catid=70:comunicados

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.”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.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.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.³⁸¹ Moreover, on March 19, in the central

³⁷⁶ IACHR. Annual Report 2010. OEA/Ser.L/V/II. Doc. 5. March 7, 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. 206-207. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%202010%20P%20ENG.pdf>; 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. 156 & 206. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/2012%2003%2021%20Annual%20Report%20RELE%202011pirnting.pdf>

³⁷⁷ IACHR. Annual Report 2009. OEA/Ser.L/V/II. Doc. 51. December 30, 2009. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). Para. 32. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%20Anual%202009%20%20ENG.pdf>

³⁷⁸ I/A Court H.R. *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of January 28, 2009. Series C No. 194. Para. 139; I/A Court H.R. *Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of January 28, 2009. Series C No. 195. Para. 151.

³⁷⁹ Fundamedios. January 23, 2012. *Dos corresponsales de medios incautados por el Estado son amenazados por desconocidos*. Available at: <http://www.fundamedios.org/portada/libertades/alertas/historico/2012/item/dos-corresponsales-de-medios-incautados-por-el-estado-son-amenazados-por-desconocidos.html>; La Hora. January 24, 2012. *Dos periodistas riosenses son amenazados por desconocidos*. Available at: <http://www.lahora.com.ec/index.php/noticias/show/1101272531-1/Dos-periodistas-riosenses-son-amenazados-por-desconocidos.html>

³⁸⁰ IFEX/ Fundamedios. March 13, 2012. *Camera operator attacked during anti-drug trafficking operation*. Available at: http://www.ifex.org/ecuador/2012/03/13/vinueza_golpeado/; Extra. March 9, 2012. *A pedradas intentaron escapar de los policías*. Available at: <http://www.extra.ec/ediciones/2012/03/09/cronica/a-pedradas-intentaron-escapar-de-los-policias/>

³⁸¹ IFEX/ Fundamedios. March 19, 2012. *Newspaper owner attacked by athlete*. Available at: <http://www.ifex.org/ecuador/2012/03/19/propietario-de-semanario/>; Inter-American Press Association (IAPA-SIP). April 2012. *Country Reports: Ecuador*. Available at: http://www.sipiapa.org/v4/det_informe.php?asamblea=48&inford=864&idioma=us

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.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.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.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.³⁸⁸

³⁸² Ecuador Inmediato. March 20, 2012. *Equipo de Ecuador TV denuncia que fue agredido en marcha de CONAIE*. Available at: http://www.ecuadorinmediato.com/index.php?module=Noticias&func=news_user_view&id=169447&umt=equipo_de_ecuador_tv_denuncia_que_fue_agredido_en_marcha_de_conaie; IFEX/ Fundamedios. March 22, 2012. *Government media personnel prevented from covering indigenous movement march*. Available at: http://www.ifex.org/ecuador/2012/03/22/government_media_censored/

³⁸³ El Telégrafo. March 28, 2012. *Mea Culpa*. Available at: http://www.telegrafo.com.ec/index.php?option=com_zoo&task=item&item_id=34029&Itemid=29; IFEX/ Fundamedios. March 30, 2012. *State newspaper editor-in-chief receives death threats after publishing criticisms*. Available at: http://www.ifex.org/ecuador/2012/03/30/perez_death_threat/

³⁸⁴ El Universo. June 19, 2012. *Simpatizantes del alcalde de Cuenca, Paúl Granda, insultaron a periodistas*. Available at: <http://www.eluniverso.com/2012/06/19/1/1355/simpatizantes-alcalde-cuenca-paul-granda-insultaron-periodistas.html>; Hoy. June 19, 2012. *Periodistas abandonan rueda de prensa convocada por alcalde*. Available at: <http://www.hoy.com.ec/noticias-ecuador/periodistas-abandonan-rueda-de-prensa-convocada-por-alcalde-551900.html>; Fundamedios. No date. *Periodistas de medios privados son agredidos verbalmente por simpatizantes de alcalde*. Available at: <http://www.fundamedios.org/portada/libertades/alertas/historico/2012/item/periodistas-de-medios-privados-son-agredidos-verbalmente-por-simpatizantes-de-alcalde.html>

³⁸⁵ IFEX/ Fundamedios. July 30, 2012. *Blogger told to "remain silent" in online death threat*. Available at: http://www.ifex.org/ecuador/2012/07/30/villegas_twitter_threat/; La República. July 26, 2012. *Amenazan al tuitero @Pablinho con la muerte de su hijo*. Available at: <http://www.larepublica.ec/blog/politica/2012/07/26/amenazan-al-tuitero-pablinho-con-la-muerte-de-su-hijo/>

³⁸⁶ Agencia Pública de Noticias del Ecuador y Suramérica (ANDES). June 26, 2012. *La comunicadora de la Gobernación del Carchi recibe amenazas de muerte*. Available at: <http://andes.info.ec/pol%C3%ADtica/3577.html>; Hoy. June 27, 2012. *Periodista agredida en Carchi denuncia amenazas de muerte*. Available at: <http://www.hoy.com.ec/noticias-ecuador/periodista-agredida-en-carchi-denuncia-amenazas-de-muerte-553207.html>; IFEX/ Fundamedios. June 28, 2012. *Government communications department photographer threatened*. Available at: http://www.ifex.org/ecuador/2012/06/28/photographer_threatened/

³⁸⁷ Reporters Without Borders. August 22, 2012. *Colombian journalist threatened, attacked with steel bar*. Available at: http://en.rsf.org/ecuador-colombian-journalist-threatened-22-08-2012_43257.html; Hoy. August 17, 2012. *Periodista denuncia agresión y amenazas*. Available at: <http://www.hoy.com.ec/noticias-ecuador/periodista-denuncia-agresion-y-amenazas-559172.html>

³⁸⁸ *Semana*. August 11, 2012. *Ecuador y los obstáculos a la prensa*. Available at: <http://www.semana.com/mundo/ecuador-obstaculos-prensa/182490-3.aspx>; El Ciudadano. August 13, 2012. *La prensa mercantil de Colombia repite y amplifica los discursos de la oposición ecuatoriana*. Available at: Continues...

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.³⁹² In mid-September, 2012, Hinostroza reported on alleged irregularities in a loan granted by the State-run COFIEC Bank to an Argentine businessman. After receiving telephone threats, Hinostroza decided not to present the final chapter of the report, and announced that she was leaving the program temporarily.³⁹³ According to the information available, the Communications National Secretary expressed his rejection of the threats against Hinostroza, and the Ministry of Interior offered protection measures to the journalist.³⁹⁴ On September 22, President Correa publicly condemned the threats and stated that the proper investigations were being conducted. He expressed his solidarity, and lamented what had happened, but without changing his opinion of the reporter, who he considered to be "a terrible journalist," "political," and a "political intriguer."³⁹⁵

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http://www.elciudadano.gob.ec/index.php?option=com_content&view=article&id=34751:la-prensa-mercantilista-de-colombia-repite-y-amplifica-los-discursos-de-la-oposicion-ecuatoriana-analisis&catid=2:politica&Itemid=43

³⁸⁹ IFEX/ Fundamedios. September 6, 2012. "El Universo" correspondent gets death threats in Ecuador. Available at: http://www.ifex.org/ecuador/2012/09/06/medrano_threat/; Hoy. September 5, 2012. *Periodista denuncia amenazas en su contra*. Available at: <http://www.hoy.com.ec/noticias-ecuador/periodista-denuncia-amenazas-en-su-contra-560744.html>

³⁹⁰ IFEX/ Fundamedios. October 1, 2012. *Intruders threaten newspaper journalist in Ecuador*. Available at: http://www.ifex.org/ecuador/2012/10/01/escudero_threats/; El Diario. September 26, 2012. *Dos hombres irrumpen en oficina de periodista para amenazarlo*. Available at: <http://www.eldiario.com.ec/noticias-manabi-ecuador/243532-dos-hombres-irrupen-en-oficina-de-periodista-para-amenazarlo/>

³⁹¹ El Comercio. September 25, 2012. *Gonzalo Rosero denuncia asedio*. Available at: http://www.elcomercio.com/politica/Gonzalo-Rosero-denuncia-asedio_0_779922226.html; El Diario. September 25, 2012. *Periodista de radio Democracia denuncia persecución y amenazas*. Available at: <http://www.eldiario.com.ec/noticias-manabi-ecuador/243412-periodista-de-radio-democracia-denuncia-persecucion-y-amenazas/>

³⁹² See, 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. 189. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/2012%2003%2021%20Annual%20Report%20RELE%202011pirnting.pdf>

³⁹³ Committee to Protect Journalists (CPJ). September 20, 2012. *Threatened Ecuadoran journalist leaves news program*. Available at: <http://www.cpj.org/2012/09/threatened-ecuadoran-journalist-temporarily-leaves.php>; IFEX/ Fundamedios. September 21, 2012. *Ecuadorian investigative journalist takes leave after her safety is threatened*. available at: http://www.ifex.org/ecuador/2012/09/21/hinostroza_threats/

³⁹⁴ El Comercio. September 19, 2012. *Fernando Alvarado dice que se solidariza con Janet Hinostroza*. Available at: http://www.elcomercio.com/politica/Janeth-Hinostroza-apoyada-usuarios-twitter_0_776922327.html; El Universo. September 20, 2012. *Janet Hinostroza sale de la pantalla ante amenaza por reportajes*. Available at: <http://www.eluniverso.com/2012/09/20/1/1355/periodista-sale-pantalla-ante-amenaza-reportajes.html>

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

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

224. The Office of the Special Rapporteur also learned that on May 30 the email account of Edgar Llerena, director of the weekly newspaper *Radimpa*, in the city of Macas, had allegedly been hacked and used to send mass emails to his contacts. According to information received, the director stated at a press conference that the paper had been subject to a campaign to undermine it since October 2011.³⁹⁷ In addition, the group Anonymous reportedly claimed responsibility for hacking into more than 40 Internet websites of the Ecuadorean government and opposition organizations on August 10, apparently as a form of protest against the Telecommunications Act.³⁹⁸

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

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

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.³⁹⁹

³⁹⁶ El Comercio. October 24, 2012. *Periodista de Teleamazonas es amenazada de muerte por reportaje sobre las drogas*. Available at: http://www.elcomercio.com/seguridad/nathaly-toledo-periodista-teleamazonas-amenazada-reportaje-drogas_0_797920241.html; El Telégrafo. October 25, 2012. *Periodista de Teleamazonas denuncia amenazas en Fiscalía*. Available at: http://www.telegrafo.com.ec/index.php?option=com_zoo&task=item&item_id=58940&Itemid=2

³⁹⁷ Fundamedios. No date. *‘Hackean’ página web de semanario y correo personal de su director*. Available at: <http://www.fundamedios.org/portada/libertades/alertas/historico/2012/item/hackean-pgina-web-de-semanario-y-correo-personal-de-su-director.html>; Radio Sucre. June 1, 2012. *Hackean página web de semanario Radimpa*. Available at: http://www.radiosucre.com.ec/index.php?option=com_content&view=article&id=24891:hackean-pagina-web-de-semanario-radimpa&catid=3:sucesos&Itemid=77?iframe=true&width=90%&height=90%

³⁹⁸ El Universo. August 10, 2012. *Anonymous Ecuador se atribuye intervención a 45 sitios web gubernamentales*. Available at: <http://www.eluniverso.com/2012/08/10/1/1355/anonymous-ecuador-atribuye-intervencion-algunos-sitios-web-gubernamentales.html>; Ecuador Inmediato. August 10, 2012. *Anonymous Ecuador inició ataque a páginas gubernamentales del país y también de opositores*. Available at: http://www.ecuadorinmediato.com/index.php?module=Noticias&func=news_user_view&id=179151&umt=anonymous_ecuador_inicif_3_ataques_a_peginas_gubernamentales_del_paeds

³⁹⁹ Fundamedios. March 27, 2012. *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."⁴⁰⁰

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*.⁴⁰¹ 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.⁴⁰² On September 13, another national presidential broadcast was reportedly dedicated to explaining the reasons for the seizure of assets from the magazine *Vanguardia*.⁴⁰³ 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*.⁴⁰⁴ 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.⁴⁰⁵

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 Ecuadorean Government's public social programs. The purpose of the second one was to contest what Álvaro Vargas Llosa had said about economic growth data for Ecuador in comparison to Peru.⁴⁰⁶

⁴⁰⁰ Fundamedios. May 24, 2012. *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-a-estacion-televisiva-y-un-entrevistado.html>; Youtube. *La verdadera cara del Coronel Mario Pazmino*. Posted by bolivartelevisión on June 7, 2012. Available at: <http://www.youtube.com/watch?v=0n-vE9qAGAo>

⁴⁰¹ 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=JPK2QeO_tAl&feature=plcp

⁴⁰² Ecuador Inmediato. September 11, 2012. *María Josefa Coronel se indigna ante cadena televisiva que aclara dónde y qué comió Presidente Correa en Loja*. Available at: http://www.ecuadorinmediato.com/index.php?module=Noticias&func=news_user_view&id=181242&umt=mareda_josefa_coronel_s_e_indigna_ante_cadena_televisiva_que_aclara_dónde_y_qué_comió_presidente_correa_en_loja; *El Universo*. September 12, 2012. *Desayuno de Rafael Correa motiva a la SECOM a hacer una cadena*. Available at: <http://www.eluniverso.com/2012/09/12/1/1355/desayuno-rafael-motiva-secom-hacer-cadena.html>; Youtube. *Cadena 11-9-12 Secom desmiente declaraciones de Nivea Vélez sobre desayuno de Correa.mpg*. Posted by archivodigitaleu on September 11, 2012. Available at: <http://www.youtube.com/watch?v=4Y6--HqQebA>

⁴⁰³ 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 Nacional, caso Vanguardia*. Posted by sioelciudadanoadmin on September 13, 2012. Available at: <http://www.youtube.com/watch?v=S12Py-FjMyQ>

⁴⁰⁴ IFEX/ Fundamedios. October 19, 2012. *Ecuadorian government uses radio messages to discredit private media*. Available at: http://www.ifex.org/ecuador/2012/10/19/cadenas_threaten_fundamedios/; Youtube. *La prensa mercantilista y sus mentiras*. Posted by bolivartelevisión on October 8, 2012. Available at: <http://www.youtube.com/watch?v=-jaQkgK4R4>; Youtube. *Los Desayunos. Patricia Estupíñán, sobre multa de 80 mil dólares a revista Vistazo*. Posted by Canal Teleamazonas on October 1, 2012. Available at: <http://www.youtube.com/watch?v=CXHZvUyn0X4>

⁴⁰⁵ You Tube. *Cadena Nacional: los derechos laborales de los comunicadores*. Posted by sioelciudadanoadmin on October 10, 2012. Available at: <http://www.youtube.com/watch?v=SMA7YRu8XC0&feature=plcp>

⁴⁰⁶ El Ciudadano. November 9, 2012. *Vargas Llosa miente sobre situación de Ecuador*. Available at: http://www.elciudadano.gob.ec/index.php?option=com_content&view=article&id=37124:vargas-llosa-miente-sobre-situacion-de-
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231. The Office of the Special Rapporteur was informed that on May 3, World Press Freedom Day, the SECOM reportedly issued various official messages, advertising spots, or broadcasts on the radio and on television. The advertising spots, aired after different programs, including news and opinion forums, sought to convey that freedom of expression is “in full effect in Ecuador,” and to criticize the journalistic performance of the private media.⁴⁰⁷

232. The Office of the Special Rapporteur has recognized the authority of the President of the Republic and high-ranking government officials to use the media for purposes of informing the public of prevailing matters of public interest; nevertheless, the exercise of this power is not absolute. The information that governments convey to the public through the presidential broadcasts must be strictly necessary to meet the urgent need for information on issues that are clearly and genuinely in the public interest, and for the length of time strictly necessary for the conveyance of that information. In this respect, both the IACHR and its Office of the Special Rapporteur,⁴⁰⁸ as well as some national bodies of States party to the American Convention, applying international standards, have indicated that not just any information justifies the interruption by the President of the Republic of regularly scheduled programming. Rather, it must be information that could be of interest to the masses by informing them of facts that could be of public significance and that are truly necessary for real citizen participation in public life.⁴⁰⁹ Additionally, the fifth principle of the IACHR’s Declaration of Principles states that: “[p]rior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”

233. Public servants must also bear in mind that they have a position as guarantors of the fundamental rights of individuals; as such, their statements cannot deny those rights.⁴¹⁰ This special duty of care is heightened particularly in situations involving social conflict, breaches of the peace, or social or political polarization, precisely because of the risks such situations might pose for specific individuals or groups at a given time.⁴¹¹ The Inter-American Court has also held that situations of risk can be

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[ecuador&catid=40:actualidad&Itemid=63](http://www.fundamedios.org/portada/libertades/alertas/historico/2012/item/gobierno-emite-dos-cadenas-para-descalificar-a-quienes-los-cuestionan-en-los-medios-privados.html); Fundamedios. No date. *Gobierno emite dos cadenas para descalificar a quienes los cuestionan en los medios privados*. Available at: <http://www.fundamedios.org/portada/libertades/alertas/historico/2012/item/gobierno-emite-dos-cadenas-para-descalificar-a-quienes-los-cuestionan-en-los-medios-privados.html>; Fundamedios. No date. *Cadena nuevamente interrumpe espacios informativos para descalificar a entrevistados*. Available at: <http://www.fundamedios.org/portada/libertades/alertas/historico/2012/item/cadena-nuevamente-interrumpe-espacios-informativos-para-descalificar-a-entrevistados.html>

⁴⁰⁷ Youtube. *Cadena 3 de mayo del 2012 libertad de expresión TA*. Posted by archivodigitaleu on May 4, 2012. Available at: <http://www.youtube.com/watch?v=Qc68FS579Qs>; Youtube. *Cadena 3-5-12 libertad expresión.mpg (incompleta)*. Posted by archivodigitaleu on May 4, 2012. Available at: <http://www.youtube.com/watch?v=HS24MP627cc&feature=relmfu>; Fundamedios. May 4, 2012. *Alert No. 466: Cadenas de radio y TV y descalificaciones a periodistas desde medios estatales por el Día Mundial de la Libertad de Prensa*. Available at: <http://www.fundamedios.org/portada/libertades/alertas/historico/2012/item/cadenas-de-radio-y-tv-y-descalificaciones-a-periodistas-desde-medios-estatales-por-el-da-mundial-de-la-libertad-de-prensa.html>; El Comercio. May 8, 2012. *El bumerán*. Available at: http://www.elcomercio.com.ec/gonzalo_ortiz/bumeran_0_695930600.html

⁴⁰⁸ IACHR. *Report on the Situation of Human Rights in Venezuela*. OEA/Ser.L/V/II.118. Doc. 4 rev. 1. October 24, 2003. Para. 408. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2003sp/indice.htm>

⁴⁰⁹ IACHR. Annual Report 2011. OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Vol. II. *Report of the Office of the Special Rapporteur for Freedom of Expression*. Para. 199. Available at: <http://www.oas.org/es/cidh/expresion/docs/informes/anuales/2012%2003%2021%20Informe%20Anual%20RELE%202011%20impr-esion.pdf>; IACHR. Annual Report 2010. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Vol. II. *Report of the Office of the Special Rapporteur for Freedom of Expression*. Para. 226. Available at: <http://www.oas.org/es/cidh/expresion/docs/informes/RELATORIA%202010%20ESP%20P%20abril.pdf>; IACHR. Declaration of Principles on Freedom of Expression. Principle 5. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=26&IID=2>

⁴¹⁰ I/A Court H.R. *Case of Apitz-Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 5, 2008. Series C No. 182. Para. 131.

⁴¹¹ I/A Court H.R. *Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of January 28, 2009. Series C No. 195 Para. 151.

exacerbated if they are “[the subject of government speeches] that may [provoke], suggest actions, or be interpreted by public officials or sectors of the society as instructions, instigations, or any form of authorization or support for the commission of acts that may put at risk or violate the life, personal safety, or other rights of people who exercise [...] freedom of expression.”⁴¹²

G. Access to public officials and government buildings

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

235. The Office of the Special Rapporteur received information that on June 16, President Rafael Correa affirmed his decision to prohibit his ministers and State officials from giving interviews to certain privately-held media outlets. According to information received, the President justified his decision on news reports that were made “in bad faith” with the intention of “destroying the honor” of high-ranking public officials and their families. He also asserted that the government could not contribute to the business of the privately owned press.⁴¹³ This Office of the Special Rapporteur was also informed that the Minister of Policy Coordination and the National Secretary of Communications reportedly made sure that the members of the president’s cabinet would not give interviews to privately-held media. According to information received, on September 5, the Human Rights Center of the Pontificia 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 20.⁴¹⁴

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.⁴¹⁵ They have also reportedly been subject to

⁴¹² I/A Court H.R. *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of January 28, 2009. Series C No. 194 Para. 143.

⁴¹³ Office of the President of the Republic of Ecuador. June 16, 2012. *Enlace Ciudadano* 276. Originally available at: http://www.elciudadano.gob.ec/index.php?option=com_content&view=article&id=38400:enlace-ciudadano-nro-303-desde-buena-fe-los-rios&catid=43:enlaces-ciudadanos-todos&Itemid=67; and currently available at Ecuador TV: <http://www.ecuadortv.ec/programasecuadortv.php?c=1314> [139:32]; *El Comercio*. June 16, 2012. *Correa reiteró la prohibición a sus ministros de no dar entrevistas a 'medios mercantilistas'*. Available at: http://www.elcomercio.com/politica/Rafael-Correa-prohibe-ministros-entrevista-mercantilistas-libertad-expresion_0_719928044.html

⁴¹⁴ Twelfth Juvenile Court of Pichincha. September 20, 2012. Case No. 2012-1168. Available at: <http://www.funcionjudicial-pichincha.gob.ec/index.php/consulta-de-procesos>; *El Comercio*. October 8, 2012. *Corte de Pichincha tratará mañana la prohibición de que ministros den entrevistas a medios privados*. Available at: http://www.elcomercio.com/politica/ministros-Fundamedios-libertad_de_expresion-Corte_de_Pichincha-ministros-entrevistas_a_medios_privados_0_788321295.html

⁴¹⁵ On February 8, Suguey Hajar, a journalist from the newspaper *El Universo*, was reportedly removed from the presidential palace during a speech given by President Correa to members of the military. *El Universo*. February 12, 2012. *Testimonio de periodista: 'Dicen que usted tiene problema con el presidente'*. Available at: <http://www.eluniverso.com/2012/02/12/1/1355/dicen-tiene-problema-presidente.html>; Fundamedios. February 14, 2012. *Alert No. 422: Periodista de El Universo es desalojada de palacio de gobierno porque supuestamente tiene un 'problema con el presidente'*. Available at: <http://www.fundamedios.org/portada/libertades/alertas/historico/2012/item/periodista-de-el-universo-es-desalojada-de-palacio-de-gobierno-porque-supuestamente-tiene-un-problema-con-el-presidente.html>. On March 20, television journalist Ana María Cañizares, of the *Teleamazonas* station, was barred from covering the signing of an agreement between the Ministry of Policy Coordination and the Shuar community. *Radio Sucre*. March 20, 2012. *Simpatizantes de PAIS insultan a periodistas*. Available at: http://www.radiosucre.com.ec/index.php?option=com_content&view=article&id=23259:simpatizantes-de-pais-insultan-a-periodistas&catid=1:politica&Itemid=73; Fundamedios. March 20, 2012. *Alert No. 445: Periodistas son impedidos de cubrir acto oficial y luego son insultados por simpatizantes del gobierno*. Available at: <http://www.fundamedios.org/portada/libertades/alertas/historico/2012/item/periodistas-son-impedidos-de-cubrir-acto-oficial-y-luego-son-insultados-por-simpatizantes-del-gobierno.html>. On June 8, Alberto Zambrano, a photographer from *Medios Ediasa*, was

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such obstacles during government ceremonies and in public places at the regional and local levels.⁴¹⁶ For example, on September 25, journalist Franklin Morán of *Teleradio* was apparently blocked from participating in one of the briefings that President Rafael Correa regularly holds with the press. Days earlier, Morán had asked questions that apparently made some high-ranking government officials uncomfortable.⁴¹⁷

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

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reportedly forced to leave a hospital in Portoviejo while covering the visit of the Minister of Public Health. Radio Sucre. June 13, 2012. *Fotógrafo es desalojado de hospital público*. Available at: http://www.radiosucra.com.ec/index.php?option=com_content&view=article&id=25201:fotografo-es-desalojado-de-hospital-publico-&catid=3:sucesos&Itemid=77; Fundamedios. June 8, 2012. *Fotógrafo es desalojado de hospital público durante visita de ministra de salud*. Available at: <http://www.fundamedios.org/portada/libertades/alertas/historico/2012/item/fotografo-es-desalojado-de-hospital-publico-durante-visita-de-ministra-de-salud.html>. On October 25, several journalists were reportedly removed from the premises where the Evaluating Committee would decide on the reassessment of the candidates nominated to the Constitutional Court. Cadenaradialvision. October 26, 2012. Press Release – *Comisión Calificadora no debe sesionar a puerta cerrada*. Available at: http://www.cadenaradialvision.com/index.php?option=com_content&view=article&id=3933:-boletin-de-prensa-comision-calificadora-no-debe-sesionar-a-puerta-cerrada&catid=2:nacionales&Itemid=3; El Mercurio. October 26, 2012. *En secreto designan jueces de la CC*. Available at: <http://www.elmercurio.com.ec/354425-en-secreto-designan-a-nuevos-jueces-de-la-cc.html>; Expreso. October 31, 2012. *Manuel Viteri deja afuera a Libia Rivas por tres puntos*. Available at: <http://expreso.ec/expreso/plantillas/nota.aspx?idart=3815882&idcat=19408&tipo=2>

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 *Telecosta* from the city of Esmeraldas from entering the area where the votes were being counted. Radio Sucre. February 8, 2012. *Periodistas fueron impedidos de cubrir proceso electoral en La Concordia*. Available at: http://radiosucra.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. *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. *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: 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. *Funcionaria del régimen echó en Loja a periodistas de una cobertura*. Available at: <http://www.lahora.com.ec/index.php/noticias/show/1101422400/-1/Periodistas%20lojanos%20ayer%20fueron%20impedidos%20de%20realizar%20la%20cobertura%20period%C3%ADstica%20de%20una%20firma%20de%20convenio%20entre%20el%20Ministerio%20de%20Relaciones%20Laborales%20MRL%20y%20el%20Sindicato%20de%20Trabajadores%20de%20la%20Universidad%20Nacional%20de%20Loja%20UNL%20.html>; Fundamedios. No date. *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>

⁴¹⁷ La Hora. September 25, 2012. *Periodista es impedido de ingresar a conversatorio de Correa con medios en Guayaquil*. Available at: http://www.lahora.com.ec/index.php/noticias/show/1101399003/-1/Periodista%20es%20impedido%20de%20ingresar%20a%20conversatorio%20de%20Correa%20con%20medios%20en%20Guayaquil.html#_UGXPf2CdyI9; El Comercio. September 26, 2012. *Periodista de radio denuncia que no le dejaron cubrir el conversatorio de Correa*. Available at: http://www.elcomercio.com/politica/Periodista-denuncia-dejaron-conversatorio-Correa_0_781122034.html

⁴¹⁸ On March 16, individuals taking part in the "Plurinational March for Life" in Riobamba reportedly blocked a cameraman from the pro-government newspaper *El Ciudadano* from filming the march, and had forced him to leave. On March 19, correspondent Máximo Barba from *Ecuador TV* in Ambato was reportedly prevented from covering the indigenous peoples' march as it passed through the city. Apparently, a member of the march's security team demanded that he leave, and told him that the government media "[were] not welcome there." El Comercio. March 16, 2012. *Indígenas analizan en Riobamba estrategia para los siguientes tramos de la marcha*. Available at: http://www.elcomercio.com/politica/marcha-vida-parte-Riobamba_0_664733559.html; El Ciudadano. March 20, 2012. *Equipo de Ecuador TV fue agredido en marcha indígena (Video)*. Available at: http://www.elciudadano.gob.ec/index.php?option=com_content&view=article&id=31424:equipo-de-ecuador-tv-fue-agredido-en-marcha-indigena&catid=40:actualidad&Itemid=63; IFEX/ Fundamedios. March 22, 2012. *Government media personnel prevented from covering indigenous movement march*. Available at: http://www.ifex.org/ecuador/2012/03/22/government_media_censored/. On March 20, a journalist from the state-owned newspaper *El Telégrafo* was reportedly denied access to a press conference organized by indigenous leaders at the headquarters of the Council of Evangelical Indigenous Organizations and Peoples of Ecuador, in Quito. Radio Sucre. March 22, 2012. *Periodista es impedido de cubrir rueda de prensa de grupos de oposición*. Available at: Continues...

H. Appropriation of media and seizure of equipment

238. The Office of the Special Rapporteur has received information on the shutdown of several local media outlets (radio stations and television channels) in 2012. In its resolutions, the National Telecommunications Council (CONATEL) has alleged the media owners' and representatives' noncompliance with the requirements of the Broadcasting and Television Act. Indeed, in all of the cases, CONATEL has verified the existence of some of the grounds for termination as established in article 67 of the Act.⁴¹⁹ In this respect, it has found, alternatively, that the media failed to comply with the technical 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.⁴²⁰ The

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http://www.radiosucres.com.ec/index.php?option=com_content&view=article&id=23326:periodista-es-impedido-de-cubrir-rueda-de-prensa-de-grupos-de-oposicion&catid=3:sucesos&Itemid=77; Fundamedios. March 22, 2012. Alert No. 446: *Periodista de medio estatal es impedido de cubrir rueda de prensa de grupos de oposición*. Available at: http://perint.org/fundamedios/component/zoo/item/periodista-de-medio-estatal-es-impedido-de-cubrir-rueda-de-prensa-de-grupos-de-oposicin.html?category_id=1

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). 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=. On March 16, CONATEL decided not to renew the frequency license of radio station *Sucres* 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=; National Telecommunications Council (CONATEL). Resolution RTV-124-03-CONATEL-2011. February 10, 2011. Available at: http://www.conatel.gob.ec/site_conatel/images/stories/resolucionesconatel/2011/RTV-124-03-CONATEL-2011.pdf. On May 24, 2012, radio *Lider*, in the city of Archidona, and television station *Lidervisión*, in the city of Tena (both located in the Amazonian province of Napo), were reportedly shut down. CONATEL reportedly decided to terminate the concession contracts early and unilaterally because of late payments on the frequency license of over six months. National Telecommunications Council (CONATEL). Resolution RTV-769-24-CONATEL-2010. November 23, 2010. Available at: http://www.conatel.gob.ec/site_conatel/images/stories/resolucionesconatel/2010/RTV-769-24-CONATEL-2010.pdf and Resolution RTV-129-03-CONATEL-2011. February 10, 2011. Available at: http://www.conatel.gob.ec/site_conatel/images/stories/resolucionesconatel/2011/RTV-129-03-CONATEL-2011.pdf. The broadcasting and linking equipment of the radio station *NET* in the city of Ambato was reportedly seized on June 6. CONATEL reportedly decided to terminate the concession contracts early and unilaterally because of late payments on the frequency license of over six months. National Telecommunications Council (CONATEL). Resolution RTV-541-17-CONATEL-2010. September 17, 2010. Available at: http://www.conatel.gob.ec/site_conatel/index.php?option=com_content&view=article&id=845:resoluciones-julio-septiembre-2010&catid=243:resoluciones-2010&Itemid=201. On June 11, broadcasting and linking equipment was reportedly confiscated from *Radio Cosmopolita AM* in Quito. CONATEL reportedly decided to terminate the concession contracts early and unilaterally because of late payments on the frequency license of over six months. National Telecommunications Council (CONATEL). Resolution RTV-548-17-CONATEL-2010. September 17, 2010. Available at: http://www.conatel.gob.ec/site_conatel/index.php?option=com_docman&task=doc_download&gid=4977&Itemid=. The radio station *K-mil FM Stereo* of Huaquillas, which operated in the Province of El Oro, was reportedly shut down and had its equipment confiscated on June 12. CONATEL decided not to renew the concession because it "failed to operate technically in accordance with the concession contract." National Telecommunications Council (CONATEL). Resolution RTV-605-16-CONATEL-2011. July 29, 2011. Available at: http://www.conatel.gob.ec/site_conatel/images/stories/resolucionesconatel/2011/RTV-605-16-CONATEL-2011-K-MIL%20FM%20STEREO.pdf. On June 13, broadcasting and linking equipment was reportedly confiscated from *Radio Impacto* in Latacunga, and its frequency was shut down. CONATEL decided to terminate the concession contracts early and unilaterally because of late payments on the frequency license of over six months. National Telecommunications Council (CONATEL). Resolution RTV-537-17-CONATEL-2010. September 17, 2010. Available at: http://www.conatel.gob.ec/site_conatel/index.php?option=com_docman&task=doc_download&gid=4987&Itemid=

⁴²⁰ Republic of Ecuador. Broadcasting and Television Act. Supreme Decree No. 256-A. Official Gazette No. 785. April 18, 1975. Article 67 of the Broadcasting and Television Act establishes: "Art. 67. - The concession of a channel or frequency for the establishment and operation of a radio or television broadcasting station shall end: // a) Upon the expiration of the term of the concession, unless the licensee has a right of renewal pursuant to this Act.// b) At the will of the licensee. // c) Upon the death of the licensee.// d) For failure to establish the station within the time period granted by the Ecuadorean Institute of Telecommunications in accordance with the Regulations. // e) For the recurrence of technical infractions that have been sanctioned with two fines and one suspension. // 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 Continues..."

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.⁴²¹

239. Information received indicates that on May 23, the public television station *Telesangay, Canal 30*, which is owned by the Provincial Government of Morona Santiago, was closed.⁴²² 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.⁴²³ Felipe Marcelino Chumpi Jimpikit and Juan Francisco Cevallos Silva, Provincial Prefect and Attorney for the Provincial Government, respectively, reportedly presented a petition to the president of the National Telecommunications Council (CONATEL) to request the revocation of the resolution which—in their judgment—was based on an ambiguous technical report.⁴²⁴ CONATEL subsequently disallowed the legal grounds of defense asserted by the licensees and ruled to continue with the process. It declared the early and unilateral termination of the concession contract, signed on May 13, 2009, on the grounds established in clause (d) of Article 67 of the Broadcasting and Television Act.⁴²⁵ Once the administrative proceedings had been exhausted, on January 23, 2012, the petitioners reportedly brought suit to challenge the ruling in the District Court of Administrative Appeals on the theory that CONATEL's

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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." Republic of Ecuador. Broadcasting and Television Act. Supreme Decree No. 256-A. Official Registry No. 785. April 18, 1975. Available at: http://www.oas.org/juridico/PDFs/mesicic4_ecu_radio.pdf

⁴²¹ Hoy. January 8, 2012. *Suptel clausura y se lleva equipos de radio de El Oro*. Available at: <http://www.hoy.com.ec/noticias-ecuador/suptel-clausura-y-se-lleva-equipos-de-radio-de-el-oro-526728.html>; El Universo. January 8, 2012. *Clausurada emisora La Perla Orense de El Guabo*. Available at: <http://www.eluniverso.com/2012/01/08/1/1355/clausurada-emisora-perla-oreense-guabo.html>; Fundamedios. May 15, 2012. *Conatel niega renovación de frecuencia a emisora que operaba desde hace 18 años*. Available at: <http://www.fundamedios.org/portada/libertades/alertas/historico/2012/item/conatel-niega-renovacin-de-frecuencia-a-emisora-que-operaba-desde-hace-18-aos.html>; El Diario. *Cierre Radio Sucre Portoviejo*. Available at: <http://www.eldiario.com.ec/temas/cierre-radio-sucre/>; La República/ EFE. June 18, 2012. *La SIP reclama a Ecuador transparencia sobre cierre de medios*. Available at: <http://www.larepublica.ec/blog/politica/2012/06/18/la-sip-reclama-a-ecuador-transparencia-sobre-cierre-de-medios/>; Radio Equinoccio. May 30, 2012. *En Ecuador Clausuran TV Lídervisión y Radio Líder*. Available at: <http://www.radioequinoccio.com/inicio/item/3002-en-ecuador-clausuran-tv-lidervision-y-radio-lider.html>; Fundamedios. June 6, 2012. *Clausuran quinto medio de comunicación en un lapso de dos semanas*. Available at: <http://www.fundamedios.org/portada/libertades/alertas/historico/2012/item/clausuran-quinto-medio-de-comunicacin-en-un-lapso-de-dos-semanas.html>; Red Latinoamericana y del Caribe para la Democracia (REDLAD). June 2012. *Alerta: Nueva ola de cierre de medios de comunicación en Ecuador*. Available at: <http://www.redlad.org/alerta-nueva-ola-de-cierre-de-medios-de-comunicaci%C3%B3n-en-ecuador>; Vistazo/ Agencia EFE. July 18, 2012. *CPJ expresa preocupación por cierre de 11 radios en Ecuador desde mayo*. Available at: <http://www.vistazo.com/webpages/pais/?id=20776>; La Hora. June 13, 2012. *Supertel clausura Radio Impacto de Latacunga*. Available at: <http://www.lahora.com.ec/index.php/noticias/show/1101345285>

⁴²² Provincial Government of Morona Santiago. May 24, 2012. *Superintendencia de Telecomunicaciones Cierra Telesangay*. Available at: http://moronasantiago.gob.ec/index.php?nombre_modulo=listar_contenido&op=mostrar&opcion=59&contenido=767&PHPSESSID=895e01388414db5dc851bf4f9179c23e; Safiqy.org. May 24, 2012. *Hoy cerraron Telesangay canal 30, la imagen de Morona Santiago*. Available at: <http://www.safiqy.org/perspectivas/sociedad/7900-hoy-cerraron-telesangay-canal-30-la-imagen-de-morona-santiago.html>

⁴²³ Republic of Ecuador. National Telecommunications Council (CONATEL). Resolution RTV-632-20-CONATEL-2010. October 13, 2010. Available at: http://www.conatel.gob.ec/site_conatel/index.php?option=com_docman&task=doc_download&gid=5134&Itemid=

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

⁴²⁵ Republic of Ecuador. National Telecommunications Council (CONATEL). Resolution RTV-589-15-CONATEL-2011. July 22, 2011. Available at: http://www.conatel.gob.ec/site_conatel/images/stories/resolucionesconatel/2011/RTV-589-15-CONATEL-2011.pdf. See also: Republic of Ecuador. Broadcasting and Television Act. Supreme Decree No. 256-A. Official Gazette No. 785. April 18, 1975. Available at: http://www.oas.org/juridico/PDFs/mesicic4_ecu_radio.pdf

general interest related to alleged acts of corruption. The government issued a nation-wide broadcast to justify the reasons for the confiscation of all of the magazine's assets.⁴³²

I. Other relevant situations

242. It was reported that on March 3, while they were inside a private building in the Luluncoto sector of Quito, ten youths⁴³³ were arrested and subsequently prosecuted and held in detention, accused of crimes against the domestic security of the State (sabotage and terrorism).⁴³⁴ 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.⁴³⁵ The authorities did not find weapons or explosives in the place of arrest, or with the youths that were detained. Human rights organizations like Amnesty International,⁴³⁶ Ecumenical Human Rights Commission (CEDHU),⁴³⁷ The Project for Social-Environmental Reparation Environmental Clinic,⁴³⁸ and the Regional Institute of Human Rights (INREDH),⁴³⁹ and high profile figures such as Baltazar Garzón⁴⁴⁰ 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 10.⁴⁴¹ At the time this report went to press, the

⁴³² 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 Nacional, caso Vanguardia*. Posted by sioelciudadanoadmin on September 13, 2012. Available at: <http://www.youtube.com/watch?v=S12Py-FjMyQ>

⁴³³ Ana Cristina Campaña Sandoval, Pablo Andrés Castro Cangas, Héctor Javier Estupiñán Prado, Luis Santiago Gallegos Valarezo, Cristhiam Royce Gómez Romero, Jescenia Abigail Heras Bermeo, Luis Marcelo Merchán Mosquera, Fadia Elizabeth Tapia Jarrin, Víctor Hugo Vinuesa Puente, César Enrique Zambrano Farías.

⁴³⁴ Tenth Court of Criminal Guarantees of Pichincha. March 6, 2012. Case No. 2012-0570. Available for consultation at: <http://www.funcionjudicial-pichincha.gob.ec/index.php/consulta-de-procesos>

⁴³⁵ Third Chamber of Criminal Guarantees of Pichincha. March 27, 2012. Case No. 2012-0102. Available for consultation at: <http://www.funcionjudicial-pichincha.gob.ec/index.php/consulta-de-procesos>; Tenth Court of Criminal Guarantees of Pichincha. July 25, 2012. Case No. 2012-0570. Available for consultation at: <http://www.funcionjudicial-pichincha.gob.ec/index.php/consulta-de-procesos>; Third Chamber of Criminal Guarantees of Pichincha. September 26, 2012. Case No. 2012-0291. Available for consultation at: <http://www.funcionjudicial-pichincha.gob.ec/index.php/consulta-de-procesos>; El Telégrafo. September 27, 2012. *Caso Sol Rojo: Tercera Sala desechó recurso de nulidad*. Available at: http://www.telegrafo.com.ec/index.php?option=com_zoo&task=item&item_id=55342&Itemid=17

⁴³⁶ Amnesty International. November 27, 2012. *Carta al Fiscal General del Estado*. Available at: http://cedhu.org/index.php?option=com_docman&task=doc_download&gid=243&Itemid=6

⁴³⁷ Ecumenical Human Rights Commission (CEDHU), the Regional Institute of Human Rights (INREDH) and the Proyecto de Reparación "Clínica Ambiental." *Ocaso de la Justicia El Caso Sol Rojo. Psychosocial and Human Rights Report*. December 2012. Available at: http://cedhu.org/index.php?option=com_docman&task=doc_download&gid=241&Itemid=6

⁴³⁸ Ecumenical Human Rights Commission (CEDHU), the Regional Institute of Human Rights (INREDH) and the Proyecto de Reparación "Clínica Ambiental." *Ocaso de la Justicia El Caso Sol Rojo. Psychosocial and Human Rights Report*. December 2012. Available at: http://cedhu.org/index.php?option=com_docman&task=doc_download&gid=241&Itemid=6

⁴³⁹ Ecumenical Human Rights Commission (CEDHU), the Regional Institute of Human Rights (INREDH) and the Proyecto de Reparación "Clínica Ambiental." *Ocaso de la Justicia El Caso Sol Rojo. Psychosocial and Human Rights Report*. December 2012. Available at: http://cedhu.org/index.php?option=com_docman&task=doc_download&gid=241&Itemid=6

⁴⁴⁰ El Telégrafo. November 26, 2012. *Baltazar Garzón señala una tesis a favor de los jóvenes*. Available at: http://www.telegrafo.com.ec/index.php?option=com_zoo&task=item&item_id=62538&Itemid=17; Ecumenical Human Rights Commission (CEDHU), the Regional Institute of Human Rights (INREDH) and the Proyecto de Reparación "Clínica Ambiental." *Ocaso de la Justicia El Caso Sol Rojo. Psychosocial and Human Rights Report*. December 2012. Available at: http://cedhu.org/index.php?option=com_docman&task=doc_download&gid=241&Itemid=6

⁴⁴¹ Third Court of Criminal Guarantees of Pichincha. November 9, 2012. Case No. 2012-0124. Available for consultation at: <http://www.funcionjudicial-pichincha.gob.ec/index.php/consulta-de-procesos>

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 Ecuadoreans’ money, to benefit the business of six families in this country...” In these terms, President Correa apparently ordered the National Secretary of Communications to withdraw government advertising from some privately held media outlets.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 Ecuadorean 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

⁴⁴² Third Court of Criminal Guarantees of Pichincha. November 9, 2012. Case No. 2012-0124. Available for consultation at: <http://www.funcionjudicial-pichincha.gob.ec/index.php/consulta-de-procesos>; El Telégrafo. November 26 2012. *¿Por qué no están libres los “Diez de Luluncoto”?* Available at: http://www.telegrafo.com.ec/index.php?option=com_zoo&task=item&item_id=62537&Itemid=17

⁴⁴³ Office of the President of the Republic of Ecuador. *Enlace Ciudadano* 282. July 28, 2012. Available at: http://www.elciudadano.gob.ec/index.php?option=com_content&view=article&id=34346:enlace-ciudadano-nro-282-desde-ibarra-imbabura&catid=43:enlaces-ciudadanos-todos&Itemid=67 [2:53:55] to [2:57:52]; IFEX/ Fundamedios. August 2, 2012. *Correa withdraws government advertising for private media*. Available at: http://ifex.org/ecuador/2012/08/02/presidente_publicidad_oficial/; ABC. July 28, 2012. *El Presidente de Ecuador suspende la publicidad oficial en algunos medios privados*. Available at: <http://www.abc.es/20120728/internacional/abci-correa-publicidad-medios-201207282356.html>; Fundamedios. August 16, 2012. *Informe Especial: Medios Controlados por el Gobierno se Llevan la Mayoría de la Pauta Estatal*. Available at: <http://www.fundamedios.org/monitoreo/informe%20publicidad%20oficial.pdf>

⁴⁴⁴ Republic of Ecuador. Ecuadorean Institute of Intellectual Property (IEPI). September 3, 2012. *OFFICIAL PRESS RELEASE – TRADEMARK REGISTRY “30S”, “30-S”, “Prohibido olvidar”*. Available at: <http://www.iepi.gob.ec/module-contenido-viewpub-tid-4-pid-167.html>; IFEX/ Fundamedios. October 12, 2012. *Ecuador limits use of phrases, constraining public debate*. Available at: http://www.ifex.org/ecuador/2012/10/12/30s_twitter/; La Hora. August 30, 2012. *‘30S’, ‘30-S’ y ‘Prohibido Olvidar’ ya son marcas registradas del Gobierno*. Available at: http://www.lahora.com.ec/index.php/noticias/show/1101385510-1/%E2%80%9830S%E2%80%99_%E2%80%9830-S%E2%80%99_y_%E2%80%98Prohibido_Olvidar%E2%80%99_ya_son_marcas_registradas_del_Gobierno.html

⁴⁴⁵ Silvia Salgado Andrade. National Congresswoman of Ecuador. November 1, 2012. *Comisión de Fiscalización entregó al Presidente de la Asamblea el informe del caso Cofiec-Duzac*. Available at: http://www.silviasalgadoandrade.com/index.php?option=com_content&view=article&id=401:comision-de-fiscalizacion-entrego-al-presidente-de-la-asamblea-el-informe-del-caso-cofiec-duzac&catid=5:boletines&Itemid=15; Ecuador En Vivo. *Gobierno no está Continues...*

10. El Salvador

246. The Office of the Special Rapporteur expressed its satisfaction at the conviction in El Salvador of one of the murderers of cameraman Alfredo Antonio Hurtado Núñez. The murder took place in San Salvador on April 25, 2011. According to information received, on May 31, 2012, Specialized Sentencing Court A in San Salvador sentenced Jonathan Alexander Martínez Castro to 30 years in prison for the murder of Alfredo Hurtado. The same court upheld the arrest warrant for Marlon Stanley Abrego Rivas, the alleged accomplice in the murder. He has not been arrested. Alfredo Hurtado was on his way to work on the night of April 25, 2011, when two armed men boarded the bus on which he was traveling and shot him several times. The murders did not steal anything. Hurtado was working as the night shift cameraman for news show 'Telepresna', on *Canal 33*, and he had more than 20 years of experience. He regularly covered crime and information related to gang violence. According to the information received, Martínez and Abrego shot Hurtado because they thought it was because of his work that a gang member had been identified in connection with another murder. The Office of the Special Rapporteur condemned the murder of Hurtado on May 2, 2011, and asked Salvadoran authorities to conduct an exhaustive investigation that took into account the possibility that the victim's journalism work may have been a motive for the crime. The Office of the Special Rapporteur praises this decision of the Salvadorian justice system, which is crucial for combating impunity, defending freedom of expression, preventing repetition of the facts and providing redress to the family of the victim. It trusts that the competent authorities will do everything necessary to capture and try the other person accused in the crime.⁴⁴⁶

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.⁴⁴⁷

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.⁴⁴⁸ In its 2011 annual report, the Office of the Special Rapporteur expressed its satisfaction at the passage of the Access to Public Information Act, which entered into force in January of 2012.⁴⁴⁹ The judgment of the

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vinculado al caso Duzac, concluye Comisión de Fiscalización. October 30, 2012. Available at: http://www.ecuadorenavivo.com/2012/10/30/100839/politica/gobierno_no_esta_vinculado_al_caso_duzac_concluye_comision_de_fiscalizacion.html

⁴⁴⁶ IACHR. Office of the Special Rapporteur for Freedom of Expression. June 12, 2012. Press Release 63/12. *Office of the Special Rapporteur expresses satisfaction for guilty verdict against a murderer of cameraman in El Salvador.* Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=902&IID=1>; Office of the Public Prosecutor of the Republic. June 4, 2012. *Homicida de camarógrafo condenado a 30 años de prisión.* Available at: <http://www.fiscalia.gob.sv/?p=1910>; Committee for the Protection of Journalists (CPJ). June 7, 2012. *CPJ hails conviction in journalist murder in El Salvador.* Available at: <http://cpj.org/2012/06/cpi-hails-conviction-in-journalist-murder-in-el-sa.php>

⁴⁴⁷ Republic of El Salvador. Official Newspaper. December 7, 2011. Decree No. 836. Volume 393. No. 229. P. 5 *et seq.* Available at: <http://www.diariooficial.gob.sv/diarios/do-2011/12-diciembre/07-12-2011.pdf>; See also, 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. 229. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/2012%2003%2021%20Annual%20Report%20RELE%202011pimring.pdf>

⁴⁴⁸ Constitutional Chamber of the Supreme Court of Justice of El Salvador. Judgment 13-2012 (Inconstitutionality). December 5, 2012. Pages 4, 6, 10 and 12-15. Available at: <http://www.jurisprudencia.gob.sv/visormlx/pdf/13-2012.pdf>; Republic of El Salvador. National Registration Center. Official Journal. Decree 534. Access to Public Information Act. Available for consultation at: http://www.cnr.gob.sv/index.php?option=com_phocadownload&view=category&id=35:ley-de-acceso-a-la-informacion-publica-lai&Itemid=277

⁴⁴⁹ 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. 228. Continues...

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

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

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.”

...continuation

Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/2012%2003%2021%20Annual%20Report%20RELE%202011pirnting.pdf>; Republic of El Salvador. National Registry Center. Official Journal. Decree 534. Access to Public Information Act. Available for consultation at: http://www.cnr.gob.sv/index.php?option=com_phocadownload&view=category&id=35:ley-de-acceso-a-la-informacion-publica-laip&Itemid=277

⁴⁵⁰ Salvadoreños en el mundo. March 19, 2012. *Carta de Carlos Dada, director editorial de El Faro, a sus colegas periodistas en el mundo entero*. Available at: <http://salvadorenosenelmundo.blogspot.com/2012/03/carta-de-carlos-dada-director-editorial.html>; Knight Center for Journalism in the Americas. March 19, 2012. *Salvadoran newspaper story on government negotiating with gangs prompts threats, controversy*. Available at: <http://knightcenter.utexas.edu/blog/00-9367-salvadoran-newspaper-story-government-negotiating-gangs-prompts-threats-controversy>

⁴⁵¹ El Faro. March 14, 2012. *Gobierno negoció con pandillas reducción de homicidios*. Available at: <http://www.elfaro.net/es/201203/noticias/7985/>

⁴⁵² Committee to Protect Journalists (CPJ). March 21, 2012. *Salvadoran news website threatened for its reporting*. Available at: <http://www.cpj.org/2012/03/salvadoran-news-website-threatened-for-its-reporting.php>; Contrapunto. March 22, 2012. *“Pandillas” arremeten contra El Faro*. Available at: <http://www.contrapunto.com.sv/politica-nacionales/pandillas-arremeten-contra-el-faro>

⁴⁵³ El Faro. No date. *Los voceros nacionales de la mara salvatrucha MSX13 y pandilla 18*. Available at: http://www.elfaro.net/attachment/395/comaras.pdf?q_download=1

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

⁴⁵⁵ Committee to Protect Journalists (CPJ). April 6, 2012. *El Salvador government pledges to protect El Faro*. Available at: <http://www.cpj.org/blog/2012/04/el-salvador-presidential-spokesman-pledges-to-prot.php>; Reporters Without Borders. April 12, 2012. *El Salvador: La redacción del diario digital El Faro aún espera protección tras recibir amenazas*. Available at: <http://www.rsf-es.org/news/el-salvador-la-redaccion-del-diario-digital-el-faro-aun-espera-proteccion-tras-recibir-amenazas/>

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

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

⁴⁵⁶ United States Supreme Court. *United States v. Alvarez*. Opinión No. 11-210. June 28, 2012. Available at: <http://www.supremecourt.gov/opinions/11pdf/11-210d4e9.pdf>

⁴⁵⁷ United States Supreme Court. *Federal Communications Commission, et al., v. Fox Television Stations, Inc., et al.* Opinion No. 10-1293. June 21, 2012. Available at: <http://www.supremecourt.gov/opinions/11pdf/10-1293f3e5.pdf>

⁴⁵⁸ Session Laws of Colorado. 68th Session of the General Assembly of the State of Colorado. Senate Bill 12-102. An Act concerning the repeal of the crime of criminal libel. Available at: http://www.state.co.us/gov_dir/leg_dir/olls/sl2012a/sl_113.htm; IFEX/ International Press Institute (IPI). April 19, 2012. *Colorado repeals criminal libel law*. Available at: http://www.ifex.org/united_states/2012/04/20/colorado_repeal/

⁴⁵⁹ Prensa Latina. January 26, 2012. *Miami-based Cuban journalist denounces threats*. Available at: http://www.cadenagramonte.cubaweb.cu/english/index.php?option=com_content&view=article&id=9209%3Amiami-based-cuban-journalist-denounces-threats&catid=66%3Anews&Itemid=50; Cuba Debate. January 26, 2012. *Amenaza de muerte a periodista que informó sobre la madre de Orlando Zapata*. Available at: <http://www.cubadebate.cu/noticias/2012/01/26/amenazan-de-muerte-a-periodista-que-informo-sobre-la-madre-de-orlando-zapata/>; Knight Center for Journalism in the Americas. January 30, 2012. *Fidel Castro accuses foreign media of lying about a Cuban political prisoner*. Available at: <http://knightcenter.utexas.edu/blog/fidel-castro-accuses-foreign-media-lying-about-cuban-political-prisoner>

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

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

⁴⁶⁰ Committee to Protect Journalists (CPJ). February 7, 2012. *Accreditation disputes at center of US arrests*. Available at: <http://cpj.org/blog/2012/02/accreditation-disputes-at-center-of-arrests-in-us.php>; Oakland North. January 31, 2012. *Journalists arrested at Saturday Occupy Oakland protest*. Available at: <http://oaklandnorth.net/2012/01/31/journalists-arrested-at-saturday-occupy-oakland-protest/>; Free Press. January 30, 2012. *Free Press Condemns Ongoing Arrests of Journalists at Occupy Protests*. Available at: <http://www.freepress.net/press-release/2012/1/30/free-press-condemns-ongoing-arrests-journalists-occupy-protests>

⁴⁶¹ Law Officer/ Associated Press (AP). February 2, 2012. *Journalists Press NYPD on Media Access Issues*. Available at: <http://www.lawofficer.com/article/news/journalists-press-nypd-media-a>; Knight Center for Journalism in the Americas. February 3, 2012. *Journalists send a second letter protesting New York police’s treatment of reporters covering Occupy protests*. Available at: <http://knightcenter.utexas.edu/en/blog/journalists-send-second-letter-protesting-new-york-polices-treatment-reporters-covering-occupy->

⁴⁶² National Press Photographers Association. January 31, 2012. *Letter to the Memphis Police regarding the detention of Casey Monroe & erasure of Video Files*. Available at: http://www.pixiq.com/sites/default/files/memphis_police_letter_12_31_12.pdf; ABC 24. January 31, 2012. *Memphis Police Delete Photographer’s Cell Phone Pictures*. Available at: <http://www.abc24.com/news/local/story/Memphis-Police-Delete-Photographers-Cell-Phone/J8kGSgNmikSoE7yuxBL2aQ.csp>

⁴⁶³ Miami New Times. February 6, 2012. *Carlos Miller Arrested for Photographing Police Crack-Down on Occupy Miami*. Available at: http://blogs.miaminewtimes.com/riptide/2012/02/carlos_miller_arrested_for_pho.php; Pixiq. February 4, 2012. *Here is the recovered video police deleted of my arrest*. Available at: <http://www.pixiq.com/article/here-is-the-recovered-video-police-deleted-of-my-arrest>

⁴⁶⁴ The New York Times Magazine. August 6, 2012. *Times Photographer in Assignment in Bronx Arrested After Altercation With Police*. Available at: <http://nymag.com/daily/intel/2012/08/police-arrest-times-photographer-solarik-on-assignment-bronx.html>; IFEX/ Reporters Without Borders. August 9 2012. *Photographer attacked while documenting a street arrest in New York*. Available at: http://www.ifex.org/united_states/2012/08/10/photographer_arrested/

Gasland, which was nominated for an Oscar.⁴⁶⁵ According to information received, journalists Dan Frosch and photographer Brandon Thibodeaux, with *The New York Times*, were briefly detained while covering demonstrations against the Keystone XL oil pipeline in Winstonsboro, Texas, on October 11.⁴⁶⁶

D. Subsequent liability

260. The Office of the Special Rapporteur was informed that on April 5, the government formally charged former CIA agent John Kiriakou, who had leaked information to the media on the torture of terrorism suspects during the George W. Bush administration. On October 23, Kiriakou pled guilty to the charge of revealing the identity of an intelligence agent, and in exchange, the prosecutor dropped the charges originally brought against him under the Espionage Act. The parties agreed on a sentence of 30 months in prison. A court ruling on the plea agreement is expected in January of 2013.⁴⁶⁷ Additionally, in a July 19 appearance before Congress, Secretary of Defense Leon Panetta announced that he had ordered the monitoring of the major national media outlets to detect unauthorized leaks of classified information.⁴⁶⁸

261. The Office of the Special Rapporteur references its Joint Statement issued in 2010 with the United Nations Special Rapporteur on Freedom of Opinion and Expression, according to which “government ‘whistleblowers’ releasing information on violations of the law, on wrongdoing by public bodies, on a serious threat to health, safety or the environment, or on a breach of human rights or humanitarian law should be protected against legal, administrative or employment-related sanctions if they act in good faith. Any attempt to impose subsequent liability on those who disseminate classified information should be grounded in previously established laws enforced by impartial and independent legal systems with full respect for due process guarantees, including the right to appeal.”⁴⁶⁹

E. Legal reforms

262. The Office of the Special Rapporteur takes note of the debate in Congress over the Stop Online Piracy Act, SOPA (the House of Representatives version), and the Preventing Real Online Threats to Economic Creativity and Theft of Intellectual Property Act of 2011, PIPA (the Senate version of the bill). According to the information received, these bills sought to block access to websites that violate copyright and would have authorized content owners to request court orders to shut down websites that contained

⁴⁶⁵ Reporters Without Borders. February 7, 2012. *Censored, prosecuted and on terror list, filmmaker denied First Amendment Rights*. Available at: http://en.rsf.org/united-states-censored-prosecuted-and-on-terror-07-02-2012_41811.html; Politico. February 1, 2012. *Josh Fox arrested at hearing*. Available at: <http://www.politico.com/news/stories/0212/72298.html>

⁴⁶⁶ Huffington Post. October 11, 2012. *Keystone XL protests: New York Times reporter detained while covering Texas pipeline opposition*. Available at: http://www.huffingtonpost.com/2012/10/11/keystone-xl-new-york-times_n_1959033.html?utm_hp_ref=green; Democracy Now. October 15, 2012. *Texas Landowners Join Environmentalists for Historic Blockade of Keystone XL Tar Sands Pipeline*. Available at: http://www.democracynow.org/2012/10/15/texas_landowners_join_environmentalists_for_historic

⁴⁶⁷ National Public Radio. October 22-23, 2012. *Update: Former CIA Officer Pleads Guilty in Leak Case*. Available at: <http://www.npr.org/blogs/thetwo-way/2012/10/22/163425014/former-cia-officer-expected-to-plead-guilty-in-leak-case>; The New York Times. October 23, 2012. *Former CIA Operative Pleads Guilty in Leak of Colleague's Name*. Available at: <http://www.nytimes.com/2012/10/24/us/former-cia-officer-pleads-guilty-in-leak-case.html>; Federal Bureau of Investigation of the United States. April 5, 2012. *Press Release. Former CIA Officer John Kiriakou indicted for allegedly disclosing classified information, including covert officer's identity, to journalists and lying to CIA's publications board*. Available at: <http://www.fbi.gov/washingtondc/press-releases/2012/former-cia-officer-john-kiriakou-indicted-for-allegedly-disclosing-classified-information-including-covert-officers-identity-to-journalists-and-lying-to-cias-publications-board>

⁴⁶⁸ According to the official press release about the private hearing, “The Undersecretary of Defense for Intelligence, in consultation with the Assistant Secretary for Public Affairs, will monitor all major, national level media reporting for unauthorized disclosures of defense department classified information.” U.S. Department of Defense. July 19, 2012. *Press Release No. 597-12*. Available at: <http://www.defense.gov/releases/release.aspx?releaseid=15451>. Politico. July 20, 2012. *Reporters oppose Pentagon Monitoring*. Available at: <http://www.politico.com/blogs/media/2012/07/defense-reporters-oppose-pentagon-monitoring-129634.html>

⁴⁶⁹ The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression and the Inter-American Commission on Human Rights (IACHR) Special Rapporteur for Freedom of Expression. *Joint Statement on Wikileaks (2010)*. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=889&IID=1>

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

⁴⁷⁰ United States Congress. October 26, 2011. H.R. 3261. *Stop Online Piracy Act*. Available for consultation at: <http://thomas.loc.gov/home/LegislativeData.php?&n=BillText> and at: <http://www.gpo.gov/fdsys/pkg/BILLS-112hr3261ih/pdf/BILLS-112hr3261ih.pdf>; United States Congress. May 12, 2011. S.968. IS. *Protect IP Act*. Available for consultation at: <http://thomas.loc.gov/home/LegislativeData.php?&n=BillText>, and at <http://www.gpo.gov/fdsys/pkg/BILLS-112s968rs/pdf/BILLS-112s968rs.pdf> and also at <http://thomas.loc.gov/cgi-bin/query/D?c112:1:./temp/~c112FJDxqY>; United States. White House. January 14, 2012. *Obama Administration Responds to We the People Petitions on SOPA and Online Piracy*. Available at: <http://www.whitehouse.gov/blog/2012/01/14/obama-administration-responds-we-people-petitions-sopa-and-online-piracy>; BBC Mundo. January 18, 2012. *El mundo digital se declara en huelga*. Available at: http://www.bbc.co.uk/mundo/noticias/2012/01/120117_tecnologia_wikipedia_apagon_digital_aa.shtml; Online News Association. January 5, 2012. *Letter from the President: Why ONA opposes SOPA*. Available at: <http://journalists.org/2012/01/05/ona-on-sopa/>; Poynter. January 5, 2012. *What journalists need to know about SOPA*. Available at: <http://www.poynter.org/latest-news/top-stories/158210/what-journalists-need-to-know-about-sopa/>

⁴⁷¹ IACHR. Office of the Special Rapporteur for Freedom of Expression. January 20, 2012. Press Release R06/12. *UN and IACHR Rapporteurs for Freedom of Expression renew call to protect free speech on the Internet*. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=880&IID=1>

⁴⁷² San Francisco Chronicle. January 21, 2012. *Antipiracy bills SOPA, PIPA shelved by Congress*. Available at: <http://www.sfgate.com/nation/article/Antipiracy-bills-SOPA-PIPA-shelved-by-Congress-2664337.php>; Huffington Post. January 20, 2012. *SOPA Withdrawn: Lamar Smith pulls controversial web anti-piracy bill*. Available at: http://www.huffingtonpost.com/2012/01/20/sopa-withdrawn-lamar-smith_n_1219250.html

⁴⁷³ 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. June 1, 2011. *Joint Declaration on Freedom of Expression and the Internet*. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=849&IID=1>

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.⁴⁷⁹ In October 2011, the journalist reported that she was threatened on a television program and

⁴⁷⁴ United States Court of Appeals for the First Circuit. *Moloney v. Holder*. Opinión No. 11-2511. July 6, 2012. Available at: <http://www.ca1.uscourts.gov/cgi-bin/getopn.pl?OPINION=11-2511P.01A>; IFEX/ Committee to Protect Journalists (CPJ). April 9, 2012. *In Boston, journalist battles to keep sources confidential*. Available at: http://www.ifex.org/united_states/2012/04/10/moloney_sources/

⁴⁷⁵ American Civil Liberties Union. September 26, 2012. *UC Davis Students Reach \$1 Million Settlement with University over Pepper-Spraying Incident*. Available at: <http://www.aclu.org/free-speech/uc-davis-students-reach-1-million-settlement-university-over-pepper-spraying-incident>; San Francisco Chronicle. September 26, 2012. *UC Davis, pepper-sprayed students settle*. Available at: <http://www.sfgate.com/bayarea/article/UC-Davis-pepper-sprayed-students-settle-3896116.php>

⁴⁷⁶ IACHR. Office of the Special Rapporteur for Freedom of Expression. October 26, 2012. Press Release R128/12. *Office of the Special Rapporteur welcomes important advances in freedom of expression in the region*. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=912&IID=1>; See also, International Press Institute (IPI). October 18, 2012. *Grenada abolishes criminal defamation*. Available at: <http://www.freemedia.at/home/singleview/article/grenada-abolishes-criminal-libel.html?L=0>

⁴⁷⁷ Grenada. Criminal Code (Amendments) Act of 2012. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; See also, Organization of American States. Criminal Code of Grenada (27 January 1987, with reforms until 1993) [earlier version]. Available at: http://www.oas.org/juridico/spanish/mesicic2_grd_criminal_code.PDF

⁴⁷⁸ Grenada Advocate. December 5, 2012. *PM: Seditious libel to be quashed*. Available at: <http://grenadaadvocate.blogspot.com/2012/12/pm-seditious-libel-to-be-quashed.html>; The New Today. December 13, 2012. *Media Awards 2012*. Available at: <http://thenewtoday.gd/2012/12/13/media-awards-2012/>; Media Workers Association of Grenada. Video of the 7^a Premiación Anual de la Asociación de Trabajadores de Medios. Available for consultation at: www.tcnhd.com

⁴⁷⁹ El Periódico. August 29, 2012. *Condenan a Vicepresidente de Comité de Seguridad de Panajachel*. Available at: <http://www.elperiodico.com.gt/es/20120829/pais/217138/>; Cerigua. August 28, 2012. *Condenan a miembro de comité de seguridad por agresiones a periodista*. Available at: http://cerigua.org/1520/index.php?option=com_content&view=article&id=10126:condenan-a-miembro-de-comite-de-seguridad-por-agresiones-a-periodista&catid=48:libertad-de-expresion&Itemid=10

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.⁴⁸⁰

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.⁴⁸¹

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.⁴⁸²

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.⁴⁸³

271. 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.⁴⁸⁴ At the beginning of October, *Prensa Libre* columnist Carolina Vásquez Araya and

⁴⁸⁰ 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. 278. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/2012%2003%2021%20Annual%20Report%20RELE%202011pirnting.pdf>

⁴⁸¹ United Nations. Office of the High Commissioner for Human Rights. Universal Periodic Review 2012: Guatemala. Available for consultation at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/GTSession14.aspx>; Guatemalan News Agency (AGN). November 30, 2012. *Elaboran plan para protección de periodistas*. Available at: <http://www.agn.com.gt/index.php/world/fashion/item/1214-elaboran-plan-para-proteccion-de-periodistas>; Centro de Reportes Informativos sobre Guatemala (Cerigua). October 29, 2012. *Llaman a la acción para proteger a los periodistas en Guatemala*. Available at: http://cerigua.org/1520/index.php?option=com_content&view=article&id=11206:llaman-a-la-accion-para-proteger-a-los-periodistas-en-guatemala&catid=48:libertad-de-expresion&Itemid=10

⁴⁸² IFEX. December 15, 2011. *Comunicador y ambientalista recibe amenazas de muerte*. Available at: http://www.ifex.org/guatemala/2011/12/15/ambientalista_amenazado/es/; Todo Gaceta. December 9, 2011. *Recibe amenazas por denunciar contaminación en Huehuetenango*. Available at: <http://todozaceta.com/news/recibe-amenazas-por-denunciar-contaminacion-en-huehuetenango>

⁴⁸³ El Periódico. November 8, 2011. *Periodista fue hospitalizado tras paliza; gobernador de Quiché dice que es un "hecho aislado"*. Available at: <http://www.elperiodico.com.gt/es/20111108/pais/203395>; Prensa Libre. November 7, 2011. *Ministro de Gobernación ordena investigar agresión a periodistas*. Available at: http://www.prensalibre.com/decision_libre_-_actualidad/Ministro-Gobernacion-investigar-agresion-periodistas_0_586741533.html

⁴⁸⁴ Cerigua. July 3, 2012. *Fotógrafo herido en la cabeza en disturbios se recupera favorablemente*. Available at: http://cerigua.org/1520/index.php?option=com_content&view=article&id=9109:fotografo-herido-en-la-cabeza-en-disturbios-se-recupera-favorablemente-&catid=48:libertad-de-expresion&Itemid=10; Prensa Libre. July 3, 2012. *Estudiantes volverán a clases con más seguridad*. Available at: http://www.prensalibre.com/noticias/Volveran-clases-seguridad_0_730126994.html; IFEX. July 4, 2012. *Photojournalists assaulted by protesting students, one seriously injured*. Available at: http://www.ifex.org/guatemala/2012/07/04/journalist_injured/

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.⁴⁸⁵ The Office of the Special Rapporteur also learned of several death threats reportedly received on October 5 y 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.⁴⁸⁶

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

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

C. Subsequent liability

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

⁴⁸⁵ IFEX/ Guatemala Cerigua. October 10, 2012. *Guatemalan journalist threatened after reporting on child abuse*. Available at: http://www.ifex.org/guatemala/2012/10/10/vasquez_threats/; La Hora. October 4, 2012. *Señalan que columnista es objeto de amenazas por denuncia*. Available at: <http://www.lahora.com.gt/index.php/nacional/guatemala/actualidad/166475-senalan-que-columnista-es-objeto-de-amenazas-por-denuncia>

⁴⁸⁶ El Mercurio Digital. October 9, 2012. *Guatemala: Amenazan de muerte al columnista Jorge Jacobs*. Available at: <http://www.elmercuriodigital.net/2012/10/guatemala-amenazan-de-muerte-al.html>; Siglo 21. October 8, 2012. *Amenazan a George*. Available at: <http://www.s21.com.gt/node/284266>

⁴⁸⁷ Noticias de Guatemala. October 4, 2012. *Al menos siete muertos y treinta heridos de bala deja intervención militar por bloqueo de ruta interamericana*. Available at: <http://noticias.com.gt/nacionales/20121004-muertos-heridos-bala-intervencion-militar-bloqueo-interamericana.html>; AFP. October 5, 2012. *Guatemala: indígenas culpan a soldados de la muerte de seis personas*. Available at: <http://www.google.com/hostednews/afp/article/ALeqM5q42GJw6ol8gNinmoAPy-7E9TwPIQ?docId=CNG.c22a08560eed455e33bc2a1cd100dac5.2c1>; Siglo 21. October 5, 2012. *El pueblo de Totonicapán amanece de luto*. Available at: <http://www.s21.com.gt/nacionales/2012/10/05/pueblo-toniticapan-amanece-luto>; Hispan TV. October 7, 2012. *Masacre de campesinos*. http://www.youtube.com/watch?v=PaemuAqs_MM

⁴⁸⁸ IFEX/ Human Rights Watch. October 12, 2012. *Army personnel charged in deaths of Guatemalan protestors*. Available at: http://www.ifex.org/guatemala/2012/10/12/guatemala_swift_charges/; BBC. October 11, 2012. *Guatemalan soldiers arrested over Totonicapán protest killings*. Available at: <http://www.bbc.co.uk/news/world-latin-america-19918713>

⁴⁸⁹ El Periódico. December 15, 2011. *Theodore Plocharski: “Intento que se conozca la verdad de la guerra”*. Available at: <http://www.elperiodico.com.gt/es/20111215/pais/205133/>; Siglo 21. December 16, 2011. *Renacen los escuadrones de la muerte*. Available at: <http://www.s21.com.gt/opinion/2011/12/16/renacen-escuadrones-muerte>. IFEX. December 19, 2011. *Denuncian a tres periodistas por asesinato, terrorismo y otros delitos*. Available at: http://www.ifex.org/guatemala/2011/12/19/periodistas_denunciados/es/

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

⁴⁹⁰ Constitutional Court of the Republic of Guatemala. Judgment of March 14, 2012. General Partial Unconstitutionality. Case File 4238-2011. Available at: http://www.cc.gob.gt/siged2009/mdlWeb/fmConsultaWebVerDocumento.aspx?St_DocumentId=819600.html&St_RegistrarConsulta=yes&SF=fraseabuscar

⁴⁹¹ IACHR, Office of the Special Rapporteur for Freedom of Expression. *Freedom of Expression Standards for Free and Inclusive Broadcasting*. OEA/Ser.L/V/III CIDH/RELE/INF. 3/09. December 30, 2009, paras. 58, 65 & 105. Available at: http://www.oas.org/en/iachr/expression/docs/publications/Broadcasting%20and%20freedom%20of%20expresion%20FINAL%20PO_RTADA.pdf

⁴⁹² Congress of the Republic of Guatemala. Decree 34-2012. Available for consultation: <http://200.12.63.122/Legislacion/Decretos1.asp?year=2012> and at: <https://gist.github.com/4129190>; Diario de Centro América. November 20, 2012. *Usufructo de frecuencias será ahora de 20 años*. Available at: <http://www.dca.gob.gt/index.php/template-features/item/7104-usufructo-de-frecuencias-sera-ahora-de-20-anos.html>; Guatemalan News Agency (AGN). December 5, 2012. *Cobran vigencia reformas a Ley de Telecomunicaciones*. Available at: <http://www.agn.com.gt/index.php/world/politics/item/1309-cobran-vigencia-reformas-a-ley-de-telecomunicaciones>; Prensa Libre. December 5, 2012. *Presidente ratifica reformas a Ley de Telecomunicaciones*. Available at: http://www.prensalibre.com/noticias/politica/Presidente-ratifica-reformas-Ley-Telecomunicaciones_0_823117793.html; UN News Center. November 26, 2012. *Guatemala: ONU lamenta reformas a Ley de Telecomunicaciones*. Available at: <http://www.un.org/spanish/News/story.asp?NewsID=25069>; See also, Republic of Guatemala. Superintendent of Telecommunications (SIT). Decree 94-96 and amendments thereto. Telecommunications Act. Arts. 58 *et seq.* Available at: http://www.sit.gob.gt/files/3113/4392/6664/Ley_General_de_Telecomunicaciones_SIT.pdf

⁴⁹³ UN News Center. November 26, 2012. *Guatemala: ONU lamenta reformas a Ley de Telecomunicaciones*. Available at: <http://www.un.org/spanish/News/story.asp?NewsID=25069>; Republic of Guatemala. Secretariat of Administrative and Security Affairs. Media Monitoring System. No date. *Diputados solicitan veto para el decreto 34-2012*. Available at: <http://monitoreo.saas.gob.gt/noticias/2012/11/diputados-solicitan-veto-para-el-decreto-34-2012-2/>; El Periódico. November 28, 2012. *Usufructos de la telecomunicación, el negocio perdido*. Available at: <http://www.elperiodico.com.gt/es/20121128/pais/221238/>

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 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.”⁴⁹⁸

E. Other relevant situations

⁴⁹⁴ IACHR. Office of the Special Rapporteur for Freedom of Expression. *Freedom of Expression Standards for Free and Inclusive Broadcasting*. OEA/Ser.L/V/II CIDH/RELE/INF. 3/09. December 30, 2009. Para. 12. Available at: <http://www.oas.org/en/iachr/expression/docs/publications/Broadcasting%20and%20freedom%20of%20expresion%20FINAL%20PORTADA.pdf>

⁴⁹⁵ Congress of the Republic of Guatemala. July 10, 2012. Bill for the amendment of Decree No. 17-73 of the Congress of the Republic. Criminal Code. Available at: <http://200.12.63.122/archivos/iniciativas/registro4479.pdf>; Cerigua. August 25, 2012. *Denuncian iniciativa de ley que busca criminalizar a las radios comunitarias*. Available at: http://cerigua.org/1520/index.php?option=com_content&view=article&id=10079:denuncian-iniciativa-de-ley-que-busca-criminalizar-a-las-radios-comunitarias&catid=48:libertad-de-expresion&Itemid=10

⁴⁹⁶ Congress of the Republic of Guatemala. Committee on Legislation and Constitutional Issues of the Congress of the Republic of Guatemala. *Iniciativa que Dispone Aprobar Reformas al Decreto Número 17-73 del Congreso de la República, Código Penal*. November 20, 2012. Opinion No. 04-2011. Bill No. 4479. Available at: <http://200.12.63.122/uploadimg/archivos/dictamenes/1243.pdf>

⁴⁹⁷ 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: <http://www.oas.org/en/iachr/expression/docs/reports/annual/2012%2003%2021%20Annual%20Report%20RELE%202011pirnting.pdf>

⁴⁹⁸ 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: <http://www.oas.org/en/iachr/expression/docs/reports/annual/2012%2003%2021%20Annual%20Report%20RELE%202011pirnting.pdf>

281. According to information received, on the morning of May 8, members of the National Police and the Public Ministry reportedly seized the equipment of the *Uqul Tinamit* community radio station and arrested journalist Brian Espinoza, who was taken to the Criminal Trial Court in the municipal district of Salamá, and later transferred to a preventive detention center. Subsequently, the officers also reportedly searched the premises of the *Jun Toj* radio station and seized its equipment. The stations had allegedly been operating without a license.⁴⁹⁹ The Office of the Special Rapporteur insists that the broadcasting laws must be consistent with international standards and must be enforced through the use of proportionate administrative sanctions and not through the application of criminal law.⁵⁰⁰

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.⁵⁰¹

283. According to information received, the program 'Libre Expresión' on *Canal 14*, in Nueva Concepción, Escuintla, was shut down on August 17. According to reports, after the program's host Evaristo García Escobar interviewed a person who criticized the mayor, municipal officials allegedly threatened the owner of *Canal 14*, saying that government advertising would be cut and the channel could be shut down if the program in question was not taken off the air.⁵⁰²

⁴⁹⁹ Prensa Libre. No date. *Rádios allanadas*. Available at: http://www.prensalibre.com/opinion/Rádios-allanadas_0_706129402.html; Cerigua. May 8, 2012. *Allanan radio comunitaria y arrestan a comunicador*. Available at: http://www.ifex.org/guatemala/2012/05/11/san_miguel_chicaj/es/

⁵⁰⁰ 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. 98. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/2012%2003%2021%20Annual%20Report%20RELE%202011pirnting.pdf>; IACHR. Annual Report 2010. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Office of the Special Rapporteur for Freedom of Expression. Chapter II: *2010 Special Report on Freedom of Expression in Mexico*. Para. 766. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%202010%20P%20ENG.pdf>

⁵⁰¹ Prensa Libre. May 3, 2012. *Controversia por denuncias de censura*. Available at: 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: <http://noticias.com.gt/departamentales/20120509-suchitepequez-denuncian-cierre-de-canales-de-televison-por-presuntas-presiones-de-alcalde.html>

⁵⁰² Cerigua. August 23, 2012. *Alcalde en Escuintla clausura programa televisivo*. Available at: http://cerigua.org/1520/index.php?option=com_content&view=article&id=10034:alcalde-en-escuintla-clausura-programa-televisivo&catid=48:libertad-de-expresion&Itemid=10; Noticias. August 31, 2011. *Amenazan con cerrar programa en TV a periodista de Escuintla luego de denunciar corrupción en la alcaldía*. Available at: <http://noticias.com.gt/nacionales/20110831-amenazan-cerrar-programa-escuintla-denuncia-corrupcion.html>

14. Guyana

284. In September of 2012, the president of Guyana designated a Commission of Inquiry to examine the use of force by police during a public demonstration in Linden on July 18 in which three people died.⁵⁰³ According to the complaint, the deaths occurred as a result of the impact of pellets fired by Guyanese police to disperse the crowd. The police officers allegedly fired in response to the violent actions of individuals protesting against an increase in the cost of electricity due to cuts in the government subsidy. Approximately 20 people were injured in the incident.⁵⁰⁴

285. On August 15, an unidentified individual attacked Freddie Kissoon, a columnist with newspaper *Kaieteur News*, minutes after he gave a speech during a demonstration in front of Parliament in Georgetown. According to the information, when Kissoon tried to get into his vehicle, the attacker struck him several times. In addition to being a columnist, Kissoon is a social activist.⁵⁰⁵

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

287. According to information received, deliberation in the National Assembly on a draft Telecommunications Bill was postponed by the Guyanese government in order to consult two of the telecommunications companies that would be affected by the law.⁵⁰⁶ The purpose of the law is to establish a Telecommunications Agency and a "regular, coordinated, open and competitive" telecommunications sector.⁵⁰⁷

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,

⁵⁰³ Office of the President of the Republic of Guyana. September 5, 2012. *President calls on persons with evidence to give testimony*. Available at: http://opnew.op.gov.gy/index.php?option=com_content&view=article&id=1516:president-calls-on-persons-with-evidence-to-give-testimony&catid=34:bulletins&Itemid=70; Kaieteur News. September 27, 2012. *Linden Commission of Inquiry: Police commander claims he had no authority over TSU ranks*. Available at: <http://www.kaieteurnewsonline.com/2012/09/27/linden-commission-of-inquiry-police-commander-claims-he-had-no-authority-over-tsu-ranks/>

⁵⁰⁴ The Daily Herald. July 18, 2012. *Three die during Linden power protest, fire raging in Linmine*. Available at: <http://www.thedailyherald.com/regional/2-news/29818-three-die-during-linden-power-protest-fire-raging-in-linmine-.html>; Trinidad Express. July 20, 2012. *Guyana protest spilling into other areas*. Available at: http://www.trinidadexpress.com/news/Guyana_protest_spilling_into_other_areas-163262776.html

⁵⁰⁵ International Press Institute (IPI). August 17, 2012. *Guyanese newspaper columnist assaulted*. <http://www.freemedia.at/home/singleview/article/guyanese-newspaper-columnist-assaulted.html>; Stabroek News. August 16, 2012. *Freddie Kissoon beaten up near Parliament*. Available at: <http://www.stabroeknews.com/2012/news/breaking-news/08/16/freddie-kissoon-beaten-up-near-parliament/>

⁵⁰⁶ Newswatch. No date. *Telecommunications Bill deferred pending meeting with GT&T & Digicel*. Available at: http://newswatchguyana.com/index.php?option=com_content&view=article&id=807:telecommunications-bill-deferred-pending-meeting-with-gtat-a-digicel&catid=37:fp-rokstories; Capitol News. November 9, 2012. *Guyana Government defers 2nd reading of 2012 Telecommunications Bill*. Available at: <http://www.capitolnewsonline.com/2012/11/09/guyana-government-defers-2nd-reading-of-2012-telecommunications-bill-nov-9th-2012/>

⁵⁰⁷ Guyana. National Frequency Management Unit. *Telecommunications Bill of 2011*. Available at: <http://www.nfmu.gov.gy/Telecommunication%20Bill.pdf>

civic education and the promotion of human and citizen values.⁵⁰⁸ Following his murder, the station suspended broadcasting temporarily. It began broadcasting again on March 20.⁵⁰⁹

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.⁵¹⁰

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.⁵¹¹

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 mayoralty. 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.⁵¹²

292. In addition, on September 20, journalists Natasha Bazelais, 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

⁵⁰⁸ IACHR. Office of the Special Rapporteur for Freedom of Expression. March 8, 2012. Press Release R26/12. *Office of the Special Rapporteur Condemns Murder of Journalist in Haiti*. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=886&ID=1>; Radio Kiskeya. March 5, 2012. *Assassinat du directeur d'une station de radio communautaire à Cité Soleil*. Available at: <http://mediasport.radiokiskeya.com/spip.php?article8605>

⁵⁰⁹ Reporters Without Borders. March 23, 2012. *Radio Boukman resumes broadcasting two weeks after director's murder*. Available at: http://en.rsf.org/haiti-radio-boukman-resumes-broadcasting-23-03-2012_42182.html

⁵¹⁰ Committee to Protect Journalists (CPJ). February 24, 2012. *Was letter to Haiti website just part of Martelly's theatrics?* Available at: <http://cpj.org/blog/2012/02/was-letter-to-haiti-website-just-part-of-martellys.php#more>; Haitian-Truth. January 16, 2012. *Haiti: President Martelly Sends Lawyers to Intimidate Defend Haiti*. Available at: <http://www.haitian-truth.org/haiti-president-martelly-sends-lawyers-to-intimidate-defend-haiti/>

⁵¹¹ Defend.ht. February 7, 2012. *Haiti-Press: Protesters Demand President Martelly to Respect Haitian Journalists*. Available at: <http://www.defend.ht/news/articles/community/2612-haiti-press-protesters-ask-martelly-to-respect-haitian-journalists>; Committee to Protect Journalists (CPJ). February 24, 2012. *Was letter to Haiti website just part of Martelly's theatrics?* Available at: <http://cpj.org/blog/2012/02/was-letter-to-haiti-website-just-part-of-martellys.php#more>; Bureau des Avocat Internationaux. July 17, 2012. *Communication to the Inter-American Commission on Human Rights*. Available at: <http://ijdh.org/wordpress/wp-content/uploads/2012/07/IACHR-letter-requesting-visit-7-17-12.pdf>

⁵¹² University of San Francisco. Institute for Justice and Democracy in Haiti. September 27, 2012. *Freedom of the Press in Haiti: The Chilling Effect on Journalists Critical of the Government*. Page 6. Available at: http://ijdh.org/wordpress/wp-content/uploads/2012/09/IJDH_FreedomOfExpression.pdf; Scoop FM. June 20, 2012. *Le ministre Mayard-Paul révoque le maire Delva*. Available at: <http://www.scoopfmhaiti.com/component/content/article/3-newsflash/2063-le-ministre-mayard-paul-revoque-le-maire-delva>; 90.5 Signal FM. November 8, 2012. *Le juge Armand Pierre ferait-il tourner le journaliste Wendy en rond?* Available at: http://www.signalfmhaiti.com/index.php?option=com_content&view=article&id=5663:le-juge-armand-pierre-ferait-il-tourner-le-journaliste-wendy-en-rond-&catid=34:politique; Le Nouvelliste. June 19, 2012. *Le ministre Mayard-Paul révoque le maire Delva*. Available at: <http://lenouvelliste.com/article4.php?newsid=106251>

⁵¹³ University of San Francisco. Institute for Justice and Democracy in Haiti. September 27, 2012. *Freedom of the Press in Haiti: The Chilling Effect on Journalists Critical of the Government*. Page 5. Available at: http://ijdh.org/wordpress/wp-content/uploads/2012/09/IJDH_FreedomOfExpression.pdf; Defend.ht. September 20, 2012. *Haiti: Three Journalists from Le Nouvelliste Arrested*. Available at: <http://www.defend.ht/news/articles/media/3361-three-journalists-from-le-nouvelliste-arrested>

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. Honduras⁵¹⁴

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 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.⁵¹⁸ On March 21, 2011, police officers intimidated the journalist and destroyed her camera while she was covering a

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.

⁵¹⁵ IFEX/ Reporters Without Borders. September 14, 2012. [TV journalist's killer gets 28 years in Honduran prison](#); La Tribuna. September 11, 2012. [28 años de cárcel para el homicida de "Georgino" Orellana](#); IACHR. Office of the Special Rapporteur for Freedom of Expression. April 22, 2010. Press Release R45/10. [Office of the Special Rapporteur Expresses its Concern at the Latest Murder of a Journalist in Honduras and at the Grave Vulnerability of the Media There](#).

⁵¹⁶ La Tribuna. March 21, 2012. [Explicación cae por muerte de periodista Israel Zelaya Díaz](#); C-Libre/ IFEX. March 23, 2012. [Capturan a sospechosos de asesinatos de dos periodistas](#).

⁵¹⁷ Comisionado Nacional de Derechos Humanos (CONADEH). No date. [Comisionado DDHH Pide Protección para Periodista Ariel D'Vicente](#); IFEX/ C-Libre. August 7, 2012. [Honduran journalist fears for safety after uncovering financial corruption](#); Proceso Digital. August 2, 2012. [Dinero que trasladaba esposa de ex ministro de Finanzas proviene de coimas, denuncia periodista](#).

⁵¹⁸ Communication of journalist Sandra Marybel Sánchez. August 30, 2012. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; El Heraldo. September 21, 2012. [Policía pide perdón a periodista hondureña](#); La Tribuna. August 29, 2012. [Policía pide disculpas a periodista por agresión](#).

teachers demonstration in Tegucigalpa. The Public Prosecutor's Office issued a summons to the police officer.⁵¹⁹

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.⁵²⁰ 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."⁵²¹

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.⁵²²

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."⁵²³ 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

⁵¹⁹ IACHR. Office of the Special Rapporteur for Freedom of Expression. March 30, 2011. Press Release R27/11. [Office of the Special Rapporteur Expresses Concern over Attacks against Media in Honduras](#); 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. 343.

⁵²⁰ IACHR. 146 Period of Sessions. [Hearing on the Right to Freedom of Expression in Honduras](#). November 4, 2012; IACHR. November 16, 2012. Press Release 134/12. [IACHR Concludes its 146th Session and Expresses Appreciation for the Confidence Shown by All Stakeholders in the Human Rights System. Annex to Press Release 134/12 on the 146th Regular Session of the IACHR](#).

⁵²¹ Communication from the State of Honduras, Official Letter No. SP-A-34-2013, dated February 22, 2013, "Observations of the State of Honduras to the Draft of the Report." p. 10.

⁵²² Communication from the State of Honduras, Official Letter No. SP-A-34-2013, dated February 22, 2013, "Observations of the State of Honduras to the Draft of the Report." p. 10.

⁵²³ Communication from the State of Honduras, Official Letter No. SP-A-34-2013, dated February 22, 2013, "Observations of the State of Honduras to the Draft of the Report." p. 11.

June 28, 2009. The IACHR learned that the Honduran authorities were weighing a number of different theories as to the motive behind the murder.⁵²⁴ The State indicated with regard to this matter that “as the IACHR notes, the Public Ministry is assessing different theories, and the investigation is ongoing.”⁵²⁵

303. The IACHR was informed of the murder of communicator and LGBTI rights defender Eric Alex Martínez Ávila, who disappeared on May 5 and was found dead two days later. According to the information received, on May 7, residents of the 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.⁵²⁶ The IACHR was informed that on September 12, one of the possible perpetrators of the crime was arrested.⁵²⁷ The State reports that the case “is being prosecuted.”⁵²⁸

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

⁵²⁴ IACHR. Office of the Special Rapporteur for Freedom of Expression. December 8, 2011. Press Release R126/11. [Office of the Special Rapporteur regrets death of journalist and shooting against newspaper in Honduras](#); La Prensa. December 6, 2011. [CPH y SIP condenan asesinato de periodista Luz Marina Paz](#).

⁵²⁵ Communication from the State of Honduras, Official Letter No. SP-A-34-2013, dated February 22, 2013, “Observations of the State of Honduras to the Draft of the Report.” p. 11.

⁵²⁶ IACHR. Office of the Special Rapporteur for Freedom of Expression. May 11, 2012 Press Release R46/12. [Office of the Special Rapporteur of Freedom of Expression, The Rapporteurship on Human Rights Defenders and The unit for the Rights of Persons LGBTI condemn murder of journalist and LGBTI activist in Honduras](#); La Tribuna. May 8, 2012. [Estrangulado encuentran a periodista de la resistencia.](#); La Prensa. May 8, 2012. [Acaban con la vida de otro periodista en Honduras; ya son 22.](#)

⁵²⁷ El Heraldo. September 12, 2012. [Capturan a pandillero sospechoso de asesinar a periodista](#); La Tribuna. September 12, 2012. [Implicado en la muerte de periodista cae en El Pedregal.](#)

⁵²⁸ Communication from the State of Honduras, Official Letter No. SP-A-34-2013, dated February 22, 2013, “Observations of the State of Honduras to the Draft of the Report.” pp. 11 & 17.

⁵²⁹ IACHR. Office of the Special Rapporteur for Freedom of Expression. May 17 2012. Press Release R52/12. [The Office of the Special Rapporteur condemns murder of journalist kidnapped in Honduras](#); Committee to Protect Journalists (CPJ). May 16, 2012. [Kidnapped Honduran Journalist found dead](#). C-Libre. May 16, 2012 [Ejecutado encuentran a periodista secuestrado hace siete días.](#)

⁵³⁰ La Prensa. No date. [Honduras: Apresados en Cofradía mataron a Alfredo Villatoro](#); El Heraldo. May 28, 2012. [Dictan detención judicial a supuestos secuestradores del periodista Alfredo Villatoro](#); C-Libre. May 28, 2012. [Un total de ocho detenidos por el secuestro y asesinato del periodista Villatoro.](#)

⁵³¹ Secretary of Foreign Affairs of the Republic of Honduras. [Secretaría de Relaciones Exteriores de Honduras] July 11, 2012. *Official Note No. 803/DGEA/012*. Transmitting Official Note-SUB-SEDS-N° 092-2012 of June 26, 2012, of the Office of the State Ministry for Security [Secretaría de Estado en el Despacho de Seguridad]. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

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 *Hondudiaro.com*. He was killed while on his way to work. According to information provided, the journalist had been receiving death threats since 2009.⁵³⁸

307. The State subsequently provided information on the matters addressed at the November 4, 2012 hearing. With regard to the case of Matías Valle, the State indicated that “the Office of the Public Prosecutor requested that the Court exhume the body, which [...] had been buried at Finca La Confianza,” and that, “the Court scheduled the exhumation for February 23 of this year.” Nevertheless, the State reported that it was not possible to conduct the exhumation due to the alleged lack of cooperation on the part of the victim’s relatives and other residents of the farm, and that the judge

⁵³² Telesur. August 29, 2012. [Periodista de la policía de tránsito es asesinado a tiros en Honduras](#); Estrategia & Negocios/AFP. August 29, 2012. [Honduras: asesinan a periodista vocero de policía de tránsito](#); IFEX/ C-Libre. August 31, 2012. [Periodista y portavoz policial asesinado en Honduras](#).

⁵³³ Communication from the State of Honduras, Official Letter No. SP-A-34-2013, dated February 22, 2013, “Observations of the State of Honduras to the Draft of the Report.” p. 11.

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 acibillado frente a su casa en Tela](#).

⁵³⁵ 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; Reporters Without Borders. January 24, 2012. [Women journalists terrorized, peasant spokesman gunned down in Aguán](#).

⁵³⁶ 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 Prensa. April 23, 2012. [Honduras: Matan al presentador del show televisivo “El Tecolote”](#).

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; Reporters Without Borders. July 13 2012. [HONDURAS | Asesinado el periodista Adonis Felipe Bueso Gutiérrez](#).

⁵³⁸ 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 Prensa. August 10, 2012. [Matan a empleado de Hondudiaro](#); UNESCO. August 22, 2012. [La Directora General condena el asesinato del periodista hondureño José Noel Canales Lago y pide el fin de la impunidad para tales crímenes](#).

reportedly ordered the authorities to leave the property.⁵³⁹ In addition, the State provided information on the situation of Noel Valladares, stating that “he was not a journalist, nor was he an employee of any media outlet. He had been paying for airtime on television since January 30, 2012 [...], and on his program he would predict winning numbers for the national lottery. Therefore, the investigation into his murder and the murder of his companions is being conducted by the Homicide Unit of the Office of the Prosecutor for Common Crimes, and not by the investigative team specializing in the death of journalists.”⁵⁴⁰ Finally, regarding the case of reporter Adonis Felipe Bueso, the State indicated that “statements have been taken from several individuals to investigate possible motives for the crime.”⁵⁴¹

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

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

3. Attacks on and Threats against Media Outlets and Journalists

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

311. The IACHR was informed that on December 23, 2011, Leonel Espinoza, a journalist and correspondent with Colombia’s *NTN 24* was arrested, assaulted and intimidated by supposed members of the National Police. The incident took place at night while the communicator was driving his car. He was intercepted by a police vehicle. The journalist had reported on issues including the cleaning up of the police department, attacks on media outlets and journalists, impunity in journalist murders, and the case of the murder of the son of the rector of the Universidad Nacional Autónoma of Honduras.⁵⁴³ The State of Honduras provided information regarding this case, stating that “the Office of the Public Prosecutor has taken several steps that included obtaining witness statements; the victim was evaluated by the Forensic

⁵³⁹ Communication from the State of Honduras, Official Letter No. SP-A-34-2013, dated February 22, 2013, “Observations of the State of Honduras to the Draft of the Report.” p. 12.

⁵⁴⁰ Communication from the State of Honduras, Official Letter No. SP-A-34-2013, dated February 22, 2013, “Observations of the State of Honduras to the Draft of the Report.” pp. 11 & 12.

⁵⁴¹ Communication from the State of Honduras, Official Letter No. SP-A-34-2013, dated February 22, 2013, “Observations of the State of Honduras to the Draft of the Report.” p. 12.

⁵⁴² IFEX. December 5, 2011. [Armed men fire shots at daily’s offices](#); Knight Center for Journalism in the Americas. December 6, 2011. [Police exposé linked to shooting attack on newspaper, Honduran editor says](#).

⁵⁴³ IFEX. December 23, 2011. [Journalist assaulted by National Police officers](#); El Heraldo. December 23, 2011. [Periodista denuncia a policías por agresión](#).

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

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

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

314. Likewise, on January 23, 2012, Gilda Silvestrucci, a journalist with *Radio Globo*, received several calls on her cellular telephone. During one of them, the voice of an unidentified man mentioned personal information regarding her three children and explicitly told her, “we’re going to kill you.” Almost simultaneously, an unidentified person called one of her daughters and asked her what time her mother normally gets home. The journalist also noticed she was being followed by suspicious vehicles. Silvestrucci is an active member of the “Journalists for Life and Freedom of Expression” collective and participated in a demonstration organized by that group on December 13, 2011.⁵⁴⁸ In addition, the journalist took part in filing a criminal complaint against senior civilian and military officials on December 21, wherein a group of human rights defenders alleged to the Office of the Special Public Prosecutor for Human Rights that the President, the head of the Joint Chiefs of Staff of the Armed Forces, and the head of the Presidential Honor Guard were responsible for a series of human rights violations committed by the Presidential Honor Guard.⁵⁴⁹

315. In that sense, on February 7, 2012, the IACHR sent a communication to the State of Honduras in keeping with the faculties established in Article 41 of the American Convention on Human Rights in which it requested information on the death threats received by Uriel Rodríguez, Itsmania

⁵⁴⁴ Communication from the State of Honduras, Official Letter No. SP-A-34-2013, dated February 22, 2013, “Observations of the State of Honduras to the Draft of the Report.” p. 12.

⁵⁴⁵ Communication from the State of Honduras, Official Letter No. SP-A-34-2013, dated February 22, 2013, “Observations of the State of Honduras to the Draft of the Report.” p. 12.

⁵⁴⁶ C-Libre. December 27, 2011. [Camarógrafo amenazado de muerte por agente policial de homicidios](#); International Freedom of Expression Exchange (IFEX). December 28, 2011. [Police officer issues death threat against camera operator](#); Honduras News. December 29, 2011. [Letter to President Lobo from Pakistan Press Foundation](#).

⁵⁴⁷ Honduras Tierra Libre. November 15, 2012. [Defensora de Derechos Humanos en Honduras Silenciada por Delincuentes Cibernéticos](#); Habla Honduras. November 23, 2012. [Defensora de derechos humanos denuncia amenazas](#); Xibalba Arte y Cultura. November 20, 2012. [Defensora de derechos humanos denuncia amenazas](#).

⁵⁴⁸ Comité de Familiares de Detenidos Desaparecidos de Honduras (COFADEH). January 26, 2012. Communication to the IACHR. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Protecti@nline. January 27, 2012. [Gilda Silvestrucci, Honduran journalist and defender: victim of death threats and harassment](#); Conexihon.info. January, 30 2012. [Amnistía Internacional realiza acciones urgentes para proteger la vida de dos integrantes del colectivo de periodistas por la vida y libre expresión](#).

⁵⁴⁹ Comité de Familiares de Detenidos Desaparecidos de Honduras (COFADEH). January 26, 2012. Communication to the IACHR. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Asociación para los derechos de la Mujer y el Desarrollo (AWID)/ RSF. January 3, 2012. [Honduras: Quince Mujeres Periodistas Presentan Una Denuncia Contra Altas Autoridades Del Estado](#).

Pineda and Gilda Silvestrucci. The request was repeated on March 12, 2012.⁵⁵⁰ 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.”⁵⁵¹ 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.”⁵⁵² 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.”⁵⁵³ Finally, the State reported that Itsmania Pineda Platero has been the beneficiary of protection measures since March 5, 2010.⁵⁵⁴

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.⁵⁵⁵

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 Yourself” showed images of and featured testimony on a number of irregularities in the penitentiary facility.⁵⁵⁶ 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.⁵⁵⁷ Regarding this matter, the State reported that “there is no record of any complaint filed with the Office of the Public Prosecutor [...] and therefore they are asked to file the respective complaint before the national authorities.”⁵⁵⁸

⁵⁵⁰ IACHR. Office of the Special Rapporteur for Freedom of Expression. February 7, 2012. *Letter to the State of Honduras: Request for information about the situation of journalists Uriel Rodríguez, Itsmania Pineda and Gilda Silvestrucci*. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; IACHR. Office of the Special Rapporteur for Freedom of Expression. March 12, 2012. *Second letter to the State of Honduras: Request for information about the situation of journalists Uriel Rodríguez, Itsmania Pineda and Gilda Silvestrucci*. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁵⁵¹ Attorney General of the Republic of Honduras [Ministerio Público de la República de Honduras]. March 20, 2012. Communication to the sub-Attorney General of the Republic [Sub Procurador General de la República] No. UAI-024-2012. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁵⁵² Communication from the State of Honduras, Official Letter No. SP-A-34-2013, dated February 22, 2013, “Observations of the State of Honduras to the Draft of the Report.” p. 12.

⁵⁵³ Communication from the State of Honduras, Official Letter No. SP-A-34-2013, dated February 22, 2013, “Observations of the State of Honduras to the Draft of the Report.” p. 12.

⁵⁵⁴ Communication from the State of Honduras, Official Letter No. SP-A-34-2013, dated February 22, 2013, “Observations of the State of Honduras to the Draft of the Report.” p. 12.

⁵⁵⁵ IFEX. February 27, 2012. [Periodista denuncia incursión de desconocidos en su vivienda](#); SIP-IAPA. April 23, 2012. [Informe por país: Honduras](#).

⁵⁵⁶ C-Libre. February 24, 2012. [Periodistas amenazados de muerte por cobertura periodística](#); Reporters Without Borders. March 2, 2012. [Oleada de amenazas a periodistas, editores, y líderes de opinión](#).

⁵⁵⁷ IFEX. February 28, 2012. [Gerente de empresa Digicable recibe amenazas](#); Reporters Without Borders. March 2 2012. [Journalists and civil society activists caught up in new wave of threats](#).

⁵⁵⁸ Communication from the State of Honduras, Official Letter No. SP-A-34-2013, dated February 22, 2013, “Observations of the State of Honduras to the Draft of the Report.” p. 13.

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

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

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

321. Additionally, the IACHR learned of death threats and threats of sexual violence received on a number of occasions between February and April by Dina Meza Elvir, spokesperson for the Committee of Relatives of the Detained and Disappeared (COFADEH in its Spanish acronym). According to the information, on February 22, 2012 she received two text messages that said, “We are going to burn your pussy with lime until you scream and the whole squad is going to enjoy it.” CAM”. And second: “you’ll to end up like the people in Aguán dead nothing better than fucking some bitches.” CAM is an

⁵⁵⁹ C-Libre. February 20, 2012. [Militares intimidan a prensa internacional en el Bajo Aguán](#); Reporters Without Borders. March 2, 2012. [Regional radio Journalist murdered by assailant with machete](#).

⁵⁶⁰ Communication from the State of Honduras, Official Letter No. SP-A-34-2013, dated February 22, 2013, “Observations of the State of Honduras to the Draft of the Report.” p. 13.

⁵⁶¹ C-Libre/ IFEX. February 27, 2012. [C-libre Vice-president receives death threat](#); Hondudiario. February 28, 2012. [Periodista Danilo Osmaro Castellanos denuncia amenazas a muerte](#).

⁵⁶² Communication from the State of Honduras, Official Letter No. SP-A-34-2013, dated February 22, 2013, “Observations of the State of Honduras to the Draft of the Report.” p. 13.

⁵⁶³ La Tribuna. March 1, 2012. [Periodista denuncia amenazas a muerte](#); La Prensa. March 1, 2012. [Periodista sampedrana es amenazada de muerte](#).

⁵⁶⁴ Communication from the State of Honduras, Official Letter No. SP-A-34-2013, dated February 22, 2013, “Observations of the State of Honduras to the Draft of the Report.” p. 13.

acronym for Comando Álvarez Martínez with which other human right defenders were threatened after the 2009 *coup d'état*. Likewise, on April 6, Dina Meza saw two men photographing her while she walked down the street with her children, and on April 14 she received a phone call during which a man warned her, “Watch your *pipa*” (vagina).⁵⁶⁵ Later, in August 2012, she reported having received new telephone threats in the context of the violent breaking up of a peasant demonstration in El Aguán.⁵⁶⁶ Dina Meza Elvir has been the beneficiary of a IACHR precautionary measures since 2006.⁵⁶⁷

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.⁵⁶⁸ 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.⁵⁶⁹

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.⁵⁷⁰

324. The IACHR received information indicating that on March 28, 2012, a mobile unit of *Canal 36 Choluta 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.⁵⁷¹

325. In addition, journalist Antonio Cabrera was threatened through text messages sent to his cellular telephone in February, March and April 2012. The threats against Cabrera, who is responsible for the *Radio Frescura 90.9* news programs in the city of Tela, Atlántida department, have generally been received while he broadcasts the morning news. According to the information received, some of the messages received by the communicator include the following: “you have a few days left to keep talking; you’re going to be the third to last journalist to get his tongue cut out.” Cabrera reports that the subjects covered in his program that may have provoked the threats include alleged illegal cutting down of trees in Lancetilla National Park and alleged arbitrary actions taken by local authorities.⁵⁷²

⁵⁶⁵ Amnesty International. April 18, 2012. [Periodista de derechos humanos amenazada](#); Front Line Defenders. April 17, 2012. [Honduras: Death Threat and ongoing intimidation against human rights defender Ms. Dina Meetabel Meza Elvir](#).

⁵⁶⁶ Iniciativa Mesoamericana de Mujeres Defensoras de Derechos Humanos. August 27, 2012. Communication to the Office of the Special Rapporteur for Freedom of Expression. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁵⁶⁷ IACHR. [Annual Report 2006](#). OEA/Ser.L/V/II.127, Doc. 4 rev. 1, March 3, 2007. Vol. I. Chapter III.

⁵⁶⁸ IFEX/ C-Libre. March 20, 2012. [Journalists receives death threats in Choloma](#); Conexihon.info. March 19, 2012. [Comunicador Alex Sabillón interpone denuncia por amenazas a muerte](#).

⁵⁶⁹ C-Libre. August 28, 2012. [Reportero se refugia en estación policial para salvaguardar su vida](#); C-Libre. September 1, 2012. [C-Libre solicitó medidas cautelares para reportero cholomeño](#); La Prensa. August 31, 2012. [Comunicadores piden protección a Fiscalía](#).

⁵⁷⁰ La Tribuna. March 17, 2012. [Portavoz del MP denuncia amenazas de una fiscal](#); C-Libre/ IFEX. March 20, 2012. [Periodista en San Pedro Sula recibe amenaza de muerte](#).

⁵⁷¹ C-Libre. March 29, 2012. [Desconocidos destruyen unidad móvil de Canal 36](#); Knight Center for Journalism in the Americas. March 30, 2012. [TV channel's mobile unit destroyed in Honduras](#).

⁵⁷² IFEX. May 28 2012. [Periodista de la Radio Frescura denuncia amenazas de muerte](#); C-Libre. May 28, 2012. [Periodista denuncia amenazas](#).

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.⁵⁷³

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

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

329. On May 28, David Romero Elnor, 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

⁵⁷³ C-Libre. April 13, 2012. [Desconocidos sabotean señal de radios comunitarias](#); Knight Center for Journalism in the Americas. April 16, 2012. [Electricity disconnected at two Honduran community radio stations](#).

⁵⁷⁴ C-Libre. April 23, 2012. [Radio journalist assaulted, gets death threat from Liberal Party leaders](#); La Tribuna. April 30, 2012. [El IPI condena los ataques de políticos a periodistas en Honduras, Panamá y Argentina](#).

⁵⁷⁵ Reporters Without Borders. May 4, 2012. [Attacks and threats aimed at provincial media reach alarming level](#); C-Libre. April 30, 2012. [Periodista de Canal 6 denuncia amenazas a muerte](#).

⁵⁷⁶ C-Libre. May 9, 2012. [Director de noticiero con medidas cautelares continúa recibiendo amenazas de muerte](#); Notimex. May 8, 2012. [Denuncian amenazas de muerte contra periodista](#).

⁵⁷⁷ La Prensa. April 28, 2012. [Atentan contra vida de comunicador en Copán](#); El Tiempo. No date. [Atentan contra el corresponsal de Canal 6](#).

⁵⁷⁸ Reporters Without Borders. May 4, 2012. [Attacks and threats aimed at provincial media reach alarming level](#); C-Libre. April 30, 2012. [Desconocidos disparan contra la vivienda de comunicador](#).

⁵⁷⁹ C-Libre/ IFEX. May 23, 2012. [Periodista denuncia intento de secuestro](#); Crónica Viva. May 23, 2012. [Honduras: periodista denuncia intento de secuestro](#).

⁵⁸⁰ C-Libre. July 18, 2012. [Prisión preventiva para el responsable del atentado contra comunicador](#); Reporters Without Borders. July 20, 2012. [Journalist still fears for safety although suspect held for his attempted murder](#).

⁵⁸¹ C-Libre. October 17, 2012. [Desde prisión agresor de periodista le continúa enviando amenazas de muerte](#); El Libertador. October 17, 2012. [Honduras: Desde la cárcel periodista recibe amenazas](#).

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 Habla*. 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

⁵⁸² IFEX. May 28, 2012. [Periodista preocupado por amenazas de coronel retirado](#); C-Libre. May 28, 2012. [Coronel retirado afirma que a los periodistas en Honduras los matan por bocones](#).

⁵⁸³ IFEX. June 25, 2012. [Radios comunitarias condenan atentado contra dos comunicadores indígenas](#); Frontline Defenders. June 15, 2012. [Honduras: Shots fired at HRD Messrs Juan Vásquez and Sotero Chavarría as they return from negotiations on a land conflict](#).

⁵⁸⁴ La Tribuna. June 28, 2012. [Encuentran cadáver en caja de cartón](#); C-Libre. July 3, 2012. [Agentes policiales detienen, secuestran camarógrafo](#).

⁵⁸⁵ La Tribuna. July 23, 2012. [Pugna política provoca cierre de medios de comunicación](#); C-Libre. July 23, 2012. [Alcalde municipal nacionalista cierra medios de comunicación y censura a periodistas](#).

⁵⁸⁶ IFEX/ C-Libre. August 7, 2012. [Honduran Journalist fears for safety after uncovering financial corruption](#); Proceso Digital. August 2, 2012. [Dinero que trasladaba esposa de ex ministro de Finanzas proviene de coimas, denuncia periodista](#); Frente a Frente/ You Tube. August 3, 2012. [Interview with journalist Ariel D'Vicente](#).

⁵⁸⁷ Comisionado Nacional de Derechos Humanos (CONADEH). No date. [Comisionado DDHH Pide Protección para Periodista Ariel D'Vicente](#); IFEX/ C-Libre. August 15, 2012. [Politicians in Honduras resorts to threats, bribes to force journalist into exile](#).

⁵⁸⁸ IFEX/ CPJ. August 7, 2012. [Radio journalist's house attacked by gunmen](#); La Tribuna. August 4, 2012. [Atentan contra periodista y hieren de gravedad a su hijo](#).

precautionary measures.⁵⁸⁹ The information received also indicates that on August 17, 2012, Roberto García, a journalist and contributor to *Radio Progreso*, was threatened. The journalist also works as a defender of environmental rights and is particularly involved in the struggle against the installation of mining companies in the Atlántida department.⁵⁹⁰

335. Likewise, on August 20, 2012, communicator Vitalino Álvarez, spokesperson for the Aguán Unified Peasant Movement (MUCA), was struck in the hands by police officers who attempted to take his camera. According to the communicator, he was the victim of persecution because of his position as the MUCA spokesperson. He also indicated that he was arrested on August 26 on accusations of being a “foreigner” because he did not have the identification requested. Days prior, the communicator had been arrested with other members of the movement during a protest in Tegucigalpa.⁵⁹¹ Also, on January 31, 2012, Álvarez alleged that he had received multiple threats.⁵⁹²

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.⁵⁹³

337. According to information received by the IACHR, on September 6, Eduardo Coto Barnica, a journalist with *Radio Uno*, was intimidated by an unidentified individual who approached him and threatened him with an object hidden underneath his shirt that appeared to be a firearm. Months prior, he had reported having received threatening phone calls. According to Coto Barnica, the attack is related with his criticism toward the *coup d'état* and the work that he does in the radio station's news department, where he takes a critical stance in addressing political, social and economic topics.⁵⁹⁴

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).⁵⁹⁵ 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.⁵⁹⁶

⁵⁸⁹ IFEX/ C-Libre. August 7, 2012. [Previo a visita de relator de libertad de expresión, se incrementan agresiones a la prensa](#); Conferencia de Provinciales Jesuitas en América Latina (CPAL). August 16, 2012. [Honduras: Acoso policial en las instalaciones de Radio Progreso](#).

⁵⁹⁰ C-Libre. August 21, 2012. [Periodista y defensor del medio ambiente temen por su vida](#); IFEX/ Reporters Without Borders. August 27, 2012. [More threats, attacks on human rights activists in Honduras](#); Radio Progreso. August 21, 2012. [Continúan amenazas a defensores de recursos naturales en Atlántida](#).

⁵⁹¹ IFEX/ C-Libre. August 31, 2012. [Peasant's rights spokesperson harassed by Honduran authorities](#); El Faro. August 26, 2012. [Honduras: Denuncian detención de portavoz de Movimiento Unificado Campesino](#); Radio Nederland. August 27, 2012. [Honduras: Denuncian detención de portavoz de Movimiento Unificado Campesino](#).

⁵⁹² IFEX/ C-Libre. January 31, 2012. [Dirigente campesino denuncia atentado en su contra](#); Honduras Tierra Libre. August 29, 2012. [Honduras: Portavoz de campesinos denuncia ser víctima de persecución policial y militar](#).

⁵⁹³ C-Libre. August 15, 2012. [Alcalde de Trujillo obstruye la labor periodística de reportero](#); El Libertador. August 17, 2012. [Honduras: Denuncia: Periodista es acosado por parte de alcalde de Trujillo](#).

⁵⁹⁴ IFEX/ C-Libre. September 17, 2012. [Critical Honduran radio journalist threatened](#); Cerigua. September 18, 2012. [Honduras: Periodista denuncia amenaza por su labor informativa](#).

⁵⁹⁵ Defensores en Línea. September 27, 2012. [Se intensifica estrategia de terror: Mensajes amenazantes contra periodista de MUCA](#); IFEX/ C-Libre. October 2, 2012. [Honduran journalist linked to peasant group receives death threats](#).

⁵⁹⁶ Telesur. October 24, 2012. [Campesinos hondureños denuncian secuestro y torturas contra su vocera](#); Defensores en Línea. October 23, 2012. [Secuestran por varias horas a Karla Zelaya periodista de MUCA](#).

339. According to information received, online newspaper *Hondudiaro* 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.⁵⁹⁷

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.⁵⁹⁸

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

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

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

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

⁵⁹⁷ C-Libre. October 16, 2012. [Hackers atacan periódico digital](#); Hondudiaro. October 15, 2012. [Hondudiaro.com y Seproc listos en el ciberespacio tras superar "hackeo"](#).

⁵⁹⁸ IFEX/ C-Libre. November 1, 2012. [Hombres vestidos de policías roban vehículo de periodistas hondureños](#); Cerigua. November 3, 2012. [Honduras: Sujetos armados hurtan equipo a periodistas](#).

⁵⁹⁹ IFEX/ C-Libre. November 29, 2012. [Environmental reporter gets death threats in Honduras](#); La Tribuna. November 29, 2012. [Periodista ambientalista denuncia amenazas](#).

⁶⁰⁰ Petitioners: Centro de Investigación y Promoción de Derechos Humanos (CIPRODEH), and Comité por la Libre Expresión (C-Libre). With the participation of the State of Honduras. IACHR. 146 Periodo de Sesiones. [Hearing on the Right to Freedom of Expression in Honduras](#) November 4, 2012; IACHR. Information brought by the petitioners in the *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; IACHR. November 16, 2012. Press Release 134/12. [IACHR Concludes its 146th Session and Expresses Appreciation for the Confidence Shown by All Stakeholders in the Human Rights System. Annex to Press Release 134/12 on the 146th Regular Session of the IACHR](#).

⁶⁰¹ IACHR. 146 Period of Sessions. November 4, 2012. [Hearing on the Right to Freedom of Expression in Honduras](#); 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; IACHR. November 16, 2012. Press Release 134/12. [IACHR Concludes its 146th Session and Expresses Appreciation for the Confidence Shown by All Stakeholders in the Human Rights System. Annex to Press Release 134/12 on the 146th Regular Session of the IACHR](#).

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 them⁶⁰⁵.

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

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

⁶⁰² IFEX/ C-Libre. February 7, 2012. [Juzgado impide viaje de periodista a Brasil](#); La Tribuna. February 4, 2012. [Impiden que director de Canal 36 hable para su documental en Brasil](#).

⁶⁰³ IFEX. April 17, 2012. [Dirigentes estudiantiles denuncian violaciones a la libertad de expresión y asociación](#). Defensores en Línea. April 12, 2012. [Universidad pedagógica amenaza con expulsar a dirigentes que demandan derechos para la comunidad estudiantil](#).

⁶⁰⁴ El Heraldo. October 18, 2012. [Alcalde de Talanga ordenó “secuestrar” todos los ejemplares de El Heraldo](#); Knight Center for Journalism in the Americas. October 25, 2012. [Mayor of Honduras orders the closure of cable channel and impedes newspaper circulation](#).

⁶⁰⁵ La Prensa. October 18, 2012. [Fiscalía citará al alcalde de Talanga](#); El Heraldo. October 25, 2012. [Hay que investigar cierre de medios en Talanga](#).

⁶⁰⁶ Conexihon. November 15, 2012. [COPINH denuncia amenazas a la Radio La Voz Lenca](#); Telesur. November 15, 2012. [La Voz Lenca denuncia asedio por parte del Conate!](#).

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.⁶⁰⁷

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.⁶⁰⁸ 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.”⁶⁰⁹ In this respect, the Office of the Special Rapporteur recalls that Article 13(5) of the American Convention prohibits the incitement to violence,⁶¹⁰ 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

⁶⁰⁷ The Gleaner. October 29, 2012. *Gay Activist Takes TV Stations to Court*. Available at: <http://jamaica-gleaner.com/gleaner/20121029/lead/lead4.html>; Aids-Free World. October 19, 2012. *AIDS-Free World Supports Case against Censorship of Gays on Jamaica TV*. Available at: http://aidsfreeworld.org/Newsroom/Press-Releases/2012/Case-against-censorship-of-gays.aspx?utm_content=mat%40aidsfreeworld.org&utm_source=VerticalResponse&utm_medium=Email&utm_term=here&utm_campaign=Is%20Jamaican%20TV%20violating%20L

⁶⁰⁸ Communication to the Office of the Special Rapporteur. December 27, 2012. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Jamaica Observer. December 25, 2012. Available at: <http://www.jamaicaobserver.com/mobile/tools/cartoons/ed-cartoon-dec-25-2012> and <http://www.jamaicaobserver.com/mobile/cartoon/>

⁶⁰⁹ IACHR. Annual Report 2009. OEA/Ser.LV/II. Doc. 51. December 30, 2009. *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. 60. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%20Annual%202009%20%20ENG.pdf>; General Assembly of the Organization of American States (OAS). September 11, 2001. Inter-American Democratic Charter. Available at: http://www.oas.org/charter/docs_es/resolucion1_es.htm

⁶¹⁰ Cf. IACHR. Office of the Special Rapporteur for Freedom of Expression. *Inter-American Legal Framework of the Right to Freedom of Expression*. OEA/Ser.LV/II CIDH/RELE/INF. 2/09. December 30, 2009. Para. 58. Available at: <http://www.oas.org/en/iachr/expression/docs/publications/INTER-AMERICAN%20LEGAL%20FRAMEWORK%20OF%20THE%20RIGHT%20TO%20FREEDOM%20OF%20EXPRESSION%20FINAL%20PORTADA.pdf>

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.⁶¹¹

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, assignation 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.⁶¹²

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*.⁶¹³ 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.”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

⁶¹¹ Senate of Mexico. June 6, 2012. Bulletin 1111. *Valida la permanente reforma constitucional a favor de periodistas*. Available at: http://comunicacion.senado.gob.mx/index.php?option=com_content&view=article&id=3740:boletin-1111-valida-la-permanente-reforma-constitucional-a-favor-de-periodistas&catid=51:boletin-de-prensa&Itemid=180; Article 19. June 7, 2012. *México: Se aprueba la federalización de delitos contra periodistas*. Available at: http://www.articulo19.org/portal/index.php?option=com_content&view=article&id=312:mexico-se-aprueba-la-federalizacion-de-delitos-contra-periodistas-ciudad-de-mexico-7-de-junio-2012-el-dia-de-ayer-se-aprobo-la-reforma-al-articulo-73-fraccion-xxi-constitucional-lo-que-significa-que-las-autoridades-federales-pueden-conocer-y-atraer-&catid=5:boletines

⁶¹² Official Journal of the Federation. June 25, 2012. *Decreto por el que se expide la Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas*. Available at: http://dof.gob.mx/nota_detalle.php?codigo=5256053&fecha=25/06/2012; National Congress of Mexico. April 30, 2012. Act for the Protection of Persons who Defend Human Rights and Journalists. Available at: <http://www.codigodh.org/wp-content/uploads/2012/05/Ley-defensores.as.pdf>; IACHR. March 30, 2012. *Annex to Press Release 36/12 on the conclusion of the IACHR'S 144th Session*. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2012/036A.asp; IACHR. May 14, 2012. Press Release 47/12. *Mexico: International and Regional Experts Urge Swift Action to Protect Human Rights Defenders and Journalists*. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2012/047.asp; Centro Nacional de Comunicación Social (CENCOS). June 22, 2012. *Urgen garantizar la efectiva implementación de la Ley de Protección de Personas Defensoras de Derechos Humanos y Periodistas*. Available at: <http://cencos.org/node/29346>; Vanguardia. June 25, 2012. *Ejecutivo publica Ley de Protección de Periodistas*. Available at: <http://www.vanguardia.com.mx/ejecutivopublicaleydeproteccionaperiodistas-1318149.html>

⁶¹³ Supreme Court of Justice of the Nation of Mexico. January 18, 2012. Press Release No. 011/2012. *Primera Sala de SCJN conocerá de amparo sobre responsabilidad civil por daño moral de periodistas*. Available for consultation at: <http://www2.scjn.gob.mx/red2/comunicados/>; El Universal. January 19, 2012. *SCJN atrae caso sobre libertad de expresión*. Available at: <http://www.eluniversal.com.mx/nacion/193186.html>; Periodistas en Línea. No date. *Periodistas denuncian violaciones a sus garantías individuales y derechos humanos*. Available at: <http://www.periodistasenlinea.org/modules.php?op=modload&name=News&file=article&sid=11214>; IACHR. Annual Report 2011. OEA/Ser.LV/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. 364. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/2012%2003%2021%20Annual%20Report%20RELE%202011pimting.pdf>

⁶¹⁴ Supreme Court of Justice of the Nation. July 4, 2012. Press Release No. 138/2012. *Resuelve SCJN amparo sobre derecho a la libertad de información*. Available at: <http://www2.scjn.gob.mx/red2/comunicados/noticia.asp?id=2367>

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.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.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.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.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 Hüge 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

⁶¹⁵ Ver, IACHR. Annual Report 2010. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Office of the Special Rapporteur for Freedom of Expression. Chapter II: *2010 Special Report on Freedom of Expression in Mexico*. Para. 789-791. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%202010%20P%20ENG.pdf>; CNDH. Recommendation 57. September 14, 2009. Pages 12-14. Available at: <http://www.cndh.org.mx/sites/all/fuentes/documentos/Recomendaciones/2009/057.pdf>; Knight Center for Journalism in the Americas. January 19, 2012. *Mexican court to review oil executives' libel case against magazine journalists*. Available at: <http://knightcenter.utexas.edu/blog/mexican-court-review-oil-executives-libel-case-against-magazine-journalists>

⁶¹⁶ Mexico. Federal Institute on Access to and Protection of Information (IFAI). File No. RDA 1191. Folio: 021000009112. Resolution of the Plenum of August 15, 2012. Commissioner Rapporteur: Jacqueline Peschard Mariscal. Available for consultation at: <http://www.ifai.gob.mx/SesionesTema?next=21&tema=11&subtema=&anio=2012>; El Milenio. October 21, 2012. *Revela Presidencia lista de 37 celulares de funcionarios*. Available at: <http://www.milenio.com/cdb/doc/noticias2011/b5717446ffb6bd6243d28adfc6faff6>

⁶¹⁷ IACHR. Office of the Special Rapporteur for Freedom of Expression. April 30, 2012. Press Release R41/12. *Office of the Special Rapporteur Condemns Murder of Journalist in Veracruz*. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=891&IID=1>; *Proceso*. April 29, 2012. *Proceso ante el crimen de Regina Martínez*. Available at: <http://www.proceso.com.mx/?p=305845>; Committee to Protect Journalists (CPJ). April 30, 2012. *Body of Mexican journalist found beaten, strangled*. Available at: <http://cpj.org/2012/04/body-of-mexican-journalist-found-beaten-strangled.php>; *Proceso*. July 3, 2012. *Mentiras, filtraciones e incompetencia en el caso Regina*. Available at: <http://www.proceso.com.mx/?p=313080>; Reporters Without Borders. July 4, 2012. *Candidates in post-election standoff over vote fraud allegations*. Available at: http://en.rsf.org/mexico-terror-continues-on-eve-of-29-06-2012_42920.html

⁶¹⁸ Committee to Protect Journalists (CPJ). November 2, 2012. *Officials, journalists cast doubt on Veracruz murder case*. Available at: <http://cpj.org/blog/2012/11/officials-journalists-cast-doubt-on-veracruz-murder-1.php>; *Proceso*. October 31, 2012. *Precipitado, el supuesto esclarecimiento del crimen de Regina Martínez: Rodríguez Castañeda*. Available at: <http://www.proceso.com.mx/?p=323982>

Notiver. Also found with them where 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, Hüge, 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 Hüge, 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 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

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

⁶¹⁹ IACHR. Office of the Special Rapporteur for Freedom of Expression. May 4, 2012. Press Release R44/12. *Office of the Special Rapporteur Condemns Murders of Four Media Workers in Veracruz, Mexico*. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=893&IID=1>; Article 19. May 3, 2012. *Asesinan a tres periodistas en Veracruz; el gobierno mexicano sabía que su seguridad peligraba*. Available at: http://www.articulo19.org/portal/index.php?option=com_content&view=article&id=302:mexico-asesinan-a-dos-periodistas-en-veracruz-el-gobierno-mexicano-sabia-que-su-seguridad-peligraba-&catid=9:alertas&Itemid=47; Committee to Protect Journalists (CPJ). May 4, 2012. *Mexican photographers murdered in Veracruz*. Available at: <http://cpj.org/2012/05/mexican-photographers-murdered-in-veracruz.php>

⁶²⁰ Milenio. August 13, 2012. *Cae "La Bertha" del Cártel de Jalisco Nueva Generación*. Available at: <http://www.milenio.com/cdb/doc/noticias2011/cb778c2c7559c120a6916f7c440a4e04>; ABC. August 13, 2012. *México: Capturan a narco con identificaciones de empleada de diario asesinada*. Available at: <http://www.abc.com.py/internacionales/mexico-capturan-narco-con-identificaciones-de-empleada-de-diario-asesinada-437617.html>

⁶²¹ El Universal. August 16, 2012. *Veracruz: cae narco ligado a muertes de 5 periodistas*. Available at: <http://www.eluniversal.com.mx/primer/40119.html>; Univisión. August 19, 2012. *Cártel de Jalisco Nueva Generación asesinó a periodistas: PJG-Veracruz*. Available at: <http://www.youtube.com/watch?v=3QqpMupntKc>

⁶²² Article 19. August 15, 2012. *Procuraduría de Veracruz considera aclarado asesinato de periodistas; aun pendiente justicia para las víctimas*. Available at: http://www.articulo19.org/portal/index.php?option=com_content&view=article&id=336:gobierno-de-veracruz-da-carpeta-a-asesinatos-de-periodistas-y-criminaliza-a-victimas&catid=6:posicionamiento&Itemid=20 and also at: <http://www.libertad-expresion.org.mx/alertas-de-agresiones/procuraduria-de-veracruz-considera-aclarado-asesinato-de-periodistas-aun-pendiente-justicia-para-las-victimas/>; Proceso. August 15, 2012. *"Aclaran" asesinatos de cuatro periodistas en Veracruz... de Regina, nada*. Available at: <http://www.proceso.com.mx/?p=317107>

⁶²³ IACHR. Office of the Special Rapporteur for Freedom of Expression. May 21, 2012. Press Release R53/12. *Office of the Special Rapporteur Condemns Murder of Crime Reporter in Sonora, Mexico*. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=898&IID=1>; Article 19. May 18, 2012. *Actualización. México: Fue asesinado Marcos Ávila, periodista privado de libertad en Sonora*. Available at: http://www.articulo19.org/portal/index.php?option=com_content&view=article&id=309:actualizacion-mexico-fue-asesinado-marcos-avila-periodista-secuestrado-ayer-en-sonora&catid=9:alertas&Itemid=47; El Universal. May 19, 2012. *Encuentran cuerpo de reportero que fue plagiado*. Available at: <http://www.eluniversal.com.mx/estados/85917.html>

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 Policiacos*.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 Hugué, 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

⁶²⁴ IACHR. Office of the Special Rapporteur for Freedom of Expression. June 18, 2012. Press Release R70/12. *Office of the Special Rapporteur Condemns Murder of Journalist in Xalapa, Veracruz*. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=904&IID=1>; Article 19. June 14, 2012. *México: Otro periodista asesinado en Veracruz; suman nueve en 18 meses*. Available at: http://www.articulo19.org/portal/index.php?option=com_content&view=article&id=314:mexico-otro-periodista-asesinado-en-veracruz-suman-nueve-en-18-meses&catid=9:alertas&Itemid=47; Committee to Protect Journalists (CPJ). June 14, 2012. *Fourth journalist killed in Veracruz in two months*. Available at: <http://cpj.org/2012/06/fourth-journalist-killed-in-veracruz-in-two-months.php>

⁶²⁵ Proceso. August 15, 2012. *"Aclaran" asesinatos de cuatro periodistas en Veracruz... de Regina, nada*. Available at: <http://www.proceso.com.mx/?p=317107>; El Universal. August 16, 2012. *Veracruz: cae narco ligado a muertes de 5 periodistas*. Available at: <http://www.eluniversal.com.mx/primer/40119.html>; Univisión. August 19, 2012. *Cártel de Jalisco Nueva Generación asesinó a periodistas: PJG-Veracruz*. Available at: <http://www.youtube.com/watch?v=3QqpMupntKc>

⁶²⁶ Article 19. August 15, 2012. *Procuraduría de Veracruz considera aclarado asesinato de periodistas; aun pendiente justicia para las víctimas*. Available at: http://www.articulo19.org/portal/index.php?option=com_content&view=article&id=336:gobierno-de-veracruz-da-carpetazo-a-asesinatos-de-periodistas-y-criminaliza-a-victimas&catid=6:posicionamiento&Itemid=20 and also at: <http://www.libertad-expresion.org.mx/alertas-de-agresiones/procuraduria-de-veracruz-considera-aclarado-asesinato-de-periodistas-aun-pendiente-justicia-para-las-victimas/>; Proceso. August 15, 2012. *"Aclaran" asesinatos de cuatro periodistas en Veracruz... de Regina, nada*. Available at: <http://www.proceso.com.mx/?p=317107>

⁶²⁷ IFEX/ Article 19. October 19, 2012. *Contradictions in journalist's murder investigation in Mexico*. Available at: http://www.ifex.org/mexico/2012/10/19/lopez_aguilas_killed/; Proceso. October 15, 2012. *Asesinan en Tijuana al periodista Abel López Aguilar*. Available at: <http://www.proceso.com.mx/?p=322661>; Knight Center for Journalism in the Americas. October 17, 2012. *Slain Mexican journalist's son-in-law confesses to crime but press organizations remain skeptical*. Available at: <http://knightcenter.utexas.edu/blog/00-11782-slain-mexican-journalists-son-law-confesses-crime-press-organizations-remain-skeptical>

⁶²⁸ IFEX/ Centro Nacional de Comunicación Social (CENCOS). October 26, 2012. *Anti-mining activists assassinated in Chihuahua, Mexico*. Available at: http://www.ifex.org/mexico/2012/10/26/elbarzon_ataque/; Proceso. October 22, 2012. *'Levantan' y ejecutan a líder de El Barzón en Chihuahua*. Available at: <http://www.proceso.com.mx/?p=323261>

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*.⁶²⁹

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.⁶³⁰ 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, 2012.⁶³¹ 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.⁶³²

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.⁶³³

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

⁶²⁹ IACHR. Office of the Special Rapporteur for Freedom of Expression. November 20, 2012. Press Release R136/12. *Office of the Special Rapporteur Condemns Murder of Journalist in Tehuacán, México*. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=913&ID=1>; Committee to Protect Journalism (CPJ). November 15, 2012. *Journalist shot dead on assignment in Mexico*. Available at: <http://www.cpj.org/2012/11/journalist-shot-dead-on-assignment-in-mexico.php>

⁶³⁰ IFEX/ Article 19. December 5, 2011. *Threats against Olga Wornat and her colleague continue*. Available at: http://www.ifex.org/mexico/2011/12/05/threats_continue/; Animal Político. November 17, 2011. *Persisten amenazas contra Olga Wornat y su asistente, Edgar Monroy*. Available at: <http://www.animalpolitico.com/2011/11/peristen-amenazas-contra-olga-wornat-y-su-asistente-edgar-monroy/>

⁶³¹ IFEX/ Reporters Without Borders. August 13, 2012. *Two female journalists in Mexico receive threats for reports on organized crime*. Available at: http://www.ifex.org/mexico/2012/08/13/female_crime_journalists/; Reporters Without Borders. August 13, 2012. *Organized crime's hand seen behind threats to women journalists*. Available at: http://en.rsf.org/mexico-organized-crime-s-hand-seen-behind-13-08-2012_43217.html

⁶³² IFEX/ Article 19. August 7, 2012. *Amenazan a director de una revista por su trabajo periodístico*. Available at: http://www.ifex.org/mexico/2012/08/07/playboy_mexico/es/; Proceso. August 7, 2012. *Director de Playboy México denuncia amenazas de muerte*. Available at: <http://www.proceso.com.mx/?p=316340>

⁶³³ Ríodoce. December 6, 2011. *Amenazan a reportero de Noroeste*. Available at: <http://www.ridoce.com.mx/content/view/11788/>; IFEX/ Article 19. December 9, 2011. *"Noroeste" correspondent threatened*. Available at: http://ifex.org/mexico/2011/12/09/peraza_ibarra_threats/

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 Gonzalez, a journalist with *El Diario*, in front of the newspaper's offices while he was watching the arrest of a woman and approached to ask what was going on.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.⁶³⁷ 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 Balgorria 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

⁶³⁴ IFEX/ Centro Nacional de Comunicación Social (CENCOS). January 9, 2012. *Columnista e investigador Sinaloense hostigado tras publicar artículo de opinión*. Available at: http://ifex.org/mexico/2012/01/10/santamaria_hostigado/es/; Ríodoce. January 2, 2012. *Agresión impune*. Available at: <http://www.ridoce.com.mx/content/view/12028/>; Reporteros.com. January 4, 2012. *Acusa Cuén a Noroeste de "orquestar" caso Santamaría*. Available at: <http://reporteroscom.blogspot.com/2012/01/acusa-cuen-noroeste-de-orquestar-caso.html>

⁶³⁵ Revista Zócalo. February 7, 2012. *Agresiones en Juárez*. Available at: http://www.revistazocalo.com.mx/index.php?option=com_content&view=article&id=2078:agresiones-en-juarez-; Ahora Mismo. February 7, 2012. *Repudia Colpechi agresiones de policías a la prensa de Juárez*. Available at: <http://www.ahoramismo.com.mx/noticia.aspx?id=32954>

⁶³⁶ El Diario. February 4, 2012. *Reportear le cuesta cárcel a periodista de El Diario*. Available at: <http://www.diario.com.mx/notas.php?f=2012/02/04&id=505913c283554eca841aa52e2da4ce59>; Human Rights Commission of the Federal District (CDHDF). February 7, 2012. *CDHDF reprueba agresiones contra periodistas en Sinaloa y Chihuahua*. Available at: <http://www.cd hdf.org.mx/index.php/boletines/2093-boletin-522012>

⁶³⁷ IFEX/ Article 19. February 7, 2012. *Agentes estatales agreden a reportero de "Noroeste"*. Available at: http://www.ifex.org/mexico/2012/02/07/salomon_agreden/es/; Noroeste. February 1, 2012. *Condenan agresión a reportero*. Available at: http://www.noroeste.com.mx/publicaciones.php?id=752713&id_seccion

⁶³⁸ Centro de Periodismo y Ética Pública (CEPET). January 31, 2012. *Policías ministeriales del Estado de México detienen y amenazan a reportero*. Available at: <http://libxmxmexico.wordpress.com/2012/01/31/policias-ministeriales-del-estado-de-mexico-detienen-y-amenazan-a-reportero/>; Knight Center for Journalism in the Americas. February 1, 2012. *Police attack two reporters in Mexico, taking their cameras*. Available at: <http://knightcenter.utexas.edu/blog/police-attack-two-reporters-mexico-taking-their-cameras>

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 *Noticaribe* in Quintana Roo. The attacks caused serious technical problems for its server, taking the site's content off-line for whole weeks. The site was critical of certain state authorities.⁶⁴³

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

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

⁶³⁹ IFEX/ Article 19. March 9, 2012. *Ten journalists attacked in nine days in Oaxaca*. Available at: http://www.ifex.org/mexico/2012/03/09/agredidos_oaxaca/; Inter-American Press Association (IAPA-SIP). April 23, 2012. *Information by Country: Mexico*. Available at: http://www.sipiapa.org/v4/det_informe.php?asamblea=48&infoid=854&idioma=us; Centro de Periodismo y Ética Pública (CEPET). March 8, 2012. *En dos días consecutivos, agreden en Oaxaca a siete periodistas*. Available at: <http://libexmexico.wordpress.com/2012/03/08/en-dos-dias-consecutivos-agreden-en-oaxaca-a-siete-periodistas/>

⁶⁴⁰ Inter-American Press Association (IAPA-SIP). March 21, 2012. *Condena la SIP estallido frente a diario Expreso en Tamaulipas*. Available at: http://www.sipiapa.org/v4/comunicados_de_prensa.php?seccion=detalles&id=4693&idioma=sp; Committee to Protect Journalists (CPJ). March 27, 2012. *In Mexico, two media outlets attacked within a week*. Available at: <http://cpj.org/2012/03/in-mexico-two-media-outlets-attacked-within-a-week.php>; El Universal. March 26, 2012. *Estalla explosivo junto a Televisa Matamoros*. Available at: <http://www.eluniversal.com.mx/notas/838045.html>

⁶⁴¹ IFEX/ Inter-American Press Association (IAPA-SIP). May 14, 2012. *IAPA condemns attack on El Mañana paper*. Available at: http://www.ifex.org/mexico/2012/05/15/el_manana_attack/; Animal Político. May 12, 2012. *Comando ataca al diario El Mañana, en Nuevo Laredo*. Available at: <http://www.animalpolitico.com/2012/05/comando-ataca-al-diario-el-manana-en-nuevo-laredo/>

⁶⁴² El Mañana. May 13, 2012. *Editorial*. Available at: <http://www.elmanana.com.mx/notas.asp?id=285418>

⁶⁴³ IFEX. April 17, 2012. *Persiste en Quintana Roo ataque a medios digitales críticos del gobierno estatal*. Available at: http://www.ifex.org/mexico/2012/04/17/ataque_noticaribe/es/; Noticaribe. June 5, 2012. *Intolerancia en QR: los nuevos ataques a Noticaribe*. Available at: <http://www.noticaribe.com.mx/blog/2012/06/intolerancia-en-qr-los-nuevos-ataques-a-noticaribe.html>

⁶⁴⁴ IACHR. Office of the Special Rapporteur for Freedom of Expression. June 13, 2012. *Press Release R65/12. Office of the Special Rapporteur Expresses Concern over Disappearance of Mexican Journalist and Her Son*. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=903&IID=1>; El Heraldo/ Associated Press (AP). June 22, 2012. *Encuentran con vida a periodista desaparecida en Saltillo*. Available at: <http://www.oem.com.mx/elheraldodechihuahua/notas/n2590797.htm>; Vanguardia. June 15, 2012. *"Estamos bien": Stephania Cardoso, reportera desaparecida en Saltillo, está con vida*. Available at: <http://www.vanguardia.com.mx/estamosbienstephanielcardosoreporteradesaparecidaensaltilloestaconvida-1310130.html>

Monterrey.⁶⁴⁵ That afternoon, a branch of the same newspaper, headquarters of the supplement *Linda Vista* in the municipality of Guadalupe, north of Monterrey, was attacked with gunfire and a grenade. Por la tarde, una sucursal del mismo diario, sede del suplemento *Linda Vista* en el municipio de Guadalupe, al norte de Monterrey, habría sido atacada con una granada y disparos.⁶⁴⁶ At dawn on July 10, an explosive device detonated in front of the newspaper *El Mañana* in Nuevo Laredo. *El Mañana* reiterated its decision of self-censorship and stopped publishing information on the actions of organized crime.⁶⁴⁷ 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.⁶⁴⁸ Likewise, on July 30, a group of armed subjects entered the printing and distribution center of *Dipsa* magazines and newspapers in Monterrey, setting fire to the facilities.⁶⁴⁹

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."⁶⁵⁰ 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.⁶⁵¹

⁶⁴⁵ IACHR. Office of the Special Rapporteur for Freedom of Expression. August 3, 2012. Press Release R101/12. *The Office of the Special Rapporteur Expresses Concern over Attacks against El Norte Newspaper and Threats against Journalists in Mexico*. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=909&IID=1>; Crónica. July 10, 2012. *Agreden con granadas oficinas del periódico El Norte*. Available at: http://www.cronica.com.mx/nota.php?id_notas=674958; El Universal. July 10, 2012. *Estallan granada en instalaciones del diario El Norte*. Available at: <http://www.eluniversal.com.mx/notas/858264.html>

⁶⁴⁶ IACHR. Office of the Special Rapporteur for Freedom of Expression. August 3, 2012. Press Release R101/12. *The Office of the Special Rapporteur Expresses Concern over Attacks against El Norte Newspaper and Threats against Journalists in Mexico*. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=909&IID=1>; Noticieros Televisa. July 10, 2010. *Medios condenan ataques a periódicos de NL y Tamaulipas*. Available at: <http://noticierostelevisa.esmas.com/nacional/468329/medios-condenan-ataques-periodicos-nl-y-tamaulipas/>; El Siglo de Torreón. July 10, 2012. *Reportan ataque a otra sucursal de El Norte*. Available at: <http://www.elsiglodetorreon.com.mx/noticia/762666.reportan-ataque-a-otra-sucursal-de-el-norte.html>

⁶⁴⁷ *El Mañana*. July 10, 2012. *Ataques explosivos contra El Mañana y Periódico El Norte*. Available at: http://www.elmanana.com/diario/noticia/nacional/noticias/ataques_explosivoscontra_el_mananay_periodico_el_norte/1686400; Noticieros Televisa. July 10, 2012. *Medios condenan ataques a periódicos de NL y Tamaulipas*. Available at: <http://noticierostelevisa.esmas.com/nacional/468329/medios-condenan-ataques-periodicos-nl-y-tamaulipas/>; Univisión. July 12, 2012. *Diario mexicano El Mañana se autocensura tras ataques*. Available at: <http://noticias.univision.com/narcotrafico/noticias/articulo/2012-07-12/diario-el-manana-autocensura-ataques-nuevo-laredo?refPath=futbol/mexico/noticias/#axzz20WGPrg3G>

⁶⁴⁸ Article 19. July 30, 2012. *México: Nuevo ataque contra las instalaciones de El Norte; tres atentados y ningún detenido en 19 días*. Available at: http://www.articulo19.org/portal/index.php?option=com_content&view=article&id=331:mexico-nuevo-ataque-contra-instalaciones-de-el-norte-tres-atentados-y-ningun-detenido-en-19-dias&catid=9:alertas&Itemid=47; Noticias Terra/EFE. July 30, 2012. *La SIP condena el ataque contra el diario el Norte*. Available at: <http://noticias.terra.com.mx/mexico/seguridad/la-sip-condena-el-ataque-contra-el-diario-el-norte.f828bf6216ad8310VqnVCM1000098cceb0aRCRD.html>

⁶⁴⁹ Proceso. July 31, 2012. *Ahora incendian distribuidora de revistas de Monterrey*. Available at: <http://www.proceso.com.mx/?p=315663>; El Economista. July 31, 2012. *Incendian empresa a plena luz del día*. Available at: <http://eleconomista.com.mx/seguridad-publica/2012/07/31/incendian-imprensa-monterrey>

⁶⁵⁰ Article 19. July 20, 2012. *México. Amenazan de muerte a reportero en Nogales, Sonora*. Available at: http://www.articulo19.org/portal/index.php?option=com_content&view=article&id=326:mexico-amenazan-de-muerte-a-reportero-en-nogales-sonora&catid=9:alertas&Itemid=47; Nuevo Día Nogales. July 17, 2012. *Amenazan a comunicador*. Available at: <http://www.nuevodia.com.mx/local/amenazan-a-comunicador/>

⁶⁵¹ *El Diario*. July 29, 2012. *Investigarán amenazas contra periodista*. Available at: <http://www.eldiariodesinaloa.com/movil/publicacion.php?id=87397>; Centro Nacional de Comunicación Social (CENCOS). July 31, 2012. *Pronunciamento por Cecilia Cota Carrasco*. Available at: http://www.libertad-expresion.org.mx/noticias/pronunciamento-por-cecilia-cota-carrasco/?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+TeHaceDanoNoSaber+%28CAMPAC3%91A+PERMANENTE+DE+PROTECCIC3%93N+A+PERIODISTAS%29

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

⁶⁵² IACHR. Office of the Special Rapporteur for Freedom of Expression. August 3, 2012. Press Release R101/12. *The Office of the Special Rapporteur Expresses Concern over Attacks against El Norte Newspaper and Threats against Journalists in Mexico*. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artiD=909&IID=1>; IACHR. Annual Report 2009. Precautionary Measure 192/09. Mexico. August 10, 2009. Para. 41. Available at: <http://www.cidh.org/annualrep/2009eng/Chap.III.e.eng.htm>; Article 19. July 30, 2012. *México: Nueva amenaza contra Lydia Cacho; el gobierno mexicano incumple recomendaciones de la IACHR*. Available at: http://www.articulo19.org/portal/index.php?option=com_content&view=article&id=333:mexico-nueva-amenaza-contra-lydia-cacho-el-gobierno-mexicano-incumple-recomendaciones-de-la-IACHR&catid=9:alertas&Itemid=47; Committee to Protect Journalists (CPJ). July 30, 2012. *Mexico must investigate threat against Lydia Cacho*. Available at: <http://cpj.org/2012/07/mexico-must-investigate-threat-against-lydia-cacho.php>

⁶⁵³ El Universal. August 3, 2012. *Lydia Cacho abandonará el país tras amenazas*. Available at: <http://www.eluniversal.com.mx/notas/862618.html>; El Comercio/ AFP. August 6, 2012. *La periodista Lydia Cacho saldrá del país por amenazas*. Available at: http://www.elcomercio.com/mundo/periodista-Lydia-Cacho-saldrá-amenazas_0_749925058.html; Noticias Terra. October 4, 2012. *PRI simboliza tragedia y destrucción, Lydia Cacho*. Available at: http://noticias.terra.com.mx/mexico/politica/pri-simboliza-tragedia-y-destruccion-lydia-cacho_063c4e5df1d2a310VqnVCM4000009bcecb0aRCRD.html

⁶⁵⁴ Proceso. August 17, 2012. *Reportan desaparecido a periodista en Tamaulipas*. Available at: <http://www.proceso.com.mx/?p=317253>; Vanguardia. August 17, 2012. *Reportan desaparecido al periodista Mario Segura en Tamaulipas*. Available at: <http://www.vanguardia.com.mx/reportandesaparecidoalperiodistamarioseguraentamaulipas-1353411.html>; IFEX/ Inter-American Press Association (IAPA-SIP). August 21, 2012. *Director de periódico desaparecido en México*. Available at: http://www.ifex.org/mexico/2012/08/21/segura_desaparecido/es/

⁶⁵⁵ IFEX / Article 19. Sempter 5, 2012. *Autoridades mexicanas en Guerrero y Oaxaca favorecen entorno hostil contra periodistas*. Available at: http://www.ifex.org/mexico/2012/09/05/entorno_hostil/es/; La Jornada Guerrero. August 22, 2012. *Condenan comuneros la agresión al reportero gráfico Eric Chavelas*. Available at: <http://www.lajornadaquerrero.com.mx/2012/08/22/index.php?section=politica&article=005n3pol>; Proceso. September 3, 2012. *Exige Article 19 garantías para periodistas en Oaxaca y Guerrero*. Available at: <http://www.proceso.com.mx/?p=318840>

⁶⁵⁶ Cerigua. September 29, 2012. *México: Periodista amenazado busca asilo en Francia*. Available at: http://cerigua.org/1520/index.php?option=com_content&view=article&id=10703:mexico-periodista-amenazado-busca-asilo-en-francia-&catid=48:libertad-de-expresion&Itemid=10; Knight Center for Journalism in the Americas. September 28, 2012. *Mexican reporter seeks asylum in France after threats and the killing of nine other journalists*. Available at: <http://knightcenter.utexas.edu/blog/00-11567-mexican-reporter-seeks-asylum-france-after-threats-and-killing-nine-other-journalists>; Diario Jurídico. September 26, 2012. *Cuestiona Fundalex compromiso del gobierno por defender libertad de expresión*. Available at: <http://diariojuridico.com.mx/actualidad/noticias/cuestiona-fundalex-compromiso-del-gobierno-por-defender-libertad-de-expresion.html>

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

382. According to information received, Hiram Moreno, a correspondent in the Tehuantepec Isthm 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 Quadratin* 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

⁶⁵⁷ Portavoz. September 14, 2012. *Roban y causan daños en Revista "Sin Límite Avante"*. Available at: <http://portavoz.com.mx/uncategorized/roban-y-danan-oficinas-de-revista-sin-limite-avante/>; La Primera de Puebla. September 26, 2012. *La libertad de expresión en México se encuentra en grave peligro: FUNDALEX*. Available at: <http://www.laprimeradepuebla.com/DetalleNoticia.php?i=59958>

⁶⁵⁸ Lindero Norte. September 19, 2012. *Presentan denuncias por agresión de dos periodistas y siete universitarios durante El grito en Ensenada*. Available at: <http://linderonorte.wordpress.com/2012/09/19/presentan-denuncias-por-agresion-de-dos-periodistas-y-siete-universitarios-durante-el-grito-en-ensenada/>; La Primera de Puebla. September 26, 2012. *La libertad de expresión en México se encuentra en grave peligro: FUNDALEX*. Available at: <http://www.laprimeradepuebla.com/DetalleNoticia.php?i=59958>

⁶⁵⁹ Cerigua. September 29, 2012. *Libertad de expresión corre grave peligro en México*. Available at: http://cerigua.org/1520/index.php?option=com_content&view=article&id=10702:libertad-de-expresion-corre-grave-peligro-en-mexico&catid=48:libertad-de-expresion&Itemid=10; La Primera de Puebla. September 26, 2012. *La libertad de expresión en México se encuentra en grave peligro: FUNDALEX*. Available at: <http://www.laprimeradepuebla.com/DetalleNoticia.php?i=59958>

⁶⁶⁰ Cerigua. October 22, 2012. *México: Periodista es amenazado por líder de pescadores*. Available at: <http://cerigua.info/servicios/diarios/c-221012.pdf>; La Jornada. October 17, 2012. *Corresponsal de La Jornada, amenazado de muerte en Oaxaca*. Available at: <http://www.jornada.unam.mx/2012/10/17/politica/016n1pol>; Evidencias. October 18, 2012. *La casa de los derechos de los periodistas demanda atención federal inmediata a agresiones contra comunicadores en Baja California y Oaxaca*. Available at: <http://www.semanarioevidencias.com/?p=52459>

⁶⁶¹ IFEX/ Article 19. October 1, 2012. *Periodista privado de su libertad por agentes de seguridad en México*. Available at: http://www.ifex.org/mexico/2012/10/01/garcia_davish/es/; Quadratin. October 1, 2012. *Aparece el periodista Juan de Dios García Davish; lo tenían policías*. Available at: <http://www.quadratin.com.mx/Noticias/Aparece-el-periodista-Juan-de-Dios-Garcia-Davish-lo-tenian-policias>; Hilo Directo. October 2, 2012. *Policías golpean a periodista en Chiapas*. Available at: <http://hilodirecto.com.mx/tag/juan-de-dios-garcia-davish/>

⁶⁶² Centro de Derechos Humanos de las Mujeres. October 12, 2012. *Communication to the Special Rapporteur for Freedom of Expression of the IACHR*. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Tierra Fuerte. October 11, 2012. *Crítica Fiscal a Lucha Castro por defender delincuentes*. Available at: <http://tierrafuerte.mx/noticia.cfm?n=7901>; Proceso. October 11, 2012. *Intercambian acusaciones fiscalía de Chihuahua y activistas por caso Marisela Escobedo*. Available at: Continues...

State's declarations.⁶⁶³ 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 2008.⁶⁶⁴

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.⁶⁶⁵

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.⁶⁶⁶

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

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

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<http://www.proceso.com.mx/?p=322326>; CEJIL. October 22, 2012. *Carta al Gobernador Constitucional del Estado de Chihuahua, México*. Available at: <http://cejil.org/en/node/3784>

⁶⁶³ Cimac Noticias. October 16, 2012. *Dice gobierno de Chihuahua que se disculpará por ataques al CEDEHM*. Available at: <http://www.cimacnoticias.com.mx/node/61716>; La Opción de Chihuahua. October 17, 2012. *Dice gobierno de Chihuahua que se disculpará por ataques al Cede hm*. Available at: http://www.laopcion.com.mx/n/id_210016.html

⁶⁶⁴ IACHR. Annual Report 2008. Precautionary Measure 147/08. Mexico. June 13, 2008. Available at: <http://www.cidh.org/annualrep/2008eng/Chap3.e.eng.htm>

⁶⁶⁵ Aristegui Noticias. October 16, 2012. *Policías incendiaron vehículos durante enfrentamientos en Michoacán*. Available at: <http://aristeguinoticias.com/1610/mexico/senalan-a-policias-por-presunta-participacion-en-ataques-a-coches-en-cheran/>; Article 19. October 19, 2012. *Posicionamiento ante la violencia, represión y bloqueo informativo en Michoacán*. Available at: <http://articulo19.org/posicionamiento-michoacan/>

⁶⁶⁶ Cerigua. October 22, 2012. *Policías detienen y agreden a reporteros en México*. Available at: http://cerigua.org/1520/index.php?option=com_content&view=article&id=11080:policias-detienen-y-agreden-a-reporteros-en-mexico-&catid=79:guatemala&Itemid=38; Knight Center for Journalism in the Americas. October 22, 2012. *Police arrest and rob two reporters in Mexico*. Available at: <http://knightcenter.utexas.edu/blog/00-11833-police-arrest-and-rob-two-reporters-mexico>; El Universal. October 21, 2012. *Indagan presuntos abusos contra periodistas en Puebla*. Available at: <http://www.eluniversal.com.mx/notas/878049.html>

⁶⁶⁷ Committee to Protect Journalists (CPJ). November 8, 2012. *Journalist missing for nearly two weeks in Mexico*. Available at: <http://cpj.org/2012/11/journalist-missing-for-nearly-two-weeks-in-mexico.php>; Milenio. October 30, 2012. *Inicia PGJ de SLP investigación por desaparición de periodista*. Available at: <http://www.milenio.com/cdb/doc/noticias2011/cdc136dbca9d34c3bb4e8f7cf1f683d9>; Agencia Latinoamericana de Información (ALAI), América Latina en Movimiento. November 14, 2012. *Desaparecen a otra periodista*. Available at: <http://alainet.org/active/59569&lang=es>

Journalists. Palacios Cházares says he recognized several municipal police officers among his attackers.⁶⁶⁸

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

D. Other relevant situations

390. According to information received, on December 1, 2011, Juan José Hernández, the director of community broadcaster *Radio Diversidad* in the Paso del Macho municipality, Veracruz state, was arrested. Mr. Hernández and three other journalists with *Radio Diversidad* are defendants in a criminal proceeding originating in the operation of the aforementioned community radio station. For this reason, they are accused of the crime of "using, taking advantage of or exploiting property owned by the Nation without a permit or concession of the state," as set forth in Article 150 of the General Law on National Property. The journalist was released six days later after paying a bail of 5000 pesos (about US \$500).⁶⁶⁹

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

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

⁶⁶⁸ Ruta 135. November 21, 2012. *Agreden a director de la revista ruta 135*. Available at: <http://www.ruta135.com/v1/index.php/201-agreden-a-director-de-la-revista-ruta-135>; IFEX/ Article 19. November 23, 2012. *Mexican journalist assaulted while covering police abuses*. Available at: http://www.ifex.org/mexico/2012/11/23/chazares_attack/; Vanguardia. November 26, 2012. *Presenta periodista su queja contra policías en Oaxaca*. Available at: <http://www.vanguardia.com.mx/presentaperiodistasuquejacontrapoliciasenoaxaca-1426484.html>

⁶⁶⁹ Asociación Mundial de Radios Comunitarias (AMARC). December 9, 2011. *En libertad periodista comunitario*. Available at: <http://www.amarcMexico.org/?p=222>; IFEX/ Asociación Mundial de Radios Comunitarias (AMARC). December 6, 2011. *Director of community radio station detained*. Available at: http://ifex.org/mexico/2011/12/06/juan_jose_detenido/; Radio TYL "la mera mera...". December 7, 2011. *Entre el silencio y la criminalización*. Available at: <http://radiolameramera.blogspot.com/2011/12/entre-el-silencio-y-la-criminalizacion.html>; IACHR. Annual Report 2010. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Office of the Special Rapporteur for Freedom of Expression. Chapter II: *2010 Special Report on Freedom of Expression in Mexico*. Para. 761. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%202010%20P%20ENG.pdf>

⁶⁷⁰ IACHR. Annual Report 2010. OEA/Ser.L/V/II. Doc. 5. March 7, 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. 113. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%202010%20P%20ENG.pdf>

⁶⁷¹ 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. 405 *et seq.* Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/2012%2003%2021%20Annual%20Report%20RELE%202011pirnting.pdf>; IACHR. Annual Report 2010. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Office of the Special Rapporteur for Freedom of Expression. Chapter II: *2010 Special Report on Freedom of Expression in Mexico*. Para. 745 *et seq.* Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%202010%20P%20ENG.pdf>

of expression, nondiscrimination and due process, and that recognizes the special characteristics of each form of radio broadcasting, in keeping with international standards.⁶⁷²

393. In this same sense, the Office of the Special Rapporteur observes that community broadcasters must operate legally; however, currently there are serious practical obstacles to the legalization of community broadcasters in Mexico. Thus, for example even though the Supreme Court of Justice declared the pertinent sections of the radio broadcasting law unconstitutional⁶⁷³ and identified some criteria to be taken into account to establish a proper procedure for granting permits or licenses to noncommercial radio and television stations,⁶⁷⁴ still no clear, precise and equitable procedures have been established whereby the community radio stations could request and obtain frequencies on which to operate.⁶⁷⁵

19. Nicaragua

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

⁶⁷² IACHR. Annual Report 2011. OEA/Ser.LV/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. 407. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/2012%2003%2021%20Annual%20Report%20RELE%202011pirnting.pdf>. See also, IACHR. Office of the Special Rapporteur for Freedom of Expression. *Inter-American Legal Framework of the Right to Freedom of Expression*. OEA/Ser.LV/II CIDH/RELE/INF. 2/09. December 30, 2009. Para. 234-235. Available at: <http://www.oas.org/en/iachr/expression/docs/publications/INTER-AMERICAN%20LEGAL%20FRAMEWORK%20OF%20THE%20RIGHT%20TO%20FREEDOM%20OF%20EXPRESSION%20FINA%20PORTADA.pdf>; IACHR. Annual Report 2010. OEA/Ser.LV/II. Doc. 5. March 7, 2011. Office of the Special Rapporteur for Freedom of Expression. Chapter II: *2010 Special Report on Freedom of Expression in Mexico*. Para. 757. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%202010%20P%20ENG.pdf>

⁶⁷³ IACHR. Annual Report 2010. OEA/Ser.LV/II. Doc. 5. March 7, 2011. Office of the Special Rapporteur for Freedom of Expression. Chapter II: *2010 Special Report on Freedom of Expression in Mexico*. Para. 749. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%202010%20P%20ENG.pdf>; Supreme Court. Unconstitutionality Suit 26/2006. Judgement of September 7, 2007. Available at: <http://pnmi.segob.gob.mx/CompilacionJuridica/pdf/SENT-TII-1.pdf>

⁶⁷⁴ Supreme Court. Unconstitutionality Suit 26/2006. Judgement of September 7, 2007. *Considerandos 14 and 15*. Available at: <http://pnmi.segob.gob.mx/CompilacionJuridica/pdf/SENT-TII-1.pdf>

⁶⁷⁵ IACHR. Annual Report 2010. OEA/Ser.LV/II. Doc. 5. March 7, 2011. Office of the Special Rapporteur for Freedom of Expression. Chapter II: *2010 Special Report on Freedom of Expression in Mexico*. Paras. 750 and 758. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%202010%20P%20ENG.pdf>; Federal Radio and Television Act. Published by the Official Press of the Federation on January 19, 1960, last amendment published March 9, 2012. Art. 13. Available at: <http://www.diputados.gob.mx/LeyesBiblio/pdf/114.pdf>

⁶⁷⁶ Centro Nicaragüense de Derechos Humanos (CENIDH). August 3, 2012. Communication to the Office of the Special Rapporteur for Freedom of Expression. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; El Nuevo Diario. July 20, 2012. *Madrugaron a jóvenes frente al CSE*. Available at: <http://www.elnuevodiario.com.ni/politica/258337-madrugaron-a-jovenes-frente-al-cse>; Asociación de Periodistas de Nicaragua (APN). July 19, 2012. *Turbas orteguistas desalojan por la fuerza a los jóvenes que resisten frente al Consejo Supremo Electoral*. Available at: <http://www.agenciasnn.com/2012/07/turbas-orteguistas-desalojan-por-la.html>; MSN latino noticias/ EFE. July 17, 2012. *Jóvenes opositores mantienen una protesta en la víspera de la conmemoración sandinista*. Available at: <http://noticias.latino.msn.com/latinoamerica/j%C3%B3venes-opositores-mantienen-una-protesta-en-la-v%C3%ADspera-de-la-conmemoraci%C3%B3n-sandinista>; MSN latino noticias/ EFE. August 2, 2012. *Jóvenes opositores en Nicaragua reanudan la protesta frente al poder electoral*. <http://noticias.latino.msn.com/latinoamerica/j%C3%B3venes-opositores-en-nicaragua-reanudan-la-protesta-frente-al-poder-electoral>

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.⁶⁷⁷

20. Panama

A. Progress

396. The Office of the Special Rapporteur observes with satisfaction the July 17, 2012 acquittal of TVN 2 journalists Siria Miranda, Eduardo Lim Yueng and Kelyneth Pérez. The ruling was handed down by the 17th Criminal Court. According to information received, the journalists were accused of distributing video of a police officer receiving a bribe from a driver. In applying inter-American standards, the court concluded that the defendants had no intention to violate the honor of the plaintiff and recognized that “the journalists were doing their job of revealing a fact that was of significance for society.” In this sense, the judgment indicated that “the incident was of considerable significance and merited the attention of the defendants in the work they were carrying out.” Likewise, the judgment found that “the defendants did not act with actual malice, as there is no indication of a ‘reckless disregard for the truth.’”⁶⁷⁸

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.⁶⁷⁹

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.⁶⁸⁰ 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

⁶⁷⁷ La Prensa. October 9, 2012. *Cierran programa radial*. Available at: <http://www.laprensa.com.ni/2012/10/09/departamentales/119309>; El Nuevo Diario. October 10, 2012. *Periodista de Somotillo dice ser perseguido por FSLN*. Available at: <http://www.elnuevodiario.com.ni/politica/266107>

⁶⁷⁸ Panama Judiciary. Seventeenth Circuit Criminal Court. Judgment No. 13. July 17, 2012. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; La Estrella/ AFP. July 17, 2012. *Juez absuelve a tres periodistas de TVN*. Available at: <http://laestrella.com.pa/online/noticias/2012/07/17/juez-absuelve-a-tres-periodistas-de-tvn.asp>; Crítica. July 18, 2012. *Absuelven a periodistas de TVN*. Available at: http://www.critica.com.pa/hoy/sucesos-interna.php?edition_id=20120718&external_link=absuelven_a_periodistas_de_tvn; La Prensa. July 31, 2012. *Fiscalía no apeló absolución a periodistas de TVN*. Available at: <http://www.prensa.com/impreso/panorama/fiscalia-no-ape-lo-absolucion-periodistas-de-%C2%B4tvn%C2%B4/111616>

⁶⁷⁹ Panama. National Council for Transparency and against Corruption. Executive Secretariat. October 31, 2012. Note N°. SECT/AL/210-12RO. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; National Council for Transparency and against Corruption. Available at: <http://www.setransparencia.gob.pa/Estadisticas.html>; Panamá América. November 5, 2012. *Panamá avanza en materia de transparencia estatal*. Available at: <http://www.panamaamerica.com.pa/notas/1395832-panama-avanza-materia-transparencia-estatal->

⁶⁸⁰ La Prensa. October 23, 2012. *Se intensifican las acciones contra Ley*. Available at: <http://www.prensa.com/impreso/panorama/se-intensifican-las-acciones-contra-ley/132509>; Telemetro. October 22, 2012. *Periodistas afectados por gases durante cobertura en Colón*. Available at: <http://www.telemetro.com/especiales/ventazonalibre/2012/10/22/118458/periodistas-afectados-gases-durante-cobertura-colon>

group of people that included the media worker.⁶⁸¹ 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.⁶⁸²

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

C. Subsequent liability

400. According to information received, on March 19, 2012, former President Ernesto Pérez Balladares brought civil suit against the newspaper *La Prensa*, seeking US \$5.5 million. According to the information, the former president considered two articles dated March 21 and March 22, 2011, that mention him in the context of investigations into money laundering being carried out by the Specialized Office of the Public prosecutor against Organized Crime as damaging to his honor. For their part, the newspaper's attorneys indicated that the lawsuit lacks basis in law and explained that in a brief dated April 2, they had formally responded to the lawsuit.⁶⁸³ 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.⁶⁸⁴

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

D. Other situations

402. 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

⁶⁸¹ La Prensa. October 20, 2012. *Policía dispara contra fotógrafo*. Available at: <http://www.prensa.com/impreso/panorama/policia-dispara-contra-fotografo/131869>; Hora Cero. October 20, 2012. *El Fórum de Periodistas repudió ataques a periodistas en Colón*. Available at: <http://horacero.com.pa/index.php/en/nacionales/73388-el-forum-de-periodistas-repudio-ataques-a-periodistas-en-colon>

⁶⁸² TVN Noticias. October 19, 2012. *Equipo periodístico quedó en medio de ráfaga de disparos*. Available at: http://www.tvn-2.com/noticias/noticias_detalle.asp?id=90724; La Prensa. October 23, 2012. *Se intensifican las acciones contra Ley*. Available at: <http://www.prensa.com/impreso/panorama/se-intensifican-las-acciones-contra-ley/132509>

⁶⁸³ La Prensa. No date. *Ernesto Pérez Balladares demandó a Corporación La Prensa por \$5,5 millones*. Available at: <http://www.prensa.com/uhora/locales/ernesto-perez-balladares-demando-corporacion-la-prensa-por-55-millones/76581>; Crítica. March 21, 2012. *'El Toro' confirma demanda*. Available at: http://www.critica.com.pa/hoy/nacional-interna.php?edition_id=20120321&external_link=el_toro_confirma_demanda; La Prensa. April 9, 2012. *Son infundadas las acusaciones de Pérez B*. Available at: <http://www.prensa.com/impreso/panorama/son-infundadas-las-acusaciones-de-perez-b/82839?page=1>

⁶⁸⁴ Knight Center for Journalism in Americas. November 5, 2012. *Newspaper in Panama sued again for millions in damages*. Available at: <http://knightcenter.utexas.edu/blog/00-11997-newspaper-panama-sued-again-millions-damages>; Inter-American Press Association (IAPA-SIP). November 1, 2012. *Preocupan a la SIP demandas de un grupo empresarial Panameño contra el diario La Prensa*. Available at: http://www.sipiapa.org/v4/comunicados_de_prensa.php?seccion=detalles&id=4779&idioma=sp

the Canadian Broadcasting Company (CBC) that would be producing a documentary on the activities and investments of Canadian mining companies.⁶⁸⁵ 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.⁶⁸⁶

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 projects. The suspension affected the ability of journalists and protesters to stay in contact with the media and report on road blockades and police intervention.⁶⁸⁷

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

21. Paraguay

A. Progress

⁶⁸⁵ Reporters Without Borders. January 30, 2012. *Canadian TV crew hoping to cover mining dispute fears being denied entry*. Available at: <http://en.rsf.org/panama-canadian-tv-crew-hoping-to-cover-30-01-2012.41787.html>; *La Estrella*. January 29, 2012. *CIAM espera que Panamá permita ingreso de periodistas de la CBC*. Available at: <http://laestrella.com.pa/online/noticias/2012/01/29/ciam-espera-que-panama-permita-ingreso-de-periodistas-de-la-cbc.asp>; Newsroom Panama. January 30, 2012. *Canadian Broadcasting journalist held at Tocumen*. Available at: <http://www.newsroompanama.com/environment/3879-canadian-broadcasting-journalist-held-at-tocumen.html>; Knight Center for Journalism in the Americas. January 31, 2012. *Panama denies entry to Canadian reporter working with indigenous groups on mining law*. Available at: <http://knightcenter.utexas.edu/blog/panama-denies-entry-canadian-reporter-working-indigenous-groups-mining-law>

⁶⁸⁶ *La Estrella*. January 30, 2012. *Critican detención de Rosie Simms*. Available at: <http://www.laestrella.com.pa/online/impreso/2012/01/30/critican-detencion-de-rosie-simms.asp>. Cf. *The Dominion*. May 4, 2011. *Ngobe protest prevails*. Available at: <http://www.dominionpaper.ca/articles/3968>; *The McGill Daily*. March 11, 2011. *The consequences of copper*. Available at: <http://www.mcgilldaily.com/2011/03/the-consequences-of-copper/>; Reporters Without Borders. January 30, 2012. *Canadian TV crew hoping to cover mining dispute fears being denied entry*. Available at: <http://en.rsf.org/panama-canadian-tv-crew-hoping-to-cover-30-01-2012.41787.html>; *La Prensa*. September 9, 2012. *Presentan amparo a favor de periodista*. Available at: <http://www.prensa.com/impreso/panorama/presentan-amparo-favor-de-periodista/122065>

⁶⁸⁷ IACHR. February 7, 2012. Press Release No. 13/12. *IACHR Urges Panama to Guarantee Protesters' Physical Integrity and Security*. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2012/013.asp; Colegio Nacional de Periodistas (CONAPE). February 5, 2012. *Comunicado de cobertura de periodistas en zona de conflicto en San Félix*. Available at: <http://es-es.facebook.com/notes/colegio-nacional-de-periodistas-conape-panam%C3%A1/comunicado-de-cobertura-de-periodistas-en-zona-de-conflicto-en-san-felix/267343383338166>; *La Estrella*. February 7, 2012. *Papadimitriu llega a Chiriquí; se restablecerá señal celular*. Available at: <http://laestrella.com.pa/online/noticias/2012/02/07/papadimitriu-llega-a-chiriqui-se-restablecera-senal-celular.asp>; ABC/ EFE. February 7, 2012. *Indígenas de Panamá recurren a Twitter para comunicarse en medio de crisis*. Available at: <http://www.abc.es/agencias/noticia.asp?noticia=1098310>; Radio Nederland. February 7, 2012. *Dura represión a Indígenas en Panamá*. Available at: <http://www.mw.nl/espanol/article/dura-represi%C3%B3n-a-ind%C3%ADgenas-en-panam%C3%A1>; *La Estrella*. February 6, 2012. *Human Rights Everywhere denuncia violación de derechos en Panamá*. Available at: <http://www.laestrella.com.pa/online/noticias/2012/02/06/human-rights-everywhere-denuncia-violacion-de-derechos-en-panama.asp>

⁶⁸⁸ Inter-American Press Association (IAPA-SIP). August 3, 2012. *La SIP condena bloqueo contra diario panameño*. Available at: http://www.sipiapa.org/v4/comunicados_de_prensa.php?seccion=detalles&id=4744&idioma=sp; *La Prensa*. August 3, 2012. *Así se vivió el bloqueo de accesos a La Prensa*. Available at: <http://www.prensa.com/uhora/locales/asi-se-vivio-el-bloqueo-de-accesos-%E2%80%98a-prensa%E2%80%99/112492>

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

B. Attacks on and threats against media outlets and journalists

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

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

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

C. Other relevant situations

409. The Office of the Special Rapporteur was informed of a number of incidents that affected the public media after president Fernando Lugo was removed from office on June 22, 2012. According to available information, Cristian Vázquez, who had identified himself as communications director for the new government, entered the facilities of *TV Pública*. According to the public complaint that was filed, the official asked the channel to stop broadcasting images of the demonstrations against the Congress's

⁶⁸⁹ Vanguardia. January 10, 2012. *Otros homicidas del locutor quieren recobrar su libertad*. Available at: <http://diariovanguardia.com.py/locales/noticias-locales/judiciales/24265-otros-homicidas-del-locutor-quieren-recobrar-su-libertad.html>; Reporters Without Borders. January 10 and 12, 2012. *Growing impunity for alleged instigators of radio journalist's murder*. Available at: http://en.rsf.org/paraguay-growing-impunity-for-alleged-10-01-2012_41653.html; ABC Color. December 11, 2011. *Cae por crimen de locutor*. Available at: <http://www.abc.com.py/nota/cae-por-crimen-de-locutor/>

⁶⁹⁰ ABC Color. January 17, 2012. *"Barón" necesita dinero para matar a periodista*. Available at: <http://www.abc.com.py/nota/baron-necesita-dinero-para-matar-a-periodista/>; Última Hora. January 14, 2012. *Policía de Brasil alerta a periodista de atentado*. Available at: <http://www.ultimahora.com/notas/495910-Policia-de-Brasil-alerta-a-periodista-de-atentado>; Radio Nandutí 1020 AM. January 16, 2012. *Periodista Cándido Figueredo refiere a nuevas amenazas de muerte en su contra*. Available at: http://www.nanduti.com.py/v1/include-audio.php?audios_id=68697&tipo=Policiales

⁶⁹¹ IFEX/ Reporters Without Borders. October 9, 2012. *Guerrillas take responsibility for radio station bombing in Paraguay*. Available at: http://www.ifex.org/paraguay/2012/10/09/guyra_campana/; ABC Color. October 5, 2012. *EPP detona explosivo en radio Guyra Campana de Horqueta*. Available at: <http://www.abc.com.py/edicion-imprensa/politica/epp-detona-explosivo-en-radio-guyra-campana-de-horqueta-459551.html>; Última Hora. October 9, 2012. *Radio Guyra Campana vuelve al aire, tras atentado con explosivos atribuido al EPP*. Available at: <http://www.ultimahora.com/notas/567613-Radio-Guyra-Campana-vuelve-al-aire-tras-atentado-con-explosivos-atribuido-al-EPP>

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 guaraní) was suspended. It returned to the airwaves one week later⁶⁹⁵. Likewise, on September 17, the program 'RedPública' - produced by public broadcaster *Radio Nacional* - did not have its contract renewed, and program director Carlos Goncalves was notified that he would no longer be working on it. The journalist had been informed that the SICOM was carrying out a special evaluation of the program.⁶⁹⁶

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

412. According to available information, on June 24, the electricity to *TV Pública* was cut off during a broadcast of the program "Open Mic." In a press release, the Secretariat of Information and Communication for Development (SICOM) reported that it will investigate the incident and will ask the

⁶⁹² Reporters Without Borders. June 27, 2012. *RSF advierte síntomas de censura tras la destitución del presidente Lugo*. Available at: <http://www.rsf-es.org/news/paraguay-rsf-advierte-sintomas-de-censura-tras-la-destitucion-del-presidente-lugo/>; ABC Color. June 22, 2012. *Intentaron atropellar TV Pública*. Available at: <http://www.abc.com.py/nacionales/intentaron-atropellar-tv-publica-417652.html>; Telesur. June 23, 2012. *Nuevo gobierno de Paraguay interviene Televisión Pública*. Available at: <http://www.telesurtv.net/articulos/2012/06/23/federico-franco-ordena-intervencion-de-television-publica-de-paraguay-317.html>

⁶⁹³ Paraguay.com. June 23, 2012. *TV Pública: Christian Vázquez dijo que sólo quería colaborar*. Available at: <http://paraguay.com/nacionales/tv-publica-christian-vazquez-dijo-que-solo-queria-colaborar-83791>; MDZ Online. June 23, 2012. *Paraguay: una de las primeras acciones del nuevo gobierno fue "apretar" a la TV Pública*. Available at: <http://www.mdzol.com/mdz/nota/396289/>

⁶⁹⁴ ABC Color. June 25, 2012. *Nuevo ministro de Sicom, contra censura a TV Pública*. Available at: <http://www.abc.com.py/nacionales/nuevo-ministro-de-sicom-contr-censura-a-tv-publica-418519.html>; TVPY. June 25, 2012. *Nuevo ministro de comunicación dice que no habrá despidos en Tv Pública*. Available at: <http://www.television.com.py/nuevo-ministro-de-comunicacion-dice-que-no-habra-despidos-en-tv-publica>

⁶⁹⁵ Reporters Freelance. July 4, 2012. *Paraguay – Los conflictos se apaciguan en los medios estatales, pero la división se ancla en la opinión pública*. Available at: <http://www2.emmegipress.it/reporters/2012/07/04/paraguay-los-conflictos-se-apaciguan-en-los-medios-estatales-pero-la-division-se-ancla-en-la-opinion-publica/>

⁶⁹⁶ IFEX/ Reporters Without Borders. September 19, 2012. *Censorship at state-owned Radio Nacional in Paraguay*. Available at: http://www.ifex.org/paraguay/2012/09/27/radio_nacional_censorship/; Knight Center for Journalism in the Americas. September 19, 2012. *Public media "purge" persists in Paraguay, says Reporters Without Borders*. Available at: <http://knightcenter.utexas.edu/blog/00-11460-public-media-purge-persists-paraguay-says-reporters-without-borders>; Radio Viva 90.1 FM. September 20, 2012. *Emisión especial de REDPÚBLICA con Carlos Goncalvez*. Available at: http://www.radioviva.com.py/rviva/index.php?option=com_content&view=article&id=6321:nacionales&catid=1:general&Itemid=37

⁶⁹⁷ Republic of Paraguay. Secretariat of Information and Communication for Development (SICOM). July 9, 2012. *Ministro Martín Sannemann aclara*. Available at: http://www.sicom.gov.py/index.php?option=com_content&view=article&id=148%3Aministro-martin-sannemann-aclara-&catid=1%3Anacionales&Itemid=96; Reporters Without Borders. July 12 and 13, 2012. *Purges in state media, community radios on alert*. Available at: http://en.rsf.org/paraguay-threat-of-purges-hangs-over-state-12-07-2012_43014.html

⁶⁹⁸ La Nación. September 3, 2012. *Ratifican fenecimiento de contratos de funcionarios de la TV Pública*. Available at: <http://www.lanacion.com.py/articulo/88591-ratifican-fenecimiento-de-contratos-de-funcionarios-de-la-tv-publica.html>; IFEX/ Reporters Without Borders. September 10, 2012. *Twenty-seven employees fired from state TV in Paraguay*. Available at: http://www.ifex.org/paraguay/2012/09/10/tv_publica_purge/; Knight Center for Journalism in the Americas. September 5, 2012. *Firings at Paraguay's state television channel spark accusations of an ideological purge*. Available at: <http://knightcenter.utexas.edu/blog/00-11316-firings-paraguays-state-television-channel-spark-accusations-ideological-purge>

National Electricity Administration (ANDE) for a corresponding technical report.⁶⁹⁹ Regarding this, the ANDE reported that the power outages in the area were pre-planned.⁷⁰⁰ Marcelo Martinessi, former director of *TV Pública*, stated that he was never notified of the power outages and that “they [the ANDE] hide behind this idea that the power outage was pre-planned.”⁷⁰¹ Some media outlets and demonstrators who were in front of *TV Pública* stated that the purpose of the power outage was to interrupt the broadcast of the program ‘*Micrófono Abierto*’.⁷⁰²

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

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

22. Peru

A. Progress

⁶⁹⁹ Secretariat of Information and Communication for Development (SICOM). Public Information Agency-IP. June 24, 2012. *Gobierno investigará corte de energía eléctrica en la TV Pública Paraguay*. Available at for consultation at: <http://www.ipparaguay.com.py/2011/ip/index.php?#cuervo>; Paraguay.com. June 24, 2012. *Gobierno de Franco asegura garantizar libertad de expresión*. Available at: <http://www.paraguay.com/nacionales/gobierno-de-franco-asegura-garantizar-libertad-de-expresion-83825/pagina/2>

⁷⁰⁰ ABC Color. June 24, 2012. *Problemas de energía afectaron señal de TV Pública*. Available at: <http://www.abc.com.py/nacionales/problemas-de-energia-afectaron-senal-de-tv-publica-418231.html>; Crónica. June 24, 2012. *ANDE habría anunciado con anticipación el corte que hizo caer la señal de TV Pública*. Disponible en: <http://www.cronica.com.py/online/articulo/2057-ande-habria-anunciado-con-anticipacion-el-corte-que-hizo-caer-la-senal-de-tv-publica.html>; La Nación. June 25, 2012. *Titular de la ANDE: En ningún momento se quiso boicotear la transmisión de la TV Pública*. 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>

⁷⁰¹ Paraguay.com. June 25, 2012. “*Micrófono Abierto*” en la *Tv Pública*. Available at: <http://www.paraguay.com/web-tv/-microfono-abierto-en-la-tv-publica-83860>

⁷⁰² Paraguay.com. June 24, 2012. *Señal de TV Pública sufrió sabotaje “express”*. Available at: <http://www.paraguay.com/nacionales/senal-de-tv-publica-sufrio-sabotaje-express-83815>; ABC Color. June 24, 2012. *Problemas de energía afectaron señal de TV Pública*. Available at: http://www.abc.com.py/nacionales/problemas-de-energia-afectaron-senal-de-tv-publica-418231.html?fb_comment_id=fbcomment_10151224655374251_27376939_10151224692714251#f16a176a24

⁷⁰³ Radio Nederland. August 29, 2012. *Paraguay: ¿deben cerrarse las radios comunitarias sin licencia?* Available at: <http://www.rnw.nl/espanol/articulo/paraguay-%C2%BFdeben-cerrarse-las-radios-comunitarias-sin-licencia>; Reporters Without Borders. July 12 and 13, 2012. *Purges in state media, community radios on alert*. Available at: http://en.rsf.org/paraguay-threat-of-purges-hangs-over-state-12-07-2012_43014.html; AMARC. September 19, 2012. *Radios Comunitarias se pronuncian sobre censura al programa RedPública*. Available at: <http://legislaciones.item.org.uy/index?q=node/5749>

⁷⁰⁴ ABC Color. August 14, 2012. *Radios piratas se prestan muchas veces a invasiones y cierres de rutas*. Available at: <http://www.abc.com.py/edicion-impresa/economia/radios-piratas-se-prestan-muchas-veces-a-invasiones-y-cierre-de-rutas-437940.html>; Reporters Without Borders. August 14, 2012. *Community radio stations face crackdown for “inciting crime”*. Available at: http://en.rsf.org/paraguay-community-radio-stations-face-14-08-2012_43225.html

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

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

⁷⁰⁵ Superior Court of Lima. Sixth Specialized Criminal Chamber for Proceedings with Free Convicts. Resolution without number. November 30, 2011. File 24304-09. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Instituto Prensa y Sociedad (IPYS). January 11, 2012. *Perú: Declaran nula sentencia contra blogger*. Available at: <http://www.ipys.org/noticia/1071>; Alerta Perú. January 11, 2012. *Declaran nula sentencia contra bloguero José Alejandro Godoy*. Available at: <http://www.psf.org.pe/aperu/publicar/nacionales/2333-declaran-nula-sentencia-contra-bloguero-jose-alejandro-godoy.html>; See also, Instituto Prensa y Sociedad (IPYS). November 10, 2009. *Caso blogger José Alejandro Godoy*. Available at: <http://www.ipys.org/comunicado/38>. Supreme Court of the Republic of Peru. Plenum Agreement No. 3-2006/CJ-116. October 13, 2006. Available at: <http://www.justiciaviva.org.pe/especiales/euj2010/15.pdf>

⁷⁰⁶ Thirty Third Criminal Court of the Superior Court of Lima. File No. 24304-2009-0-1801-JR-PE-33. Resolution No. 38. June 18, 2012. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Instituto Prensa y Sociedad (IPYS). July 10, 2012. *Absuelven en primera instancia a blogger denunciado por ex ministro*. Available at: <http://www.ipys.org/noticia/1318>

⁷⁰⁷ Crónica Viva. March 27, 2012. *Declaran nula sentencia que condenó a periodista*. Available at: <http://www.cronicaviva.com.pe/index.php/prensa/27-prensa/38168-declaran-nula-sentencia-que-condeno-a-periodista>; Reporters Without Borders. March 29, 2012. *Court quashes defamation conviction on appeal, spares journalist jail time*. Available at: http://en.rsf.org/peru-court-quashes-defamation-29-03-2012_42211.html. See also, IACHR. Office of the Special Rapporteur for Freedom of Expression. November 21, 2011. Press Release R123/11. *Office of the Special Rapporteur Expresses Concern over Criminal Conviction against Journalist*. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=877&IID=1>

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 Chíncha, 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 Timaná, a journalist, host of *Radio Limón* program 'El Investigador' and a critic of the mayor's administration, was attacked by two people at the Olmos district municipality. One of the attackers was identified by the journalist as a municipal employee.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

⁷⁰⁸ La República. May 9, 2012. *Atestado policial responsabiliza a alcalde de Comandante Noel por asesinato de periodista Pedro Flores*. Available at: <http://www.larepublica.pe/09-05-2012/atestado-policial-responsabiliza-alcalde-de-comandante-noel-por-asesinato-de-periodista-pedro-flores>; Chimbote en línea. May 9, 2012. *Alcalde Marco Rivero mandó a asesinar a periodista casmeño, según la Seincri*. Available at: http://www.chimbotenlinea.com/index.php?option=com_content&view=article&id=7570:alcalde-marco-rivero-mando-a-asesinar-periodista-casmenosegun-la-seincri-&catid=138:caso-asesinato-periodista-pedro-flores&Itemid=426

⁷⁰⁹ Committee to Protect Journalists (CPJ). December 6, 2011. *Peruvian daily attacked after linking police to gangs*. Available at: <http://cpj.org/2011/12/peruvian-daily-attacked-after-linking-police-to-ga.php>; RPP. November 30, 2011. *Junín: Familiares de policías atacan el Diario El Sol de los Andes*. Available at: http://www.rpp.com.pe/2011-11-30-junin-familiares-de-policias-atacan-el-diario-el-sol-de-los-andes-noticia_427286.html; La República. December 1, 2011. *Desconocidos atacan local del diario El Sol de Los Andes*. Available at: <http://www.larepublica.pe/01-12-2011/desconocidos-atacan-local-del-diario-el-sol-de-los-andes>

⁷¹⁰ IFEX/ Instituto Prensa y Sociedad (IPYS). December 8, 2011. *Journalists assaulted by police while covering demonstration*. Available at: http://www.ifex.org/peru/2011/12/08/golpes_contra_periodistas/; Panamericana TV. December 5, 2011. *Denuncian agresión a periodistas por parte de la Policía Nacional en Cañete*. Available at: <http://www.panamericana.pe/buenosdiasperu/politica/96780>

⁷¹¹ IFEX/ Instituto Prensa y Sociedad (IPYS). December 14, 2011. *Journalist assaulted by individuals associated with mayor; another reports receiving death treats*. Available at: http://www.ifex.org/peru/2011/12/14/tasayco_agredido/; Cadena Sur TV. December 6, 2011. *Matones mandados por alcalde de El Carmen Soria Calderón agreden a periodista de Canal 33*. Available at: <http://www.youtube.com/watch?v=Dck1pL8FdZI>

⁷¹² IFEX/ Instituto Prensa y Sociedad (IPYS). December 15, 2011. *Journalist reports being assaulted by municipal councillors he is investigating*. Available at: http://www.ifex.org/peru/2011/12/15/julca_mendoza_golpeado/; Prensa Huaraz. December 9, 2011. *Iván Julca: "Regidores y serenos me golpearon cobardemente"*. Available at: <http://www.prenshuaraz.com/detalle.php?id=noticias.2063>

⁷¹³ Crónica Viva. February 1, 2012. *Dos sujetos agreden a conductor radial en Olmos*. Available at: <http://www.cronicaviva.com.pe/index.php/prensa/27-prensa/35251--dos-sujetos-agreden-a-conductor-radial-en-olmos>; IFEX/ Instituto Prensa y Sociedad (IPYS). January 31, 2012. *Radio presenter attacked after criticizing mayor*. Available at: http://ifex.org/peru/2012/01/31/monja_attack/

⁷¹⁴ Crónica Viva. January 27, 2012. *Amenazan de muerte a periodista de Tocache*. Available at: <http://www.cronicaviva.com.pe/index.php/prensa/27-prensa/34973-amenazan-de-muerte-a-periodista-de-tocache>; Hoy. February 1, Continues...

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 purchase of heavy machinery by the regional presidency. The journalists denounced the campaign on January 26, 2012.⁷¹⁵

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.⁷¹⁶

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

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

425. According to information received, while covering protests against the Conga mining project in Cajamarca, a number of journalists were attacked, both by protesters and by individuals assumed to be public officials. Along with this, the Office of the Special Rapporteur received information indicating that on November 29, 2011, protesters cut the transmission cable of the *Canal N* satellite team to prevent a correspondent of the channel from broadcasting images.⁷²⁰ Likewise, on April 16, 2012,

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2012. *Respaldan a periodista amenazado en Tocache*. Available at: <http://www.diariohoy.com.pe/noticia.php?id=2142>; Asociación Nacional de Periodistas del Perú (ANP). No date. *Amenazan de muerte a periodista de Tocache*. Available at: <http://www.anp.org.pe/ofip/alertas/937-amenazan-de-muerte-a-periodista-de-tocache>

⁷¹⁵ IFEX/ Instituto de Prensa y Sociedad (IPYS). January 31, 2012. *Three journalists defamed and threatened after investigating regional president*. Available at: http://www.ifex.org/peru/2012/01/31/ayacucho_threats/; Perú 21. January 30, 2012. *Periodistas denuncian amenazas por investigar a titular regional*. Available at: <http://peru21.pe/2012/01/30/actualidad/periodistas-denuncian-amenazas-investigador-titular-regional-2009697>

⁷¹⁶ 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 18, 2012. *Con correos electrónicos amenazan de muerte a director y editor de diario*. Available at: <http://www.ipys.org/alerta/1222>

⁷¹⁷ Instituto Prensa y Sociedad (IPYS). May 24, 2012. *Disparan en pierna a periodista incómodo a alcalde*. Available at: <http://www.ipys.org/alerta/1234>; Panorama Cajamarquino. May 22, 2012. *Atacan a balazos y dejan herido a comunicador social en Cutervo*. Available at: <http://www.panoramacajamarquino.com/noticia/atacan-a-balazos-y-dejan-herido-a-comunicador-social-en-cutervo/>

⁷¹⁸ 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>

⁷¹⁹ La República. 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/

⁷²⁰ Instituto Prensa y Sociedad (IPYS). November 10, 2011. *Manifestantes del gremio de construcción agreden a periodistas durante protesta contra minera*. Available at: <http://www.ipys.org/?q=alerta/962>; RPP. November 28, 2011. *Periodistas son agredidos con piedras por manifestantes en Cajamarca*. Available at: http://www.rpp.com.pe/2011-11-28-periodistas-son-agredidos-con-piedras-por-manifestantes-en-cajamarca-noticia_426597.html; Instituto Prensa y Sociedad (IPYS). December 1,

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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 the Conga mining project in Cajamarca.⁷²¹ Likewise, on May 31, 2012, Alejandro Huamán, of *TV Norte*, was beaten by individuals assumed to be police officers. With regard to the incidents that took place on May 31, the Interior Minister regretted the overreach by the police and ordered an investigation.⁷²² On June 14, 2012, individuals assumed to be police officers attacked journalists covering the conflict, among them Daniel Jayo of *Sol TV*, Luis Chilón of *Radio Programas del Perú*, Edwin Lozano of *Frecuencia Latina TV*, Karina Aliaga, of the channel *ATV* and Alejandro Huamán, of the program ‘Gotas de Lluvia’ on *TV Norte*. On June 26, a group of unidentified individuals attacked *Canal N* and *Canal ATV* workers and technical teams.⁷²³

426. In the same context, the following people suffered attacks and a number of incidents of aggression: Aleida Dávila, a journalist and director of the newspaper *El Cajacho* and Renerio Sánchez, Juan Guerrero and Oscar Lino, the latter two with radio station *Onda Popular*.⁷²⁴ 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.⁷²⁵ 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.⁷²⁶

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2011. *Perú: Continúan agresiones contra periodistas en octavo día de paro minero*. Available at: <http://www.ipys.org/?q=noticia/1023>; IFEX/ Instituto Prensa y Sociedad (IPYS). December 2, 2011. *Two journalists assaulted during sixth day of protests in Cajamarca*. Available at: http://www.ifex.org/peru/2011/12/02/cajamarca_protestas/

⁷²¹ IFEX/ Instituto Prensa y Sociedad (IPYS). April 20, 2012. *Journalist kidnapped, threatened by rural self-defense Group*. Available at: http://www.ifex.org/peru/2012/04/20/periodista_secuestrado/; Asociación Nacional de Periodistas del Perú (ANP). No date. *49 agresiones a periodistas peruanos en 2012*. Available at: <http://www.anp.org.pe/ofip/alertas/969-49-agresiones-a-periodistas-peruanos-en-2012>

⁷²² Asociación Nacional de Periodistas del Perú (ANP). No date. *Periodistas son brutalmente golpeados por registrar imágenes de represión policial*. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Peru. Ministry of Interior. June 5, 2012. Official Report 018-2012-MININTER. Available at: <http://www.mininter.gob.pe/noticiasdetalle.php?item=6550>

⁷²³ Instituto Prensa y Sociedad (IPYS). June 16, 2012. *Perú: Preocupante balance de agresiones a la prensa en 15 días de paro antiminero*. Available at: <http://www.ipys.org/noticia/1290>; Noticias Ser/ Asociación Nacional de Periodistas del Perú (ANP). June 27, 2012. *Protesta por agresión a periodistas en Cajamarca*. Available at: <http://www.noticiasser.pe/27/06/2012/nacional/protesta-por-agresion-periodistas-en-cajamarca>; Asociación Nacional de Periodistas del Perú (ANP). No date. *Periodistas son brutalmente golpeados por registrar imágenes de represión policial*. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁷²⁴ You Tube/ Frecuencia Latina. June 12, 2012. *Agresión a periodistas en Cajamarca*. Available at: <http://www.youtube.com/watch?v=m1W7R2Ke4g0&feature=related>; Perú 21. June 12, 2012. *Amedrentan a la prensa en Cajamarca*. Available at: <http://peru21.pe/2012/06/12/actualidad/amedrentan-prensa-cajamarca-2028386>; Correo. June 13, 2012. *Radicales anticonga pone a periodistas en riesgo*. Available at: <http://diariocorreo.pe/ultimas/noticias/EPENSA-093427/radicales-anticonga-pone-a-periodistas-en-riesgo>

⁷²⁵ IFEX. July 5, 2012. *Five journalists assaulted on first day of state of emergency*. Available at: http://www.ifex.org/peru/2012/07/05/per_cinco_periodistas/; Cerigua. July 7, 2012. *Múltiples agresiones contra periodistas en Perú*. Available at: http://cerigua.org/1520/index.php?option=com_content&view=article&id=9189:multiples-agresiones-contra-periodistas-en-peru; Instituto Prensa y Sociedad (IPYS). July 4, 2012. *Cinco periodistas agredidos en primer día de estado de emergencia por paro antiminero*. Available at: <http://www.ipys.org/alerta/1311>

⁷²⁶ IFEX. July 24, 2012. *Journalist gets intimidating calls after covering mining conflict*. Available at: http://www.ifex.org/peru/2012/07/24/periodista_recibe/; Celedín Libre. July 22, 2012. *Perú: Periodista es intimidada con llamadas telefónicas luego de regresar de Cajamarca*. Available at: <http://celendinlibre.wordpress.com/2012/07/22/peru-periodista-es-intimidada-con-llamadas-telefonicas-luego-de-regresar-de-cajamarca/>

427. On July 28, alleged police officers apprehended Jorge Chavez Ortiz, a journalist responsible for the blog *Mi Mina Corrupta*, and held him for several hours. The motive for his apprehension seems to have been his account of how the alleged police officers turned off a screen in a public plaza in Celendín while people were watching a message from the President of the Republic.⁷²⁷

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*").⁷²⁸

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 2004.⁷²⁹ 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.⁷³⁰ 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.⁷³¹

⁷²⁷ Instituto Prensa y Sociedad (IPYS). July 28, 2012. *Detienen a periodista bloguero que fotografió a policías en estado de emergencia*. Available at: <http://www.ipys.org/alerta/1348>; La República. July 28, 2012. *Cajamarca: periodista fue liberado tras ocho horas de encierro*. Available at: <http://www.larepublica.pe/28-07-2012/cajamarca-periodista-fue-liberado-tras-ocho-horas-de-encierro>

⁷²⁸ Instituto Prensa y Sociedad (IPYS). August 29, 2012. *Periodista denuncia haber sido secuestrado por ronderos*. Available at: <http://www.ipys.org/alerta/1391>; Voces. August 14, 2012. *Comunicador secuestrado en Soritor denunciará a sus captores*. Available at: <http://www.diariovoces.com.pe/?p=80158>

⁷²⁹ You Tube/ WilaxTV. May 10, 2012. *Vergüenza: Absolvieron a Valdez*. Available at: <http://www.youtube.com/watch?v=aP8SB5xyyUM>; El Comercio. May 10, 2012. *Absolución de Luis Valdez "es una burla" de la justicia, afirmó abogado Carlos Rivera*. Available at: <http://elcomercio.pe/politica/1412912/noticia-absolucion-luis-valdez-burla-justicia-afirmo-abogado-carlos-rivera>; Knight Center for Journalism in the Americas. May 11, 2012. *Former Peruvian mayor, city manager absolved in 2004 killing of journalist*. Available at: <http://knightcenter.utexas.edu/blog/00-10088-former-peruvian-mayor-city-manager-absolved-2004-killing-journalist>

⁷³⁰ 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. 469. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/2012%2003%2021%20Annual%20Report%20RELE%202011pirnting.pdf>

⁷³¹ Instituto Prensa y Sociedad (IPYS). October 6, 2012. *Amenazan de muerte a periodista llamando a casa de su familia y enviándole sobre con balas*. Available at: <http://www.ipys.org/alerta/1424>; Ideeleradio. October 9, 2012. *Ica: Amenazan de muerte a miembros de CODEHICA*. Available at: <http://www.ideeleradio.org.pe/web/wNoti.php?idN=5516&tip=red>

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 Twelfth Criminal Court of Lima handed down the criminal conviction of Juan Carlos Tafur, director of *Diario 16*, and Roberto More, a journalist with that newspaper, for an article linking Peru's former national police director and former interior minister to alleged illegal acts. According to the information received, the judge issued a suspended sentence against the journalists of two years in prison, and ordered the payment of 60,000 soles (about US \$23,000) to the former police general.⁷³²

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 Román 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.⁷³³

434. The Office of the Special Rapporteur considers it relevant to indicate that these cases have taken place in a context in which President Ollanta Humala has declared publicly and repeatedly that he will not use criminal proceedings to block debate on matters of public interest. At the same time, the Congress of the Republic has studied a number of reforms that would eliminate crimes of defamation, at the least for public officials, or substitute prison sentences for fines. Parallel to this, the Supreme Court of Justice has handed down directives on the subject, and in recent rulings has overturned criminal convictions for the crime of defamation of public servants or former public servants.⁷³⁴

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

⁷³² Peru Judiciary. Twelfth Criminal Court of Lima. File 4087-2011. Judgment of June 5, 2012. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; 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&IID=1>; IFEX/ Instituto Prensa y Sociedad (IPYS). June 5, 2012. *Editor, journalist get suspended prison sentences*. Available at: http://www.ifex.org/peru/2012/06/05/sentencian_a_director/; Perú 21. June 5, 2012. *Dos años de prisión suspendida para Juan Carlos Tafur y Roberto More*. Available at: <http://peru21.pe/2012/06/05/actualidad/dos-anos-prision-suspendida-contra-juan-carlos-tafur-y-roberto-more-2027377>

⁷³³ 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/ofip/alertas/989--huamanga-querellan-a-periodistas-que-denunciaron-irregularidades-en-gestion-de-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>

⁷³⁴ 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&IID=1>

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

23. Dominican Republic

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

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

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

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

⁷³⁵ Constitutional Court of the Dominican Republic. September 21, 2012. Judgment TC/0042/12. Petition for writ of *amparo* presented by the Chamber of Deputies of the Dominican Republic and the Dominican State against Manuel Muñoz Hernández. Available at: <http://www.tribunalconstitucional.gob.do/sites/default/files/documentos/Sentencia%20TC%200042-12%20C.pdf>

⁷³⁶ Reporters Without Borders. March 8, 2012. *Court surprisingly acquits three men of murdering cameraman in 2008*. Available at: http://en.rsf.org/dominican-republic-court-surprisingly-acquits-three-08-03-2012_42038.html; Voz Diaria. March 2, 2012. *Descargan acusados del caso Normando García “Azabache”*. Available at: <http://www.vozdiaria.com.do/noticias/nacional/9132/descargan-acusados-del-caso-normando-garcia-%E2%80%99Cazabache%E2%80%99D>; Proyecto Impunidad. March 8, 2012. *Exoneran a inculcados por asesinato del camarógrafo Normando García, de República Dominicana*. Available at: <http://www.impunidad.com/noticia.php?id=806&idioma=br>

⁷³⁷ El Nuevo Diario. April 23, 2012. *Wilton Guerrero denuncia supuesta trama para asesinar a Nuria Piera*. Available at: <http://www.elnuevodiario.com.do/app/article.aspx?id=283565>; Pueblo en Línea/ Xinhua. April 4, 2012. *Periodista dominicana denuncia persecución tras informe que involucra al presidente de Haití*. Available at: <http://spanish.peopledaily.com.cn/31617/7778513.html>; Nuria Piera. April 4, 2012. *Nota de prensa*. Available at: <https://twitter.com/#/nuriapiera/status/187616296505057280/photo/1>

⁷³⁸ Vigilante. September 28, 2012. *Protesta contra la Barrick deja 29 heridos, hay varios periodistas y un menor muy grave*. Available at: http://www.vigilanteinformativo.com/index.php?option=com_content&view=article&id=12123:protesta-contra-la-barrick-deja-29-heridos-hay-varios-periodistas-y-un-menor-muy-grave-un-menor-entre-la-vida-y-la-muerte-tras-protesta-contra-la-barrick-cotui-sanchez-ramirez-un-menor-se-debate-entre-la-vida-y-la-muerte-la-noche-de-este-juenes-tras-s&catid=62:nacionales&Itemid=124; IFEX/ Inter-American Press Association (IAPA-SIP). October 1, 2012. *Journalists injured in protest against gold mining in Dominican Republic*. Available at: http://www.ifex.org/dominican_republic/2012/10/01/protest_march/; Ciudad Oriental. September 29, 2012. *SNTP informa fueron cuatro periodistas heridos en marcha: deplora el hecho y exige justicia*. Continues...

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

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Available at: http://www.ciudadoriental.org/index.php?option=com_content&view=article&id=6016:sntp-informa-fueron-cuatro-periodistas-heridos-en-marcha-deplora-el-hecho-y-exige-justicia&catid=121:prensa&Itemid=320

⁷³⁹ IACHR. April 13, 2012. Press Release 38/12. *IACHR Expresses Concern about Amnesty Legislation in Suriname*. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2012/038.asp; IFEX/ Reporters Without Borders. April 4, 2012. *Parliament urged to reject amnesty that would include murders of five journalists*. Available at: http://www.ifex.org/suriname/2012/04/04/proposed_amnesty/; Amnesty International. March 23, 2012. *Surinam amnesty law threatens President's trial for human rights violations*. Available at: <http://www.amnesty.org/en/news/suriname-amnesty-law-threatens-presidents-trial-human-rights-violations-2012-03-23>

⁷⁴⁰ International Press Institute (IPI). June 27, 2012. *Trinidad and Tobago Prime Minister Promises to initiate Review of Nation's Defamation Laws*. Available at: <http://www.freemedia.at/home/singleview/article/trinidad-and-tobago-prime-minister-promises-to-initiate-review-of-nations-defamation-laws.html>; Guardian. June 30, 2012. *PM at IPI Congress: Govt to review defamation laws*. Available at: <http://www.guardian.co.tt/news/2012-06-30/pm-ipi-congress-govt-review-defamation-laws>

⁷⁴¹ Stabroek News. November 24, 2012. *T&T's defamation laws under review says PM*. Available at: <http://www.stabroeknews.com/2012/archives/11/24/tts-defamation-laws-under-review-says-pm/>

⁷⁴² Stabroek News. November 24, 2012. *T&T's defamation laws under review says PM*. Available at: <http://www.stabroeknews.com/2012/archives/11/24/tts-defamation-laws-under-review-says-pm/>; Free Speech Jamaica/ Trinidad Guardian. December 15, 2012. *T&T aims to weaken criminal libel law*. Available at: <http://freespeechjamaica.com/tt-aims-to-weaken-criminal-libel-law.html>

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

⁷⁴³ Trust Media/ International Press Institute (IPI). January 3, 2012. *Trinidad and Tobago Police Raid Broadcaster*. Available at: <http://www.trust.org/trustmedia/news/ipi-trinidad-and-tobago-police-raid-broadcaster>; *Newsday*. December 30, 2011. *Police seize Crime Watch tape*. Available at: <http://www.newsday.co.tt/news/0.152931.html>; WACK 90.1 FM. December 30, 2011. *Police head Express concern over TV-6 raid*. Available at: <http://www.facebook.com/notes/wack-901-fm-radio/police-head-express-concern-over-tv-6-raid/10150549877731535>

⁷⁴⁴ Association of Caribbean Media Workers (ACM). February 11, 2012. *ACM condemns raid on TT Newspaper*. Available at: <http://www.acmediaworkers.com/archive/2012/pdf/20120211ACMonNewsdayRaid.pdf>; *Trinidad Express Newspapers*. February 10, 2012. *Extreme Action PM calls on Gibbs to explain raid on newspaper*. Available at: http://www.trinidadexpress.com/news/EXTREME_ACTION-139135919.html; Knight Center for Journalism in the Americas. February 15, 2012. *Press freedom groups condemn police raid on newspaper, reporter's home in Trinidad and Tobago*. Available at: <http://knightcenter.utexas.edu/blog/00-9047-press-freedom-groups-condemn-police-raid-newspaper-reporters-home-trinidad-and-tobago>

⁷⁴⁵ Reporters Without Borders. October 18, 2012. *Government obtains newspaper reporter's phone records*. Available at: <http://en.rsf.org/trinidad-and-tobago-government-obtains-newspaper-18-10-2012.43559.html>; Aid News. October 18, 2012. *Trinidad and Tobago – Government obtains newspaper reporters phone records*. Available at: <http://aidnews.org/trinidad-and-tobago-government-obtains-newspaper-reporters-phone-records/>; Antigua Observer. October 18, 2012. *Reporters without Borders calls for Independent Commission of Enquiry*. Available at: <http://www.antiguaobserver.com/?p=82673>

⁷⁴⁶ Sociedad Uruguaya. December 3, 2012. *Decreto que regulará la asignación de publicidad oficial recibe respaldo de las gremiales de medios del interior*. Available at: <http://www.sociedaduruguaya.org/2012/12/decreto-que-regulara-la-asignacion-de-publicidad-oficial-recibe-respaldo-de-las-gremiales-de-medios-del-interior.html>; UNoticias. December 3, 2012. *Organizaciones del*
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448. According to information received, on March 6, an Uruguayan court ordered the processing and arrest of a former police officer suspected of being an accomplice to the murder of journalist and teacher Julio Castro. Castro was kidnapped, tortured and murdered in 1977 by members of the Information and Defense Service. Castro's remains were found in 2011, buried at a military facility. According to the information, Judge Juan Carlos Fernández Lecchini denied a statute of limitations pleading brought by the defense and declined, due to lack of evidence, to process a member of the armed forces allegedly responsible who could be connected with the order to commit the crime.⁷⁴⁷

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

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

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

452. According to information received, on October 31, the Uruguayan government published a decree establishing the regulations for the National Archives System Act (Law No. 18.220 of December

...continuation
interior apoyan decreto para regular publicidad oficial. Available at: http://www.unoticias.com.uy/2012/12/03/informacion_nacional/organizaciones_del_interior_apoyan_decreto_para_regurar_publicidad_oficial/

⁷⁴⁷ Uruguay Judiciary. Case No. 402/2012. IUE 87-289/1985. Available at: http://medios.elpais.com.uy/downloads/2012/Procesamiento_Zabala_Quintero.pdf; El País. March 6, 2012. *Procesan a expolicía por muerte de Julio Castro*. Available at: <http://www.elpais.com.uy/120306/ultmo-628908/ultimomomento/procesan-a-expolicia-por-muerte-de-julio-castro/>; El Diario. March 6, 2012. *Ex policía procesado por muerte de Julio Castro*. Available at: <http://eldiario.com.uy/2012/03/06/ex-policia-procesado-por-muerte-de-julio-castro/>; MSN latino noticias/ EFE. December 1, 2011. *Restos humanos hallados en cuartel uruguayo pertenecen a maestro Julio Castro*. Available at: <http://noticias.latino.msn.com/internacionales/articulos.aspx?cp-documentid=31575385>

⁷⁴⁸ Ministry of Industry, Energy and Mining. May 11, 2012. Decree regulating Digital TV. Available at: http://archivo.presidencia.gub.uy/sci/decretos/2012/05/miem_585.pdf; 180. May 12, 2012. *Así será la TV digital uruguaya*. Available at: http://www.180.com.uy/articulo/26133_Asi-sera-la-TV-digital-uruguaya

⁷⁴⁹ Radio World. May 9, 2012. *Uruguay regulariza radios comunitarias*. Available at: <http://www.radioworld.com/article/uruguay-regulariza-radios-comunitarias/213368>; Radio Malva. May 14, 2012. *América Latina # URUGUAY: regularización de radios comunitarias*. Available at: <http://radiomalva.org/2012/05/14/america-latina-uruguay-regularizacion-de-radios-comunitarias/>

⁷⁵⁰ El Observador. April 11, 2012. *Juez obliga a ANEP a dar datos de infraestructura*. Available at: <http://www.elobservador.com.uy/noticia/222055/juez-obliga-a-anep-a-dar-datos-de-infraestructura/>; Red Andi América Latina. April 11, 2012. *Justicia obliga a la ANEP a brindar información sobre situación edilicia de escuelas*. Available at: <http://www.redandi.org/noticia/justicia-obliga-la-anep-brindar-informacion-sobre-situacion-edilicia-de-escuelas/>; Centro de Archivo y Acceso a la Información Pública (Cainfo). April 27, 2012. *Sólo tres escuelas habilitadas en todo el país. Que vengan los bomberos*. Available at: <http://www.cainfo.org.uy/noticias/3-general/210-solo-tres-escuelas-habilitadas-en-todo-el-pais-que-vengan-los-bomberos>

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*.⁷⁵¹

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

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

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

27. Venezuela⁷⁵⁴

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.

⁷⁵¹ Ministry of Education and Culture of the Eastern Republic of Uruguay. October 31, 2012. *Regulation of the Archival Function Nationwide and the National Archives System*. Decree No. 355/012. Available at: http://archivo.presidencia.gub.uy/sci/decretos/2012/10/cons_min_585.pdf and available for consultation at: <http://www.presidencia.gub.uy/wps/wcm/connect/presidencia/portalpresidencia/normativa/decretos/decretos-10-2012>; Centro de Archivo y Acceso a la Información Pública (Cainfo). November 12, 2012. *Cainfo destaca la reglamentación de la Ley del Sistema Nacional de Archivos como pre-requisito para un completo acceso a la información pública*. Available at: <http://www.cainfo.org.uy/noticias/3-general/278-cainfo-destaca-la-reglamentacion-de-la-ley-del-sistema-nacional-de-archivos-como-pre-requisito-para-un-completo-acceso-a-la-informacion-publica>. Cf. I/A Court H.R. *Case of Gelman v. Uruguay. Merits and Reparations*. Judgment of February 24, 2011. Series C No. 221.

⁷⁵² Diario El Pueblo. December 13, 2011. *Periodista de El Pueblo denunció a dos policías por agresión en el estadio*. Available at: <http://www.diarioelpueblo.com.uy/deportes/periodista-de-el-pueblo-denuncio-a-dos-policias-por-agresion-en-el-estadio.html>; Asociación de la Prensa Uruguaya (APU). December 15, 2011. *Periodista agredido por la policía en Salto*. Available at: <http://www.apu.org.uy/noticias/periodista-agredido-por-la-policia-en-salto>; Diario El Pueblo. January 19, 2012. *La Policía inició una investigación para determinar responsabilidades en agresión a periodista de El Pueblo*. Available at: <http://www.diarioelpueblo.com.uy/titulares/la-policia-inicio-una-investigacion-para-determinar-responsabilidades-en-agresion-a-periodista-de-el-pueblo.html>; Diario El Pueblo. May 24, 2012. *Periodista de EL PUEBLO ratificó denuncia penal y ahora la Jefatura deberá identificar a los efectivos*. Available at: <http://www.diarioelpueblo.com.uy/titulares/periodista-de-el-pueblo-ratifico-denuncia-penal-y-ahora-la-jefatura-debera-identificar-a-los-efectivos.html>

⁷⁵³ El País. August 7, 2012. *Amenaza de muerte a juez, fiscal policías y periodista en Young*. Available at: <http://www.elpais.com.uy/120807/ultimo-656452/ultimomomento/amenaza-de-muerte-a-juez-fiscal-policias-y-periodistas-en-young>; Knight Center for Journalism in the Americas. August 8, 2012. *Radio journalists receive poorly written threat in Uruguay*. Available at: <http://knightcenter.utexas.edu/blog/00-11013-radio-journalists-receive-poorly-written-threat-uruguay>

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

1. Attacks and Threats against the Media and Journalists

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

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.⁷⁵⁹

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.⁷⁶⁰

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

⁷⁵⁶ IFEX/ Instituto Prensa y Sociedad (IPYS). January 16, 2012. [Journalist Threatened via Twitter](#); Instituto Prensa y Sociedad (IPYS). November 25, 2011. [Periodista ciberactivista es amenazado por Twitter y teléfono](#) [Online activist journalist threatened over Twitter and by telephone].

⁷⁵⁷ Sexto Poder. January 31, 2012. [N33 ataca a los periodistas Orian Brito y Alberto Rodríguez](#) [N33 attacks journalists Orian Brito and Alberto Rodríguez]; Instituto Prensa y Sociedad (IPYS)/IFEX. February 7, 2012. [Journalists' Twitter accounts hacked after posting controversial photos](#); Espacio Público. January 31, 2012. [N33 ataca a Orian Brito y Alberto Rodríguez](#) [N33 attacks Orian Brito and Alberto Rodríguez]; Knight Center for Journalism in the Americas. February 1, 2012. [More Venezuelan opposition journalists' Twitter accounts hacked](#).

⁷⁵⁸ Espacio Público. March 9, 2012. [N33 ataca a periodista Édgar C. Otálvora](#) [N33 attacks journalist Edgar C. Otálvora].

⁷⁵⁹ Colegio Nacional de Periodistas. January 20, 2012. [CNP rechaza agresión al equipo de RCTV durante cobertura de elecciones en la UCV](#) [CNP denounces attack on RCTV team during coverage of UCV elections]; Espacio Público. January 20, 2012. [Manifestantes agreden a equipo reportero de RCTV durante revuelta en la UCV](#) [Demonstrators attack RCTV news team during turbulence at the UCV].

⁷⁶⁰ IFEX/ Instituto Prensa y Sociedad (IPYS). March 28, 2012. [Column writer denounces smear campaign against him](#); El Universal. March 28, 2012. [Investigan a periodistas del diario la Prensa de Barinas](#) [Journalists with the Barinas Press newspaper under investigation].

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.⁷⁶¹

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

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

⁷⁶² Espacio Público. February 23, 2012. [Agredido periodista por Guardia Nacional en el estado Apure](#) [Journalist assaulted by National Guardsmen in the state of Apure]; Instituto Prensa y Sociedad (IPYS). February 19, 2012. [Funcionario militar agrede a reportero y luego pide disculpas](#) [Military officer attacks reporter and then apologizes].

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].

⁷⁶⁴ Colegio Nacional de Periodistas (CNP). March 12, 2012. [Incendio en la casa del secretario CNP Apure-Amazonas](#) [Fire at the home of the Apure-Amazonas CNP Secretary]; Noticias 24. March 12, 2012. [Incendiaron la casa del secretario general del CNP, seccional Apure-Amazonas](#) [Home of CNP General Secretary – Apure-Amazonas section- set ablaze].

⁷⁶⁵ El Universal. March 11, 2012. [Colectivo La Piedrita acusa a Globovisión de estar tras hechos de violencia](#) [La Piedrita Collective accuses *Globovisión* of being behind the acts of violence]; *Globovisión*. March 11, 2012. [Colectivo La Piedrita acudió a Globovisión con carrozas fúnebres de miembros asesinados](#) [La Piedrita Collective turns up at *Globovisión* with hearses carrying the remains of slain members]; Sexto Poder. March 10, 2012. [Globovisión recibió visita del Secretariado Revolucionario Venezolano](#) [*Globovisión* receives a visit from the *Secretariado Revolucionario Venezolano*]; RCTV.net. March 11, 2012. [Colectivo La Piedrita acudió a Globovisión con carrozas fúnebres de miembros asesinados](#) [La Piedrita Collective went to *Globovisión* with hearses carrying the bodies of its murdered members].

Court of Human Rights had ordered precautionary measures for *Globovisión*. In the process, the State was ordered to adopt such measures as might be necessary to “safeguard and protect the lives, safety, and freedom of expression of the reporters, executives and employees of Globovisión and of the other persons who are in the facilities of said broadcaster and who are directly linked to the journalistic operation of this broadcaster” as well as “to protect the perimeter of the head offices of the *Globovisión* social communications broadcaster.”⁷⁶⁶

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.⁷⁶⁷

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 Office⁷⁶⁸ concerning the insults and threats. The program “La Hojilla” is carried on public television and is known for challenging any critics or opponents of the National Government.

467. The IACHR was informed of attacks on five media outlets. According to reports, on the night of March 19, 2012 unidentified persons fired several shots at the newspaper *Nuevo Día*, in Coro, Falcón state. There were no casualties. The police who investigated the incident found that bullets had penetrated the main door to the newspaper’s headquarters.⁷⁶⁹ 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 2010.⁷⁷⁰

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

⁷⁶⁶ I/A Court H.R., *Matter of Globovisión Television Station*, Provisional Measures Regarding Venezuela. Order of the Court of September 4, 2004; I/A Court H.R., *Case of Perozo et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195, paragraph 69.

⁷⁶⁷ Colegio Nacional de Periodistas (CNP). March 18, 2012. [Amenaza de secuestro a la colega Sara Vargas de El Tigre](#) [*El Tigre*’s colleague Sara Vargas threatened with kidnapping]; Crónica Viva. March 22, 2012. [Felatraccs en alarma por amenazas a periodista venezolana](#) [Felatraccs alarmed by threats made against Venezuelan journalist]; Instituto Prensa y Sociedad (IPYS). March 15, 2012. [Amenazan de secuestro a periodista de televisora regional](#) [Journalist with regional television channel threatened with kidnapping].

⁷⁶⁸ *El Universal*. March 20, 2012. [Rayma Suprani denunció a La Hojilla](#) [Rayma Suprani filed complaint against *La Hojilla*]; RCTV. March 20, 2012. [La caricaturista Rayma denunció al conductor de La Hojilla ante el MP](#) [Caricaturist Rayma filed complaint with the Public Prosecutor’s Office against the host of *La Hojilla*]; *Globovisión*. March 21, 2012. [Rayma Suprani denunció a La Hojilla ante el MP](#) [Rayma Suprani brought complaint against *La Hojilla* with the Public Prosecutor’s Office]; Instituto Prensa y Sociedad (IPYS). March 14, 2012. [Caricaturista recibe amenazas e insultos vía Internet](#) [Caricaturist receives threats and insults online].

⁷⁶⁹ Instituto Prensa y Sociedad (IPYS). March 19, 2012. [Atentan contra sede de diario regional](#) [Offices of regional newspaper attacked]; Sexto Poder. March 20, 2012. [Reportan que sede del diario Nuevo Día de Falcón volvió a ser objeto de un atentado](#) [Reports are that the headquarters of the Falcón newspaper *Nuevo Día* once again attacked]; El Carabobeño. March 21, 2012. [Atentado contra rotativo falconiano no deja heridos](#) [No one injured in attack on Falcón newspaper].

⁷⁷⁰ *El Universal*. October 6, 2012. [Un herido deja explosión de granada en diario Nuevo Día en Coro](#) [One person injured when grenade explodes at offices of Falcón’s *Un Nuevo Día* in Coro]; *El Mundo*. October 5, 2012. [Lanzan explosivo al diario Un Nuevo Día de Falcón](#) [Explosive hurled at offices of Falcón’s *Un Nuevo Día*]; 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].

casualties.⁷⁷¹ On July 10, unidentified persons reportedly threw an explosive device at a vehicle belonging to the Carabobo newspaper *La Costa*.⁷⁷²

469. From the information received, it appears that in early June, María Isoliett Iglesias, Deivis 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

⁷⁷¹ La Nación. June 4, 2012. [Continúan ataques contra medios de comunicación en Zulia](#) [Attacks on the media in Zulia persist]; Noticia Al Día. May 30, 2012. [Tirrotearon la sede de Catatumbo Televisión: Segundo ataque a un medio en Maracaibo](#) [Shots fired at headquarters of Catatumbo Television: second attack on a media outlet in Maracaibo]; Qué Pasa. May 29, 2012. [Nos tiraron una granada para callarnos](#) [The grenade was meant to silence us].

⁷⁷² IFEX/Instituto Prensa y Sociedad (IPYS). July 16, 2012. [Regional newspaper target of explosion in Carabobo: El Universal](#). July 12, 2012. [Con explosivo atacaron sede del diario La Costa, en Carabobo](#) [Offices of the newspaper *La Costa*, in Carabobo, attacked with explosives].

⁷⁷³ El Universal. June 4, 2012. [Periodista de El Universal denunció amenazas en su contra](#) [*El Universal* journalist denounced threats made against him]; El Político. June 5, 2012. [Amenazan a reporteros venezolanos](#) [Venezuelan reporters threatened]; Inter-American Press Association (IAPA-SIP). June 6, 2012. [IAPA condemns threats, attacks on journalists and media in Venezuela](#).

⁷⁷⁴ Colegio Nacional de Periodistas (CNP). August 3, 2012. [Guardia Nacional despoja de equipo a reportero gráfico en Barinas](#) [In Barinas, National Guard strips photo-journalist of his camera equipment]; Instituto Prensa y Sociedad (IPYS). August 1, 2012. [Efectivos de la Guardia Nacional impidieron trabajo de reportero gráfico](#) [National Guardsmen stopped photo journalist from reporting the news].

⁷⁷⁵ Globovisión. August 23, 2012. [Equipo de Globovisión fue agredido durante cobertura de sucesos de Yare I](#) [*Globovisión* news team attacked during coverage of events at Yare I]; Colegio Nacional de Periodistas (CNP). August 24, 2012. [Comunicado del CNP Caracas: ¡Exigimos respeto al ejercicio de nuestra profesión!](#) [CNP Caracas Press Release: We demand that our practice of the journalism profession be respected!]

⁷⁷⁶ El Impulso. September 13, 2012. [Comunidad enardecida defendió el Programa Regional de Alimentación](#) [Angry community defended the Regional Food Program]; Espacio Público. September 12, 2012. [Agredido equipo de Diario El Impulso por efectivos militares](#) [Military troops attack *El Impulso*'s news team].

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].

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

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

⁷⁷⁸ Espacio Público. September 20, 2012. [GNB ataca a reportero gráfico de Notitarde durante cobertura en la Refinería El Palito](#) [GNB attacks photographer during coverage at the El Palito Refinery]; Globovisión. September 19, 2012. [Se registró incendio en tanques de la refinería El Palito](#) [Fire broke out in the tanks at El Palito Refinery].

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 reporteril de ANTV en la Universidad Central de Venezuela](#) [ANTV news team at the Universidad Central de Venezuela attacked].

⁷⁸⁰ IFEX/ Instituto Prensa y Sociedad (IPYS). 5 November 2012. [Shots fired at newspaper office in Western Venezuela](#); Globovisión. November 1, 2012. [Atacan a tiros sede del diario El Regional del Zulia](#) [Shots fired at the offices of Zulia’s newspaper *El Regional*]; Panorama. November 1, 2012. [Tirrotearon sedes del diario El Regional y PDVSA en el estado Zulia](#) [Gunfire at the headquarters of the newspaper *El Regional* and the PDVSA in the state of Zulia].

⁷⁸¹ Parties that requested the hearing: Center for Human Rights of the Universidad Católica Andrés Bello (UCAB), *Espacio Público* civic organization, the Colegio Nacional de Periodistas de Venezuela, the Sindicato Nacional de Trabajadores de la Prensa, Venezuela (SNTP). The Venezuelan State was represented at the hearing. IACHR. 144th Session. March 27, 2012. Hearing on *The Situation of the Right to Freedom of Expression in Venezuela*. IACHR. 146th Session. November 1, 2012. [Right to Freedom of Expression in Venezuela](#).

⁷⁸² In communication from the State of Venezuela No. AGEV/ 000039 to the Executive Secretary of the IACHR, dated February 22, 2013, “Observations of the Venezuelan State to the IACHR Annual Report of 2012.” Specific observations to the section on “State respect and guarantee for the exercise of freedom of expression.” Pp 20-21.

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

2. Election-related assaults

480. The IACHR also received information concerning the spike in attacks on journalists and other media personnel during the electoral process. The IACHR continues to observe a climate of extreme polarization that obstructs and, in many cases, altogether prevents journalists from practicing their profession of keeping the public properly informed. For example, on February 14, 2012 Aragua police officers grabbed photographer Luis Rivas, with the newspaper *El Aragüeño*, and took away his camera equipment as he was covering the commotion related to the seizure of the voting records for the internal elections within the *Mesa de la Unidad Democrática* (MUD), an opposition party, in the municipality of Mario Briceño Iragorry. Later, the police returned the camera equipment, but without the memory card.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 TV5, and journalist Lourdes Maldonado and photographer Javier Troconiz from the newspaper *El Siglo*, as they were trying to cover a demonstration

⁷⁸³ Espacio Público. February 16, 2012. [Despojado de sus equipos por la policía reportero gráfico en Aragua durante disturbios](#) [Police take away photo-journalist’s equipment in Aragua during disturbances]; Colegio Nacional de Periodistas (CNP). February 16, 2012. [Nuevo atropello contra la libertad de informar](#) [New outrage committed against freedom of to inform].

⁷⁸⁴ Globovisión. March 3, 2012. [Agreden a equipo de Globovisión en acto del PSUV](#) [Globovisión news team attacked at PSUV event]; Espacio Público. March 5, 2012. [Corresponsal de Globovisión en Táchira agredida por seguidores del PSUV](#) [Globovisión correspondent in Táchira attacked by PSUV supporters].

⁷⁸⁵ Committee to Protect Journalists (CPJ). March 6, 2012. [Globovisión Journalists Attacked in Venezuela; Globovisión](#). March 4, 2012. [Amenazan y roban a equipo de Globovisión que cubría caminata de Capriles en Caracas](#) [Globovisión team covering Capriles’ Caracas walk attacked and robbed].

⁷⁸⁶ Correo del Orinoco. March 12, 2012. [Agreden a equipo de Catatumbo TV en marcha de candidato presidencial de la MUD](#) [Catatumbo TV team attacked in march staged for the MUD presidential candidate]; Instituto Prensa y Sociedad (IPYS). March 12, 2012. [Agreden a camarógrafo en marcha de candidato presidencial](#) [Photographer attacked on march staged by presidential candidate]; Espacio Público. March 13, 2012. [Agreden a equipo reportero de Catatumbo TV durante acto político](#) [Catatumbo TV news team attacked during political event]; Catatumbo TV. March 13, 2012. [Equipo de Catatumbo TV relata agresión por parte de seguidores de Capriles Radonski](#) [Catatumbo TV news team recounts attack by followers of Capriles Radonski].

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 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.⁷⁸⁹ 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.⁷⁹⁰ 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.⁷⁹¹ 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.⁷⁹²

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.⁷⁹³ Similarly, on September 9, persons presumed to be members of the opposition attacked Lorena Benítez, a journalist with the National Public Media System. According to what was reported, the journalist was covering a campaign event staged by the opposition

⁷⁸⁷ Espacio Público. March 22, 2012. [Agreden a dos equipos reporteros durante acto político en Aragua](#) [Two teams of reporters attacked during political event in Aragua]; Colegio Nacional de Periodistas (CNP). March 20, 2012. [Urge convivencia y respeto a los periodistas](#) [Respect for journalists urged]; Instituto Prensa y Sociedad (IPYS). March 16, 2012. [Agreden a comunicadora en acto de campaña de candidato presidencial opositor](#) [Journalist attacked at campaign event staged by opposition presidential candidate].

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 TV in Aragua]; Venezolana de Televisión (VTV). March 22, 2012. [Seguidores de Capriles Radonski agredieron a corresponsal de VTV en Táchira](#) [Capriles supporters turn on VTV correspondent in Táchira].

⁷⁸⁹ Venezolana de Televisión (VTV). March 23, 2012. [Corresponsal de VTV en Táchira: Radonski se percató de toda la agresión](#) [VTV correspondent in Táchira: Radonski was aware of the entire attack]; Agencia Venezolana de Noticias (AVN). March 23, 2012. [Corresponsal de VTV en Táchira: Capriles se estaba percatando de toda la agresión](#) [VTV correspondent in Táchira: Capriles knew everything about the attack]; Inter-American Press Association (IAPA-SIP). April 23, 2012. [Information by Country: Venezuela](#).

⁷⁹⁰ Colegio Nacional de Periodistas (CNP). April 18, 2012. [CNP deplora agresiones contra los reporteros Rojas y Amorim en Anzoátegui](#) [CNP deploras attacks on reporters Rojas and Amorim in Anzoátegui]; YVKE Radio. April 18, 2012. [Comando Tricolor agrede a camarógrafo de Televen](#) [Comando Tricolor attacks Televen cameraman].

⁷⁹¹ Noticias 24. May 10, 2012. [Corresponsal de VTV en Barinas denuncia agresión por parte de simpatizantes de Capriles](#) [VTV correspondent in Barinas complains of aggression by Capriles supporters]; Venezolana de Televisión (VTV). May 10, 2012. [Cámara VTV robada por gente de Radonski fue hallada en manos de ex alcalde Frenchy Díaz](#) [VTV camera stolen by Radonski followers found in possession of ex-mayor Frenchy Díaz].

⁷⁹² Noticias Diarias. July 26, 2012. [Partidarios de Capriles agreden por tercera vez a periodista de VTV en Guárico](#) [In Guárico, Capriles followers attack VTV journalist a third time]; Colegio Nacional de Periodistas (CNP). July 31, 2012. [Agredida corresponsal de VTV en Guárico](#) [VTV journalist in Guárico attacked].

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

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.⁷⁹⁴

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.⁷⁹⁵ Similarly, on September 30, Cristian 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.⁷⁹⁷ 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.⁷⁹⁸

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

⁷⁹⁴ Agencia Venezolana de Noticias (AVN). September 9, 2012. [Periodista del SNMP fue agredida por seguidores de Capriles en La Pastora](#) [SNMP correspondent attacked by Capriles' followers in La Pastora]; Espacio Público. September 12, 2012. [Periodista de YVKE Mundial agredida en manifestación de Henrique Capriles Radonski en La Pastora](#) [YVKE Mundial journalist assaulted in demonstration staged for Henrique Capriles Radonski in La Pastora].

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].

⁷⁹⁶ 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]; *Llanero Digital*. October 2, 2012. [Empleados públicos en la marcha](#) [Government employees participate in the march].

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].

⁷⁹⁹ Espacio Público. October 10, 2012. [Reportero gráfico del Correo del Caroní agredido durante cobertura electoral](#) [Photographer for the *Correo del Caroní* attacked while covering elections]; 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].

⁸⁰⁰ Últimas Noticias. October 7, 2012. [Agreden a reporteros de Últimas Noticias en Kennedy](#) [Reporters for *Últimas Noticias* attacked in Kennedy]; Espacio Público. October 7, 2012. [Equipo de últimas noticias fue atacado durante cobertura en la urbanización Kennedy](#) [*Últimas Noticias* news team attacked during coverage in the Kennedy housing development].

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 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.⁸⁰²

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.⁸⁰³ 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.⁸⁰⁴ According to the information received, N33 is alleged to be the group behind these activities. In other cases, the perpetrators’ identity is unknown. For its part, the State claimed that the Government’s own websites had also been hacked.⁸⁰⁵

⁸⁰¹ IFEX/ Inter-American Press Association (IAPA-SIP). October 9, 2012. [Argentinian journalist detained at Venezuelan airport](#); FOPEA. October 9, 2012. [FOPEA reclama protesta formal de Gobierno Argentino por retención y destrucción de material a equipo de Canal 13 en Venezuela](#) [FOPEA demands that Argentine Government files formal protest over the incident in which Channel 13’s team was detained and its news materials destroyed in Venezuela]; ADEPA. October 9, 2012. [Un principio atropellado en Caracas](#) [A principle trampled in Caracas]; 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].

⁸⁰² Instituto Prensa y Sociedad (IPYS)/IFEX. November 5, 2012. [Rights activist threatened after health study publication in Venezuela](#); Red Latinoamericana y del Caribe para la Democracia (REDLAD). October 2012. [Alerta en Venezuela: amenazas contra directivo de CONVITE A.C.](#) [Alert in Venezuela: threats against executive of CONVITE A.C.]; *El Nacional*. October 25, 2012. [Amenazas no impedirán investigaciones de Convite](#) [Threats will not stop Convite’s investigations].

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 Zulia, June 2; the website of the weekly *Sexto Poder*, June 7; *Globovisión* news channel, August 5; the president of the National Assembly, Diosdado Cabello, September 8; the online news portal *Noticias24.com*, September 24; the director of the Venezuelan Observatory of Prisons, Humberto Prado, October 4; the *Mesa de la Unidad Democrática*, around October 4; the Secretary General of the PIEDRA party, Ricardo Koesling, on October 6, and the former presidential candidate María Bolívar, on October 9. Other persons and institutions allegedly reported that their e-mail and social networking accounts had been hacked, but were not subsequently used to spread false statements in the account owner’s name. These included the following: political leader David Smolansky, on January 30; journalist Patricia Poleo and her partner Nixon Moreno, on June 11; the executive director of the *Instituto Prensa y Sociedad* in Venezuela, Marianela Balbi, on July 14; the website of the National Electoral Council; deputy Ismael García; news analyst on *Globovisión*’s program *Buenas Noches*, Ricardo 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.

⁸⁰⁵ IACHR. 146th Session. November 1, 2012. Information supplied during the hearing on the Right to Freedom of Expression in Venezuela. Available at: IACHR Archives.

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.⁸⁰⁶

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

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

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

495. The IACHR has received information concerning the difficulties that opposition or independent media encounter when trying to cover events of interest to the public, such as alleged the contamination of the water supply in various communities. The IACHR was told that on March 21, 2012 Examining Court 25 of the Caracas Metropolitan Area agreed to a request from the Public Prosecutor’s Office to require that “the national and regional print media and radio, television and digital news conduct themselves with the utmost sense of responsibility when reporting information related to the *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.*”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.”⁸⁰⁹

⁸⁰⁶ 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]; Espacio Público. October 16, 2012. [Ataques informáticos sacuden las redes sociales en el país](#) [Hacker attacks shake up social networks in the country].

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

⁸⁰⁸ Public Prosecutor’s Office, Bolivarian Republic of Venezuela. March 21, 2012. [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].

⁸⁰⁹ Noticias 24. March 20, 2012. [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. [FGR: medida solicitada por](#)

496. In its observations to this report, the State of Venezuela maintained that, “We have been telling you for fourteen years that our Constitution is more advanced with respect to human rights than the American Convention on Human Rights. At several hearings we have read and explained to you [that] Articles 57 and 58 define the meaning of freedom of expression and freedom of information. According to our Constitution, it is possible in cases of news that causes social alarm and consternation—such as the articles in all the Venezuelan newspapers that said the drinking water throughout the country was polluted—for a Court of the Republic to require the media [...] to act with extreme responsibility in disseminating information related to the alleged pollution of the country’s drinking water supply, and they should have the proper, accurate technical evidence backed by a competent body.”⁸¹⁰

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.⁸¹¹

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.⁸¹²

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.⁸¹³

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

...continuation

[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. [Venezuelan Court Ruling Limits Coverage of Water Quality](#); Espacio Público. March 22, 2012. [Ministerio Público exige “soporte técnico veraz” para hablar sobre el agua potable](#) [Public Prosecutor’s Office demands “reliable technical support” before any talk about the water supply].

⁸¹⁰ In communication from the State of Venezuela No. AGEV/ 000039 to the Executive Secretary of the IACHR, dated February 22, 2013, “Observations of the Venezuelan State to the IACHR Annual Report of 2012.” Specific observations to the section on “State respect and guarantee for the exercise of freedom of expression.” Pp. 21-22.

⁸¹¹ IFEX/ Instituto Prensa y Sociedad (IPYS). January 27, 2012. [Journalists briefly detained after covering oil spill](#). Espacio Público. January 20, 2012. [GNB retiene a periodista de Globovisión durante pauta en el estado Monagas](#) [National Guard detains *Globovisión* journalist reporting from the state of Monagas]; Colegio Nacional de Periodistas. February 7, 2012. [Retienen a equipo de televisora que cubrió derrame petrolero](#) [News team covering oil spill detained].

⁸¹² El Mundo. February 14, 2012. [Liberados periodistas de Cadena Capriles retenidos en Maturín](#) [Journalists with the Capriles News Organization Detained in Maturín Have Been Released]; *Globovisión*. February 14, 2012. [Sindicato Nacional de la Prensa rechaza “nueva agresión militar” contra periodistas](#) [National Press Association decries “yet another military attack” on journalists]; Instituto Prensa y Sociedad (IPYS). February 14, 2012. [Retienen a equipo de prensa que investigaba derrame petrolero](#) [Journalists investigating the oil spill detained].

⁸¹³ Espacio Público. March 16, 2012. [Irrumpen en programa en vivo de Globovisión](#) [Live *Globovisión* broadcast interrupted]; Knight Center for Journalism in the Americas. March 19, 2012. [Members of community council in Venezuela violently interrupt live broadcast of TV program](#); Colegio Nacional de Periodistas (CNP). March 16, 2012. [Irrumpen de forma violenta en grabación de “Radar de los Barrios”](#) [Violent disruption during taping of “Radar de los Barrios”].

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.”⁸¹⁴

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 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.⁸¹⁵

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.⁸¹⁶

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.⁸¹⁷

⁸¹⁴ *Últimas Noticias*. March 20, 2012. [Tildan al caricaturista Weil de racista](#) [Caricaturist Weil branded a racist]; *Últimas Noticias*. March 21, 2012. [Piden sanciones contra caricatura de Weil](#) [Sanctions sought against caricaturist Weil]; Instituto Prensa y Sociedad (IPYS). March 20, 2012. [Asamblea Nacional pide investigación contra caricaturista](#) [National Assembly seeks investigation of caricaturist].

⁸¹⁵ *La Verdad*. August 17, 2012. [Derrame de crudo en Anzoátegui afectó morichales en Freites](#) [Crude oil spill in Anzoátegui affected moriche palms in Freites]; *Mundo Oriental*. August 16, 2012. [Detienen a periodista y fotógrafo por cubrir derrame de petróleo](#) [Journalist and photographer detained for covering oil spill].

⁸¹⁶ Instituto Prensa y Sociedad (IPYS)/IFEX. February 14, 2012. [Journalists Detained by Members of Militia](#); *El Mundo*. February 8, 2012. [Periodista de Últimas Noticias relata abusos de la Milicia](#) [Últimas Noticias Reporter Tells of Militia’s Abuses]; Colegio Nacional de Periodistas (CNP), February 9, 2012. [Milicia de Venezuela desnudó a reporteros durante detención](#) [Venezuelan Militia stripped reporters during detention].

⁸¹⁷ Colegio Nacional de Periodistas (CNP). April 30, 2012. [Ministra Iris Varela amenaza vía telefónica por el sistema de medios públicos a equipo de Globovisión](#) [In a phone conversation with a public television channel, Minister Iris Varela issues threat against the news team at *Globovisión*]; *Espacio Público*. April 30, 2012. [Detenidos por la Guardia Nacional operadores de microondas de Globovisión](#) [*Globovisión*’s microwave operators detained by National Guard]; *El Universal*. April 30, 2012. [Ministra](#)

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.⁸¹⁸ According to information received, similar incidents involving *Globovisión* personnel covering news events at the detention facility had occurred on April 30 and May 8.⁸¹⁹

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

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[Varela se pronuncia ante situación en La Planta](#) [Minister Varela speaks out about the La Planta situation] (see video at 3:35); *El Universal*. April 30, 2012. [Fuego cerrado en la cárcel de La Planta](#) [Fire at the La Planta prison extinguished].

⁸¹⁸ Espacio Público. May 17, 2012. [Detenido equipo de Globovisión durante cobertura de conflicto en La Planta](#) [*Globovisión* team detained during coverage of the disturbance at La Planta]; *El Universal*. May 17, 2012. [Periodistas de Globovisión llevados a la sede de Policaracas](#) [*Globovisión* journalists taken to Policaracas headquarters]; Soy *Globovisión* / YouTube. May 17, 2012. [Detienen a equipo de Globovisión que cubría situación en La Planta](#) [*Globovisión* team covering the situation at La Planta detained].

⁸¹⁹ Noticias 24. April 30, 2012. [Autoridades penitenciarias denuncian supuesta maniobra de Globovisión para generar zozobra](#) [Prison authorities denounce *Globovisión*'s supposed ploy to generate anxiety]; Provea/Espacio Público. May 8, 2012. [Espacio Público: Camarógrafo de Globovisión despojado a la fuerza de sus equipos por GN](#) [National Guardsmen take away *Globovisión* cameraman's equipment by force].

⁸²⁰ Instituto Prensa y Sociedad (IPYS). August 28, 2012. [Militares retienen a equipo reporteril en cobertura de explosión de refinería](#) [Military detain team of reporters covering refinery explosion]; Espacio Público. August 29, 2012. [Detenido equipo de El Nacional que realizaba cobertura en Amuay](#) [*El Nacional*'s team covering events in Amuay detained].

⁸²¹ Tal Cual. October 23, 2012. [Sin Extra de Monagas](#) [*Extra de Monagas* not on newsstands]; *Extra de Monagas*. October 22, 2012. [Guardia Nacional decomisó tiraje de Extra de Monagas](#) [National Guard confiscated copies of *Extra de Monagas*]; Colegio Nacional de Periodistas (CNJ), Caracas section. October 29, 2012. [Guardia Nacional venezolana incauta 6 mil ejemplares del periódico local Extra de Monagas](#) [National Guard seizes 6 thousand copies of local newspaper *Extra de Monagas*].

⁸²² In communication from the State of Venezuela No. AGEV/ 000039 to the Executive Secretary of the IACHR, dated February 22, 2013, "Observations of the Venezuelan State to the IACHR Annual Report of 2012." Specific observations to the section on "State respect and guarantee for the exercise of freedom of expression." P. 22.

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.

511. 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 2010.⁸²⁵ 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*),⁸²⁶ 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.⁸²⁷ In its decision, the Bureau of Social Responsibility had reportedly concluded that the television channel transmitted "messages that promote alterations of public order, justify crime, incite the existing legal regime, promote hatred for political reasons and foment panic among

⁸²³ IACHR. Annual Report 2011. OEA/Ser.LV/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. 515. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/2012%2003%2021%20Annual%20Report%20RELE%202011pirnting.pdf>; IACHR. Annual Report 2010. OEA/Ser.LV/II. Doc. 5. March 7, 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. 508 *et seq.* Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%202010%20P%20ENG.pdf>

⁸²⁴ IACHR. Office of the Special Rapporteur for Freedom of Expression. Report on the state of freedom of expression in Venezuela. 2010. Paragraphs 104-110; IACHR. Office of the Special Rapporteur for Freedom of Expression. Special Report on Freedom of Expression in Venezuela. 2009. Para. 520.

⁸²⁵ IACHR. Office of the Special Rapporteur for Freedom of Expression. October 21, 2011. Press release R111/11. *Office of Rapporteur Concerned over Fine against Globovisión in Venezuela*; Bolivarian Republic of Venezuela. Bureau of Social Responsibility 201 and 152. October 18, 2011. *Administrative Order No. PADRS-1.913*.

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.

Ministry of the People's Power for Communications and Information. Official Gazette No. 39.610. February 7, 2011. *Law on Social Responsibility in Radio, Television and Electronic Media*.

⁸²⁷ Bolivarian Republic of Venezuela. Bureau of Social Responsibility 201 and 152. October 18, 2011. *Administrative Order PADRS-1.913*. Chapter II.

the citizenry during the days of June 16, 17, 18 and 19, 2011.”⁸²⁸ According to what was reported, on January 20, 2012, “a contentious-administrative petition was filed” with the Political-Administrative Chamber of the Supreme Court (TSJ). It was filed “together with a petition for injunctive relief and, secondarily, a petition seeking precautionary measures that would suspend the effects of the decision.”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 freedom from *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

⁸²⁸ IACHR. Office of the Special Rapporteur for Freedom of Expression. October 21, 2011. Press Release R111/11. [Office of Rapporteur Concerned over Fine against Globovisión in Venezuela](#); Bolivarian Republic of Venezuela. Bureau of Social Responsibility 201 and 152. October 18, 2011. [Administrative Order PADRS-1.913](#).

⁸²⁹ Supreme Court of the Bolivarian Republic of Venezuela. Political-Administrative Chamber. Justice Evelyn Marrero Ortiz writing. [Case 2012-0104. Judgment 00220](#). March 15, 2012; Supreme Court of the Bolivarian Republic of Venezuela. Political-Administrative Chamber. Justice Evelyn Marrero Ortiz writing. [Case 2012-0104. Judgment 00765](#). 28 June 2012.

⁸³⁰ Supreme Court of the Bolivarian Republic of Venezuela. Political-Administrative Chamber. Justice Evelyn Marrero Ortiz writing. [Case 2012-0051. Judgment 00165](#). March 6, 2012.

⁸³¹ Supreme Court of the Bolivarian Republic of Venezuela. Political-Administrative Chamber. Justice Evelyn Marrero Ortiz writing. [Case 2012-0051. Judgment 00165](#). March 6, 2012; Supreme Court of the Bolivarian Republic of Venezuela, Political-Administrative Chamber. Justice Evelyn Marrero Ortiz writing. [Case 2012-0104. Judgment 00220](#). March 15, 2012; El Universal. March 7, 2012. [TSJ ratifica la multa de Bs. 9 millones contra Globovisión](#) [Supreme Court upholds Bs. 9 million fine against *Globovisión*]; Inter-American Press Association (IAPA-SIP). March 7, 2012. [IAPA condemns ratification of multi-million-dollar fine against Globovisión](#).

⁸³² Supreme Court of the Bolivarian Republic of Venezuela. Political-Administrative Chamber. Justice Evelyn Marrero Ortiz writing. [Expediente 2012-0104. Sentencia 00765](#) [Case 2012. Judgment 00765], June 28, 2012; Supreme Court of the Bolivarian Republic of Venezuela. June 28, 2012. [TSJ decreta embargo ejecutivo sobre bienes propiedad de Globovisión Tele, C.A.](#) [Supreme Court orders enforceable attachment of property of *Globovisión Tele, C. A.*]

⁸³³ Supreme Court of the Bolivarian Republic of Venezuela. Political-Administrative Chamber. Justice Evelyn Marrero Ortiz writing. [Expediente 2012-0104. Sentencia 00766](#) [Case 2012-0104. Judgment 00766]. July 3, 2012; *Globovisión*. June 30, 2012. [Globovisión pagó bajo protesta la multa ante el TSJ](#) [Under protest, *Globovisión* pays fine ordered by Supreme Court].

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 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.”⁸³⁵

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.⁸³⁶

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.⁸³⁷ 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.”⁸³⁸

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.

⁸³⁴ In communication from the State of Venezuela No. AGEV/ 000039 to the Executive Secretary of the IACHR, dated February 22, 2013, “Observations of the Venezuelan State to the IACHR Annual Report of 2012.” Specific observations to the section on “State respect and guarantee for the exercise of freedom of expression.” P. 22.

⁸³⁵ In communication from the State of Venezuela No. AGEV/ 000039 to the Executive Secretary of the IACHR, dated February 22, 2013, “Observations of the Venezuelan State to the IACHR Annual Report of 2012.” General observations regarding a section named “Statements supported on assumptions and presumptions and not in documented facts – Freedom of Thought and Expression”, in the State Communication. P. 40.

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 cruentas](#) [At the request of the Ombudsperson’s Office, *La Antena* newspaper may not publish crude images]; *Últimas Noticias*. April 26, 2012. [Diario La Antena no podrá publicar fotos cruentas](#) [*La Antena* newspaper can no longer publish crude photos].

⁸³⁷ Ombudsperson’s Office. April 4, 2012. [Con lugar acción de protección a la niñez interpuesta por la Defensoría](#) [Court upholds child protection petition filed by Ombudsperson’s Office]; Colegio Nacional de Periodistas (CNJ). April 9, 2012. [Condenan al diario La Prensa de Barinas por publicar fotografías de sucesos](#) [Barinas’ *La Prensa* convicted of publishing photographs of events]; IFEX / Instituto Prensa y Sociedad de Venezuela (IPYS). April 13, 2012. [Court rules against regional newspaper](#).

⁸³⁸ Barinas Judicial District Superior Court in Civil, Commercial, Traffic and Child Protection Matters. [Expediente 12-3452. Imposición de sanción por infracción a la protección debida](#) [Case 12-3452. Penalty for violating child protection law]. June 25, 2012.

518. According to what was reported, on October 10 Councilman Nelson Urbina of the Carirubana Municipality was convicted of defaming [*difamación e injurias*] the mayor of that community. He was sentenced to three years in prison. The criminal case against him reportedly started in 2007, when the mayor filed a complaint in response to articles critical of his performance in office, which the town councilmen reportedly published in an editorial opinion piece. Urbina was taken to the Coro Prison in the state of Falcón, to serve his sentence.⁸³⁹

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

520. For its part, the Inter-American Court has addressed the issue of civil liability and wrote that civil penalties in matters involving freedom of expression must be proportional so that they do not have a chilling effect on that freedom, since “the fear of a civil penalty, considering the claim [...] for a steep civil reparation, may be, in any case, equally or more intimidating and inhibiting for the exercise of freedom of expression than a criminal punishment, since it has the potential to affect the personal and family life of an individual who accuses a public official, with the evident and very negative result of self-censorship both in the affected party and in other potential critics of the actions taken by a public official.”⁸⁴⁰

6. Access to information

521. When the topic of access to public information came up in the public hearings that the IACHR held in March and November 2012 on the situation of freedom of expression in Venezuela, the petitioners spoke about the difficulties that journalists have in getting access to information that the State has in its possession, and to government events and offices.⁸⁴¹ They also made the point that Venezuela does not have a law on access to public information and expressed concern over a Supreme Court decision that would require journalists to explain why they were requesting public information and how they planned to use the information they were seeking.⁸⁴² The State, for its part, said that these limitations were legitimate; that journalists cannot be provided with every piece of information they ask for. It also argued that not every media outlet can be accommodated at every event, and access to information is

⁸³⁹ Nuevo Día. October 11, 2012. [Concejal Nelson Urbina condenado a tres años de prisión](#) [Councilman Nelson Urbina sentenced to three years’ prison]; El Universal. October 12, 2012. [Por difamación condenan a concejal de Punto Fijo](#) [Punto Fijo Councilman convicted of defamation]; Notifalcón. October 10, 2012. [Condenan a concejal Nelson Urbina por difamación](#) [Councilman Nelson Urbina convicted of defamation].

⁸⁴⁰ I/A Court H.R., *Case of Tristán Donoso v. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. Para.129.

⁸⁴¹ Petitioners at the hearing: Center for Human Rights of the Universidad Católica Andrés Bello (UCAB), *Espacio Público* Civic Association, *Colegio Nacional de Periodistas de Venezuela*, *Sindicato Nacional de Trabajadores de la Prensa* (SNTP). The Venezuelan State was represented. IACHR. 144th Session. March 27, 2012. Hearing on *The Situation of the Right to Freedom of Expression in Venezuela*. IACHR. 146th Session. November 1, 2012. *Right to Freedom of Expression in Venezuela*.

⁸⁴² Constitutional Chamber of the Supreme Court. July 15, 2010. [Expediente. 745-15710-2010-09-1003](#) [Case 745-15710-2010-09-1003]. See also, 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. 520. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/2012%2003%2021%20Annual%20Report%20RELE%202011pirnting.pdf>

guaranteed because Venezuela has public radio and television and official press releases are issued following government events and are accessible to everyone.⁸⁴³

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 in December 2010 under which the National Assembly's *Fundación Televisor* would be the only one authorized to be present for legislative sessions and provide the signal to private broadcasters.⁸⁴⁴

523. According to the information received, in 2012 various *amparo* petitions were brought by members of civil society in connection with requests for information filed with government agencies and never answered. In this connection, on March 16 a petition seeking constitutional relief for failure to answer a request for information filed with *Petróleos de Venezuela* concerning alleged oil spills in 2010 and 2011, was declared inadmissible by the Capital Region's Sixth Superior Contentious-Administrative Law Court.⁸⁴⁵ Likewise, on May 23, the Constitutional Chamber of the Supreme Court dismissed a petition for *amparo* relief that was based on the fact that a request filed with the Ministry of the People's Power for Women and Gender Equality seeking information on plans to treat and prevent violence against women went unanswered.⁸⁴⁶ On June 5, the Constitutional Chamber dismissed a petition seeking *amparo* relief where the petitioner wanted information turned over on the amount that the Ministry of the People's Power for Communications and Information had spent on government advertising.⁸⁴⁷ On June 18, a petition seeking *amparo* relief because the Ministry of the People's Power for 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.⁸⁴⁸ In all these cases, the court held that the petition seeking *amparo* relief was not the proper avenue to pursue to request access to public information.

⁸⁴³IACHR. 144th Session. March 27, 2012. Hearing on *The Situation of the Right to Freedom of Expression in Venezuela*. IACHR. 146th Session. November 1, 2012. *Right to Freedom of Expression in Venezuela*.

⁸⁴⁴ Article 56 of the new Internal Rules of Procedure and Debate of the National Assembly of Venezuela appears in a chapter on the Operating System of the National Assembly and provides that: "In order to guarantee access to information in accordance with Article 108 of the Constitution of the Republic, plenary sessions shall be transmitted by the National Assembly's *Fundación Televisora* (ANTV) and the State television station may provide support for transmission. Conditions shall be provided so that media outlets interested in transmitting the information produced in the course of the session may do so through the ANTV signal." Article 87 of the previous Rules provided that: "All sessions shall be public. In view of the content of Article 108 of the Constitution, audiovisual communications media may partially or totally transmit the development of the sessions." National Assembly of the Bolivarian Republic of Venezuela. December 22, 2010. *Reglamento Interior y de Debates de la Asamblea Nacional*. [Internal Rules of Procedure and Debate of the National Assembly]; National Assembly of Venezuela. September 5, 2000. *Reglamento Interior y de Debates de la Asamblea Nacional* [Internal Rules of Procedure and Debate of the National Assembly]. Espacio Público. April 20, 2012. *Espacio Público, CNP y SNTP interpusieron recurso de nulidad por inconstitucionalidad del reglamento de la AN* [Espacio Público, CNP and SNTP file petition for nullification of the National Assembly's Rules of Procedure on the grounds that they are unconstitutional], 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. 521. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/2012%2003%2021%20Annual%20Report%20RELE%202011pirnting.pdf>

⁸⁴⁵ Espacio Público. March 16, 2012. Caracas Capital Region's Sixth Contentious-Administrative Law Court. *Expediente 12-3217*. [Case 12-3217] Final section; Espacio Público. Information presented to the IACHR. 146th Session. November 1, 2012. Hearing on the Right to freedom of Expression in Venezuela. Available at: IACHR archives.

⁸⁴⁶ Constitutional Chamber of the Supreme Court. May 23, 2012. *Decisión No. 679. Expediente 12-0389* [Decision No. 679, Case 12-0389]; Espacio Público. Information presented to the IACHR. 146th Session. November 1, 2012. Hearing on the Right to freedom of Expression in Venezuela. Available at: IACHR archives.

⁸⁴⁷ Constitutional Chamber of the Supreme Court. June 5, 2012. *Decisión No. 782. Expediente 12-0281* [Decision No. 782, Case 12-0281]; Espacio Público. Information presented to the IACHR. 146th Session. November 1, 2012. Hearing on the Right to freedom of Expression in Venezuela. Available at: IACHR archives.

⁸⁴⁸ Constitutional Chamber of the Supreme Court. June 18, 2012. *Decisión No. 805. Expediente 12-0355* [Decision No. 805, Case 12-0355]; Espacio Público. Information presented to the IACHR. 146th Session. November 1, 2012. Hearing on the Right to freedom of Expression in Venezuela. Available at: IACHR archives.

524. According to reports received, on August 6 journalists from private media outlets were excluded from a Chávez campaign event in Guacara, Carabobo state. According to what was reported, the journalists had their credentials taken away and were told that they could not get into the event because it was being broadcast via the National Public Media System.⁸⁴⁹

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."⁸⁵⁰

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.⁸⁵¹

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."⁸⁵² At the hearing on the right to freedom of expression in Venezuela held at the IACHR on March 27, 2012, the petitioners argued, among other things, that only those media outlets in Venezuela that are part of the State and very few private media outlets are able to participate in press conferences and are granted access to information in the power of the Government. In their view, these limitations on the right to access to public information constitute a pattern of restrictions that characterizes a State policy. In this regard, the representative of the State maintained that, "every time there is a public ceremony, a press release is issued about what is taking place. It is also broadcast by State media and television stations, so that anyone who wishes to be informed of these public ceremonies in the most sufficient, complete, and total manner can redistribute it and even rebroadcast what airs on the public networks. And they do this, in fact, and the public system, which is very limited, has also in fact re-broadcast content from private media, and thus in this sense, there is no restriction of information."⁸⁵³ At the hearing held on November 1, 2012, the petitioners again

⁸⁴⁹ Noticias 24. August 6, 2012. [Denuncian el retiro de las credenciales a los medios privados que iban a cubrir evento de Chávez](#) [Private media intending to attend Chávez event have their credentials taken away; complaints filed]; 6to Poder. August 6, 2012. [Prohíben a medios privados cubrir acto de campaña de presidente Chávez en Carabobo](#) [Private media not permitted to cover President Chávez' campaign event in Carabobo].

⁸⁵⁰ Second Contentious-Administrative Law Court. October 2, 2012. [Expediente No. AP42-O-2012-000070](#) [Case No. AP42-O-2012-000070]; Office of the Public Prosecutor of the Bolivarian Republic of Venezuela. [Ley del Cuerpo de Investigaciones Científicas, Penales y 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."

⁸⁵¹ Second Contentious-Administrative Law Court. October 23, 2012. [Expediente No. AP42-G-2012-000844](#) [Case No. AP42-O-2012-000844]; *Espacio Público*. November 2, 2012. [Corte conocerá caso de Acceso a la Información Pública contra CONATEL](#) [Court will hear access-to-public-information case against CONATEL].

⁸⁵² In communication from the State of Venezuela No. AGEV/ 000039 to the Executive Secretary of the IACHR, dated February 22, 2013, "Observations of the Venezuelan State to the IACHR Annual Report of 2012." Specific observations to the section on "State respect and guarantee for the exercise of freedom of expression." P. 22.

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

raised the absence of institutional mechanisms to guarantee the right to public information in Venezuela. The State's representative held that "The Inter-American Convention on Human Rights itself says that there is a set of circumstances under which, for the security of the State, among other reasons, information can be restricted. It is not—in no State in the world is there a situation in which information requested by a journalist must necessarily be surrendered."⁸⁵⁴

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

⁸⁵⁴ IACHR. 146th Period of Sessions. November 1, 2012. [Hearing on the Right to Freedom of Expression in Venezuela](#). [23:30 – 23:57].

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 *Xtrema* and *Cosmo* stations].

⁸⁵⁶ National Telecommunications Commission (CONATEL). March 30, 2012. [CONATEL inició procedimientos administrativos sancionatorios a emisoras Venezuela Olímpica, Caicareña, Única y Líder por presuntamente funcionar de forma clandestina](#) [CONATEL acted to penalize radio stations *Venezuela Olímpica*, *Caicareña*, *Única* and *Líder* for alleged clandestine operation]; National Telecommunications Commission (CONATEL). March 30, 2012. [Al cerrar emisora ilegal Caicareña 100.5 FM Turba comandada por hermano del gobernador Briceño atacó a funcionarios de Conatel](#) [In shutting down *Caicareña 100.5 FM* for operating illegally, mob led by brother of Governor Briceño attacks CONATEL employees]; Espacio Público. March 31, 2012. [CONATEL cierra cuatro emisoras en Monagas](#) [CONATEL shuts down four radio stations in Monagas]; El Universal. March 31, 2012. [Conatel cerró emisora del hermano del "Gato" Briceño](#) [CONATEL shuts down radio station owned by brother of "Gato" Briceño]; El Universal. March 31, 2012. [Toma de la emisora La Caicareña en Monagas](#) . [Seizure of *La Caicareña* station in Monagas].

⁸⁵⁷ Globovisión. March 30, 2012. [Cámara de Radio respaldó el cierre de emisoras por parte de Conatel en Monagas](#) [Venezuelan Broadcasting Association supported CONATEL's move to shut down stations in Monagas]; Agencia Venezolana de Noticias (AVN). July 26, 2012. [Cámara Venezolana de Radio respalda cierre de emisoras clandestinas](#) [Venezuelan Broadcasting Association supports the closing of clandestine broadcasting stations]; Cámara Venezolana de la Industria de la Radiodifusión (CVIR). July 16, 2012. [Enza Carbone, Ptda Cámara Venezolana de Radiodifusión](#) [Enza Carbone, President of the Venezuelan Broadcasting Association].

Commission about this at the proper time; they are stations that were operating without the proper authorization from CONATEL.”⁸⁵⁸

⁸⁵⁸ In communication from the State of Venezuela No. AGEV/ 000039 to the Executive Secretary of the IACHR, dated February 22, 2013, “Observations of the Venezuelan State to the IACHR Annual Report of 2012.” Specific observations to the section on “State respect and guarantee for the exercise of freedom of expression.” P. 23.

CHAPTER III DOMESTIC CASE LAW ON FREEDOM OF EXPRESSION

A. Introduction

1. In this report, the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights provides a synthesis of important rulings from the region's domestic high courts on the issue of freedom of expression in the Americas. This review is a continuation of the practice begun by the Office of the Special Rapporteur of documenting and disseminating, through its annual reports, the domestic court rulings that represent progress on a domestic level or that enrich regional scholarship and case law while at the same time incorporating inter-American standards on the issue into its reasoning.

2. As in other annual reports, this type of review seeks to contribute to a positive dialog between the bodies of the Inter-American system and domestic jurisdictions, with the conviction that the sharing of different experiences leads to a virtuous cycle of mutual learning.¹

3. Effectively, the Court and the Inter-American Commission have repeatedly recognized that all domestic courts - regardless of level or hierarchy - play a crucial role in developing and implementing regional human rights standards. As the Court has found, local justice systems operate not only to guarantee the rights of individuals in specific cases, but also, through their rulings, they can broaden and strengthen the content of constitutional provisions and domestic laws connected with a particular right, thereby also strengthening the provisions of international instruments such as the American Convention. Likewise, the system's organs have emphasized that domestic judges play an important role in the process of implementing international human rights law in domestic legal systems.

4. For this reason, this Office continues to make its best efforts to document the court rulings that represent important local progress in the recognition and protection of the right to freedom of expression, and disseminate them in its annual reports, keeping that documentation updated and standardized. In some cases, these rulings must also be considered models to follow on the issue. This work also allows the Office of the Special Rapporteur to determine the degree to which the right is protected in the different countries of the region, as well as the characteristics of each level of protection. The results thus far have been notable. As this report demonstrates, there is a clear trend in important courts of the Americas toward a true guarantee and protection of the right to freedom of thought and expression of persons, meaning decisive steps toward the consolidation and preservation of pluralist and deliberative democratic systems.

5. This document is divided into two parts. The first part briefly explores the most relevant aspects of the inter-American legal framework on freedom of expression that have served as the basis for the selection of the judgments presented herein. For the purposes of this review, the determination that domestic progress has been made or a best practice has been established will be based on how well a judicial ruling measures up to the principles, scope and limits of the right to freedom of expression according to the interpretation of the authorized organs of the inter-American system and the highest standards set by the region's courts and tribunals.

6. The second part collects rulings from different countries throughout the region, organizing them thematically and summarizing them so as to make it easy to understand the way in which each ruling constitutes local progress or the way in which it implements regional standards.

¹ IACHR. Annual Report 2009. OEA/Ser.L/V/II. Doc. 51. December 30, 2009. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter IV (The Right of Access to Information). Para. 93; Chapter V (National Incorporation of the Inter-American Standards on Freedom of Expression During 2009). Paras. 33-134. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%20Annual%202009%20%20ENG.pdf>

7. Finally, as in other annual reports, the Office of the Special Rapporteur recognizes that an exhaustive review of the rulings made with regard to this right goes beyond the scope of this report. The Office of the Special Rapporteur will refer only to the emblematic court rulings on which it has received information.

B. Inter-American legal framework regarding freedom of expression

8. For the purposes of this report, domestic progress or the identification of best practices starts with the standards used to adopt the corresponding ruling and its impact on the greater exercise of freedom of thought and expression. In principle, these are rulings that at the very least reduce arbitrary or disproportionate limits on freedom of expression and contribute to strengthening guarantees of the existence of public and plural debate under democratic conditions, pursuant to the inter-American legal framework on the issue.

9. As this Office of the Special Rapporteur has expressed on prior occasions, the inter-American system for the protection of human rights is probably one of the systems that establishes the most guarantees for the exercise of freedom of thought and expression. Effectively, in its Article 13, the American Convention on Human Rights places a very high value on freedom of expression and establishes its own limited system of restrictions.² The same reinforced level of guarantee can be found in the American Declaration of the Rights and Duties of Man - Article IV³ - and the Inter-American Democratic Charter - Article 4.⁴ This stricter level of guarantee is based on the broad concept of the autonomy and dignity of persons, which is based on the recognition of freedom of expression not only as a right derived from the idea of human autonomy, but also as a right with instrumental value for the exercise of other fundamental rights and with an essential role in democratic systems.

10. On this latter aspect, the IACHR and the Inter-American Court have highlighted in their case law that there is a structural relationship between democracy and the right to freedom of thought and expression. This relationship is so important that the organs of the system have emphasized that the objective itself of Article 13 of the American Convention is to strengthen the functioning of pluralist and deliberative democratic systems by protecting and fomenting the free circulation of information, ideas, and expression of all kinds.

11. This relationship between the right to freedom of expression and democracy - defined as "strict" and "indissoluble" - is partly explained by the dual dimensions of this right. Effectively, and as the Inter-American Court and the IACHR have indicated, freedom of expression has an individual component consisting of each person's right to express his or her own thoughts, ideas and information, as well as a collective or social aspect, consisting of every person's right to seek and receive any information

² The article holds that: "1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice. // 2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: (a) respect for the rights or reputations of others; or (b) the protection of national security, public order, or public health or morals. // 3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions. // 4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence. // 5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law."

³ "Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever." American Declaration of the Rights and Duties of Man. Article IV.

⁴ "Transparency in government activities, probity, responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press are essential components of the exercise of democracy. // The constitutional subordination of all state institutions to the legally constituted civilian authority and respect for the rule of law on the part of all institutions and sectors of society are equally essential to democracy." Inter-American Democratic Charter, Article 4.

(*information and ideas of all kinds*), to know outside thoughts, ideas, and information, and to be well informed.⁵

12. Taking this dual dimension into account, inter-American case law has found that freedom of expression is a *means for the exchange* of information and ideas among people and for mass communication among human beings. It has specified that for the common citizen, the knowledge of others' opinions or the information available to other people is just as important as the right to disseminate one's own beliefs or information. The case law has also emphasized that a particular act of expression has both dimensions simultaneously. For this reason, a limitation of the right to freedom of expression at the same time affects the right of the person wishing to disseminate an idea or information and the right of members of society to learn about that idea or information. Additionally, the right to information and to receive the greatest number of opinions and variety of information requires a special effort for achieving access to the public debate under equal conditions and without discrimination of any kind. This presupposes special conditions for inclusion that allow for the effective exercise of this right for all sectors of society.⁶

13. A large portion of the development of the subject in scholarship and in the case law of the system's bodies highlights the importance assigned to the dual dimension of the right to freedom of expression and its role in democracy. Specifically, based on this relationship between democracy and freedom of expression, the Court and the Inter-American Commission have in recent years defined a general framework regarding the principles and standards linked to the interpretation and application of Article 13 of the Convention - and IV of the American Declaration - that places emphasis on the special protection of speech regarding the public interest or State officials and the conditions under which legitimate limitations to this right may be established in such cases.

14. This general framework promotes the recognition of at least the following principles: 1) all forms of expression, regardless of content and level of acceptance by society at large or the State, are presumed generally to be covered; 2) expression having to do with matters of public interest and individuals who are holding or seeking to hold government positions, and expression that includes elements constitutive of the personal identity or dignity of the person who makes the expression enjoy greater protection under the American Convention, and the State must therefore refrain to a greater degree from imposing limitations on these forms of expression; 3) to be admissible, the limitations must be established through subsequent liability for exercising the right, with prior restraint (censorship) and restrictions that have discriminatory effects and that are imposed through indirect mechanisms, such as the ones proscribed in Article 13(3) of the American Convention, being prohibited; 4) the examination of the legitimacy of the limitations imposed requires that the restrictions be established clearly and precisely by law, that they be aimed at achieving legitimate objectives recognized by the Convention, and that they be necessary in a democratic society (three-part test); and 5) the standard requires that due to the type of speech to which they apply or the medium they employ, some types of limitations must be exceptional and subjected to an examination that is stricter and more demanding in order to be valid under the American Convention (*strict necessity test*).

15. The judgments reviewed herein show the way in which different domestic courts have incorporated regional standards into their domestic legal systems. Likewise, some of the rulings mentioned in this report have been pioneer in making fundamental progress on the issue of freedom of expression and have become required points of reference not only for the courts and tribunals of other States but also for the bodies of the regional system itself. Effectively, it has been possible thanks to

⁵ IACHR, Office of the Special Rapporteur for Freedom of Expression, *A Hemispheric Agenda for the Defense of Freedom of Expression*. OEA/Ser.L/V/II/CIDH/RELE/INF.4/09. February 25, 2009, para. 15. Available at: <http://www.oas.org/en/iachr/expression/doconpublicationonHemispheric%20%20Agenda%20Eng%20FINAL%20portada.pdf>

⁶ IACHR, Office of the Special Rapporteur for Freedom of Expression, *A Hemispheric Agenda for the Defense of Freedom of Expression*. OEA/Ser.L/V/II/CIDH/RELE/INF.4/09. February 25, 2009, para. 15. Available at: <http://www.oas.org/en/iachr/expression/doconpublicationonHemispheric%20%20Agenda%20Eng%20FINAL%20portada.pdf>

some of the rulings noted hereinafter to promote freedom of thought and expression and strengthen inter-American scholarship and case law.

C. Judicial rulings on the subject of freedom of expression

16. Hereinafter, we will present some of the most significant decisions that in the opinion of the Office of the Special Rapporteur constitute important domestic progress or best practices on the subject of freedom of expression. They are organized according to the main standard or rule of the right that they develop. The initial sections contain extracts from some of the rulings that address generally the scope and characteristics of the right to freedom of expression. These are included here for their relevance in the later analysis of the legitimacy of limitations to the right, a central aspect of the rulings reviewed.

1. Case law on the importance, scope and function of freedom of expression in democratic systems

17. In decisions that have clearly been in harmony with the organs of the inter-American human rights system, the highest courts in the region have generally recognized the importance and special character of the right to freedom of thought and expression in the context of their constitutional legal systems. The priority given to this right has been attributed to the instrumental role it plays in democratic systems and to it being an indispensable tool for the exercise of other rights. As this aspect has been broadly developed by a variety of courts, in this section the Office of the Special Rapporteur will highlight some of the relevant court rulings that have been emblematic on this issue.

18. In a judgment dated February 1, 2006,⁷ the Court of Constitutionality of Guatemala indicated in a ruling on the constitutionality of the articles of the Penal Code that establish the crime of *desacato*⁸ that freedom of expression is “a fundamental right inherent to persons [...] and one of the liberties that are a positive sign of true constitutional rule of law [...].” In this sense, it explained that “the free expression of thought is one of the rights that make respect for the dignity of a person possible by allowing a person to freely translate his or her ideas and thoughts into expression that can give rise to value judgments and subsequent decision-making, not only of individuals but also of groups, within a democratic society.” In the opinion of this high court, this is “how one explains that in modern constitutional history, the exercise of this right has deserved constitutional protection.”

19. In this important ruling, the Court of Constitutionality of Guatemala turns to what was established by the Inter-American Court of Human Rights in Advisory Opinion OC/5 and the Declaration of Principles on Freedom of Expression where they determine that “the right to and respect for freedom of expression is established as an instrument that allows for the free exchange of ideas and functions to strengthen democratic processes, while at the same time guaranteeing the citizenry a basic tool for participation.” This criteria was reiterated by the Court of Constitutionality of Guatemala in a ruling dated September 14, 2010.⁹ Citing comparative law, the Court recalled that the deep commitment to the

⁷ Republic of Guatemala. Court of Constitutionality. Partial Judgment of General Unconstitutionality, Case File 1122-2005, February 1, 2006. Available at: http://www.cc.gob.gt/siged2009/mdlWeb/frmConsultaWebVerDocumento.aspx?St_DocumentId=807270.html

⁸ The judgment examined the constitutionality of articles 411, 412 and 413 of the Penal Code of Guatemala regulating the crimes of *desacato* against presidents of State bodies (art. 411), *desacato* against authority (art. 412) and evidence for leveling accusations of these crimes (art. 413).

⁹ Republic of Guatemala. Court of Constitutionality. Judgment on Appeal of *Amparo* Judgment, Case File 4628-2009, September 14, 2010. Available at: http://www.cc.gob.gt/siged2009/mdlWeb/frmConsultaWebVerDocumento.aspx?St_DocumentId=815146.html. This ruling of the Court of Constitutionality of Guatemala overturned a ruling convicting a candidate for representative elections with the Professional Association of Veterinary Doctors and Zoologists before the Superior University Council of Guatemala of lacking “professional ethics” and “respect for one of its members, both in speech and in writing,” after he criticized the quality of the education provided at one of the universities in that country during his campaign. Basing its ruling on the importance and function of the right to freedom of expression in democratic proceedings, the Court of Constitutionality of Guatemala ordered that a new ruling be issued based on the court’s case law on the subject.

freedom of expression of all persons and the need to protect robust, open and uninhibited debate on subjects of public interest require the State to tolerate attacks even when they seem or in fact are harsh, caustic or unpleasant.

20. The Constitutional Chamber of the Supreme Court of Justice of Costa Rica ruled similarly in a judgment dated March 29, 2011¹⁰. Therein, it ruled on an *amparo* remedy brought against an agreement reached by the University Council of the Universidad de Costa Rica preventing a foreign guest from giving a conference there because in the past he had made statements that were discriminatory against a variety of minorities. In its ruling, the Chamber expressed that:

“It should also be taken into account that freedom of expression is an indispensable requirement for democracy - although certainly not the only one - as it allows for the creation of public opinion, essential for giving content to a number of principles of the constitutional rule of law, such as for example the right to information, the right to petition and rights having to do with political participation. The opportunity for all people to participate in public debate constitutes a necessary condition for the construction of a social dynamic of exchange of knowledge, ideas and information that allows for the reaching of consensus and taking of decisions among components of diverse social groups; but it also constitutes a channel for the expression of dissenting opinions, which in a democracy are just as necessary as concurring opinions. For its part, the exchange of opinions and information that arises from public debate contributes to forming personal opinions, while both combined form public opinion, which ends up being expressed through the channels of representative democracy.”

21. This relationship between democracy and freedom of expression has also been recognized by the Supreme Court of Justice of the Nation of Mexico in a number of rulings. That court has found that freedom of expression is a right that is “functionally essential in the structure of the constitutional rule of law”¹¹ and that in its “public, collective and institutional aspects” it becomes the “centerpiece for the proper functioning of representative democracy.”¹²

22. For its part, the Supreme Court of Justice of the Argentine Nation issued a ruling on June 24, 2008, in the case of *Patitó, José Ángel et al. v. Newspaper La Nación et al.*¹³ that emphasized that “with regard to freedom of expression, this Court has repeatedly ruled that it holds an eminent place in a republican regime. In this sense, the Court has held for some time that [...] among the liberties that the National Constitution enshrines, freedom of the press is one of the most important, to the point that without its due protection, the democracy that exists would be an impaired one and democracy in name only [...]”

23. Analogously, the Constitutional Tribunal of Bolivia ruled in a judgment dated September 20, 2012,¹⁴ that Article 162 of the Penal Code was unconstitutional. That article established harsher prison sentences for those convicted of defamation [*calumnia, injuria o difamación*] against a public official (*desacato*). The court explained that freedom of expression is an essential human right that holds a “preferential position” in the constitutional system due to the role it plays in a democratic system. Taking up once again one of its previous rulings, it indicated that freedom of expression “constitutes one of the most important rights of an individual and one of the fundamental pillars of all democratic States,” and

¹⁰ Republic of Costa Rica. Constitutional Chamber of the Supreme Court of Justice. *Amparo* Remedy Res. No. 2011004160, March 29, 2011. Available at: <http://sitios.poder-judicial.go.cr/salaconstitucional/Constitucion%20Politica/Judgmenton2011/11-004160.html>

¹¹ United States of Mexico. Supreme Court of Justice. Direct *Amparo* Appeal 2044-2008, June 17, 2009. Available at: <http://www2.scjn.gob.mx/juridica/engroseoncerradoonpublico/08020440.010.doc>

¹² United States of Mexico. Supreme Court of Justice. Direct *Amparo* Appeal 2044-2008, June 17, 2009. Available at: <http://www2.scjn.gob.mx/juridica/engroseoncerradoonpublico/08020440.010.doc>

¹³ Republic of Argentina. Supreme Court of Justice. Judgment of June 24, 2008, P.2297.XL, *Patitó, José Ángel et al. v. Diario La Nación et al.* Available at: <http://www.cpj.org/newon2008/americaoonArgentina.Court.24-06-08.pdf>

¹⁴ Plurinational State of Bolivia. Constitutional Tribunal. Specific Action of Unconstitutionality, Case File 00130-2012-01-AIC, Judgment 1250/2012, September 20, 2012. Available at: http://www.tribunalconstitucional.gob.bo/moduleonver_resolucion/indexnew.php?id=125150

that “the State duty to respect and guarantee fundamental principles in a democratic society includes the obligation to promote open and plural public debate.”

24. In a judgment dated April 30, 2009,¹⁵ the Supreme Federal Tribunal of Brazil declared that the Press Act, which was passed during the military regime, established harsh punishment for journalists for the crime of defamation [*difamación y injurias*], allowed for prior restraint and established other measures that restricted the exercise of freedom of expression, and was therefore not compatible with the Federal Constitution. To this effect, the Tribunal carried out an extensive examination of the scope and importance of freedom of expression in a democratic system, referencing among other sources the inter-American system's standards on the subject.

25. The Tribunal found that freedom of the press is an expression of the freedoms of thought, information and expression with an intrinsic relationship to democracy, and that therefore it must enjoy extra protection to ensure it can be exercised fully. In this regard, the Supreme Tribunal highlighted that the press is a natural opportunity for the formation of public opinion and an alternative to the official version of the facts. In that sense, critical thought in journalism is an integral part of full and trustworthy information. This standard was reiterated by the Tribunal in a judgment dated September 2, 2010.¹⁶

26. The Constitutional Court of Colombia has repeatedly established in multiple rulings the priority status of the right to freedom of expression in the constitutional framework of that country.¹⁷ So for example, in recent ruling C-422/11 of May 25, 2011¹⁸, the Court ruled that judges who hear cases on defamation [*injurias y calumnias*] must interpret those criminal offenses restrictively in ways that favors “the expanding scope of freedom of expression.” In this ruling, the Court reiterated the thesis that it has held since its beginning - and that is based on “the special importance of this right in the Colombian legal system - [...] that the right occupies a place of privilege within the catalog of fundamental rights.”

27. Prior to this, in ruling T-391/07 of May 22, 2007¹⁹, regarding a writ of protection brought by Radio Cadena Nacional (RCN) against the Council of State, the Constitutional Court of Colombia indicated that “the principal justification for making freedom of expression central to contemporary constitutional systems is that, through its protection, representative democracy, citizen participation and self governance are facilitated in each nation. This argument highlights that communication and the free flow of information, opinions and ideas in a society are essential elements for democratic and representative governance, for which reason freedom of expression, on allowing open and vigorous debate on public matters, serves a central political function.”

¹⁵ Federative Republic of Brazil. Supreme Federal Tribunal. Complaint of breach of fundamental precept 130 Federal District. April 30, 2009. Available at: <http://www.stf.jus.br/portal/inteiroTeor/obterInteiroTeor.asp?id=605411&idDocumento=&codigoClasse=776&numero=13>

¹⁶ Federative Republic of Brazil. Supreme Federal Tribunal. Sentence of September 2, 2010. Precautionary measure in Direct Action of Unconstitutionality ADI-4451. Available at: <http://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=2613221> In this ruling, the Supreme Federal Tribunal recognized that the press has a “relationship that is rooted in interdependence or feedback.” In this sense, it explained that the Brazilian constitution grants the press the right to monitor and disclose matters related to the life of the State and society, which is why renouncing press freedom would be equivalent to renouncing general information about matters related to authorities, whether they be political, economic, military or religious.

¹⁷ Republic of Colombia. Constitutional Court. Judgment C-010/00, of January 19, 2000. Available at: <http://www.corteconstitucional.gov.co/relatoria/2000/C-010-00.htm>; Constitutional Court. Judgment T-391/07, of May 22, 2007. Available at: <http://www.corteconstitucional.gov.co/relatoria/2007/T-391-07.htm>; Constitutional Court. Judgment C-442-11, of May 25, 2011. Available at: <http://www.corteconstitucional.gov.co/relatoria/2011/C-442-11.htm>

¹⁸ Republic of Colombia. Constitutional Court. Judgment C-442-11 of May 25, 2011. Available at: <http://www.corteconstitucional.gov.co/relatoria/2011/C-442-11.htm>

¹⁹ Republic of Colombia. Constitutional Court. Judgment T-391/07, of May 22, 2007. Available at: <http://www.corteconstitucional.gov.co/relatoria/2007/T-391-07.htm>

28. Of particular interest are the considerations developed by the Constitutional Court of Colombia in this ruling with regard to the way this right specifically functions in its political dimension. For this Court:

“In its political dimension, freedom of expression serves a number of specific functions: (i) the broad and open political debate protected by this freedom informs and improves on the quality of public policy in that it permits “the inclusion of all sectors of society in the communication, decision making and development processes,” inclusion that “is fundamental for their needs, opinions, and interests to be taken into account in the design of policies and decision making,” thus allowing equitable exercise of the right to participation; (ii) freedom of expression keeps the channels for political change open, using critical analysis to prevent those that govern from becoming indefinitely rooted in an illegitimate position; (iii) solid protection of the free communication of information and ideas prevents governmental abuses of power by supplying a counterweight through the opening of a channel for the exercise of the power of citizen participation and oversight of the public - in other words, it provides an opportunity for the discussion of matters in the general interest, an opportunity that in turn reduces the risk of government oppression; (iv) it promotes sociopolitical stability on providing an escape valve for social dissent and thereby establishing a framework for managing and processing conflicts that does not threaten to erode societal integrity; (v) it protects active political minorities at a given time, preventing them from being silenced by majority or prevailing forces; and (vi) on a more basic level, it is a necessary condition for ensuring the free expression of the opinions of voters when they cast their ballots for a political representative. It has also been noted that freedom of expression (vii) contributes to the formation of public opinion on political matters and the consolidation of a duly informed electorate, given that it gives substance to citizens’ right to understand political matters, thereby allowing them to participate effectively in the operation of democracy, thereby (viii) bringing to life the principle of representative self-government by citizens themselves, and (vii) the responsibility of those governing the electorate, as well as (ix) the principle of political equality. Finally, it has been emphasized that (x) freedom of expression strengthens the individual autonomy of the political subject in a democratic regime, and that (xi) on allowing the construction of opinion, it facilitates societal control over the operation not only of the political system, but also of society itself, including the legal system and its need to develop or change.”²⁰

29. As will be explained later on, according to this Tribunal, “the multiplicity of reasons that justifies granting generic freedom of expression a privileged position in the Colombian constitutional system has an immediate practical consequence: there is a constitutional presumption in favor of freedom of expression.”²¹

2. Case law on the scope and entitlement of freedom of expression

30. In the terms of Article 13 of the American Convention, freedom of expression is a right held by every individual, without discrimination of any kind. According to Principle 2 of the Declaration of Principles, “all people should be afforded equal opportunities to receive, seek and impart information by any means of communication without any discrimination for reasons of race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition.”

31. As the Inter-American Court has indicated, the conditions for bearing the right to freedom of expression cannot be restricted to a particular profession or group of individuals, nor to the scope of freedom of the press: the “American Convention guarantees this right to every individual, irrespective of any other consideration; so, such guarantee should not be limited to a given profession or group of

²⁰ Republic of Colombia. Constitutional Court. Judgment T-391/07, of May 22, 2007. Available at: <http://www.corteconstitucional.gov.co/relatoria/2007/T-391-07.htm>

²¹ Republic of Colombia. Constitutional Court. Judgment T-391/07, of May 22, 2007. Available at: <http://www.corteconstitucional.gov.co/relatoria/2007/T-391-07.htm>

individuals. Freedom of expression is an essential element of the freedom of the press, although they are not synonymous and exercise of the first does not condition exercise of the second.²²

32. Likewise, the Commission and the Inter-American Court have emphasized the Democratic scope of freedom of expression, which implies both the ability of every individual to put forward expression and ideas, as well as the ability to seek, receive and disseminate information of all kinds, orally, in print, in the mass media, or through any other medium of an individual's choosing. In this sense, the organs of the system have recognized that Article 13 of the American Convention includes:²³ 1) the right to speak - that is, to express orally thoughts, ideas, information or opinions;²⁴ 2) the right to speak necessarily implies individuals' right to use the language of their choosing to express themselves;²⁵ 3) the right to write - that is, to express thoughts, ideas, information or opinions in writing or in print; 4) the right to disseminate spoken or written expression of thoughts, information, ideas or opinions through the medium chosen for communicating to the largest number of receptors possible;²⁶ 5) the right to artistic or symbolic expression, to the distribution of artistic expression, and to access to art in all its forms;²⁷ 6) the right to seek, receive and access expressions, ideas, opinions and information of all kinds; 7) the right to have access to information about oneself contained in public or private databases or registries, with the correlative right to update, correct or amend it; and 8) the right to possess information in writing or any other form, to transport that information, and to distribute it.²⁸

33. All of the rulings collected in this report begin with the assumption that the right to freedom of expression universal, something that is generally recognized in the constitutions of the countries of the region. Thus for example, the Constitutional Court of Colombia in the aforementioned judgment T-391/07 of May 22, 2007,²⁹ found that all individuals are entitled to the right to freedom of expression, without any discrimination regarding the characteristics of the individual, the content of the speech, or the way in which the speech is received or distributed.

34. On this last point, it expressed that the media, as vehicles for the full exercise of the right to freedom of expression, must be recognized as bearers of this right. In this regard, it would be appropriate to mention that the Constitutional Court has recognized that the right to open a media outlet is

²² I/A Court H.R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. para. 114.

²³ See IACHR, Office of the Special Rapporteur for Freedom of Expression. *Inter-American Legal Framework of the Right to Freedom of Expression*. OEA/Ser.LJ/III CIDH/RELE/INF. 2/09. December 30, 2009. Paras. 21-29. Available at: <http://www.oas.org/en/iachr/expression/doconpublicationonINTER-AMERICAN%20LEGAL%20FRAMEWORK%20OF%20THE%20RIGHT%20TO%20FREEDOM%20OF%20EXPRESSION%20FINAL%20PORTADA.pdf>

²⁴ I/A Court H.R. *Case of López Álvarez v. Honduras*. Judgment of February 1, 2006. Series C No. 141, para. 164; *Case of Herrera Ulloa v. Costa Rica*. Judgment dated July 2, 2004. Series C No. 107, para. 109; *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111, para. 78; *Case of Ivcher Bronstein v. Peru*. Judgment of February 6, 2001. Series C No. 74, para. 147; *Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile*. Judgment dated February 5, 2001. Series C No. 73, para. 65; *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 31.

²⁵ I/A Court H.R. *Case of López Álvarez v. Honduras*. Judgment of February 1, 2006. Series C No. 141, para. 164.

²⁶ I/A Court H.R. *Case of Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Series C No. 135, para. 73; *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No. 107, para. 109; *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111, para. 78; *Case of Ivcher Bronstein v. Peru*. Judgment of February 6, 2001. Series C No. 74, para. 147; *Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile*. Judgment dated February 5, 2001. Series C No. 73, para. 65; *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 31.

²⁷ IACHR. Pleadings before the Inter-American Court in the *Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile*. Transcripts available at: I/A Court H.R. *Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile*. Judgment dated February 5, 2001. Series C No. 73, para. 61(b).

²⁸ IACHR. Report No. 3/98. Case No. 11.221. *Tarcisio Medina Charry*. Colombia. April 7, 1998, para. 77.

²⁹ Republic of Colombia. Constitutional Court. Judgment T-391/07, of May 22, 2007. Available at: <http://www.corteconstitucional.gov.co/relatoria/2007/T-391-07.htm>

a fundamental right that must be recognized universally and without discrimination, and with restrictions that are strictly necessary with regard to certain types of media that wish to use the electromagnetic spectrum.³⁰

35. The scope of the right to freedom of expression in the rulings reviewed in this report is likewise broad. Although the majority of the rulings examined refer to expression through the mass and print media, the courts recognize that the right to freedom of expression likewise protects multiple other forms of expression, artistic expression among them. This has been established by, for example, the Supreme Federal Tribunal of Brazil, in a judgment issued on August 1, 2011, in which it examined the constitutionality of the requirement that the country's musicians be part of a professional organization³¹.

3. Case law on the presumption of *ab initio* coverage for all kinds of expression, including offensive, shocking or disturbing speech

36. The organs of the inter-American system have explained that in principle, all forms of speech are protected by the right to freedom of expression regardless of their content or the degree to which they are accepted by society or the State. This Office of the Special Rapporteur has emphasized that this general assumption that all expression is covered is explained through the State's obligation to remain neutral toward content and by the resulting need to guarantee that, in principle, no individuals, groups, ideas or means of expression are excluded *a priori* from the public debate.³²

37. According to this order of ideas, the Inter-American Court has reiterated that freedom of expression must be guaranteed not only with regard to the distribution of ideas and information favorably received or considered inoffensive or indifferent, but also with regard to those that offend and shock.³³ These are the demands of pluralism, tolerance and the spirit of disclosure without which a truly democratic society could not exist.

38. In the last decade, domestic courts have taken significant steps toward protecting this kind of expression, preserving the significant value that it has for democratic societies. For example, according to a judgment dated September 2, 2010, for the Supreme Federal Tribunal of Brazil, freedom of expression guarantees the right of a journalist - the same as any other person - to express his or her ideas "including with a tough, blunt, sarcastic, ironic or irreverent tone, especially against State authorities and bodies."³⁴ The Supreme Court of Justice of Argentina also used this criteria in a recent judgment dated October 30, 2012, handed down in the case of *Quantín, Norberto Julio v. Benedetti, Jorge Enrique*

³⁰ Cf., e.g., Republic of Colombia. Constitutional Court. Unification Judgment SU-182 of 1998. Available at: <http://www.corteconstitucional.gov.co/relatoria/1998/SU182-98.htm>

³¹ Federative Republic of Brazil. Supreme Federal Tribunal. Extraordinary remedy 414.426 Santa Catarina. Judgment of August 1, 2011. Available at: <http://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=AC&docID=628395>. In the same sense, judgment T-081 of the Constitutional Court of Colombia, among other considerations, mentioned previously that freedom of expression protects multiple forms of expression, among them artistic expression. In its ruling, the Court found that granting a public servant the authority to classify a work of art as indecent violated the right to freedom of expression. Cf. Republic of Colombia. Constitutional Court. Judgment T-081 of February 26, 1993. Available at: <http://www.corteconstitucional.gov.co/relatoria/1993/T-081-93.htm>

³² IACHR. Annual Report 2009. OEA/Ser.L/V/II. Doc. 51. December 30, 2009. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter IV (The Right of Access to Information), para. 31. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%20Anual%202009%20%20ENG.pdf>

³³ I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No. 107, para. 113; *Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile*. Judgment dated February 5, 2001. Series C No. 73, para. 69; *Case of Ríos et al. v. Venezuela*. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194, para. 105; *Case of Perozo et al. v. Venezuela*. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195, para 116.

³⁴ Federative Republic of Brazil. Supreme Federal Tribunal. Judgment of September 2, 2010. Precautionary Measure in Direct Action of Unconstitutionality ADI-4451. Available at: <http://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=2613221>

*et al. on derechos personalísimos*³⁵. In that ruling, the Argentine Supreme Court took up the case law of the European Court of Human Rights and the Inter-American Court on the subject and recalled that “journalistic freedom includes the opportunity to use a certain degree of exaggeration, to the point of provocation.” On ruling in this specific case, it found that “toleration of these excesses are better for democracy than the other alternative,” which would be turning judges into the arbiters of societal debate. For this high court, “in addition to the fact that this role would be inappropriate for the courts, it would dangerously restrict the freedom of public debate.”

39. The Permanent Criminal Chamber of the Supreme Court of Justice of Peru ruled similarly in a judgment dated June 18, 2010.³⁶ The court was ruling on a lawsuit seeking the nullification of a prison sentence for the crime of defamation handed down to the director of a weekly newspaper with local circulation. In the ruling, the Chamber recognized that “harsh and caustic criticism or attacks that are sharp and unpleasant [are] necessarily tolerable in order to secure freedom of opinion and guarantee public debate on matters of local interest in the administration of State institutions.” According to the Chamber, in cases in which public and societal interest is in play, “the context in which the expressions being questioned were issued must be taken into account.” In this sense, it emphasized that “the tone and content of the statements that are tolerable as part of the exercise of freedom of expression are related to the degree to which the news item awakes general or societal interest.”

40. The rulings of the Constitutional Court of Colombia have had a similar tone. In judgment C-010/00,³⁷ this high court explained that “as international case law on human rights has highlighted, freedom of expression seeks to protect not only the dissemination of information or opinions that the State and the majority of the population consider inoffensive or indifferent, but also ideas or information that are not viewed favorably by a majority in society and that may be judged disturbing or dangerous. Pluralism, tolerance and the spirit of disclosure, without which a truly democratic society does not exist, require that these dissident opinions and information also be protected”. In this line of reasoning, it expressed that the constitutional assumption of coverage of freedom of expression in principle covers *all* forms of human expression, and that constitutional freedom protects both the content and the tone of expression.³⁸

41. Another case relevant for the application of the fundamentals of this principle can be found in the April 23, 2009, ruling *Patricia Mujica Silva v. Liceo Experimental Artístico y de Aplicación de Antofagasta República Juan Rojas Navarro*,³⁹ whereby the Supreme Court of Justice of Chile found that the decision made by public school authorities to expel one of its students “for holding ideas that they saw as contrary to the values that the entity professed” was arbitrary and violated the constitutional guarantee of freedom of expression. In its analysis of the specific case, the high court found that the decision was based solely on disagreement with positions held by the student. In this regard, it ruled that “although it is evident that the student proposed that fellow students take political action and strongly criticized the legal

³⁵ Republic of Argentina. Supreme Court of Justice. Judgment of October 30, 2012, *Quantín, Norberto Julio v. Benedetti, Jorge Enrique et al. on derechos personalísimos*. Available at: <http://www.csjn.gov.ar/confal/ConsultaCompletaFallos.do?method=verDocumentos&id=693527>

³⁶ Republic of Peru. Permanent Criminal Chamber of the Supreme Court of Justice. Judgment of June 18, 2010. RN No. 1372/2010. Available at: <http://www.pj.gob.pe/wponwcm/connect/fdec1e004bf42509a767b73aa702a2d1/SPP+R.N.+N%C2%BA+1372-2010+-+Amazonas.pdf?MOD=AJPERES&CACHEID=fdec1e004bf42509a767b73aa702a2d1>

³⁷ Republic of Colombia. Constitutional Court. Judgment C-010/00, of January 19, 2000. Available at: <http://www.corteconstitucional.gov.co/relatoria/2000/C-010-00.htm>. See also, Constitutional Court. Judgment C-417/09, of June 26, 2009. Available at: <http://www.corteconstitucional.gov.co/relatoria/2009/C-417-09.htm>

³⁸ See also, Republic of Colombia. Constitutional Court. Judgment C-417/09, of June 26, 2009. Available at: <http://www.corteconstitucional.gov.co/relatoria/2009/C-417-09.htm>

³⁹ Republic of Chile. Supreme Court of Justice. *Patricia Mujica Silva con Liceo Experimental Artístico y de Aplicación de Antofagasta República Juan Rojas Navarro* (2009). Judgment of April 23, 2009, Rol N°1.740-2009. Available at: http://www.poderjudicial.cl/juris_pjud/muestra_doc.php?docid=49718&row_id=&ciudad_palabras=&rol_buscar=1.740?2009:1.740?09:1.740?2009:1.740?09&todos_ministros=&sala_buscar=&flag_ninguna=0

regime of the education system and his school [...] the action being appealed violates freedom of expression [...] because it punishes legitimate communication of ideas.”

42. Finally, on explaining the reasoning for which the University of Costa Rica must foster a broad opening to the expression of all types of speech, the Constitutional Chamber of the Supreme Court of Justice of that country held in a decision dated March 29, 2011,⁴⁰ that “suspending a conference because the presenter had expressed a series of controversial ideas prevents both public discussion on those subjects and the formation of public opinion. Further, the expression of the ideas of the presenter could allow those who disagree with him to further refine their convictions, or allow those who agree with him to change their opinions on hearing the public debate, or just the opposite. However, this is how a democracy is built: through dissent and consensus.”

4. Case law on specially protected speech

43. The Office of the Special Rapporteur has held that although all forms of expression are in principle protected by the right enshrined in Article 13 of the American Convention, certain types of speech receive special protection due to their importance for the exercise of other human rights or for the consolidation, functioning and preservation of democracy.

44. Effectively, inter-American case law has repeatedly recognized that the functioning of democracy requires the greatest possible level of public discourse on the functioning of society and the State in all its aspects - that is, on matters of public interest. In a democratic and pluralist system, the actions and omissions of the State and its officials must be subjected to rigorous scrutiny, not only by internal oversight bodies, but also by the press and public opinion. Public administration and matters of common interest must be subjected to oversight by society as a whole. Democratic oversight of public administration through public opinion increases transparency in State activities and causes public officials to take responsibility for their actions. It is also a measure for achieving the highest degree of citizen participation.

45. According to the case law developed in recent years by the bodies of the inter-American system, a democratic and pluralist system must tend toward greater and broader circulation of information, opinions and ideas relating to the State, matters of public interest, public officials performing their duties or candidates to public positions, or private individuals voluntarily involved in public matters, as well as speech and political debate, leaving little space for State restriction of information, opinions and ideas.⁴¹ In this regard, Principle 11 of the Declaration of Principles states that, “[p]ublic officials are subject to greater scrutiny by society.”

46. In clear harmony with this development, the region’s courts have handed down important decisions in the last decade that provide special guarantees for this type of speech with regard to illegitimate limitations, in particular limitations oriented toward protecting the honor and reputation of public officials. For example, in the previously cited September 20, 2012, judgment of the Plurinational Constitutional Tribunal of Bolivia in which it ruled crimes of *desacato* unconstitutional, it stated that “due to the very nature of the work they do - work in the public interest - authorities are exposed to a variety of criticism. Thus, in the case of Herrera Ulloa [v.] Costa Rica (2004), the Inter-American Court of Human Rights recalled that: “[t]hose individuals who have an influence on matters of public interest have laid themselves open voluntarily to a more intense public scrutiny and, consequently, in this domain, they are

⁴⁰ Republic of Costa Rica. Constitutional Chamber of the Supreme Court of Justice. *Amparo* Remedy Res. N° 2011004160, of March 29, 2011. Available at: <http://sitios.poder-judicial.go.cr/salaconstitucional/Constitucion%20Politica/Judgmenton2011/11-004160.html>

⁴¹ I/A Court H.R. *Case of Kimel v. Argentina*. Judgment of May 2, 2008. Series C No. 177, para. 88; *Case of “The Last Temptation of Christ” (Olmedo Bustos et al.) v. Chile*. Judgment of February 5, 2001, Series C No. 73, para. 69; *Case of Ivcher Bronstein v. Peru*. Judgment of February 6, 2001. Series C No. 74, para. 152; *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111, para. 83.

subject to a higher risk of being criticized, because their activities go beyond the private sphere and belong to the realm of public debate”.⁴²

47. According the Constitutional Court of Guatemala, Principle 11 the Declaration of Principles on Freedom of Expression “reveals that due to the performance of the function that falls to them, public officials are subject to greater scrutiny by society, therefore laws that penalize offensive expression directed at public officials are in violation of the right to freedom of expression and the right to information.” For this high court, a democratic system needs critical expression “to encourage the corresponding scrutiny of the public function. Prohibiting this type of speech is inappropriate in a system [...] that delegates the exercise of sovereignty that belongs to the people. Therefore, those who make up this latter element of the State must be permitted the right to criticize official conduct, especially the conduct of those who serve in the three bodies which have been delegated with the power to govern, particularly if that conduct exceeds limits established in the Constitution and by law”.⁴³

48. In judgment T-298/09 of April 23, 2009,⁴⁴ the Constitutional Court of Colombia, citing once more its settled case law on the subject, indicated that “on issues of clear relevance to the public in which a public servant is involved, the right to freedom of expression and information becomes broader and less flexible. Effectively, as already indicated, when a person has voluntarily decided to become a public personality or when he or she has the power to in some way exercise State authority, that person has the duty to bear up under greater criticism and questioning than a common person who holds no public authority and who has not decided to submit him or herself to public scrutiny.” In further development in judgment C-442-11 of May 25, 2011,⁴⁵ the Court indicated that “*political* speech, debate on matters of public interest, and speech that constitutes a direct and immediate exercise of additional fundamental rights that must necessarily be connected to freedom of expression in order to be exercised, all enjoy a greater degree of protection”. This reinforced protection “has a direct effect on admissible State regulation, and the standard of constitutional oversight to which the limitations [on these types of expressions] are subjected.”

49. In similar terms, in a judgment dated November 23, 2011,⁴⁶ the Supreme Federal Tribunal of Brazil ruled in a case of a direct action of unconstitutionality on the interpretation of Article 33(2) of Law No. 11.343 of 2006, which criminalizes drug consumption. The Tribunal found that the law should not include anything that could allow for a ban on demonstrations and public debate on the legalization or decriminalization of drug consumption. The Court explained that criticism of crime policy, being as it is a matter in the public interest, is specially protected by the right to freedom of expression. The high court recalled that “the collectivization of critical thought and the right to criticize institutions, persons and institutes must be fomented as expression of the citizenry and as a way of seeking out the truth or essence of things.” Finally, it emphasized that “criminalization of conduct cannot be confused with discussion about its criminalization [...] Otherwise, it would not be compatible with the dynamism and diversity - both cultural and political (pluralism) - of the democratic society in which we live, where freedom of expression is the best expression of freedom.”

⁴² Plurinational State of Bolivia. Constitutional Tribunal. Action of Unconstitutionality, Case File 00130-2012-01-AIC Judgment 1250/2012 of September 20, 2012. Available at: http://www.tribunalconstitucional.gob.bo/moduleonver_resolucion/indexnew.php?id=125150

⁴³ Republic of Guatemala. Court of Constitutionality. Judgment of General Partial Unconstitutionality, Case File 1122-2005, of February 1, 2006. Available at: http://www.cc.gob.gt/siged2009/mdlWeb/frmConsultaWebVerDocumento.aspx?St_DocumentoId=807270.html

⁴⁴ Republic of Colombia. Constitutional Court. Judgment T-298/09, of April 23, 2009. Available at: <http://www.corteconstitucional.gov.co/relatoria/2009/T-298-09.htm>

⁴⁵ Republic of Colombia. Constitutional Court. Judgment C-442-11, of May 25, 2011. Available at: <http://www.corteconstitucional.gov.co/relatoria/2011/C-442-11.htm> In this judgment, the court declared that judges who hear cases involving defamation [*injurias y calumnias*] should interpret the relevant criminal norms strictly in order to favor “an expansive concept of freedom of expression.”

⁴⁶ Supreme Federal Tribunal of Brazil. Judgment of November 23, 2011. Direct action of unconstitutionality 4274. Available at: <http://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=1955301>

50. Following this reasoning, in a ruling dated June 24, 2008,⁴⁷ the Supreme Court of Justice of Argentina found that “one of this Court’s functions is to support, contribute to and protect the basic consensuses for the functioning of a society in which different opinions can coexist together in tolerance. One of these fundamental principles is that of freedom of expression and oversight of public officials, as well as discussion of their decisions.” In that sense, the Court emphasized that “there can be no liability for criticism or dissent, even when expressed heatedly, as every plural and diverse society needs democratic debate nurtured with opinions whose goal is social peace.” The same tone is found in a recent ruling by the Supreme Court of Justice of Argentina dated October 30, 2012.⁴⁸ In *Quantín, Norberto Julio v. Benedetti, Jorge Enrique et al. on derechos personalísimos*, following what has been established by the Inter-American Court, the Supreme Court of Justice of Argentina found that expression regarding a person’s suitability for holding a public office enjoys greater constitutional protection.

51. Likewise, in a ruling dated June 18, 2012,⁴⁹ the 33rd Criminal Court of the Superior Court of Justice of Lima explicitly adopted the case law and scholarship of the organs of the inter-American system regarding broad debate in matters of public interest and greater scrutiny in speech about public officials, as well as the narrower space for restrictions in these areas. In this regard, it recognized the case law of the Inter-American Court of Human rights in the sense that there should be less opportunity for restrictions to political debate or debate on questions of public interest, and that in the terms of Article 13 of the American Convention, opportunity for restrictions on expression concerning public officials or other persons exercising functions of a public nature must be particularly narrow. Regarding this latter issue, it reiterated that “those persons who have an influence on issues in the public interest are exposed to greater scrutiny, and are consequently at greater risk of criticism.”

52. In analyzing the case in question, the Court found that “honor with regard to individuals who have exercised a public function and are public personalities [as in the case of complainant] are based on the legal status they assume.” For the Court, “on having been a State minister and member of the Congress of the Republic, a greater opportunity for criticism is required, [which] does not mean that he does not have honor, but rather that he does but in a more limited sense due to the function he has taken up.”

53. The 17th Criminal Circuit Court of the First Circuit in Panama ruled likewise in judgment No. 13 of July 17, 2012,⁵⁰ whereby it acquitted three journalists that had been charged with the crime of defamation [*injuria y calumnia*] for expression that supposedly damaged the honor of a National Police of Panama official. The Court recognized that the facts leading to the criminal complaint were verified in the exercise of public functions and therefore deserved the attention and coverage of the accused as part of their work as journalists. In this regard, the Court recognized that “this is established in Article 11 of the Declaration of Basic Principles on Freedom of Expression of the Inter-American Commission on Human Rights, (X ANNIVERSARY - October 19, 2000-2010), which indicates, among other things, that ‘*public officials are subject to greater scrutiny by society.*’”

54. For its part, the Supreme Court of Justice of the Nation of Mexico, with the support of the jurisprudence and scholarship of the organs of the inter-American system, has established case law standards in this regard. Thus, in its judgment dated June 17, 2009,⁵¹ the Supreme Court held that

⁴⁷ Republic of Argentina. Supreme Court of Justice. Judgment of June 24, 2008, P.2297.XL, *Patitó, José Ángel et al. v. Diario La Nación et al.*. Available at: <http://www.cpi.org/newon2008/americasonArgentina.Court.24-06-08.pdf>

⁴⁸ Republic of Argentina. Supreme Court of Justice. Judgment of October 30, 2012, *Quantín, Norberto Julio cl Benedetti, Jorge Enrique et al. si derechos personalísimos*. Available at: <http://www.csjn.gov.ar/confal/ConsultaCompletaFallos.do?method=verDocumentos&id=693527>

⁴⁹ Republic of Peru. 33° Criminal Court of the Superior Court of Justice of Lima. Case file 24304-2009-0-1801-JR-PE-33. Resolution No. 38 of June 18, 2012.

⁵⁰ Republic of Panama. Seventeenth Court of the First Criminal Circuit of Panama. Judgment No. 13 of July 17, 2012.

⁵¹ United States of Mexico. Supreme Court of Justice. Direct *Amparo* Appeal 2044-2008, of June 17, 2009. Available at: <http://www2.scjn.gob.mx/juridica/engroseoncerradoonpublico/08020440.010.doc>

“freedom of the press and the right to give and receive information provides especially vigorous protection for expression and circulation of information related to politics, and more broadly, matters of public interest.” For this high court, protection of the free circulation of this kind of speech “is especially relevant in order for these freedoms to fully accomplish their strategic functions with regard to the formation of public opinion in the structural scheme of representative democracy.” Citing this Office of the Special Rapporteur’s 2008 annual report, it highlighted that special protection for political speech and speech on matters of public interest “extends to electoral speech, which focuses on candidates seeking to hold public office.” For this Tribunal, “citizen oversight of the activities of individuals who hold public office or have held it in the past (officials, elected positions, members of political parties, diplomats, private individuals performing state or other functions in the public interest, etc.) increases transparency in State activities and promotes the accountability of all of those who have governing duties. This necessarily means that there is greater space for disseminating the statements and evaluations that are inseparable from the political debate or matters of public interest.”

55. It emphasized that, “[o]ne of the specific rules that has been most agreed upon in the area of comparative law and international human rights law [...] is the rule according to which individuals who hold or have held public responsibilities [...], as well as candidates seeking to hold them, have a right to privacy and honor that is generally more flexible than the right held by ordinary citizens when it comes to the actions of the mass media in exercising their rights to express themselves and inform.” In this regard, it recalled “the instrumental relationship between freedom of expression and information and the proper development of democratic practices.”

56. As a corollary to this, for the Supreme Court of Justice of Mexico, it is possible to speak of a favorable “bonus” or “special” position of the right to freedom of expression and the right to information when those rights come in conflict with the so-called “personal rights” [*derechos de la personalidad*] of public officials, among which are the right to privacy and the right to honor; “this is for reasons strictly linked to the type of activity that they have decided to perform, which requires intense public scrutiny of their activities.” On referring to the facts of the case, it found that “the threshold of the intensity of the criticism and debate to which persons like the one referenced in the news item in question can be exposed to is very high and not easy to cross for reasons that open the door to claims of civil or criminal liability.”

5. Case law on crimes of *desacato*

57. Likewise, in accordance with the foregoing, the IACHR and its Office of the Special Rapporteur have indicated repeatedly that application of the criminal offense of *desacato* to those who disseminate expression that is critical of public officials is, *per se*, contrary to the American Convention,⁵² given that it constitutes an application of subsequent liability for the exercise of freedom of expression. This is unnecessary in a democratic society, and it is disproportionate due to the serious effects it has on the person issuing the expression and on the free flow of information in a society. Likewise, Principle 11 of the Declaration of Principles establishes that, “[l]aws that penalize offensive expressions directed at public officials, generally known as ‘*desacato* laws,’ restrict freedom of expression and the right to information.”⁵³

⁵² See, IACHR, Annual Report 1994. OEA/Ser.L/V.88 Doc. 9 rev. 1. 17 February 1995. Chapter V (Report on the Compatibility of “*Desacato*” Laws with the American Convention on Human Rights). Title I. Available at: <http://www.cidh.org/annualrep/94eng/chap.5.htm>

⁵³ The Inter-American Court has also examined, in specific cases, the disproportionate nature of *desacato* laws and of the prosecution under those laws of individuals who exercise their freedom of expression. For example, in the Case of *Palamara Iribarne v. Chile* the Inter-American Court noted that “by pressing a charge of contempt, criminal prosecution was used in a manner that is disproportionate and unnecessary in a democratic society, which led to the deprivation of Mr. Palamara-Iribarne’s right to freedom of thought and expression with regard to the negative opinion he had of matters that had a direct bearing on him and were closely related to the manner in which military justice authorities carried out their public duties during the proceedings instituted against him. The Court believes that the contempt laws applied to Palamara-Iribarne established sanctions that were disproportionate to the criticism leveled at government institutions and their members, thus suppressing debate, which is essential for the functioning of a truly democratic system, and unnecessarily restricting the right to freedom of thought and expression.” In the Case of *Tristán Donoso v. Panama*, the Inter-American Court highlighted the positive fact that after convicting Mr. Tristán Donoso

Continues...

58. According to the Inter-American Commission, these types of laws are a measure to silence unpopular ideas and opinions and dissuade criticism by causing fear of legal action, criminal sanctions and fines. Regarding this, the IACHR has been emphatic that the *desacato* legislation is disproportionate due to the sanctions it establishes for criticism leveled at government institutions and their members, thus suppressing debate that is essential for the functioning of a truly democratic system, as well as unnecessarily restricting the right to freedom of thought and expression.⁵⁴

59. In what has been a clear showing of fruitful dialogue that has arisen between the organs of the system and the States in the region, in the last decade laws that criminalize defamation of public officials in Mexico, Panama, Uruguay, Costa Rica, Argentina and El Salvador have been struck down.⁵⁵ Legal rulings that have sought to adjust legal frameworks to meet inter-American standards on the subject have been particularly important for this trend, declaring as they have that these types of laws are not compatible with Article 13 of the American Convention.

60. This was the case with the Court of Constitutionality of Guatemala in the aforementioned judgment dated February 1, 2006,⁵⁶ in which it found that criticism of the performance of a public function is constitutionally exempt from criminal liability. In this regard, it explained that “due to the performance of the function that falls to them, [public officials] are subject to greater scrutiny by society, such that laws that penalize offensive expression directed at public officials are in violation of the right to freedom of expression and the right to information.”

61. For the Court, “it is inescapable that the expectation of being criminally sanctioned for expression of opinions can have a chilling effect on those who express them, such that although the criminal provision does not explicitly provide for censorship, it indeed can cause citizens to self censor in matters regarding which, in a democratic system, criticism is necessary for providing a basis for the corresponding scrutiny of public functions.”

62. In this ruling, the high court recognized that the right to freedom of expression is not absolute and is subject to subsequent liability. However, it held that “in the case of statements about public officials regarding actions taken in the exercise of their duties, [subsequent liability] can only be

...continuation

for defamation [*calumnia*] based on the statements he made about a senior official, the country's laws changed to prohibit sanctions for *desacato* and other limitations on freedom of expression. Cf., IACHR, Office of the Special Rapporteur for Freedom of Expression. *Inter-American Legal Framework of the Right to Freedom of Expression*. OEA/Ser.L/V/II CIDH/RELE/INF. 2/09. December 30, 2009. Paras. 142-143. Available at: <http://www.oas.org/en/iachr/expression/doconpublicationonINTER-AMERICAN%20LEGAL%20FRAMEWORK%20OF%20THE%20RIGHT%20TO%20FREEDOM%20OF%20EXPRESSION%20FINAL%20PORTADA.pdf>

⁵⁴ See, IACHR, Annual Report 1994. OEA/Ser.L/V.88 Doc. 9 rev. 1. 17 February 1995. Chapter V (Report on the Compatibility of “*Desacato*” Laws with the American Convention on Human Rights). Title I. Available at: <http://www.cidh.org/annualrep/94eng/chap.5.htm>

⁵⁵ For Instance, Mexico repealed the federal norms that permitted individuals who offended the honor of a public official to be tried for criminal defamation, and a number of the states of the Mexican Federation have done the same. In 2007, the National Assembly of Panama similarly decriminalized defamation in relation to criticism or opinions regarding official acts or omissions of high-ranking public servants. In April 2009, the Supreme Court of Brazil declared the Press Law incompatible with the Brazilian Constitution; the Law had imposed severe prison and pecuniary penalties on journalists for the crime of defamation. In June 2009, the legislature of Uruguay eliminated from the Criminal Code the sanctions for the dissemination of information or opinions about public officials and matters of public interest, with the exception of those cases where the person allegedly affected could demonstrate the existence of “actual malice”. In November 2009, the legislature of Argentina passed a reform to the Criminal Code doing away with prison terms for the crime of defamation, and decriminalizing speech about matters of public interest. Following this trend, in December of 2009, the Supreme Court of Costa Rica derogated a provision of the Press Law that established a prison penalty for crimes against honor. Similarly, in December of 2011 the Legislative Assembly of El Salvador approved a reform that substituted fines for prison sentences where crimes against honor are concerned and established greater protection for expressions dealing with public figures or matters of public interest.

⁵⁶ Republic of Guatemala. Court of Constitutionality. Judgment of General Partial Unconstitutionality, Case file 1122-2005, of February 1, 2006. Available at: http://www.cc.gob.gt/siqed2009/mdlWeb/frmConsultaWebVerDocumento.aspx?St_DocumentId=807270.html

established and later punished through civil sanctions, as [...] the existence of a criminal sanction could inhibit the oversight of public administration that is necessary in a democratic society should the sanction be used as an instrument to repress criticism of public administration.”

63. This Court explicitly recognized that “the Inter-American Commission on Human Rights has found that laws that establish the crime of *desacato* are not compatible with Article 13 of the American convention on Human Rights. It determined that they are not compatible with the standard of necessity and that the objectives they seek are not legitimate, on finding that this type of law lends itself to abuse as a means of silencing unpopular ideas and opinions and repressing debate that is necessary for the effective functioning of democratic institutions.” The Court of Constitutionality of Guatemala ruled similarly in judgment 863-2010 of August 24, 2010.⁵⁷

64. In a similar fashion, in a judgment dated September 20, 2012,⁵⁸ the Constitutional Plurinational Tribunal of Bolivia declared Article 162 of the Penal Code unconstitutional. The article called for a harsher prison sentence for those who commit defamation [*calumnia, injuria o difamación*] against a public official (*desacato*). The judgment includes a broad reflection on the history of the criminal offense, the proportionality of this kind of punishment, the right to equal treatment of citizens and public officials, and the incompatibility of the crime of *desacato* with international human rights commitments.

65. For the Tribunal, *desacato* creates an unconstitutional situation of inequality of public officials and citizens, which in turns disproportionately affects the right to freedom of expression. For example, on examining the constitutionality of the criminal offense of defamation against a public official, the Constitutional Tribunal held that “the opportunity to allege, in the public interest, the commission of a crime and, fundamentally, acts of corruption, must be practically without restrictions. The ability to make those allegations must be guaranteed for all citizens, who cannot find their capacity to allege acts of corruption to be limited.”

66. In this regard, it emphasized that “the crime of *desacato* represents a disproportionate reaction to false allegations of the commission of crimes by public servants, as it means that a criminal complaint can only be brought against a public official when it is certain that a crime has been committed. This unnecessarily disincentivizes citizens from denouncing irregularities and prevents serious criminal investigations from being launched to corroborate or dismiss the complaints. This understanding [of *desacato* laws] does not mean leaving public servants defenseless when they are accused falsely of the commission of crimes.”

67. In this judgment, the Constitutional Tribunal recognized “the regional tendency of eliminating the aforementioned criminal offense, a trend that is also broadly supported by human rights bodies: fundamentally, on our continent, by the case law of the Inter-American Court of Human Rights and the work of the Inter-American Commission on Human Rights.” In this regard, it held that “maintaining this criminal offense in a domestic legal system not only represents a failure to comply with our international commitments, but also discredits democratic and legitimate governments in the eyes of the rest of the international community - of course, including the Plurinational Constitutional Tribunal itself - by raising unjustified suspicions regarding the violation of freedom of expression, an aspect that necessarily should be taken into consideration for finding the crime of *desacato* unconstitutional.”

6. Case law on the admissibility of limitations to freedom of expression: general framework

⁵⁷ Republic of Guatemala. Court of Constitutionality. Appellate Judgment of *Amparo*, Case file 4628-2009, of September 14, 2010. Available at: http://www.cc.gob.gt/siged2009/mdlWeb/fmConsultaWebVerDocumento.aspx?St_DocumentId=815146.html

⁵⁸ Plurinational State of Bolivia. Constitutional Tribunal. Action of Unconstitutionality Case file: 00130-2012-01-AIC Judgment 1250/2012 of September 20, 2012. Available at: http://www.tribunalconstitucional.gob.bo/moduleonver_resolucion/indexnew.php?id=125150

68. The Commission and the Inter-American Court have indicated that the right to freedom of expression is not absolute and can be subjected to certain limitations, according to subparagraphs 2, 4 and 5 of Article 13 of the American Convention. In order to be legitimate, those limitations must meet a series of specific conditions. Particularly, Article 13(2) requires that three basic conditions be met for a limitation on the right to freedom of expression to be admissible: 1) the limitation must be defined precisely and clearly in a law – in the formal and material sense, 2) the limitation must be oriented toward achieving the legitimate objectives authorized by the American Convention, and 3) the limitation must be necessary in a democratic society for achieving the legitimate aims that it seeks; strictly proportional to the aim pursued; and suitable for achieving the crucial objective that it seeks to achieve.⁵⁹

69. During the last decade, the highest courts in the region have explicitly incorporated inter-American precedents on the subject. This has been done, among other places, by the Court of Constitutionality of Guatemala, in previously cited ruling 1122-2005;⁶⁰ the Supreme Court of Justice of Argentina in *Patitó, José Ángel et al. v. Newspaper La Nación et al.*;⁶¹ the Plurinational Constitutional Tribunal of Bolivia,⁶² in its recent judgment of September 25, 2012; the Supreme Court of Justice of the Nation of Mexico; and the Constitutional Court of Colombia in its reiterated case law.⁶³ In their rulings, the courts extensively cite inter-American case law and scholarship, demonstrating its crucial role in the implementation of inter-American standards.

70. For example, in its previously-cited judgment of September 20, 2012,⁶⁴ the Plurinational Constitutional Tribunal of Bolivia found that the reasoning used by the Inter-American Court of Human Rights in the case of *Herrera Ulloa v. Costa Rica* as far as the requirements for establishing subsequent liability “must be used to interpret the Constitution” of Bolivia.

⁵⁹ IACHR, Office of the Special Rapporteur for Freedom of Expression. *Inter-American Legal Framework of the Right to Freedom of Expression*. OEA/Ser.L/V/II CIDH/RELE/INF. 2/09. December 30, 2009. Paras. 66 *et seq.* Available at: <http://www.oas.org/en/iachr/expression/doconpublicationonINTER-AMERICAN%20LEGAL%20FRAMEWORK%20OF%20THE%20RIGHT%20TO%20FREEDOM%20OF%20EXPRESSION%20FINAL%20PORTADA.pdf>

⁶⁰ In its judgment, the Court of Constitutionality indicated that “responsibility in the exercise of free expression of thought is supported in the framework of international human rights law, as set forth in the principles contained in Articles 13(2) of the American Convention on Human Rights and 19(3) of the International Covenant on Civil and Political Rights.”

⁶¹ In the judgment, the Supreme Court of Argentina indicated that “as held by the Inter-American Court of Human Rights in the case *Herrera Ulloa v. Costa Rica*”, the legality of restrictions placed on the freedom of expression contained in Article 13(2) of the American Convention on Human Rights turns on whether they seek to satisfy an imperative public interest.” The Court emphasized that “given various means of achieving this objective, the one that least restricts the right protected should be chosen. In light of this standard, it is insufficient to demonstrate, for example, that the law fulfills a useful or convenient purpose; in order to be compatible with the Convention, restrictions must be justified according to collective goals that, due to their importance, clearly prevail over the social need to enjoy to the fullest extent the right guaranteed by Article 13 and do not limit this right to a greater degree than is strictly necessary. That is, the restriction must be proportionate to the interest that it justifies and be narrowly tailored to reach this legitimate objective (Advisory Opinion 5/85, November 13, 1985, Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism; “Case of Herrera Ulloa v. Costa Rica”, Judgment of July 2, 2004; European Court of Human Rights, Case of “The Sunday Times v. United Kingdom”, Judgment of March 29, 1979, Series A, N° 30; “Barthold v. Germany”, Judgment of March 25, 1985, Series A. N° 90)”.

⁶² In this judgment, the Plurinational Constitutional Tribunal of Bolivia reiterates the holding in: I/A Court H.R. *Caso Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No. 107, paras. 113, 120.

⁶³ Republic of Colombia. Constitutional Court. Judgment T-391/07, of May 22, 2007. Available at: <http://www.corteconstitucional.gov.co/relatoria/2007/T-391-07.htm>; Constitutional Court of Colombia. Judgment C-442-11, May 25, 2011. Available at: <http://www.corteconstitucional.gov.co/relatoria/2011/C-442-11.htm>; Constitutional Court of Colombia. Judgment C-010/00, of January 19, 2000. Available at: <http://www.corteconstitucional.gov.co/relatoria/2000/C-010-00.htm>; Constitutional Court of Colombia. Judgment T-298/09, of April 23, 2009. Available at: <http://www.corteconstitucional.gov.co/relatoria/2009/T-298-09.htm>; Constitutional Court of Colombia. Judgment C-179-1994, April 13, 1994. Available at: <http://www.corteconstitucional.gov.co/relatoria/1994/C-179-94.htm>; Constitutional Court of Colombia. Judgment T-293-1994, of June 27, 1994. Available at: <http://www.corteconstitucional.gov.co/relatoria/1994/T-293-94.htm>; and Constitutional Court of Colombia. Judgment C-586-1995, of December 7, 1995. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normaonNorma1.jsp?i=4315>.

⁶⁴ Plurinational State of Bolivia. Constitutional Tribunal. Action of Unconstitutionality Case file: 00130-2012-01-AIC Judgment 1250/2012 of September 20, 2012. Available at: http://www.tribunalconstitucional.gob.bo/moduleonver_resolucion/indexnew.php?id=125150

71. Likewise, the Constitutional Court of Colombia has in a number of rulings explicitly recognized that “the general framework of admissible limitations to freedom of expression is provided by articles 19 of the International Covenant on Civil and Political Rights and 13 of the American Convention on Human Rights, which orient interpretation of Article 20 of the [Colombian Constitution] and other concordant law.”⁶⁵ Effectively, for the Colombian high court, “a close reading of these provisions reveals that in order to be constitutional, limitations on freedom of expression (in the strict sense), information and the press must meet the following basic requirements: (1) they must be established by law precisely and in a limited fashion; (2) they must seek to achieve certain crucial aims; (3) they must be necessary for achieving those aims; (4) they must be subsequent and not prior to the expression; (5) they must not constitute censorship in any of its forms, which includes the requirement to remain neutral regarding the content of the expression being limited; and (6) they must not interfere excessively with the exercise of this fundamental right.”⁶⁶

72. For this high court, “any legal or factual action, either general or specific in nature, that directly or indirectly limits the exercise of freedom of expression in any of its manifestations, carried out by any Colombian State authority, regardless of its rank or position within the State structure, must be considered a possible invasion of the exercise of this right, and therefore must be submitted to strict constitutional review for the purposes of determining if the requirements that make a State limitation on the exercise of this important freedom admissible have been met.”⁶⁷

73. Likewise, the Supreme Court of Justice of the Nation of Mexico has indicated repeatedly in its case law that “the general rule is that people can freely express their opinions without any limitation.”⁶⁸ In that sense, the court has found that in order to be considered legitimate, “restrictions on the right to freedom of expression and information must be established by law, seek the protection of one of the interests or rights protected by law under Article 13(2) of the American Convention, and meet the standards of reasonableness and proportionality.”⁶⁹

7. Case law on the need for limitations to be established clearly and precisely by law

74. Both the Commission and the Inter-American Court have held “that every limitation on freedom of expression must be established beforehand in a law and established explicitly, strictly, precisely and clearly, both substantively and procedurally. This means that the law’s text should clearly establish the grounds for subsequent liability to which the exercise of freedom of expression could be subjected.”⁷⁰ It has been emphasized that vague, ambiguous, broad or open-ended punitive laws, by their

⁶⁵ Republic of Colombia. Constitutional Court. Judgment T-298/09, of April 23, 2009. Available at: <http://www.corteconstitucional.gov.co/relatoria/2009/T-298-09.htm>; Republic of Colombia. Constitutional Court. Judgment T-391/07, of May 22, 2007. Available at: <http://www.corteconstitucional.gov.co/relatoria/2007/T-391-07.htm>

⁶⁶ Republic of Colombia. Constitutional Court. Judgment T-391/07, May 22, 2007. Available at: <http://www.corteconstitucional.gov.co/relatoria/2007/T-391-07.htm>. According to the Constitutional Court of Colombia, “[t]his presumption is *de facto* and allows for the submission of evidence to the contrary; nevertheless, the authority that establishes the limitation bears the burden of demonstrating that the strict constitutional requirements for establishing a limitation in this area are met.” In this sense, it explained that the presumptions impose three burdens on the authorities: (i) *the burden of definition*, which consists of defining the end that is pursued by restricting the freedom, the legal base for the restriction and the specific effect that the freedom could have on the legal interest that is sought to be protected by the limitation; (ii) *the burden of argument*, according to which the authority must demonstrate that the constitutional presumptions do not apply to the case; (iii) *the burden of proof*, by which the authorities must demonstrate the validity of the evidence that they present in order to justify restrictions on freedom of expression.

⁶⁷ Republic of Colombia. Constitutional Court. Judgment T-391/07, of May 22, 2007. Available at: <http://www.corteconstitucional.gov.co/relatoria/2007/T-391-07.htm>

⁶⁸ United States of Mexico. Supreme Court of Justice. Judgment of *Amparo* Appeal 248/2011, July 13, 2011. Available at: <http://www2.scjn.gob.mx/juridica/engroseoncerradoonpublico/11002480.002.doc>

⁶⁹ United States of Mexico. Supreme Court of Justice. Judgment of *Amparo* Appeal 248/2011, July 13, 2011. Available at: <http://www2.scjn.gob.mx/juridica/engroseoncerradoonpublico/11002480.002.doc>

⁷⁰ IACHR, Office of the Special Rapporteur for Freedom of Expression. *Inter-American Legal Framework of the Right to Freedom of Expression*. OEA/Ser.L/V/II CIDH/RELE/INF. 2/09. December 30, 2009. Para. 69. Available at: <http://www.oas.org/en/iachr/expression/doconpublicationonINTER->

mere existence, discourage the dissemination of information and opinions out of fear of punishment and can lead to broad judicial interpretations that unduly restrict freedom of expression.

75. In the cases *Kimel v. Argentina* and *Usón Ramírez v. Venezuela*, the Inter-American Court specified that “should the restrictions or limitations be of a criminal nature, it is also necessary to strictly meet the requirements of the criminal definition in order to adhere to the *nullum crimen nulla poena sine lege praevia* principle. Thus, they must be formulated previously, in an express, accurate, and restrictive manner. The legal system must afford legal certainty to the individuals,”⁷¹ especially when criminal law is the most severe and restrictive measure for establishing liability for illegal conduct.⁷² For the Inter-American Court, “this means a clear definition of the conduct in question that establishes its characteristics and allows for it to be differentiated from activity that is not punishable or from noncriminal illegal activity.”⁷³

76. The review of judgments contained hereinafter will examine closely not only the existence of a prior law as a basis for limitations to the right to freedom of expression, but also the degree of precision and clarity of its provisions as one of the essential aspects of this requirement.

77. For example, in its previously cited ruling T-391/07 of May 22, 2007,⁷⁴ the Constitutional Court of Colombia explained that “pursuant to applicable international human rights treaties and by virtue of the legality principle, limitations on freedom of expression must be established by law clearly, explicitly, in a restrictive manner, beforehand, and precisely, for which reason authorities establishing those restrictions outside legal authorization or without such authorization violate this constitutionally protected freedom.” According to this high court, “the degree of precision with which the corresponding laws are drafted must be sufficiently specific and clear to allow individuals to regulate their conduct in keeping with them. This requirement is identified with the prohibition on limiting freedom of expression with vague, ambiguous, broad or nonspecific legal mandates.” Although the court recognizes that it is impossible to reach a level of absolute certainty in the wording of laws, “the degree of precision, specificity and clarity in the legal definition of the limitation must be such that it avoids discrimination, persecution and arbitrary actions by the authorities in charge of enforcing the law in question.” On ruling on the action for protection, the Constitutional Court of Colombia found that the restriction under discussion was based on vague parameters whose specific content was not clarified by the judge who ordered the measure, such as “public morality,” the “defense of public patrimony,” the “cultural heritage of the nation,” “public safety,” “public health,” and the “rights of radio consumers and users in Colombia.”

78. The legitimacy of vague and ambiguous restrictions to freedom of expression had already been taken up by the Constitutional Court of Colombia in ruling C-010/00 of January 19, 2000,⁷⁵ which raised questions regarding a law ordering radio broadcasters to follow “ambiguous and nonexistent ‘universal dictates of decorum and good taste,’ as the order implies the predominance of certain world

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⁷¹ I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008. Series C No. 17, para. 63; *Case of Usón Ramírez v. Venezuela. Preliminary Exceptions, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207, para. 55.

⁷² I/A Court H.R. *Case of Usón Ramírez v. Venezuela. Preliminary Exceptions, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207, para. 55.

⁷³ I/A Court H.R. *Case of Usón Ramírez v. Venezuela. Preliminary Exceptions, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207, para. 55.

⁷⁴ Republic of Colombia. Constitutional Court. Judgment T-391/07, of May 22, 2007. Available at: <http://www.corteconstitucional.gov.co/relatoria/2007/T-391-07.htm>

⁷⁵ Republic of Colombia. Constitutional Court. Judgment C-010/00, of January 19, 2000. Available at: <http://www.corteconstitucional.gov.co/relatoria/2000/C-010-00.htm>

views over others.”⁷⁶ It expressed that these notions have to do with aesthetic criteria that is highly indeterminate and culturally relative, subject to *ex post facto* definition by the entities regulating radio frequencies, and that the law fails to recognize “the requirement that limitations to freedom of expression be established specifically, restrictively and beforehand, by law, as Article 13-2 of the Inter-American Convention (*sic*) and Article 19 of the International Covenant on Civil and Political Rights of the United Nations indicate.”

79. In that judgment, the Court also ruled unconstitutional the provision that prohibited a “haranguing, speechifying or declamatory tone” in radio broadcasts. For the court, “the enormous ambiguity that the application of this restriction would imply would place freedom of expression at excessive risk, without it being clear that the provision helps to achieve an important constitutional aim.” Thus, it highlighted that “even if one could eventually theoretically define what a haranguing, speechifying, or declamatory tone is, the practice of defining whether a specific broadcast should or should not be classified as having one or more of these features would be very problematic, as what is at issue is a classification of degree that is very difficult to specify. It is therefore not clear as of what level of vehemence or passion on the part of the speaker we would begin to see a tone that could be qualified as harassing or speechifying. For this reason, the definition of which content is punishable would be left to the subjective criteria of the authorities in charge of monitoring compliance with those regulations.”

80. Similarly, in a judgment dated June 21, 2012, the Supreme Court of the United States ruled in the cases of *FCC, et al. v. Fox Television Stations, Inc., et al., Petitioners v. Fox Television Stations, Inc. et al.* and the case of *FCC, et al., petitioners v. ABC, Inc., et al.*⁷⁷ that the provisions on the use of “fleeting expletives” that the Federal Communications Commission applied to issue fines to these networks and their affiliates were excessively vague from a constitutional point of view, which may have had a chilling effect on expression. In its analysis of the cases, the Court found that the history of Federal Communications Commission regulation makes it clear that the policy in force at the time of the broadcasts in question did not provide reasonable warning to Fox or ABC. In this regard, the Court recalled that according to the “void for vagueness” doctrine, a punishment or sanction does not provide due process if its legal basis does not give a “person of ordinary intelligence” reasonable warning regarding what is prohibited or is so standardless that it authorizes or invites arbitrary or discriminatory application.

81. Although the Supreme Court did not examine the First Amendment implications of the Federal Communications Commissions’ indecency policies, it indicated that “even when speech is not at issue, the void for vagueness doctrine addresses at least two connected but discrete due process concerns: first, that regulated parties should know what is required of them so they may act accordingly; second, precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way. When speech is involved, rigorous adherence to those requirements is necessary to ensure that ambiguity does not chill protected speech.”

82. As a corollary to this, in recent years some courts in the region have ruled specifically on the formulation of the crime of defamation [*injuria y calumnia*] in criminal codes and their compatibility with the fundamental *nullum crimen nulla poena sine lege praevia* principle and the right to freedom of expression. For example, in the judgment declaring Article 1 of the Press Law of the state of Guanajuato unconstitutional,⁷⁸ the Supreme Court of Justice of Mexico explained that when rules that establish subsequent liability “are criminal in nature and allow individuals to be deprived of property and fundamental rights - including, in some cases, their liberty - the requirements regarding [strict formulation

⁷⁶ Article 2. “Without prejudice to the freedom of information, broadcasting services should be designed to disseminate culture and affirm the essential values of the Colombian nationality. Radio programs must use the Castilian language properly and respect the universal standards of decorum and good taste.”

⁷⁷ United States of America. Supreme Court. *Federal Communications Commission, et al. v. Fox Television Stations, Inc.*, Opinion No. 10-1293 (2012). Available at: <http://www.supremecourt.gov/opinionon11pdf/10-1293f3e5.pdf>

⁷⁸ United States of Mexico. Supreme Court of Justice. Direct *Amparo* Appeal 2044-2008, of June 17, 2009. Available at: http://www2.scjn.gob.mx/juridica/engroseoncerradoonpublico/08020440_010.doc.

of the law] are even more vigorous.” On examining the facts of the specific case, it concluded that the provision that served as the basis for the criminal conviction in question⁷⁹ does not “satisfy the conditions of the restrictiveness that is part of the general *nullum crimen nulla poena sine lege praevia* principle, nor the requirement, functionally equivalent in this case, that every restriction of freedom of expression be established beforehand in a law with the status of statute, whose wording is clear and precise.”

83. In this regard, the Supreme Court explained that, first of all, there is “a patent lack of clarity [...] produced by the structurally defective construction of something that in our system [...] is subjected to strict requirements: the wording of a criminal offense.” Second, it found that some of the terms of the provision were obviously vague and excessive in scope, as they made reference to merely hypothetical damages and covered both direct violations of reputation, such as simple “discrediting,” and violations that individuals could suffer “to their interests.” For the Court, “the presence of this latter expression irredeemably blurs the interest or right that the legislators supposedly must protect from abusive exercises of freedom of expression and leaves the criminal offense completely open.”

84. Analogously, the Court of Constitutionality of Guatemala indicated in the aforementioned ruling of February 1, 2006, that the principle of legality in criminal matters is even more relevant in democratic systems when what is at issue is punishing “the carrying out of conduct that according to the spirit of a constitutional system cannot be punished as criminal.”⁸⁰

8. Case law on the need for limitations to be oriented toward achieving a legitimate aim recognized by the American Convention

85. The second condition that limitations on freedom of expression must meet according to the Convention is that they must be oriented toward achieving aims that are authorized by the Convention. Effectively, the American Convention narrowly establishes the aims that can serve as a basis for a legitimate limitation of freedom of expression, those being respect for the rights or reputations of others and the protection of national security, public order, or public health or morals. These are the only aims authorized. This is explained by the fact that the limitations must be necessary in order to achieve imperative public interests that, due to their importance in specific cases, clearly prevail over society’s need for full enjoyment of the freedom of expression protected by Article 13.

86. This Office of the Special Rapporteur has emphasized that States are not free to interpret the content of these aims however they wish in order to justify the limitation of freedom of expression in specific cases.⁸¹

87. With a similar tone, in previously-cited judgment T-391/07,⁸² the Constitutional Court of Colombia explained that in order to be legitimate, limitations on freedom of expression must “seek to accomplish certain imperative ends or aims that have been set forth in the abstract in applicable treaties - the protection of the rights of others, protection of security and public order, protection of public health and protection of public morals - but that the limitations must be specific and set forth by law.”

⁷⁹ United States of Mexico. Article 1 of the Press Law of Guanajuato. Available at: <http://docs.mexico.justia.com/estataleonguanajuato/ley-de-imprenta-del-estado-de-guanajuato.pdf>

⁸⁰ Republic of Guatemala. Court of Constitutionality. Judgment of General Partial Unconstitutionality, Case file 1122-2005, February 1, 2006. Available at: http://www.cc.gob.gt/siged2009/mdlWeb/frmConsultaWebVerDocumento.aspx?St_DocumentId=807270.html

⁸¹ IACHR, Office of the Special Rapporteur for Freedom of Expression. *Inter-American Legal Framework of the Right to Freedom of Expression*. OEA/Ser.L/V/III CIDH/RELE/INF. 2/09. December 30, 2009. Para. 75. Available at: <http://www.oas.org/en/iachr/expression/doc/publication/INTER-AMERICAN%20LEGAL%20FRAMEWORK%20OF%20THE%20RIGHT%20TO%20FREEDOM%20OF%20EXPRESSION%20FINAL%20PORTADA.pdf>

⁸² Republic of Colombia. Constitutional Court. Judgment T-391/07, of May 22, 2007. Available at: <http://www.corteconstitucional.gov.co/relatoria/2007/T-391-07.htm>

88. In this regard, the Court observed that these ends (a) must be subjected to strict interpretation in order to maximize the range of freedom of expression; (b) the list of aims must be a restrictive one, outside of which there are no additional justifications or aims for limiting freedom of expression; (c) in harmony with the principle of legality, it is not enough to invoke aims in the abstract to justify a particular limitation; it must be demonstrated in each specific case that the elements exist to conclude that a specific and imperative public interest effectively exists; (d) it must be compatible with the essential principles of a democratic society and social rule of law, and (e) it must be compatible with the principle of human dignity.

89. In the case in question, the Court specified that “it is not enough to limit the broadcasting of sexually explicit expression with the mere invocation of “public morality” - a very vague concept - without specifying the form this takes in this particular case as far as a specific interest deserving of constitutional protection. Nor can broadcasts be restricted based on a mention of the “rights of children” in the abstract, without closely and strictly bearing the burden of proof of demonstrating both the predominant presence of children in the audience to a particular expression and the damage that they have suffered or could clearly suffer by virtue of that expression.”

9. Case law on the requirement that the limitation must be necessary in a democratic society, suitable for achieving the imperative aim that it seeks to achieve, and strictly proportional to the end sought

90. Inter-American case law has been emphatic in the sense that States that place limitations on freedom of expression are required to demonstrate that the limitations are necessary in a democratic society for achieving the imperative aims that they seek. In this sense, it has specified that in order for a restriction to be legitimate, it must clearly establish the true and imperative need for establishing a limitation: that is, that the aim cannot be reasonably achieved by means that are less restrictive to human rights, which in turn suggests that the means of restriction is in reality the least burdensome available. In addition, it has established that any limitation to the right to freedom of expression must be a suitable instrument for achieving the end sought through its imposition - that is, it must be a measure that effectively leads to achieving the legitimate and imperative aims pursued.

91. But restrictions to freedom of expression must be more than suitable and necessary. In addition, they must be strictly proportional to the legitimate aim that justifies them, and they must hew strictly to achieving that aim, interfering as little as possible in the legitimate exercise of that freedom.⁸³ According to the Inter-American Court, in order to establish the proportionality of a restriction that limits freedom of expression with the aim of preserving other rights, three factors must be evaluated: (i) the degree to which the other right is affected - greatly, intermediately, moderately; (ii) the importance of ensuring the other right; and (iii) if ensuring the other right justifies restriction of freedom of expression. There are no *a priori* answers or formulas for general application in this area: the result of the balance struck will be different in each case, in some cases giving precedence to freedom of expression, in others to the other right.⁸⁴ If subsequent liability applied in a specific case turns out to be disproportionate or does not serve the interests of justice, Article 13(2) of the American Convention has been violated.⁸⁵

⁸³ I/A Court H.R. *Case of Eduardo Kimel v. Argentina*. Judgment of May 2, 2008. Series C No.177, para. 83; *Case of Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Series C No. 135, para. 85; *Caso Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No. 107, para. 123; *The Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 of the American Convention on Human Rights). Advisory Opinion 5/85 of November 13, 1985. Series A No. 5, para. 46; IACHR. Pleadings before the Inter-American Court of Human Rights in the *Case of Herrera Ulloa v. Costa Rica*. Transcribed in: I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No. 107, para. 101.1.B).

⁸⁴ I/A Court H.R. *Case of Kimel v. Argentina*. Judgment of May 2, 2008. Series C No. 177, para. 84.

⁸⁵ IACHR, Office of the Special Rapporteur for Freedom of Expression. *Inter-American Legal Framework of the Right to Freedom of Expression*. OEA/Ser.L/V/II CIDH/RELE/INF. 2/09. December 30, 2009. Paras. 84-89. Available at: <http://www.oas.org/en/iachr/expression/doconpublication/INTER-AMERICAN%20LEGAL%20FRAMEWORK%20OF%20THE%20RIGHT%20TO%20FREEDOM%20OF%20EXPRESSION%20FINAL%20PORTADA.pdf>

92. In harmony with this, a number of judgments from the Constitutional Court of Colombia have explained that pursuant to international treaties, “the third requirement established in order for limitations on freedom of expression to be acceptable [...] is that they must be necessary and proportional for achieving the aim pursued.”⁸⁶ In a number of its rulings, the Court has found legal provisions, administrative actions and court orders to be in violation of the Constitution for failing to meet this requirement.

93. For example, in previously cited ruling C-010/00,⁸⁷ the Court found a number of provisions of Law 74 of 1966, on radio broadcasting, to be unconstitutional after subjecting them to a strict examination of proportionality pursuant to the requirements established by the country’s Constitution and the American Convention. First, the high court observed that a provision that prohibits certain types of expression on the radio may seek a constitutionally significant aim, such as preventing the disturbance of public order, but it would not be constitutional solely for this reason. The Court explained that the measure must also be suitable and proportional on pursuing that aim. In this regard, it emphasized that “in order for the limitations to be legitimate, it is necessary, pursuant to the terms of the Inter-American Court, for the restriction not only to hew closely to achieving that aim, but that in addition, that the restriction be the one that places the least limitation on freedom of expression.”

94. In the specific case in question, the Constitutional Court found that a provision that prohibits radio broadcasts with a “haranguing, speechifying or declamatory tone” does not meet this standard, as “one could call on listeners in a heated and emphatic tone to respect public order and obey laws, meaning the provision would exclude completely innocuous speech.” A provision prohibiting journalistic or news programs on the radio from portraying another person through imitation of that person’s voice also does not meet this standard. The Court indicated that although the prohibition in question is a clear and narrow restriction, “it restricts freedom of expression beyond what is strictly necessary to ensure the truth of the news.” It explained that “those programs could include a section, clearly differentiated from the presentation of the news, in which imitations and parodies of some personality are used in a critical or humorous way. Under those conditions, and as long as the media outlet takes the necessary measures to prevent causing any confusion for the listener, the Court finds that the absolute prohibition of voice imitations is excessive, even for these programs.”

95. Finally, on examining the legitimacy of a law that bans broadcasting person-to-person messages over the radio, such as greetings and dedications, the Court expressed that it could not find a constitutional interest of great importance to justify it. On one hand, it considered an argument according to which the ban seeks to ensure “greater seriousness among broadcasters on preventing the dissemination of banal, capricious or colloquial messages over the radio.” Regarding this, the Court found that “this aim is not sufficiently constitutionally relevant for authorizing a general legal restriction of freedom of expression, as established in the law being challenged.” On the other hand, it weighed an argument according to which this prohibition protected the reputation of individuals and the public order. Although it recognized that the aims were legitimate in this case and of sufficient constitutional importance to authorize a restriction of radio freedom, it emphasized that “in no way is it clear that a general ban on broadcasting these interpersonal messages constitutes a proportional and necessary measure for achieving these aims, given that not only is the prohibition absolute, meaning that totally innocuous and banal communications are unjustly excluded, but also, the law could establish more effective measures that are less harmful to freedom of expression in order to protect these same constitutional rights.”

⁸⁶ Republic of Colombia. Constitutional Court. Judgment C-417/09, June 26, 2009. Available at: <http://www.corteconstitucional.gov.co/relatoria/2009/C-417-09.htm>

⁸⁷ Republic of Colombia. Constitutional Court. Judgment C-010/00, January 19, 2000. Available at: <http://www.corteconstitucional.gov.co/relatoria/2000/C-010-00.htm>

96. Another case relevant for the application of a balance of proportionality can be found in judgment, C-417/09 of June 26, 2009,⁸⁸ in which the Constitutional Court of Colombia used the standards developed previously to examine the legitimacy of a provision of the Penal Code that restricted individuals accused of defamation [*calumnia*] from exercising the *exceptio veritatis*. The provision in question prevented the judge from admitting evidence regarding the veracity of the imputation of a sanctionable conduct that has been the subject of a judgment of acquittal, termination of investigation or dismissal of the charges.⁸⁹ The Constitutional Court found that as the issue involves a fundamental right that is especially valuable for the Colombian constitutional system, as is the right to freedom of expression and information, a more strict and intense balance of proportionality must be applied. In its ruling, the Court indicated that in these kinds of balances, it is not enough to establish that the measure is legitimate, apt and effectively leads to achieving the proposed aim: “one also must also study whether the provision is necessary and strictly proportional.”

97. The judgment found that the provision under examination had a legitimate aim from a constitutional perspective, as it sought to protect fundamental rights like honor and good name. In addition, the provision was adequate and even effectively led to achieving that aim. However, the Court found that the balance of proportionality related with necessity and strict proportionality led to a different conclusion. After noting that other legal measures existed that were sufficient and pertinent for achieving the legitimate aim sought, the Court then stated the following:

“The measure taken by the provision is neither imperative, nor useful; in contrast, it is extremely burdensome for freedom of expression. *Exceptio veritatis* frees a plaintiff accused of the crime of defamation [*calumnia o injuria*] of criminal liability when that person demonstrates that the statements were true. Specifically, what distinguishes the provision under review is that it excludes these grounds for exemption even for situations in which the person accused of the crime of defamation [*calumnia*] demonstrates the truth of his or her statements. [...] That is, according to the provision under review, for cases in which a final ruling has been handed down by the criminal justice system, the only possible route is forgetting, independent of the conduct a person has been accused of and its seriousness for the legal system and the functioning of national institutions.

Evidently, this represents a radical limitation to freedom of expression that, given the preeminent character of this right, cannot be accepted from a constitutional perspective. Therefore, the conclusion is that the provision under review does not cross the threshold of necessity, as it employs an excessive measure for protecting honor and good name, and, from that substantive point of view, the principles of *res judicata* and legal certainty, abolishing in practice the freedom of expression and information for the cases in question. That is, in the words of the Inter-American Court of Human Rights, which have been taken up by this constitutional court, the provision does not meet the requirement of providing for a measure “interfere to the least extent possible with the effective exercise of the right.”

10. Case law on subsequent civil liability

⁸⁸ Republic of Colombia. Constitutional Court. Judgment C-417/09, June 26, 2009. Available at: <http://www.corteconstitucional.gov.co/relatoria/2009/C-417-09.htm>. Similarly, in Judgment T-391/07 the Constitutional Court of Colombia further developed the criteria according to which the constitutional judge must perform the strict proportionality test in these cases.

⁸⁹ The provision examined is Article 224(1) of the Criminal Code, according to which:

“Article 224. Defenses. Criminal responsibility will not result from the conduct described in the preceding articles if the truth of the imputations is proven.

However, no proof will be admitted:

1. Regarding the imputation of any sanctionable conduct that has been the subject of a judgment of acquittal, termination of investigation or dismissal of the charges or the equivalent, unless it is due to the prescription of the cause of action, and

2. Regarding the imputation of conduct that involves sexual, romantic, marital or family life, or the victim of a crime against liberty and sexual integrity.

98. As far the imposition of subsequent liability through civil sanctions, the Inter-American Court established in the case of *Tristán Donoso v. Panamá* that these could be just as intimidating and have just as much of a chilling effect on the exercise of freedom of expression as a criminal sanction. In this regard, it observed that “the fear of a civil penalty, considering the claim [...] for a very steep civil reparation, may be, in any case, equally or more intimidating and inhibiting for the exercise of freedom of expression than a criminal punishment, since it has the potential to attain the personal and family life of an individual who accuses a public official, with the evident and very negative result of self-censorship both in the affected party and in other potential critics of the actions taken by a public official.”⁹⁰

99. In a judgment dated April 30, 2009, the Supreme Federal Tribunal of Brazil found after examining the unconstitutionality of the Press Act passed during the military regime that the rewarding of excessive pecuniary indemnities against media outlets can constitute in itself a powerful inhibiting influence on freedom of expression. For the tribunal indemnities of this kind violate the proportionality principle of restrictions and are therefore a violation of freedom of expression. In this sense, it found that “the magistrate must take into account that every conviction of a media outlet, in whatever form it may take or tool it may use, inhibits the future exercise of freedom of expression and therefore reduces the possibility of moving forward in democratic learning.”

11. Case law on the special protection of opinions and the nonexistence of a crime of opinion

100. As inter-American scholarship and case law have specified, “truthfulness or falseness may only be established in respect of facts, not opinions.”⁹¹ Consequently, no one can be held liable for a simple opinion about a person or particular fact.⁹²

101. The Supreme Court of Justice of Argentina ruled similarly in a October 30, 2012, judgment in the case of *Quantín, Norberto Julio v. Benedetti, Jorge Enrique et al on derechos personalísimos*. In that ruling, the high court granted constitutional protection to the broadcasting of opinions over the radio that, although potentially considered shocking or painful for the listener, must be tolerated for the purposes of fostering broad and democratic debate in society.

102. In the case, the Supreme Court examined through an extraordinary remedy the legitimacy of a civil damages award for the broadcast of expression that was allegedly defamatory [*injuriosas y calumniosas*] toward a former public official. The first thing that the high court observed was that it was necessary to specify whether what was at issue was expression in which “priority is given to the statement of facts (factual assertions) or if on the contrary, one is in the presence of expression in which ideas, opinions, critical or value judgments, or, why not, conjectures and hypotheses are what predominate.”⁹³ In this regard, it held that the expression could be guilty of serious hyperbole without making accusations “of any specific illegal fact and that, therefore, the expression cannot be subjected to a test of veracity. Thus one is limited to attributing a certain ideology” to the author; the court reiterated

⁹⁰ I/A Court H.R. *Case of Tristán Donoso v. Panamá*. Preliminary Exception, Merits, Reparations and Costs. Judgment of January 27, 2009 Series C No. 193, para. 129.

⁹¹ I/A Court H.R. *Case of Kimele v. Argentina*. Judgment of May 2, 2008. Series C No. 177, para. 93; *Case of Tristán Donoso v. Panamá*. Preliminary Exception, Merits, Reparations and Costs. Judgment of January 27, 2009 Series C No. 193, para.124.

⁹² IACHR, Office of the Special Rapporteur for Freedom of Expression. *Inter-American Legal Framework of the Right to Freedom of Expression*. OEA/Ser.LV/II CIDH/RELE/INF. 2/09. December 30, 2009. Para. 109. Available at: <http://www.oas.org/en/iachr/expression/doconpublicationonINTER-AMERICAN%20LEGAL%20FRAMEWORK%20OF%20THE%20RIGHT%20TO%20FREEDOM%20OF%20EXPRESSION%20FINAL%20PORTADA.pdf>

⁹³ Republic of Argentina. Supreme Court of Justice. Judgment of October 30, 2012, “Quantín, Norberto Julio v. Benedetti, Jorge Enrique et al. on derechos personalísimos”. Available at: <http://www.csjn.gov.ar/confal/ConsultaCompletaFallos.do?method=verDocumentos&id=693527>

that, pursuant to inter-American case law, on issues of public interest, freedom of expression protects the expression of ideas that “shock, irritate or upset public officials or any sector of the population.”⁹⁴

103. With that same structure of ideas, the Constitutional Chamber of the Supreme Court of Costa Rica⁹⁵ has emphasized in a number of judgments that the right to correction and reply is granted only in response to the dissemination of newsworthy or factual information considered to be inaccurate and damaging, and not with regard to “personal ideas or opinions held by their author - good or bad, and whether or not they are shared - and whose free expression is also protected by constitutional law.” On the same subject, individual criminal court judge of Paraguay Manuel Aguirre Rodas, in a judgment dated June 30, 2011, acquitted a journalist accused of the crime of defamation [*injuria y calumnia*], on finding that the news item, which referred to allegations of political corruption, contained opinions based on verifiable documents and sources, which did not merit a sanction⁹⁶.

12. Case law on the application of the principle of “actual malice” when establishing subsequent liability

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

105. The Inter-American Court has taken the opportunity to rule on the application of the standard of “actual malice.” Thus for example, in the case of *Usón Ramírez v. Venezuela*, the Inter-American Court found that the statements for which Usón was convicted had been formulated

⁹⁴ Republic of Argentina. Supreme Court of Justice. Judgment of October 30, 2012, “Quantín, Norberto Julio v. Benedetti, Jorge Enrique et al. on derechos personalísimos”. Available at: <http://www.csjn.gov.ar/confal/ConsultaCompletaFallos.do?method=verDocumentos&id=693527>. The Constitutional Court of Colombia has also examined the different treatment that should be accorded to opinions or value judgments. In the previously cited judgment 417/09 of June 26, 2009, the Court indicated generally that “an opinion, unless it is expressed with the express and effective purpose of offending and causing real harm to persons or unless it involves the inclusion of speech that is not protected, ... is and must be free, because in a democratic and pluralistic State founded upon the dignity of the human being, *inter alia*, taking into account that an opinion consists of a point of view, a judgment, a perception of reality derived from the exercise of other fundamental liberties such as thought, conscience and religion, and must be the subject of broad respect and protection, even when it contains expressions that are considered ungracious, offensive or disturbing for the State or for others. That is to say that in contrast to the affirmation of facts that are presented by means of the exercise of freedom of information or the press, which are seen as having factual support, complying with the constitutional requirements of truth and impartiality or social responsibility in the case of the communications media, an opinion is an idea, an appearance or a way of seeing the world, and if it is found to be unjust or impertinente, it should be fought with other opinions or appearances, and not with sanctions of any kind, least of all criminal.” Constitutional Court of Colombia. Judgment C-417/09, of June 26, 2009. Available at: <http://www.corteconstitucional.gov.co/relatoria/2009/C-417-09.htm>

⁹⁵ Republic of Costa Rica. Constitutional Chamber of the Supreme Court of Justice. Judgment of November 7, 2002, issued in a remedy of *amparo* filed by Roberto Hernández González against the newspaper *La Nación* and Edgar Espinoza. Available at: http://200.91.68.20/pj/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=TSS&nValor1=1&nValor2=221646&strTipM=T&strDirSel=directo

⁹⁶ Individual Tribunal of the Republic of Paraguay. Presiding Judge Manuel Aguirre Rodas. June, 30 2011. Case Sandra López Curtido on difamación et al. S.D.N. No. 41. Available at: <http://archivo.abc.com.py/descargables/sd-sandra-lopez262.pdf>; See also: Instituto Prensa y Sociedad (IPYS). July 1, 2011. *Paraguay: Absuelven a periodista acusada de difamación por empresaria*. Available at: <http://www.ipys.org/index.php?q=noticia/695>; ABC. July 1, 2011. *Magistrado absuelve a periodista y ratifica libertad de prensa y opinión*; Available at: <http://www.abc.com.py/nota/magistrado-absuelve-a-periodista-y-ratifica-libertad-de-prensa-y-opinion/>; ABC. June 29, 2011. *Abogados de Zuni pidieron pena de dos años y medio contra periodista*; Available at: <http://www.abc.com.py/nota/abogados-de-zuni-solicitaron-pena-de-dos-anos-y-medio-contra-periodista/>; Paraguay.com. June 30, 2011. *Sandra López: “Con el fallo ganó la libertad de expresión”*. Available at: <http://www.paraguay.com/nacionales/sandra-lopez-con-el-fallo-gano-la-libertad-de-expresion-72501>

conditionally, and as a consequence could not be understood as an expression intended to cause damage: “[i]n this case, when conditioning his opinion in such a way, it is clear that Mr. Usón Ramírez was not stating that a premeditated crime had been committed, but that in his opinion such a crime seemed to have been committed in case the hypothesis about the use of the flamethrower was true. An opinion conditioned in such a way cannot be subjected elements which question veracity. Furthermore, the above shows that Mr. Usón Ramírez lacked any specific intention to insult, offend, or disparage since if he had had the intent to do so, he would not have conditioned his opinion in such a way.”⁹⁷

106. In harmony with this, in cases of subsequent liability, senior courts in the region have used this standard when evaluating whether someone is individually liable for the publication of information that is in the public interest. For example, in the previously-cited judgment of June 28, 2008, the Supreme Court of Justice of Argentina noted in the case of *Patitó, José Ángel et al. v. Diario La Nación et al.*⁹⁸ that it has incorporated into its case law “the principle of actual malice, and not the test of truth as adequate protection of freedom of expression” when what is at issue is the publication of expression that may have negative effects on the reputation of persons connected with public issues. Effectively, in this ruling, the high court reiterated its settled case law in the sense that “with regard to information referring to public officials, public figures, or private individuals who have participated in public issues, when the news item contains false or inaccurate expressions, those who consider themselves affected must demonstrate that those who made the expression or accusation knew the news item was false and acted with the knowledge that it was false or with evident recklessness with regard to its veracity.”

107. The Supreme Court explained that “the principle of actual malice, in contrast to the test of veracity, does not operate based on the objective truth or falsehood of expression, given that it is applied when it is already accepted that the truth of the statements at issue cannot be proven, or when the statements are erroneous, or even false. What is subject to discussion and proof, if actual malice is at issue, is whatever knowledge that the journalist or media outlet had (or should have had) of the falsehood or possible falsehood. This is the first difference, and an important one. The second difference, no less important, is that the specific content of the subjective factor to which the concept of actual malice alludes (knowledge of the falsehood or negligent indifference regarding the possibility of falsehood) cannot be presumed to be the case; rather, it must be proven with evidence by the person bringing suit against the journalist or media outlet.”

108. In this ruling, the Supreme Court expressed that the principle of actual malice is based on the recognition of the role that investigative journalism plays in public matters in a democratic system. According to the court, “excessive rigor and intolerance of error would lead to self-censorship, depriving the citizenry of the crucial information necessary for making decisions about their representatives.” Based on these considerations, the Court concluded that on having failed to apply this principle in the case in question, “the space necessary for the development of broad and robust public debate on subjects of general interest and that has been guaranteed by Article 14 of the National Constitution was unacceptably restricted.” This standard was repeated in a later ruling handed down on May 19, 2010, in the case of *Di Salvo, Miguel Ángel v. Diario La Mañana on daños y perjuicios.*⁹⁹

109. Likewise, the First Chamber of the Mexican Supreme Court of Justice found in a judgment dated June 17, 2009,¹⁰⁰ that the standard of malice “requires expression that allegedly causes

⁹⁷ I/A Court H.R. *Case of Usón Ramírez v. Venezuela*. Preliminary Exception, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207. Para. 86.

⁹⁸ Republic of Argentina. Supreme Court of Justice. Judgment of June 24, 2008, P.2297.XL, *Patitó, José Ángel et al. v. Diario La Nación et al.*. Available at: <http://www.cpi.org/newon2008/americas/Argentina.Court.24-06-08.pdf>

⁹⁹ Republic of Argentina. Supreme Court of Justice. Judgment of May 19, 2010, D 281 XLIII, *Di Salvo, Miguel Ángel v. Diario La Mañana on daños y perjuicios*. Available at: http://www.csjn.gov.ar/expcon/documentoonCasefileoncons_expe.jsp

¹⁰⁰ United States of Mexico. Supreme Court of Justice. Direct *Amparo* Appeal 2044-2008, June 17, 2009. Available at: http://www2.scjn.gob.mx/juridica/engroseoncerradoonpublico/08020440_010.doc.

damage to the reputation of a public official to have been issued with the intention of causing that damage, with the knowledge that the facts being disseminated were false, or with clear negligence regarding the review of apparent veracity or lack of veracity of the facts. Otherwise, individuals could be gripped by the fear of completely accidentally committing a violation and becoming liable for the issuing of expression or information, which could directly or indirectly lead to abruptly restricting the exercise of their rights to express themselves or inform.”

110. The Permanent Criminal Chamber of the Supreme Court of Justice of Peru explained that “meddling with the reputation or the right to honor of a politician or a public official - whose position is political in nature - subject to appointment by a political body or not - in the exercise of political authority will be legitimate [...] as long as the facts, which entail matters of public or general interest, are true - understood as subjective veracity: knowledge of the falsehood of what was expressed or later knowledge that the fact being alleged is false (specific intent and willful ignorance, respectively) - and that, where appropriate, the judgment calls have sufficient factual basis.”¹⁰¹ In this regard, it recalled that when what is at issue is expression directed at public officials exercising their public authorities, the limitations on the right to freedom of expression must be interpreted restrictively.

111. Another case that is illustrative in its application of the doctrine of “actual malice” can be found in judgment No. 161 handed down on June 2, 2010, by the Criminal Appeals Court of Uruguay.¹⁰² In this ruling, the Tribunal overturned the conviction of the managing director of weekly *Tres Puntos*, in Paysandú, for the crime of defamation that had been based on two articles raising questions about connections between regional police and acts of corruption. According to the Tribunal, the facts must be examined “according to the ‘actual malice’ of the author of the article, which is what is legally required in order to cross the threshold of criminal responsibility.” In this regard, it found that the accusation was exempt from liability, as pursuant to this doctrine, “the news items do not reflect and the plaintiff has not proven - in keeping with his burden of proof under the law - that the author intended to offend anyone or violate their privacy.” For the tribunal, “the journalist divulged information about the public official that appeared plausible according to the evidence and in addition, there is no indication of any intention to discredit the official or violate his privacy with actual malice.” Finally, the Tribunal expressed that on issues in the public interest, the legal system in force in that country places the burden on the plaintiff to prove that the journalists acted with knowledge that the fact attributed was false or with the sole purpose of insulting the person or violating his privacy.

112. The 17th Criminal Circuit Court of the First Circuit in Panama ruled similarly in judgment No. 13 of July 17, 2012¹⁰³, whereby it acquitted three journalists accused of the crime of defamation [*injuria y calumnia*] for expression issued to the alleged detriment of the honor of an official of the Panama National Police. In its ruling, the Court indicated that the journalists “did not act with actual malice, as there is no indication of a reckless disregard for the truth.”

13. Case law on the application of the principle of fair (or neutral) reporting

113. The ruling of the Inter-American Court in the case of *Herrera Ulloa v. Costa Rica* introduces the principle of “neutral reporting” or “fair reporting” to the inter-American system. According to this principle, those who disseminate a news item that is limited to copying statements or information from third parties will not be subjected to tests of veracity, as long as the source is cited. In the case in question, the journalist was criminally convicted because according to the judge ruling on the case, he

¹⁰¹ Republic of Peru. Permanent Criminal Chamber of the Supreme Court of Justice. Judgment of June 18, 2010. RN No. 1372/2010. Available at: <http://www.pj.gob.pe/wponwcm/connect/fdec1e004bf42509a767b73aa702a2d1/SPP+R.N.+N%C2%BA+1372-2010+-+Amazonas.pdf?MOD=AJPERES&CACHEID=fdec1e004bf42509a767b73aa702a2d1>

¹⁰² Oriental Republic of Uruguay. Court of Criminal Appeals. Judgment No. 161 of July 12, 2010. Case files: COELHO *JURIOL*—Ricardo José. *Denuncia Ley 16.099 v. MORALES BARTABURO, Rodrigo*. I.U.E.: 30257/2009.

¹⁰³ Republic of Panama. Seventeenth Court of the First Criminal Circuit of Panama. Judgment of Acquittal No. 13 of July 17, 2012.

was not able to prove the truth of facts narrated in his articles that referred to the conduct of a public official abroad, even though the news item was a faithful reproduction of content from a number of different European newspapers.¹⁰⁴ In its ruling, the Inter-American Court found that the conviction of journalist Herrera Ulloa constituted an excessive limitation of freedom of expression, as the news item disseminated by him had been faithfully attributed to a source.

114. In a judgment dated October 11, 2011, the Temporary Criminal Chamber of the Supreme Court of Justice of Peru¹⁰⁵ acquitted a journalist of the crime of aggravated defamation and fully annulled the July 27, 2011, judgment of the Superior Court of Ucayali upholding a conviction. The journalist had been convicted and sentenced to 18 months in prison and payment of 20,000 *nuevos soles* in civil damages (about US\$7,400). In its ruling, the Criminal Chamber indicated that “what the defendant did [...] was disseminate something that had already been previously disseminated. In the scholarship, the aforementioned conduct is known as neutral reportage.” Regarding this, it explained that “scholarship on the issue indicates that there is no liability when: 1) the individual issuing the expression limits him or herself to disseminating content that has already been disseminated, 2) the media outlet that previously disseminated the news item is identified, and 3) what is being repeated is not distorted.”

115. On ruling in the case in question, it held that “in sum, it is not that the defendant before the court has accused the citizen [...] of committing criminal acts; to think this would be irrational if one takes into account that the citizen has already been brought to trial for the facts indicated in the publication, and that the publication even indicates this using underlined sections of text corresponding to links on the internet that according to the defendant would take us to the source of the information from which the information in the news item related with the plaintiff was taken, having [...] faithfully reported what appeared in previous publications.” Based on this, it concluded that “the defendant has made proper use of his right to inform through neutral reportage - that is, he has not surpassed the limits imposed on this fundamental right, in the sense that the defendant’s right to honor has not been affected, as his status as a politician holding state office subjects him to a degree of criticism.”

116. On referring to the publication of information on a private individual based on information provided by an official source, the Supreme Court of New Jersey ruled that the “fair-report privilege” protects journalists who have provided accurate information regarding official documents such as court records and final judgments. Thus, in a judgment dated May 11, 2010, in the case of *Salzano v. North Jersey Media Group*,¹⁰⁶ the Court explained that in general terms, “one such privilege is accorded to the publication of defamatory matter concerning another in a report of an official action or proceeding, or of a meeting open to the public that deals with a matter of public concern”. Accordingly, “if the publication, in fact, satisfies that standard, the state of mind of the publisher is irrelevant [...] and thus, immune from a defamation suit because of the fair-report privilege”.

117. According to this line of reasoning, it found that the “fair-report privilege” also applies to briefs filed in any court action related to the proceedings. In this regard, it specified that “we are convinced that the public policy underpinning of the fair-report privilege—advancement of the public’s interest in the free flow of information about official actions—would be thwarted by the recognition of the initial pleadings exception. A full, fair, and accurate report regarding a public document that marks the commencement of a judicial proceeding deserves the protection of the privilege”.

¹⁰⁴ I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No. 107. Paras. 131-133.

¹⁰⁵ Republic of Peru. Transitory Criminal Chamber of the Supreme Court of Justice. October 11, 2011 (R.N. No. 2436-11). Available at: http://historico.pj.gob.pe/CorteSuprema/documentoonSPT_R_N_N_2436_2011_UCAYALI.pdf

¹⁰⁶ United States of America. Supreme Court of New Jersey. *Salzano v. North Jersey Media Group*. Judgment of May 11, 2010. Available at: http://www.aclu-nj.org/download_file/view_inline/65/391/

118. The Supreme Court of Justice of Argentina ruled in a similar sense in the case of *Canavesi, Eduardo Joaquín et al. v. el Diario 'El Día' Soc. Impr. Platense SACI on daños y perjuicios*¹⁰⁷, brought against newspaper *El Día* in the city of La Plata for having published false information on a private individual based on information provided by an official source. In a brief judgment handed down on June 8, 2010, the Supreme Court overturned the ruling against the newspaper, indicating that “it shares and adopts the reasoning and conclusions put forth in the report by the Public Prosecutor which shall be remitted for reasons of brevity.” In that report, the prosecutor held that, “the simple reproduction of news provided for distribution by public authorities does not, even when false, cross beyond what is the regular exercise of the right to report, as the status of the source excuses the press from having to confirm the truth of the facts, and because prior confirmation of the news under these circumstances would limit this right, establishing a true restriction on the freedom of information. These are the circumstances in place in the case under adjudication.” In this regard, it recalled that based on the case law of that high court in the case of Campillay, “the journalistic medium is exempt from liability when it faithfully attributes a news item to a source - as happened in this case - given that the news therein ceases to be its own. In addition, it has found that when this standard is adopted, the origin of information becomes transparent, allowing readers to connect it not with the medium through which the information has been received, but with the specific source generating it. This is beneficial for those affected by the information, as their eventual complaints - if they believe they have a right to raise them - can be directed against those who truly issued the news item, and not against those who simply provided a channel for distribution.”¹⁰⁸

119. The Third Criminal Chamber of the First Section of the Center of El Salvador followed a similar line of reasoning in a judgment dated July 22, 2011. In that ruling, the Chamber rejected a suit against three directors and a journalist of the newspaper *La Prensa Gráfica* for the crime of defamation [*calumnia*]. The suit had been brought by a member of the military named in a news item published on November 30, 2010. The Chamber found that there was no harmful intent in the publication and ruled that it was transmitting information from third parties. The case began when *La Prensa Gráfica* published that unidentified sources of the Drug Enforcement Agency (DEA) of the United States and the National Civilian Police of El Salvador had revealed the names of two soldiers - one on active duty and the other retired - being investigated for alleged connections with organized crime.

14. Case law on the liability of intermediaries on the Internet and the application of the principle of “mere conduit”

120. In their Joint Declaration on Freedom of Expression and the Internet (2011), the special rapporteurs for freedom of expression of the UN, the OSCE, the OAS and the African Commission rejected attempts by some States to hold actors considered to be intermediaries in the provision of Internet services liable for damaging or illegal Internet content.¹⁰⁹ This includes a broad range of actors who participate as intermediaries on the Internet - and provide services such as access to Internet connections, transmission, processing and routing of Internet traffic, storage of material published by third parties, and access to it, references to content or searches for information on the Internet, financial transactions and the facilitation of social networks. For the special rapporteurs, according to the mere conduit principle, “as long as they do not specifically intervene in that content or refuse to obey a court

¹⁰⁷ Republic of Argentina. Supreme Court of Justice. *Canavesi, Eduardo Joaquín et al. v. Diario 'El Día' Soc. Impr. Platense SACI on daños y perjuicios*. Judgment of June 8, 2010. Case file C. 3548. XLII. Available at: http://www.csin.gov.ar/expcon/documentoonCasefileoncons_expe.jsp

¹⁰⁸ Republic of Argentina. Public Ministry, Attorney General of the Nation. *Canavesi, Eduardo Joaquín et al. v. Diario 'El Día' Soc. Impr. Platense SACI on daños y perjuicios*. Case file C. 3548. XLII. Decision of November 29, 2007.

¹⁰⁹ 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. *Joint Declaration on Freedom of Expression and the Internet*. June 1, 2011. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=849&IID=1>

order to remove that content, where they have the capacity to do so”, intermediaries must not be held responsible.¹¹⁰

121. With this logic, this Office of the Special Rapporteur recognizes the ruling handed down on October 19, 2010, by the Supreme Court of Canada in the case of *Crookes v. Newton*,¹¹¹ in which it analyzed whether an individual could be convicted for defamation for placing links on a website that lead to content that is defamatory (or allegedly defamatory) toward third parties. In its ruling, the Court found that a link or hyperlink can never in and of itself be seen as a publication of the content to which it makes reference. For this reason, the person who made it cannot in principle be sued for defamation. In this regard, it explained that a person who makes a hyperlink does not have control over the content referenced - that is, that person is only an intermediary.

122. To reach this conclusion, the Court was categorical on indicating that, “The Internet cannot, in short, provide access to information without hyperlinks.” According to the Court, “limiting their usefulness by subjecting them to the traditional publication rule would have the effect of seriously restricting the flow of information and, as a result, freedom of expression”. In this sense, it noted the potentially devastating chilling effect on the way in which the Internet functions, as the authors of articles would not risk possible repercussions by linking to other articles over whose content they have no control. For the Court, “given the core significance of the role of hyperlinking to the Internet, we risk impairing its whole functioning. Strict application of the publication rule in these circumstances would be like trying to fit a square archaic peg into the hexagonal hole of modernity.”

15. Case law on the prohibition of prior censorship and the requirement of neutrality toward the content of expression or information

123. This Office of the Special Rapporteur has explained that prior censorship takes place when the government takes *prior* measures to prevent the free circulation of information, ideas, opinions or news using any type of proceeding that gives the State control over expression or circulation of information - for example, by prohibiting publications or confiscating them, or by carrying out any other procedure oriented toward that same end.¹¹²

124. In this regard, Principle 5 of the Declaration of Principles establishes that, “[p]rior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression;” and Principle 7 establishes that, “prior conditioning of expressions, such as truthfulness, timeliness or impartiality is incompatible with the right to freedom of expression recognized in international instruments.”

125. Likewise, in the case of “*The Last Temptation of Christ*” (*Olmedo Bustos et al.*) v. *Chile*,¹¹³ the Inter-American Court examined a prohibition imposed by the Chilean judicial authorities on the exhibition of the film “The Last Temptation of Christ” at the request of a group of citizens who had

¹¹⁰ Article 2(a), of the Joint Declaration on Freedom of Expression and the Internet of 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. *Joint Declaration on Freedom of Expression and the Internet*. June 1, 2011. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artiD=849&IID=1>

¹¹¹ Canada. Supreme Court of Justice. *Crookes v. Newton*, 2011 SCC 47. Available at: <http://scc.lexum.org/decisia-scc-csv.scc-csv.scc-csv.en/item/7963/index.do>

¹¹² I/A Court H.R. *Case of Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Series C No. 135, para. 68.

¹¹³ I/A Court H.R. *Case of “The Last Temptation of Christ” (Olmedo Bustos et al.) v. Chile*. Judgment of February 5, 2001. Series C No. 73.

sought a remedy by invoking protection of the image of Jesus Christ, the Catholic Church, and their own rights. In highlighting some of the most important characteristics of freedom of expression - for example, its dual individual and collective dimensions and its critical democratic function, and recalling that this right protects both information that is positive, indifferent or inoffensive and information that is shocking, upsetting or offensive to the State or society - the Inter-American Court concluded that Chilean authorities had committed an act of prior censorship not compatible with Article 13 of the American Convention. The Tribunal noted that the violation of the American Convention had occurred not only due to the court rulings in question, but also due to the existence of an article in the Chilean Constitution setting forth a system of prior censorship for cinematic exhibition, thus conditioning the acts of all three branches of public power; it therefore ordered Chile to adapt its internal legal system to the Convention's provisions.¹¹⁴ The Court ruled similarly later on in its judgment in the case of *Palamara Iribarne v. Chile*.¹¹⁵

126. In this line of reasoning, in the aforementioned judgment dated April 30, 2009, the Supreme Federal Tribunal of Brazil¹¹⁶ found after examining the unconstitutionality of the Press Act passed during the military regime that the State cannot, through any of its agencies, define beforehand what can or cannot be said by journalists. Closely following inter-American case law and the scholarship of this Office of the Special Rapporteur, the Tribunal was emphatic in indicating that "freedom of the press cannot exist between or under the claws of censorship." In this regard, it explained that "the law prohibits the establishment of "core journalism activity," understood as time and content guidelines on expression of thought, information and creation understood broadly."

127. This standard was reiterated in the previously-cited judgment of September 2, 2010.¹¹⁷ In this important ruling, the Supreme Tribunal reiterated that the State cannot decide ahead of time what individuals or journalists can or cannot say. This duty of omission, which includes its own legislative activity, includes a prohibition on determination of the content of basic journalism activities (both the moment – during elections or not – when speech can be issued and its content and information). In this sense, it emphasized that "in general, by virtue of its relationship with the public interest, journalistic criticism is not susceptible to prior censorship."

128. Likewise, in previously-cited judgment C-010-00,¹¹⁸ the Constitutional Court of Colombia explained that "pursuant to the terms of the Inter-American Convention (*sic*) and constitutional law, prior censorship takes place when for any number of reasons; authorities prevent or seriously obstruct the issuing of a message or publication containing particular content. It is a measure of preventative control given that the broadcast or publication is subject to prior authorization from an authority. [...] This type of practice is strictly prohibited by the Inter-American Convention (*sic*) and by the Constitution."

129. In the same way, in a ruling dated March 29, 2011,¹¹⁹ the Constitutional Chamber of the Supreme Court of Justice of Costa Rica reiterated the prohibition of prior censorship and found that prior

¹¹⁴ IACHR, Office of the Special Rapporteur for Freedom of Expression. *Inter-American Legal Framework of the Right to Freedom of Expression*. OEA/Ser.L/V/II CIDH/RELE/INF. 2/09. December 30, 2009. Para 149. Available at: <http://www.oas.org/en/iachr/expression/doconpublicationonINTER-AMERICAN%20LEGAL%20FRAMEWORK%20OF%20THE%20RIGHT%20TO%20FREEDOM%20OF%20EXPRESSION%20FINAL%20PORTADA.pdf>

¹¹⁵ I/A Court H.R. *Case of Palamara Iribarne v. Chile*. Judgment of November 22, 2005, Series C No. 135.

¹¹⁶ Federative Republic of Brazil. Supreme Federal Tribunal. Complaint of breach of fundamental precept 130 Federal District. April 30, 2009. Available at: <http://www.stf.jus.br/portal/inteiroTeor/obterInteiroTeor.asp?id=605411&idDocumento=&codigoClasse=776&numero=13>

¹¹⁷ Federative Republic of Brazil. Supreme Federal Tribunal. Judgment of September 2, 2010. Precautionary Measure in Direct Action of Unconstitutionality ADI-4451. Available at: <http://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=2613221>

¹¹⁸ Republic of Colombia. Constitutional Court. Judgment C-010/00, of January 19, 2000. Available at: <http://www.corteconstitucional.gov.co/relatoria/2000/C-010-00.htm>

¹¹⁹ Republic of Costa Rica. Constitutional Chamber of the Supreme Court of Justice. *Amparo* Remedy Res. N° 2011004160. March 29, 2011. Available at: <http://sitios.poder-judicial.go.cr/salaconstitucional/Constitucion%20Politica/Judgmenton2011/11-004160.html>

ensorship includes “every act that seeks *a priori* to censor or silence any demonstration, dissemination or communication of thought, ideas, opinions, beliefs, convictions or value judgments. Any prior condition, including requirements of the veracity, opportunity, or impartiality of information, will also be considered prior censorship.”

16. Case law on the prohibition of discriminatory placement of government advertising

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

131. Regarding this, this Office of the Special Rapporteur has indicated that arbitrary distribution of government advertising is an indirect mechanism of censorship. It is a form of pressure that acts to reward or punish and whose purpose is to place conditions on the editorial stance of a media outlet according to the wishes of the individual exercising the pressure.¹²⁰ In that sense, it has been emphasized that regulation of the placement of government advertising must follow a series of principles as follows: (1) the establishment of special, clear and precise laws; (2) the use of government advertising for legitimate aims (to inform about public services offered and public policies implemented by the government and, in general, to disseminate information in the public interest); (3) the establishment of criteria for the allocation of government advertising, that is the States must establish procedures for the contracting and allocation of government advertising that reduce discretion and prevent suspicion of political favoritism in its distribution. Advertising funds must be allocated according to pre-established criteria that are clear, transparent, and objective; (4) adequate planning of the guidelines for placing government advertising; (5) the establishment of open, transparent and nondiscriminatory mechanisms for placing advertising; (6) the promotion of transparency and access to information on government advertising; (7) the establishment of external oversight of the allocation of government advertising; and (8) the promotion of media diversity and pluralism.¹²¹

132. One of the main local precedents on this issue was set in the case of *Editorial Río Negro S.A. v. Provincia de Neuquén*. A ruling in the case was handed down by the Supreme Court of Justice of Argentina in September of 2007.¹²² The case has to do with a suit brought by the newspaper *Río Negro* against the province of Neuquén, whose government had suspended its advertising in that media outlet because the newspaper had published accusations of corruption. In its ruling, the Supreme Court found that if the State decides to place government advertising, it must do so based on two constitutional standards: “(1) it cannot manipulate advertising, placing it and withdrawing it from certain media outlets [based on] discriminatory criteria; 2) it cannot use advertising as an indirect means of affecting freedom of expression.”

133. Citing the Office of the Special Rapporteur’s 2003 annual report, the Court found that “the State cannot arbitrarily assign advertising resources based on unreasonable standards,” and found that

¹²⁰ IACHR, Office of the Special Rapporteur for Freedom of Expression. *Principles on the Regulation of Government Advertising and Freedom of Expression*. OEA/Ser.L/V/III. CIDH/RELE/INF.6/12. March 7, 2011. Para. 10. Available at: <http://www.oas.org/en/iachr/expression/doconpublicationonADVERTISING%20PRINCIPLES%202012%2005%2007%20reduce.pdf>

¹²¹ IACHR, Office of the Special Rapporteur for Freedom of Expression. *Principles on the Regulation of Government Advertising and Freedom of Expression*. OEA/Ser.L/V/III. CIDH/RELE/INF.6/12. March 7, 2011. Para. 33-82. Available at: <http://www.oas.org/en/iachr/expression/doconpublicationonADVERTISING%20PRINCIPLES%202012%2005%2007%20reduce.pdf>

¹²² Republic of Argentina. Supreme Court of Justice, *Editorial Río Negro S.A.* Judgment of September 5, 2007, considerando 11.e. Available at: <http://www.csjn.gov.ar/confal/ConsultaCompletaFallos.do?method=verDocumentos&id=632580>

such arbitrary placement “is a kind of pressure that, far from preserving the integrity of public debate, puts it at risk, unjustly and indirectly affecting freedom of the press and the legitimate interest that newspaper *Río Negro* and its readers have in the performance of provincial political officials in the exercise of their functions.”

134. Later, in a judgment dated March 2, 2011, the Supreme Court of Justice reiterated the State’s obligation to adopt a government advertising policy with objective and nondiscriminatory standards, as set forth in the *Editorial Río Negro (S.A.)* ruling.¹²³ The judgment upheld a 2009 ruling of the National Chamber of Administrative Contentious Federal Appeals¹²⁴ that ordered the National State “to order government advertising to be distributed among the different publications” of *Editorial Perfil* and *Diario Perfil*, which had brought the *amparo* action against the Media Secretariat of the Leadership of the Cabinet of Ministers. This standard was reiterated in the judgment handed down on February 29, 2012, by federal Argentine judge Ernesto Marinelli.¹²⁵

135. The second Chamber of the Supreme Court of Justice of Mexico ruled on a remedy of *amparo* and protection of guarantees filed by a radio broadcaster against the Secretary of Health over its refusal to place government advertising with the appellant.¹²⁶ With explicit references to inter-American standards on the issue of freedom of expression, the Court concluded that the refusal to place advertising was based on standards that do not meet the requirements of reasonableness and proportionality established in the Constitution and the American Convention. The Secretary of Health argued that the radio broadcaster did not have the characteristics necessary for disseminating the Secretary’s activity, given its status as a community broadcaster and for supposedly not yet being in operation.

136. In a later judgment,¹²⁷ referring to facts of the same nature, the aforementioned court found that on privileging some media outlets over others “solely based on the general range (capacity) of their broadcasts and not on their real coverage of all regions or communities in the country, [it is possible] that the placement of government advertising may become discretionary and restrictive due to unequal and undue distribution; these measures could lead to reduced protection of the rights of other radio broadcasters; this, in turn, could lead to undue restrictions to the communication and circulation of ideas and opinions through the discriminatory placement of government advertising, given the absence of specialized legislation and transparent and measurable criteria for placing government advertising; in this sense, these measures of restriction prevent the full exercise of the right to expression and information. Based on these arguments, it is concluded that the aforementioned measures of restriction are lacking in constitutional reasonableness and proportionality.”

17. Case law on requirement of membership in a professional organization or holding of an academic degree to exercise the profession

¹²³ Republic of Argentina. Supreme Court of Justice, *Editorial Perfil S.A. et al. v. E.N. —Jefatura Gabinete de Ministros— SMC on amparo ley 16.986*. Judgment of March 2, 2011. Available at: <http://www.csjn.gov.ar/confal/ConsultaCompletaFallos.do?method=verDocumentos&id=3843>

¹²⁴ Chamber IV of the Chamber of Federal Contentious Administrative Law of Argentina resolved a claim presented by Editorial Perfil against the national government for having been excluded in the distribution of government advertising as a consequence of its critical editorial line. In this case, the judges of Chamber IV held that “[t]he government should avoid acts that intentionally or exclusively aim to limit the exercise of freedom of the press, as well as those that indirectly produce this result. That is to say, it is sufficient that the government action have this aim to constitute an alleged affection of this freedom. As a result, it is not necessary to cause the economic asphyxiation or bankruptcy of the newspaper.”

¹²⁵ Republic of Argentina. Judicial Branch of the Nation. Case File 18.639/06 *Editorial Perfil S.A. et al. v. Jefatura de Gabinete de Ministros- SMC on Amparo Ley 16.986*. Available at: http://www.perfil.com/doconfallo_perfil_2012.pdf

¹²⁶ United States of Mexico. Second Chamber of the Supreme Court of Justice. Amparo Appeal 248/2011, of 13 July 2011. Available at: <http://www2.scjn.gob.mx/juridica/engroseoncerradoonpublico/11002480.002.doc>

¹²⁷ United States of Mexico. Supreme Court of Justice. August 24, 2011. Amparo Appeal 531-2011. Available at: <http://www2.scjn.gob.mx/juridica/engroseoncerradoonpublico/11005310.002.doc>

137. This issue was addressed in detail by the Inter-American Court in *Advisory Opinion on Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism OC-5*.¹²⁸ In that opinion, the Inter-American Court explained that because of its close relationship with freedom of expression, journalism “cannot be equated to a profession that is merely granting a service to the public through the application of some knowledge or training acquired in a university or through those who are enrolled in a certain professional “*colegio*.”” Thus, for the Court, reasons of public order that justify the requirement that other professionals be members of professional organizations cannot be invoked validly in the case of journalism because it would permanently limit - to the detriment of those not members of the professional association - the right to make full use of the rights that Article 13 of the American Convention recognizes for all individuals, “it would violate the basic principles of a democratic public order on which the Convention itself is based.”

138. In this sense, Principle 6 of the Declaration of Principles expresses that, “[c]ompulsory membership or the requirements of a university degree for the practice of journalism constitute unlawful restrictions of freedom of expression.”

139. In agreement with what the Inter-American Court found in Advisory Opinion OC 5/85, in a judgment dated August 24, 2010,¹²⁹ the Court of Constitutionality of Guatemala ruled on an action of *amparo* brought by the Constitutional Vice President of the Republic of Guatemala. The action sought the nullification of a court ruling rejecting a criminal complaint filed for defamation charges [*calumnia, injuria y difamación*] that held that these offenses were committed in an opinion column published in a newspaper. One of the arguments put forth by the plaintiff during the court proceeding was that the author of the column was not registered with the Professional Council of Humanities and that based on this, the proceeding provided for in the Thought Distribution Act did not apply; rather, the plaintiff argued, standard proceedings must be used.

140. In ruling the *amparo* action inadmissible, the Court held that one of the bases for its decision was that “on being a right inherent to persons, the freedom to express a thought does not require the possession of an academic degree in journalism in order to be exercised.”

141. Similarly, in a judgment dated June 17, 2009, the Supreme Federal Tribunal of Brazil ruled that the requirement to hold a journalism degree and for the professionals to register with the Ministry of Labor, as a condition for the exercise of the profession of journalist, was unconstitutional.¹³⁰ In its ruling, the Tribunal examined whether the requirement to hold a degree was an unjustified barrier to freedom of expression. In its analysis, it explicitly included Article 13 of the American Convention and the relevant scholarship of the organs that monitor compliance with that treaty, as well as the considerations put forth by the Office of the Special Rapporteur in the 2008 annual report.

142. The first issue that the Supreme Court addressed was the scope of Article 5.XIII of the Federal Constitution, which authorizes the legislature to establish requirements and regulations for the exercise of specific professions. On this point, the Supreme Court stressed that this reservation of legal authority is not absolute and, therefore, must be in keeping with proper standards of reasonableness and proportionality. Accordingly, the Supreme Court then questioned whether the requirement of a professional degree to engage in journalistic activity could be considered a reasonable and proportionate regulation in a democratic society. To answer this question, the Supreme Court used inter-American doctrine and case law expressly.

¹²⁸ I/A Court H.R. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5.

¹²⁹ Republic of Guatemala. Court of Constitutionality. Case file 863-2010 of 24-08-2010. Available at: <http://www.cc.gob.gt/documentosCV.ResolucionesIntPub/863-2010%2024-08-2010.pdf>

¹³⁰ Federative Republic of Brazil. Supreme Federal Tribunal. Judgment of June 17, 2009. Extraordinary Remedy 511.961 São Paulo. Available at: <http://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=AC&docID=605643>

143. First, the Court sought to establish whether journalistic activity was related to or different from other professions that required a university degree in order to practice, such as medicine or law. The Supreme Court thus considered that journalism is a profession that is distinct from those others due to the fact that it is closely related to the exercise of freedom of expression. In this respect, journalism is “the very expression and dissemination of thought and information, in continuous, professional and remunerated form.” Therefore, journalism and freedom of expression are two activities that overlap due to their very nature and cannot be considered and treated separately.

144. Based on this interrelatedness, the Supreme Court held that, “the requirement of a university diploma for the practice of journalism or the professional development of the freedoms of expression and information is not authorized by the Constitution, as it is a restriction, an impediment, a true, flat-out suppression of the effective exercise of freedom of expression, which is prohibited expressly by Article 220(1) of the Constitution.” The Supreme Court found that the offending law did not pass the proportionality test, as it was a prior restriction on the exercise of the right to freedom of expression. According to the Supreme Court, any control of this type that interferes with access to journalistic activity is a prior control that constitutes real prior censorship of freedom of expression. Analogously, on examining the validity of the requirement that Brazilian musicians be members of a professional organization, the Supreme Federal Tribunal held in a judgment dated August 1, 2011, that as far as the manifestation of the right to freedom of expression, one should be able to exercise artistic expression without any censorship, and without requirements of licenses or permits.¹³¹

18. Case law on source confidentiality

145. In its interpretation of Article 13 of the American Convention, Principle 8 of the Declaration of Principles explicitly indicates that, “[e]very social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential.”

146. In this regard, in judgment T-298/09 of April 23, 2009,¹³² the Constitutional Court of Colombia ruled on an action of protection brought by a member of Congress requesting that an article published in the newspaper connecting him with acts of corruption based on an anonymous letter be corrected. With regard to the confidentiality of the source, the Court found that what is at issue is “a fundamental and necessary guarantee for the protection of true independence for journalists and for them to be able to exercise the profession and satisfy the right to information without any indirect limitations or threats that inhibit the distribution of information relevant for the public.” The Court based its statement on its case law, the Colombian Constitution, the Declaration of Principles on Freedom of Expression of the Inter-American Commission on Human Rights (Principle 8: “Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential”), and on the interpretation that the court itself has performed of that Declaration. In conclusion, it indicated that “in principle, and as long as statutory legislation does not establish a clear, reasonable, necessary and proportional provision to the contrary, the confidentiality guaranteed by Article 74 of the Constitution is not subject to limitations. Any attempt to impose a restriction on that guarantee currently lacks the statutory legal support necessary.”

147. In reference to the conflict between the confidentiality of the source and the rights of third parties, the Court expressed that “in some circumstances, the confidentiality of a source is necessary even when it could compromise the rights of good-faith third parties. These are cases in which, without a guarantee of source confidentiality, information of great importance for society would remain unavailable. Effectively, especially in cases in which mafia or organized crime are involved, organizations that are not afraid to intimidate a source to keep him or her from revealing information that could affect their interests, source confidentiality becomes a priority guarantee necessary for brave and independent journalism to be

¹³¹ Federative Republic of Brazil. Supreme Federal Tribunal. Judgment of August 1, 2011. Extraordinary Remedy 414.426 Santa Catarina. Available at: <http://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=AC&docID=628395>

¹³² Republic of Colombia. Constitutional Court. Judgment T-298/09 of April 23, 2009. Available at: <http://www.corteconstitucional.gov.co/relatoria/2009/T-298-09.htm>

able to carry out its work. In any case, it is true that journalists have important duties when publishing information that could incriminate third parties but that has been provided by a confidential source. In this sense, as the majority of pleadings received in this case have indicated that, in principle, ethical and professional rules require the media to offer to the public all the information that is available to them, except in special cases in which a source can be trusted and there are latent risks, and the information is relevant to the public. In these cases, greater diligence is required of journalists in the collection and assessment of information, although they cannot be required to reveal their sources.”

19. Case law on the obligation to guarantee the life and safety of journalists covering armed conflict and emergency or high-risk situations

148. In a judgment issued this year case of *Veléz Restrepo and family v. Colombia*, the Inter-American Court found that “States have the obligation to adopt special measures of prevention and protection for journalists subject to special risk owing to the exercise of their profession. Regarding the measures of protection, the Court underlines that States have the obligation to provide measures to protect the life and integrity of the journalists who face this special risk owing to factors such as the type of events they cover, the public interest of the information they disseminate, or the area they must go to in order to do their work, as well as to those who are the target of threats in relation to the dissemination of that information or for denouncing or promoting the investigation of violations that they suffered or of those they became aware of in the course of their work. The States must adopt the necessary measures of protection to avoid threats to the life and integrity of journalists under those conditions.”¹³³

149. In this sense, judgment T-1037/08 of October 23, 2008, of the Constitutional Court of Colombia,¹³⁴ ruled on an action for protection brought against the Ministry of the Interior and Justice by a Colombian journalist who investigates issues of human rights and armed conflict. The journalist had been subjected to threats, harassment, persecution and psychological torture because of her professional activities.

150. In this ruling, the Court found that the fact of publicly questioning risk studies or the danger of the situation or the feeling of fear of someone who is being threatened is not compatible with State obligations, as one of the State’s special duties with regard to individuals facing situations of high or extraordinary risk is the recognition of the situation. In that sense, the State attitude “intended to ignore, hide, lie about, minimize, or justify the crimes committed” constituted an additional violation of the rights of those facing a situation of risk.

151. In these cases, the Court found, it is not possible to justify the authorities’ discrediting of the situation of risk faced by the journalist, given that “the right to freedom of expression when exercised by public officials exercising their duties has greater limitations than when that right is exercised by a common citizen,” as the Inter-American Court of Human Rights has also found.¹³⁵ The limited scope of freedom of expression for public officials exercising their duties will be addressed in greater detail in the following section.

152. In addition, the Court held first that in order to determine that the protection that should be provided to a journalist facing special or extraordinary risk be withdrawn, “a process must be carried out in which, at least, the minimum guarantees of due process are guaranteed.” These guarantees, it stated, “must extend to all criminal and administrative areas in which the State exercises a legal authority

¹³³ I/A Court H.R. *Case of Vélez Restrepo and family v. Colombia. Preliminary Exceptions, Merits, Reparations and Costs.* Judgment of September 3, 2012. Series C No. 248. para. 194.

¹³⁴ Republic of Colombia. Constitutional Court. Judgment T-1037/08, of October 23, 2008. Available at: <http://www.corteconstitucional.gov.co/relatoria/2008/T-1037-08.htm>

¹³⁵ I/A Court H.R. *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela. Preliminary Exception, Merits, Reparations and Costs.* Judgment of August 5, 2008. Series C No. 182.

to sanction - that is, whenever it can affect the rights of a person as a result of the actions or omissions of this person that violate or injure a right that is legally protected by the system.”

153. Finally, the Court argued that “when what is at issue is a journalist who, despite threats, decides to continue his or her investigations, that person will likely require special provisions that take into account the totality of the rights involved. In particular, it is obvious that communicators may need a certain amount of privacy to be able to interview a confidential source or make certain inquiries. In these cases, it becomes necessary to make special allotments designed to guarantee both the journalist’s safety, and his or her work and the important rights associated with freedom of expression. Specifically, the Court cannot fail to note that in these cases, not only is the right of all persons to free personal development at issue, but also the rights to freedom of expression and source confidentiality.”

154. Based on the foregoing, the Court concluded that the mandate had been violated according to which “the Ministry is obliged to adopt whatever specific, adequate and sufficient measures are necessary to prevent the extraordinary risk that has been identified from resulting in harm and to implement those measures, also in a timely fashion and according to the circumstances of each case, such that the protection is effective.”

20. Case law on the limited scope of freedom of expression for public officials exercising their duties

155. The organs of the system have recognized that the exercise freedom of expression by public officials has certain specific characteristics and connotations. Thus, when public officials exercise their freedom of expression, “they are subjected to certain limitations as far as confirming to a reasonable - although not necessarily exhaustive - degree the facts on which their opinions are based. They must do so with even greater diligence than necessary of private individuals based on the high degree of credibility they enjoy and in order to prevent citizens from receiving a manipulated version of the facts.”¹³⁶

156. In this regard, this office has also specified that public officials have a duty to ensure that on exercising their freedom of expression, they are not causing a violation of fundamental rights; that their statements do not constitute arbitrary, direct or indirect interference with the rights of those who contribute to public debate through expression and dissemination of their thought; and that their statements do not interfere with the independence and autonomy of legal authorities.

157. In a similar tone, in judgment T-1191, of November 25, 2004,¹³⁷ the Constitutional Court of Colombia ruled on an action of protection filed by a group of nongovernmental organizations dedicated to the defense of human rights against the then-President of the Republic of that country. The action argued that his statements - in which he accused them of having connections to terrorist groups - were a violation of their rights to honor and good name, and their rights to promote and defend human rights, as well as to the rights of their members to physical safety and life. In its ruling, the Court explained that the “President of the Republic [holds] the power-duty to maintain permanent contact with citizens through his speeches and public appearances,” but that “this power-duty of the President differs substantially from simple freedom of expression recognized in general for citizens. In reality, it constitutes a legitimate means of exercising the governmental authority held by contemporary democracies.”

158. In this sense, it held that “the public statements of the President of the Republic are not absolutely free, and that (i) they must strictly respect parameters of objectivity and veracity when they are

¹³⁶ I/A Court H.R. *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*. Preliminary Exception, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182. para. 131. See also, I/A Court H.R. *Case of Ríos et al. v. Venezuela*. Preliminary Exception, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194, para. 139; *Case of Perozo et al. v. Venezuela*. Preliminary Exception, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195, para. 151.

¹³⁷ Republic of Colombia. Constitutional Court. Judgment T-1191-04 of November 25, 2004. Available at: <http://www.corteconstitucional.gov.co/relatoria/2004/T-1191-04.htm>

simply transmitting public information or data; (ii) they are more free when taking political positions, proposing governmental policies or responding to criticism from the opposition, but that even in these events, expression of the President must include a minimum of real factual justification and meet a basic standard of reasonableness, and (iii) in all cases, his communication with the Nation must contribute to the defense of the fundamental rights of persons, especially those deserving of special protection.” Regarding this latter aspect, the Constitutional Court expressed that “as with all authorities, the President holds a position as guarantor with regard to the fundamental rights of all inhabitants of his country’s territory. This means that when he addresses himself to citizens, he must refrain from issuing any declaration or statement that damages or puts at risk that category of rights.” The Court expressed that “this obligation [to refrain from making declarations that threaten fundamental rights] becomes more relevant when dealing with subjects who enjoy special constitutional protection such as human rights defenders, the reinserted, those displaced by violence, or members of peace communities.” In addition, it emphasized that the use of mass media generates “greater responsibility than what arises through the use of other non-mass communication systems.”

159. These standards were made to extend to other senior state authorities or public officials through judgments T-263/10¹³⁸ and T-627/12¹³⁹ issued later on by the Constitutional Court of Colombia. In this regard, in the judgment issued on August 12, 2012, after a review of its constitutional case law, as well as the case law of the Inter-American Court established in the cases of *Perozo et al.* and *Ríos et al.*, both against Venezuela, the Constitutional Court of Colombia found that “the statements of senior public officials – whether national, local or departmental – on matters of general interest are not part of their right to freedom of expression or opinion but rather constitute a manner of exercising their duties through communication with the citizenry.”

¹³⁸Republic of Colombia. Constitutional Court. Judgment T-263-10 of April 19, 2010. Available at: <http://www.corteconstitucional.gov.co/relatoria/2010/t-263-10.htm>

¹³⁹ Republic of Colombia. Constitutional Court. Judgment T-627-12 of August 12, 2012. Available at: <http://www.corteconstitucional.gov.co/relatoria/2012/t-627-12.htm>

CHAPTER IV THE RIGHT TO ACCESS TO INFORMATION¹

Introduction

1. The right to access to information is a fundamental right protected by Article 13 of the American Convention. It is a particularly important right for the consolidation, functioning, and preservation of democratic systems, and as such has received significant attention from the Member States of the OAS² and in international case law and doctrine.

2. The Inter-American Court has established that Article 13 of the American Convention, by expressly stipulating the rights to “seek [and] receive . . . information,” protects the right of every individual to access information under the control of the State, with the exceptions permitted under the narrow system of restrictions set forth in that instrument.³

3. The right to access to information has been considered an essential tool for the public oversight of government and the operation of the State—especially for the control of corruption,⁴ for citizen participation in public matters through, *inter alia*, the informed exercise of political rights and, in general, for the effective exercise of other human rights, especially by the most vulnerable groups.⁵

4. Indeed, the right to access to information is a critical tool for monitoring the public administration and operation of the State, and for keeping corruption in check. The right to access to information is a fundamental requirement for guaranteeing transparency and good governance. The full exercise of the right to access to information is an essential guarantee for preventing abuses by public servants, promoting accountability and transparency in public management, and preventing corruption and authoritarianism. Free access to information is also a means by which, in a representative and participatory democratic system, citizens can properly exercise their political rights. Indeed, political rights necessarily require the existence of a broad and vigorous debate, for which it is essential to have the

¹ The right of access to information has been one of the recurrent topics of the annual reports and publications of the Office of the Special Rapporteur. This chapter contributes to the collection of material compiled by the Office on best judicial practices of Member States in the area of access to information contained in the annual reports of 2005 (Chapter IV), 2008 (Section F of Chapter III), 2009 (Chapter IV), 2010 (Chapters III and IV), as well as the study on *The Inter-American Legal Framework regarding the Right to Access to Information (Second Edition)* of 2011.

² The General Assembly of the OAS holds that the right of the access to information is “a requisite for the very functioning of democracy.” In this sense, all democratic American States “are obliged to respect and promote respect for everyone’s access to public information and to promote the adoption of any necessary legislative or other types of provisions to ensure its recognition and effective application.” General Assembly of the Organization of American States. Resolution AG/RES. 1932 (XXXIII-O/03), Access to Public Information: Strengthening Democracy, June 10, 2003. Also see: AG/RES. 2057 (XXXIV-O/04), AG/RES. 2121 (XXXV-O/05), AG/RES. 2252 (XXXV-O/06), AG/RES. 2288 (XXXVII-O/07), AG/RES. 2418 (XXXVIII-O/08), AG/RES. 2514 (XXXIX-O/09), and AG/RES. 2661 (XLI-O/11).

³ I/A Court H.R. *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. para. 58.a)-b). See also, I/A Court H.R. *Case of López Álvarez v. Honduras*. Judgment of February 1, 2006. Series C No. 141, para. 77; *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No. 107, para. 108.

⁴ “Free access to information is a measure that, in a representative and participative democratic system, the citizens exercise their political rights; effectively, the full exercise of the right of access to information is necessary for preventing abuses by public officials, promoting transparency in government administration, and allowing solid and informed public debate that ensures the guarantee of effective recourses against government abuse and prevents corruption. Only through access to State-controlled information in the public interest can citizens question, investigate, and weigh whether the government is adequately complying with its public functions.” Cf. I/A Court H.R. *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. paras. 86-87.

⁵ IACHR. Annual Report 2008. OEA/Ser.L/V/II.134 Doc. 5 rev. 1. February 25, 2009. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). Para. 147. Available at: <http://cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

public information that makes it possible to evaluate reliably progress and difficulties in the achievements of different authorities. Only through access to information under the control of the State is it possible for citizens to know whether government is operating properly.⁶ Finally, access to information has an essential, instrumental function. Only through an adequate implementation of this right can individuals know exactly what their rights are, and what mechanisms are available for their protection. In particular, the proper implementation of the right to access to information, in all of its aspects, is a basic condition for the effective realization of social rights among socially excluded or marginalized sectors. Indeed, those sectors do not usually have safe and systematic alternative ways of knowing the scope of the rights that the State has recognized and the mechanisms for asserting and enforcing them.

5. This chapter continues in the vein of the reports on freedom of expression and access to public information put out by the Office of the Special Rapporteur in the fulfillment of its mandate, highlighting the good practices recognized and implemented by the judicial authorities of the OAS Member States. In the future, this Office of the Special Rapporteur also hopes to advance the study and systematization of the decisions rendered by some of the autonomous bodies entrusted with protecting the right to access to public information in OAS Member States, such as the Federal Institute for Access to Information and Data Protection in Mexico [*Instituto Federal de Acceso a la Información y Protección de Datos de México*] (IFAI) or the Chilean Council for Transparency [*Consejo para la Transparencia*] (CPLT), which have made significant progress in the improvement of good practices in the field.

6. This Office of the Special Rapporteur has recognized that, regardless of the legal frameworks of the OAS Member States, there are some court decisions that have notably promoted the standards of access to public information in the domestic law of each one of the States. The study of this case law has been vitally important, in that it makes it possible to observe, in practice, the ways in which different judges and courts have implemented the guiding principles of the right to access to public information.

7. In addition, the Office of the Special Rapporteur continues to affirm the special importance of inter-American comparative law and its role in enriching the regional case law and doctrine. Although one of the objectives of the regional human rights protection bodies is to achieve the domestic application of inter-American standards, those standards have also been elevated thanks to developments in the institutional practices of the Member States of the OAS. The interpretations of civil society and the domestic bodies of the different States continue to create the conditions for the regional system to keep on the path of strengthening and refining its doctrine and case law on the right to access to information.

8. The following paragraphs summarize some of the most important recent decisions on access to information to which the Office of the Special Rapporteur has had access. These decisions were organized according to the main issues they address. Nevertheless, it is important to note that most of the decisions refer to various issues, and therefore it is relevant to view them comprehensively.

1. Case law on access to information as a fundamental, autonomous, universal right

9. The courts of the region have continued with the good practice of recognizing the right to access to information as a fundamental universal right.

10. In a decision dated December 5, 2012,⁷ the Constitutional Division of the Supreme Court of El Salvador ruled on the constitutionality of some articles of the Regulations to the Access to Public Information Act, finding that its “indisputable status as a fundamental right” is a “starting point for approaching the right to access to information.” The Court found that this status rests on two essential

⁶ I/A Court H.R. *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Paras. 86-87.

⁷ Republic of El Salvador. Constitutional Chamber of the Supreme Court of Justice. Judgment 13-2012 (Unconstitutionality). December 5, 2012. Available at: <http://www.jurisprudencia.gob.sv/visormlx/pdf/13-2012.pdf>

pillars: “the constitutional recognition of the right to freedom of expression, which assumes the right to investigate or to seek and receive public or private information of all kinds that is of public interest; and (...) the democratic principle of the rule of law or the Republic as a form of government, which imposes upon public authorities the duty to guarantee transparency and disclosure in government, as well as accountability with respect to the use of public funds and resources.”⁸

11. The “fundamental right status” of the right to access to information has certain significant regulatory implications, according to the Constitutional Division of the Supreme Court of El Salvador. Indeed, the recognition of the right to access to information as a fundamental right entails, in regulatory terms: “(a) the prohibition against altering its essential content, in both its interpretation and its regulation; (b) the recognition of its objective or institutional dimension, with its positive implications of guarantees; (c) the requirement of its harmonization, proportion, or balance with other, conflicting rights; and (d) the recognition of its expansive and optimizing force.”⁹

12. The Argentine Supreme Court ruled similarly in its December 4, 2012¹⁰ decision on a petition for a constitutional remedy (*amparo*), which addressed whether the National Institute of Social Services for Retirees and Pensioners (PAMI) “is obligated to provide information regarding the official advertising developed by the institute.” In resolving this issue, the Court found that it was necessary to “clarify the meaning and scope of the right to access to information.” It held on this point that, “even when the [entity requesting the information] is not a State entity, given its special characteristics and the important and significant public interests involved, the refusal to provide the requested information is an arbitrary and illegitimate act [that amounts to] an action that severely curtails rights to which (...) any citizen is entitled, insofar as the information is unquestionably of public interest; those same rights make transparency and disclosure in government fundamental pillars of a society that considers itself democratic.”

13. In a judgment handed down on February 8, 2012, the Supreme Court of Panama¹¹ recognized the universal nature of the right to access to information. The case involved the appeal of a *habeas data* petition seeking information about the Curricular Transformation system, filed by a citizen in his capacity as the Secretary of a Teachers’ Association. When he failed to receive a reply within the legally established time period, the citizen filed the writ of *habeas data* in his individual capacity. The Institute questioned the petitioner’s legal standing, and the Supreme Court determined that “regardless of the letterhead on which the request was filed, or whether Mr. Herrera acted in his own name or on behalf of a third party, the information in this case is public, accessible to any interested party, without any need to justify the request.” The Court added that “every person has the right to request public access to information in the hands of the State, without the need to provide a justification. At the same time, they will have standing to file a writ of *habeas data*, which does not require further legal formalities—unless the information in question is personal or confidential, in which case it is understood to be of interest only to the person concerned, and no one else.” The Court thus concluded that “the nature of the writ of *habeas data*, its purposes, the law in question, and the public nature of the information sought, overcome the censorship of the administrative authority. The State is therefore required to provide information about its workings and activities to any person, except where it involves data that is confidential or personal, or restricted.”¹²

⁸ Republic of El Salvador. Constitutional Chamber of the Supreme Court of Justice. Judgment 13-2012 (Unconstitutionality). December 5, 2012. Considerando III.1. Available at: <http://www.jurisprudencia.gob.sv/visormlx/pdf/13-2012.pdf>

⁹ Republic of El Salvador. Constitutional Chamber of the Supreme Court of Justice. Judgment 13-2012 (Unconstitutionality). December 5, 2012. Considerando III.1. Available at: <http://www.jurisprudencia.gob.sv/visormlx/pdf/13-2012.pdf>

¹⁰ Republic of Argentina. Supreme Court of Justice. December 4, 2012. *Asociación de Derechos Civiles v. EN – PAMI – (dto. 1172-03) on amparo ley 16.986*. Available at: <http://www.cij.gov.ar/nota-10405-La-Corte-Suprema-reconocio-el-derecho-de-los-ciudadanos-de-acceso-a-la-informacion-publica.html>

¹¹ Republic of Panama. Supreme Court of Justice. February 8, 2012. Case file 156-11. Available at: <http://bd.organojudicial.gob.pa/registro.html>

¹² Republic of Panama. Supreme Court of Justice. February 8, 2012. Case file 156-11. *Fundamentos jurídicos 1, 2, 3 y 10*. Available at: <http://bd.organojudicial.gob.pa/registro.html>

14. In a November 30, 2010 decision, the Constitutional Court of Guatemala¹³ ruled on several constitutional challenges to the Public Information Access Act. The Court dismissed the four charges relating to: legal entitlement to the right and the need to verify the interest in order for the right to be exercised; information considered confidential; the obligation to publish information on the salaries and emoluments of public servants; and changes to the system of the autonomous bodies as a result of requiring them to implement the Act.

15. With respect to legal entitlement to the right to access to information and the need for prior verification of interest in the information sought, the Constitutional Court found that “the constitutional recognition of the right to access to public information (...) signifies the ability of any citizen to obtain information from the government, without having to prove any interest other than that which arises from his own will as a citizen, in connection with the principle of transparency in government.” According to the Court, in view of the international standards, the Constitution of Guatemala recognizes that “all acts of government are public” and also that the people have the right “to access this information, as the owners of national sovereignty.” Consequently, in order to exercise this right, “the citizen needs only to express their legitimate desire to gain knowledge of the organization, the workings, and the decision-making processes of the government apparatus meant to secure their welfare and that of their peers; it is herein that their interest in the matter in question is understood to exist, and not in the purely procedural sense of the term.”¹⁴

16. The Third Chamber of the Civil and Commercial Appeals Division of the Province of Salta, Argentina, handed down a decision on May 28, 2010,¹⁵ ruling on an amparo petition arising from a request for access to detailed information on government advertising expenditures in the Province of Salta. Regarding the nature of the right to access to information, the Court found that, “the right to access to information acquires substance because of its procedural and instrumental status. Without it, other rights could not exist, and thus it is vitally important to pave the way for it to be protected, refined, and maximized.” Therefore, understanding the right to access to information “as a fundamental right, and beyond the debatable notions of the concept, the general rule then will be for the citizen to have free access to public information in the hands of, or under the control of, State entities.”¹⁶

17. In this same decision, the Third Chamber asserted the universal nature of the right to access to public information, noting in particular that the person who was requesting the access to information was a representative in the provincial legislature. On this point, it found that, “If any person can request public information, with no exclusion provided under the law, if the requesting party cannot be required to state the purpose of his request—and therefore there is no reason to inquire about his motivations or whether he has a specific interest—there is no justification to exclude the legislators of the

¹³ Republic of Guatemala. Court of Constitutionality. November 30, 2010. Case files 1373-2009, 1412-2009, 1413-2009. Available at: http://www.cc.gob.gt/siged2009/mdlWeb/frmConsultaWebVerDocumento.aspx?St_DocumentId=819889.html&St_RegistrarConsulta=yes&sF=fraseabuscar

¹⁴ Republic of Guatemala. Court of Constitutionality. November 30, 2010. Case files 1373-2009, 1412-2009, 1413-2009. *Considerando* IV. Available at: http://www.cc.gob.gt/siged2009/mdlWeb/frmConsultaWebVerDocumento.aspx?St_DocumentId=819889.html&St_RegistrarConsulta=yes&sF=fraseabuscar

¹⁵ Republic of Argentina. Chamber III of the Civil and Commercial Chamber of Appeals of the Province of Salta. May 28, 2010. *CORNEJO, Virginia v. SECRETARÍA GENERAL DE LA GOBERNACIÓN DE LA PROVINCIA DE SALTA – ACCIÓN DE AMPARO*- Case files N° CAM 301.440/10. Available at: http://justicia.salta.gov.ar/nuevo/index.php?option=com_content&view=article&id=325:publicidad-oficial-sala-iii&catid=48:derecho-de-acceso-a-la-informacion-publica

¹⁶ Republic of Argentina. Chamber III of the Civil and Commercial Chamber of Appeals of the Province of Salta. May 28, 2010. *CORNEJO, Virginia v. SECRETARÍA GENERAL DE LA GOBERNACIÓN DE LA PROVINCIA DE SALTA – ACCIÓN DE AMPARO*- Case Files N° CAM 301.440/10. *Consideración* IIIa. Available at: http://justicia.salta.gov.ar/nuevo/index.php?option=com_content&view=article&id=325:publicidad-oficial-sala-iii&catid=48:derecho-de-acceso-a-la-informacion-publica

province from the access to public information provided for in Decree No. 1.574/02, as the respondent asserts.”¹⁷

18. In Judgment 48 of September 11, 2009, the Trial Court of Mercedes, Uruguay (Second Rotation)¹⁸ ruled on a petition for *habeas data* (*amparo informativo*) related to the disclosure of information on the procurement of government advertising. The Court held that the right to access to public information “follows from” the right to information, and it found that the latter is “a basic right, inherent in the human personality.” This understanding, says the Court’s judgment, has also been set forth in the relevant doctrine, even before the Access to Information Act entered into force.

19. In general, the essential and universal nature of the right to access to information has been widely recognized in most of the decisions cited in this report, which will be reviewed in greater detail in the sections below.

¹⁷ Republic of Argentina. Chamber III of the Civil and Commercial Chamber of Appeals of the Province of Salta. May 28, 2010. CORNEJO, Virginia v. SECRETARÍA GENERAL DE LA GOBERNACIÓN DE LA PROVINCIA DE SALTA – ACCIÓN DE AMPARO- Case Files N° CAM 301.440/10. Consideración Illg. Available at: http://justicia.salta.gov.ar/nuevo/index.php?option=com_content&view=article&id=325:publicidad-oficial-sala-iii&catid=48:derecho-de-acceso-a-la-informacion-publica

¹⁸ Oriental Republic of Uruguay. Trial Court of Mercedes (Second Rotation). September 11, 2009. AA v. Junta Departamental of Soriano- Amparo Action. I.u.e. 381-545/2009. Available at: http://www.uaip.gub.uy/wponwcm/connect/60fff8804ad59ad8a98beb5619f13f97/Judgment-juzgado-letrado-de-2do-turmo-de-mercedes.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=60fff8804ad59ad8a98beb5619f13f97

2. Case law on the principle of maximum disclosure

20. In a judgment handed down on March 18, 2011, the Constitutional Division of the Supreme Court of Costa Rica¹⁹ heard an amparo petition that was filed against the Costa Rican Labor Ministry for refusing to turn over information relating to three lists (persons who were visited by inspectors and written up for noncompliance with the minimum wage laws, persons visited by inspectors a second time, and persons against whom complaints were filed in court). The information had been requested for purposes of journalistic work. The Ministry made the information public, but using general data and percentages. In deciding the case, the Court affirmed its case law on government transparency and disclosure²⁰ in the following terms: “in the context of the social and democratic rule of law, each and every public entity and body within the respective administration must be subject to the implicit constitutional principles of transparency and disclosure that must be the rule that governs every administrative action or function. The collective organizations of Public Law—public entities—must be like glass houses, the insides of which all citizens must be able to view and supervise, in the light of day.” In the opinion of the Court, “governments must create and foster permanent and fluid channels of communication or exchange of information with citizens and the collective media (...) According to this logic, administrative secrecy or confidentiality is an exception that is justified solely under qualified circumstances when constitutionally relevant values and interests are thereby protected.”²¹

21. In this specific case, the Constitutional Division of the Supreme Court of Costa Rica found that the requested information had been denied under a law that prohibits “the disclosure of data that are obtained from inspections.” In the Court’s opinion, the government denied the right to access to information “without a necessary, sufficient, or reasonable justification,” given that “the requested information is of clear public interest, as it refers to infractions involving the failure to pay minimum wages. It concerns both employees and employers, especially since the request was for general information and not information about a specific individual.”²²

22. The Supreme Federal Tribunal of Brazil, in a June 9, 2011 decision²³ suspending the effects of two precautionary measures that barred the disclosure of data on the incomes of some municipal employees, underscored the preponderance of the “principle of disclosure” and the resulting “State duty to disclose public acts.” According to the Court, that duty is “eminently republican, because the ‘*res publica*’ [...] must be managed with maximum transparency”, with the sole exception being information “whose confidentiality is essential to the security of society and the State” according to current law.

¹⁹ Republic of Costa Rica. Constitutional Chamber of the Supreme Court of Justice. March 18, 2011. Judgment 2011-003320. Available at: http://200.91.68.20/pi/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=TSS&nValor1=1&cmbDespacho=0007&txtAnno=2011&strNomDespacho=Sala%20Constitucional&nValor2=506651&IResultado=&IVolverIndice=¶m01=Judgments%20por%20Despacho¶m2=3&strTipM=T&

²⁰ Republic of Costa Rica. Constitutional Chamber of the Supreme Court of Justice. Judgment 2003-2120 of March 14, 2003, which lays out the scope and nuances of the right protected in Article 30 of the Political Constitution, reiterated in Judgments, 2004-09234 of August 25, 2004, 2005-14563 of October 21, 2005, 2007-011455 of August 10, 2007 and 2010-010982 of June 22, 2010.

²¹ Republic of Costa Rica. Constitutional Chamber of the Supreme Court of Justice. March 18, 2011. Judgment 2011-003320. Available at: http://200.91.68.20/pi/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=TSS&nValor1=1&cmbDespacho=0007&txtAnno=2011&strNomDespacho=Sala%20Constitucional&nValor2=506651&IResultado=&IVolverIndice=¶m01=Judgments%20por%20Despacho¶m2=3&strTipM=T&

²² Republic of Costa Rica. Constitutional Chamber of the Supreme Court of Justice. March 18, 2011. Judgment 2011-003320. *Consideración* V. Available at: http://200.91.68.20/pi/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=TSS&nValor1=1&cmbDespacho=0007&txtAnno=2011&strNomDespacho=Sala%20Constitucional&nValor2=506651&IResultado=&IVolverIndice=¶m01=Judgments%20por%20Despacho¶m2=3&strTipM=T&

²³ Federative Republic of Brazil. Supreme Federal Tribunal. June 9, 2011. *Segundo Ag. Reg. na Suspensão of Segurança* No. 3.902 – São Paulo. Available at: <http://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=AC&docID=628198>

23. The Supreme Court held that every person has the right to receive information of general or particular interest from government entities, and that it must be provided within the legally established period of time to avoid the pertinent sanctions. In the Court's opinion, the best instrument of personal defense against "possible unlawful assaults by the State" is the right to "denounce irregularities or unlawful acts" before oversight bodies. In this respect, the Supreme Court added that "the preponderance of the principle of disclosure" is an effective way to "realize the republic as a form of government." It also indicated that "if, on one hand, there is a republican mode of administering the Brazilian State, on the other hand it is the public itself that has the right to see its State administered as a republic. The question of 'how' the *res publica* is administered should outweigh the question of 'who' administers it [...] and the fact is that this public way of administering the government machine is a conceptual element of our Republic." The Court concluded that failing to observe the principle of disclosure could cause serious harm to public law and order.²⁴

24. In Judgment 48 of September 11, 2009, the Trial Court of Mercedes, Uruguay (Second Rotation)²⁵ held, in relation to the principle of maximum disclosure, that: "the right to access public information is related to specific principles, namely, the principle of transparency in government; this is what makes it possible to clearly see the government's actions with respect to the use of public funds. The principle of disclosure in government activity [...] in a system such as ours, the first solution is always disclosure, and restriction is the exception. Finally, [...] the principle of participation, which means that citizens are informed and consulted on the matters that concern them. These principles [...] are important in taking account of the purpose of this [access to information] law and the objective it pursues, which provides guidance for interpretation in case of doubt."²⁶

3. Case law on limits to the principle of maximum disclosure

25. In a November 30, 2010 decision on a constitutional challenge, the Constitutional Court of Guatemala,²⁷ based on the standards set forth in the decision of the Inter-American Court of Human Rights in *Claude Reyes v. Chile*, in the IACHR's 2009 annual report²⁸ and in the Declaration of Principles on Freedom of Expression,²⁹ among others, found that the limitations on access to public information contained in the Access to Information Act were consistent with the Constitution. Thus, for example, with regard to the confidentiality "of court files in cases that have not become final," it found that the confidentiality was not applicable "in cases or proceedings that are of clear public interest, even the mere handling of their procedural aspects, whether for objective reasons pertinent to the subject addressed—e.g., general unconstitutionality—or subjective, that is, relating to the capacity in which the parties are involved, as in the case of a trial determining the liability of a public servant [...]. In society it is

²⁴ Federative Republic of Brazil. Supreme Federal Tribunal. June 9, 2011. *Segundo Ag. Reg. na Suspensão of Segurança* No. 3.902 – São Paulo, paras. 12 y 16 Available at: <http://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=AC&docID=628198>

²⁵ Oriental Republic of Uruguay. Trial Court of Mercedes (Second Rotation). September 11, 2009. AA v. Junta Departamental de Soriano- *Amparo* Action. I.u.e. 381-545/2009. Available at: http://www.uaip.gub.uy/wponwcm/connect/60fff8804ad59ad8a98beb5619f13f97/Judgment-juzgado-letrado-de-2do-turmo-de-mercedes.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=60fff8804ad59ad8a98beb5619f13f97

²⁶ Oriental Republic of Uruguay. Trial Court of Mercedes (Second Rotation). September 11, 2009. AA v. Junta Departamental de Soriano- *Amparo* Action. I.u.e. 381-545/2009. Available at: http://www.uaip.gub.uy/wponwcm/connect/60fff8804ad59ad8a98beb5619f13f97/Judgment-juzgado-letrado-de-2do-turmo-de-mercedes.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=60fff8804ad59ad8a98beb5619f13f97

²⁷ Republic of Guatemala. Court of Constitutionality. November 30, 2010. Case files 1373-2009, 1412-2009, 1413-2009. Available at: http://www.cc.gob.gt/siged2009/mdlWeb/frmConsultaWebVerDocumento.aspx?St_DocumentoId=819889.html&St_RegistrarConsulta=yes&SF=fraseabuscar

²⁸ IACHR. Annual Report 2009. OEA/Ser.L/V/II. Doc. 51. December 30, 2009. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter IV (The Right of Access to Information). Available at: <http://www.oas.org/en/iachr/expression/doc/reports/annual/Informe%20Anual%202009%202%20ENG.pdf>

²⁹ IACHR. Declaration of Principles on Freedom of Expression. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=26&IID=1>

indispensable to have public opinion be the comptroller of government acts, and the actions of judges cannot be excluded.”³⁰ In addition, in relation to information defined as “confidential under the Comprehensive Protection of Juveniles Act,” the Court found that children and adolescents “who are involved in court cases [...] require special treatment, given the implications of their age, in order to adequately preserve their human dignity; discretion in the handling of information is vital in view of that objective.”³¹ Finally, the Court concluded by leaving the door open to the possibility of limiting the exceptions to the principle of maximum disclosure. Indeed, at the end of point VI of its conclusions of law, the Court stressed that, “naturally, in each specific case, the authority in charge of the information (those considered bound by Article 6 of the challenged law) must weigh the particular circumstances, using the necessary premises of the previously underscored canons and scopes. It can thus determine, in accordance with the constitutional principles, whether the information being requested contains elements that justify its confidentiality or secrecy as an exception to the principle of maximum disclosure.”³²

26. In *amparo* appeal (*amparo en revisión*) decision 168/2011, of November 30, 2011³³ the First Division of the Supreme Court of Mexico recognized a limit to the confidentiality of information concerning preliminary investigations in criminal matters. According to this exception “secrecy cannot be claimed when the preliminary investigation concerns acts that constitute serious human rights violations or crimes against humanity.”³⁴ This assertion is supported in general terms by the “preferential position” of the right to access to information “*vis-à-vis* the interests that would limit it, as well as its operation as a general rule *vis-à-vis* the exceptional limitations established by law.”³⁵

27. In this specific case, the Supreme Court held that the duty to turn over information is also based on the judgment of the Inter-American Court of Human Rights in the *Case of Rosendo Radilla Pacheco v. Mexico*, paragraph 258 of which recognized the rights of victims “to obtain copies of the preliminary inquiry carried out by the Attorney General of the Republic, [which] is not subject to confidentiality, since it refers to the investigation of crimes that constitute grave violations of human rights.” The Supreme Court held that such considerations are “binding upon the Mexican State, including all judges and courts that carry out essentially judicial functions.”³⁶

28. In its decision of March 14, 2007 on a petition of *habeas data* seeking access to a file relating to the denial of a promotion to a government official, the Superior Court of Justice of Brazil³⁷ ruled

³⁰ Republic of Guatemala. Court of Constitutionality. November 30, 2010. Case files 1373-2009, 1412-2009, 1413-2009. Considerando VI. Available at: http://www.cc.gob.gt/siged2009/mdlWeb/frmConsultaWebVerDocumento.aspx?St_DocumentId=819889.html&St_RegistrarConsulta=yes&SF=fraseabuscars

³¹ Republic of Guatemala. Court of Constitutionality. November 30, 2010. Case files 1373-2009, 1412-2009, 1413-2009. Considerando VI. Available at: http://www.cc.gob.gt/siged2009/mdlWeb/frmConsultaWebVerDocumento.aspx?St_DocumentId=819889.html&St_RegistrarConsulta=yes&SF=fraseabuscars

³² Republic of Guatemala. Court of Constitutionality. November 30, 2010. Case files 1373-2009, 1412-2009, 1413-2009. Considerando VI. Available at: http://www.cc.gob.gt/siged2009/mdlWeb/frmConsultaWebVerDocumento.aspx?St_DocumentId=819889.html&St_RegistrarConsulta=yes&SF=fraseabuscars

³³ United States of Mexico. Supreme Court of Justice. First Chamber. November 30, 2011. Amparo Appeal 168/2011. Available at: <http://www2.scjn.gob.mx/red2/Case fileon>

³⁴ United States of Mexico. Supreme Court of Justice. First Chamber. November 30, 2011. Amparo Appeal 168/2011. Consideración 3. Available at: <http://www2.scjn.gob.mx/red2/Case fileon>

³⁵ United States of Mexico. Supreme Court of Justice. First Chamber. November 30, 2011. Amparo Appeal 168/2011. Consideración 1. Available at: <http://www2.scjn.gob.mx/red2/Case fileon>

³⁶ United States of Mexico. Supreme Court of Justice. First Chamber. November 30, 2011. Amparo Appeal 168/2011. Consideración 3. Available at: <http://www2.scjn.gob.mx/red2/Case fileon>

³⁷ Federative Republic of Brazil. Superior Court of Justice. Third Session. March 14, 2007. *Habeas data* No. 91-DF. Case file 2003/0235568-0. Available at: https://ww2.stj.jus.br/revistaeletronica/Abre_Documento.asp?sSeq=669609&sReq=200302355680&sData=20070416&formato=PDF

on the principle of maximum disclosure. The Court found that that principle must be “observed by the government [...] including, beyond the Union, the States, the Federal District, and the municipalities.” According to the Court, disclosure is the general rule and is subject to “few exceptions, which also must be based on [current law].” In the case under examination, the Court did not find the exception for information that “is essential to the security of society and the State” contained in the Constitution; consequently, it applied the principle of maximum disclosure.³⁸

29. In a decision of September 5, 2010, the Constitutional Court of Peru,³⁹ ruling on the refusal of a municipality to turn over copies of a file on the rehabilitation of a public road, addressed the “relevance of the principle of transparency in a democratic State.” On this point, it held: “*habeas data* is linked directly to the importance that the principle of transparency in the exercise of government power has acquired in today’s democratic systems. It is a constitutionally relevant principle that is implicit in the model of social and democratic rule of law [...] Where power emanates from the people, as stated in Article 45 of the Constitution, it must be exercised not only in the name of the people but also for the people.” In addition, in the Court’s opinion, “putting the principle of transparency into practice helps fight corruption in the State and, at the same time, is an effective tool against the impunity of power. It enables the public to have access to the way in which power is delegated. One of the manifestations of the principle of transparency is, without doubt, the right to access to public information that this Court has developed in its case law.”⁴⁰

30. In addition, with respect to the regulatory implications and the content of the principle of transparency, the Constitutional Court of Peru held that it imposes “several obligations upon public entities, not only in relation to information but also in the management of public administration in general. Thus, for example, it has been held that not just any information creates transparency in the exercise of State power; rather, it is the information that is timely and reliable for the citizen. In that respect, the World Bank Institute, which puts out the well-known governance indicators, has established four components to transparent information: accessibility, relevance, quality, and reliability.” The Court later added that the right to access to information “is also linked directly to [...] the principle of responsibility. [...] It is thus clear that the more transparent a government is, the more responsible and committed to public aims it will be. Secrecy, in general, encourages practices in the defense of individual or group interests, but not necessarily public objectives.”⁴¹ In this case, the Court ordered that the requested information be turned over.

31. In Judgment 354/11 of November 22, 2011, the Court of Civil Appeals of Uruguay (Third Rotation)⁴² ruled on the supposed existence of a limit to the right to access to information (sensitive data). The case concerned a request for information on the number of labor union organizations (with government ties), the number of members in each organization, and the number of labor union hours requested and granted during the period from February to November of 2011. The Court found that such limitations were inadmissible, given that “neither the names of the unions nor their members were requested; rather, the request sought simply to establish quantitative data. Therefore, that information does not fall within the exceptions established in Art.10 of Law 18.381. The petitioner is interested in monitoring the criteria used by the government to comply with the allocation of “labor union hours” [...] As

³⁸ Federative Republic of Brazil. Superior Court of Justice. Third Session. March 14, 2007. *Habeas data* No. 91-DF. Case file 2003/0235568-0. Available at: https://ww2.stj.jus.br/revistaeletronica/Abre_Documento.asp?sSeq=669609&sReq=200302355680&sData=20070416&formato=PDF

³⁹ Republic of Peru. Constitutional Tribunal. First Chamber. Exp. N° 00565-2010-PHD/TC. September 5, 2010. Available at: <http://www.tc.gob.pe/jurisprudencia/2010/00565-2010-HD.html>

⁴⁰ Republic of Peru. Constitutional Tribunal. First Chamber. Exp. N.º 00565-2010-PHD/TC. September 5, 2010. Fundamento §3.5. Available at: <http://www.tc.gob.pe/jurisprudencia/2010/00565-2010-HD.html>

⁴¹ Republic of Peru. Constitutional Tribunal. First Chamber. Exp. N.º 00565-2010-PHD/TC. September 5, 2010. Fundamento §3.6. Available at: <http://www.tc.gob.pe/jurisprudencia/2010/00565-2010-HD.html>

⁴² Oriental Republic of Uruguay. Civil Court of Appeals (Third Rotation). November 22, 2011. *Sindicato de Policía del Uruguay v. Ministerio del Interior- Acceso a la Información Pública* Art. 22 Ley 18.381, i.u.e. 2-105220/2011. Available at: <http://bin.poderjudicial.gub.uy/BJNPUBLICA/hojaInsumo2.seam?cid=323>

such, there is no infringement of the fundamental rights of any identified subject, and the requested information is excluded from the concept of sensitive or protected data.” The Court consequently indicated that “it can in no way be understood that the act of providing the number of labor unions that the respondent ministry recognizes and negotiates or has dealings with in such capacity, nor the number of members in those unions (at least what is known to the respondent from making the deductions for union dues), nor the number of “labor union hours” requested in the detailed form previously expressed, exposes either the legal entities—the labor unions—or the individuals who belong to them, to any discrimination, or entails the disclosure of sensitive data relating to those particular individuals.”⁴³

4. Case law on parties bound by the right to access to public information

32. In the above-cited decision handed down on December 4, 2012,⁴⁴ the Supreme Court of Argentina found that by virtue of the international obligation of the Argentine State established in Article 2 of the American Convention (obligation to bring domestic law into line with international standards) in relation to the right to access to information, it was necessary “to guarantee this right not only in the purely administrative sphere or in institutions tied to the Executive Branch but also in all government bodies.” As such, the Court found that, in “overseeing the institutions that perform public functions, the States must take account of both public and private entities that perform such functions. The important thing is for the focus to be on the service they provide or the duties they perform. Such scope means imposing this requirement not only upon public State bodies in all their branches and at all their levels, local and national, but also upon State-owned enterprises, hospitals, private institutions, or others that act in a government capacity or perform public duties.” The Supreme Court found support for this in the “principle of maximum disclosure” recognized in the Inter-American Court’s *Case of Claude Reyes v. Chile*. Based on these considerations, the Supreme Court ruled that the Institute (PAMI), in spite of not “forming part of the national State” and having a “legal personality and financial individuality legally differentiated from the State,” had the obligation to turn over the information requested by the non-governmental organization relating to the 2009 government advertising budget and the advertising outlay made during some months in that year. This was in view of the fact that the case involved “the request for public information from an institution that manages public interests and has a function delegated by the State, and the interaction between the respondent and the government is indisputable.”

33. In a decision rendered on March 18, 2011, the Constitutional Division of the Supreme Court of Costa Rica⁴⁵ addressed the question of which entities are subject to the principle of maximum transparency. It reiterated that “all public entities and their bodies, both of the Central Government and the Decentralized Government, whether institutional or corporate service providers, are required to observe [the right to access to information] (...) The right of access must be observed broadly by public enterprises that assume collective forms of organization under private law, through which some government entity performs a business, industrial, or commercial activity, and participates in the economy and the market.” The Court also found that “private persons who exercise public power or authority, on a temporary or ongoing basis, by virtual of legal or contractual authorization (...) such as utilities or public works concessionaires, interested managers, public notaries, public accountants, engineers, architects,

⁴³ Oriental Republic of Uruguay. Civil Court of Appeals (Third Rotation). November 22, 2011. *Sindicato de Policía del Uruguay v. Ministerio del Interior- Acceso a la Información Pública Art. 22 Ley 18.381*, i.u.e. 2-105220/2011. *Considerando VI*. Available at: <http://bjn.poderjudicial.gub.uy/BJNPUBLICA/hojalnsumo2.seam?cid=323>

⁴⁴ Republic of Argentina. Supreme Court of Justice. December 4, 2012. *Asociación de Derechos Civiles v. EN – PAMI – (dto. 1172-03) on amparo ley 16.986*. Available at: <http://www.cij.gov.ar/nota-10405-La-Corte-Suprema-reconocio-el-derecho-de-los-ciudadanos-de-acceso-a-la-informacion-publica.html>

⁴⁵ Republic of Costa Rica. Constitutional Chamber of the Supreme Court of Justice. March 18, 2011. Judgment 2011-003320. Available at: http://200.91.68.20/pj/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=TSS&nValor1=1&cmbDespacho=0007&txtAnno=2011&strNomDespacho=Sala%20Constitucional&nValor2=506651&Resultado=&IVolverIndice=¶m01=Judgments%20por%20Despacho¶m2=3&strTipM=T&

topographers, etc., may potentially become subject to this requirement when they handle or possess information—documents—of clear public interest.”⁴⁶

5. Case law on access to public information related to the investigation of human rights violations

34. The First Division of the Supreme Court of Mexico, in amparo appeal decision 168/2011 of November 30, 2011,⁴⁷ ordered the Office of the Attorney General “to allow access and provide certified copies of the preliminary investigation” to the petitioner, in relation to the judicial investigations into the forced disappearance of Rosendo Radilla Pacheco. In spite of the fact that the Transparency and Access to Public Information Act of Mexico has, since 2002, prohibited the invocation of confidentiality with respect to files on the “investigation of serious violations of fundamental rights or crimes against humanity,” the Office of the Attorney General had refused to provide access to preliminary investigations. With this decision, the Supreme Court sets an important precedent in the area of access to public information related to the defense of human rights.

35. In this case, the First Division of the Supreme Court of Mexico found that “with respect to the right to public information, the general rule in a democratic State under the rule of law must be to favor access and the maximum disclosure of information,” the exceptions to which, “by constitutional mandate, must be provided by law, substantively and procedurally.”⁴⁸ It also acknowledged the dual nature of the right to access to information, “as a right in and of itself, but also as a means or instrument for the exercise of other rights,” in which case “the right to access to information is the basis upon which citizens exercise the respective oversight of the institutional workings of the State.”⁴⁹

6. Case law on access to information on government advertising

36. In a May 28, 2010 decision,⁵⁰ the Third Chamber of the Civil and Commercial Appeals Division of the Province of Salta, Argentina, in ruling on a petition for amparo stemming from a request for access to detailed information on government advertising expenditures in the Province of Salta, Argentina, held that, “the refusal of the respondent [the Office of the Governor of the Province of Salta] to provide the requested information is unjustified and is not based on any law; it also violates the principle of the disclosure of acts of government and the scope of the right to access to information as established in Article 13 of the Inter-American Convention of Human Rights (*sic*).” In the opinion of the Court, according to the evidence in the case, “the requested information arises from the State’s own administrative action, which, as such, must be documented not only because it involves the decision and execution of public spending but also because it concerns government advertising, a matter of indisputable public interest in that it is linked to freedom of expression. As stated by Dolores Lavalle Cobo, there is a very close relationship among freedom of expression, the allocation of government

⁴⁶ Republic of Costa Rica. Constitutional Chamber of the Supreme Court of Justice. March 18, 2011. Judgment 2011-003320. *Consideración* IV. Available at: http://200.91.68.20/pj/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=TSS&nValor1=1&cmbDespacho=0007&txtAnno=2011&strNomDespacho=Sala%20Constitucional&nValor2=506651&IResultado=&IolverIndice=¶m01=Judgments%20por%20Despacho¶m2=3&strTipM=T&

⁴⁷ United States of Mexico. Supreme Court of Justice. First Chamber. November 30, 2011. Amparo Appeal 168/2011. Available at: <http://www2.scjn.gob.mx/red2/Case fileon>

⁴⁸ United States of Mexico. Supreme Court of Justice. First Chamber. November 30, 2011. Amparo Appeal 168/2011. *Consideración* 3. Available at: <http://www2.scjn.gob.mx/red2/Case fileon>

⁴⁹ United States of Mexico. Supreme Court of Justice. First Chamber. November 30, 2011. Amparo Appeal 168/2011. *Consideración* 3. Available at: <http://www2.scjn.gob.mx/red2/Case fileon>

⁵⁰ Republic of Argentina. Chamber III of of the Civil and Commercial Chamber of Appeals of the Province of Salta. May 28, 2010. CORNEJO, Virginia v. SECRETARÍA GENERAL DE LA GOBERNACIÓN DE LA PROVINCIA DE SALTA – ACCIÓN DE AMPARO- Case files N° CAM 301.440/10. Available at: http://justicia.salta.gov.ar/nuevo/index.php?option=com_content&view=article&id=325:publicidad-oficial-sala-iii&catid=48:derecho-de-acceso-a-la-informacion-publica

advertising, and access to information.” Finally, the Court held that “we must consider that observance of the duty to inform in this case is simple, since it only requires making available to the requesting party the file or files containing the documentation of the government’s decision to place the advertising in question, the action itself, and the accounting records (invoices or similar documents) that reflect its execution. In other words, the response required of the respondent does not mean that it has to draft a complete report, or perform any activity more demanding than what is stated.”⁵¹

37. In Judgment 48 of September 11, 2009, the Trial Court of Mercedes, Uruguay (Second Rotation)⁵² ruled on a *habeas data* petition filed against the Departmental Board of Soriano, and ordered the disclosure of information on the procurement of government advertising. The Court found that the information relating to the procurement of government advertising must be disclosed by the respective agency to the extent that such information is not “turned over to the Board, but rather produced by the Board, and is public information from the moment it is [included] in the Board’s five-year budget.”

7. Case law on the right to access to information on private government contractors or providers of public services

38. The Constitutional Court of Peru, in a decision of August 27, 2010,⁵³ addressed the obligation of private parties that provide public services to disclose requested information relating to their activities. In this case, a citizen requested that a private company (an electrical power service provider) disclose information relating to service complaints over the past five years. The company had refused to turn over the information. The Court ordered that it disclose the requested information, holding that, “[w]ith respect to access to information in the possession of non-state entities, that is, private legal entities, not all of the information they possess is exempt from disclosure. Bearing in mind the type of work they perform, it is possible for them to have some information that is public in nature, and that the general public is therefore entitled to request and obtain. In this context, the entities subject to requests for this type of information are those that, in spite of being private, provide public services or exercise government functions as provided [by law].” Indeed, according to the Court, “[p]rivate legal entities that perform public services or government functions are obligated to provide information on the nature of the public services they provide, their fees, and the government functions they perform. This means that accessible information must always pertain to one of these three aspects, and not to any others.”⁵⁴

39. In a decision dated April 29, 2009,⁵⁵ Court No. 2 for Administrative Disputes and Tax Matters of the Autonomous City of Buenos Aires, heard a petition for *amparo* stemming from the refusal of the Government of the City of Buenos Aires (hereinafter GCBA) to provide information related, *inter alia*, to the names of individuals associated with various private security firms, their percentages of ownership in the firms, and their membership in the armed forces. In relation to the classification and nature of the requested information and the criteria for considering it sensitive or classified, the Court held

⁵¹ Republic of Argentina. Chamber III of of the Civil and Commercial Chamber of Appeals of the Province of Salta. May 28, 2010. *CORNEJO, Virginia v. SECRETARÍA GENERAL DE LA GOBERNACIÓN DE LA PROVINCIA DE SALTA – ACCIÓN DE AMPARO*- Case files N° CAM 301.440/10. *Consideración VI*. Available at: http://justicia.salta.gov.ar/nuevo/index.php?option=com_content&view=article&id=325:publicidad-oficial-sala-iii&catid=48:derecho-de-acceso-a-la-informacion-publica

⁵² Oriental Republic of Uruguay. Trial Court of Mercedes (Second Rotation). September 11, 2009. *AA v. Junta Departamental de Soriano- Acción de Amparo*. I.u.e. 381-545/2009. Available at: http://www.uaip.gub.uy/wponwcm/connect/60fff8804ad59ad8a98beb5619f13f97/Judgment-juzgado-letrado-de-2do-turno-de-mercedes.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=60fff8804ad59ad8a98beb5619f13f97

⁵³ Republic of Peru. Constitutional Tribunal. First Chamber. Exp. N.º 01347-2010-PHD/TC. August 27, 2010. Available at: <http://www.tc.gob.pe/jurisprudencia/2010/01347-2010-HD.html>

⁵⁴ Republic of Peru. Constitutional Tribunal. First Chamber. Exp. N.º 01347-2010-PHD/TC. August 27, 2010. Fundamentos 5 - 7. Available at: <http://www.tc.gob.pe/jurisprudencia/2010/01347-2010-HD.html>

⁵⁵ Republic of Argentina. Contentious Administrative and Tributary Court N° 2 of the autonomous city of Buenos Aires. Martínez. April 29, 2009. *Diego v. Gobierno de la Ciudad Autónoma de Buenos Aires*. Available at: <http://www.cdpd.gov.ar/imageonarticuloscpdp/falloonmartinez.pdf>

as follows: “[n]o part of the requested information can be considered sensitive under the terms of Article 3 of Law 1845. This is obvious. [...] The GCBA has also not asserted, nor does it arise from any applicable law, that the requested records are classified for reasons of national or local security, or for strategic or intelligence reasons—a situation that would obviously not make the records inviolable, but could require greater care in judicially manipulating the disclosure of their content. In sum, neither the nature of the information requested, nor the characteristics of the database, provides any evidence to support the GCBA’s restriction of the information that is the subject of the petition.”⁵⁶

40. Additionally, in this case, the Court found that access to the information had “institutional gravity,” to the extent that it facilitated compliance with some legal provisions relating to the transition from dictatorship to democracy in Argentina. Indeed, the Court found that, “Law 1913 (...) establishes as a requirement for the provision of private security services that the provider not have been convicted or pardoned for crimes that are human rights violations. [...] In this case, the information on individual members of the agencies is of even greater institutional relevance. [...] The institutionalization of the right to information and the institutionalization of criticism are conditions *sine qua non* of a democratic society.” Accordingly, the Court concluded that, “the mere possibility that persons who participated in human rights violations during the last military dictatorship could directly or indirectly form part of business organizations engaged in the provision of private security services is of such a magnitude that it is hard to imagine what reasons the GCBA might have in mind for preventing the disclosure of the requested information, using clearly avoidable procedures to do so.”⁵⁷

8. Case law on the subject matter of the right to access and the definition of public document

41. In a decision of April 29, 2009,⁵⁸ Court No. 2 for Administrative Disputes and Tax Matters of the Autonomous City of Buenos Aires held as follows with regard to the subject matter of the right to access: “the aforementioned rules are related to the basic principle of the disclosure of acts of government, its nature being access to the information contained in documents—that is, physical formats of any type. As such, it does not concern access to the news, in the sense of the product or outcome of an activity performed by third parties; rather, it concerns direct access to the source of information—in this case, to the document.” In the Court’s opinion, “the activity of the government *vis-à-vis* the exercise of the right of access does not exactly consist of the provision of a benefit, but rather of intermediation. Certainly this configuration of the right entails some inevitable institutional requirements, including the prior existence of the document as an assumption for the exercise of the right. It can be held that the right to access to government documents is, structurally, a right to the freedom to be informed, which is based on the democratic principle of the disclosure of the information that is in the State’s possession.”⁵⁹

42. On this same issue, in a decision handed down on March 18, 2011, the Constitutional Division of the Supreme Court of Costa Rica⁶⁰ reiterated that, “citizens or individuals can access any

⁵⁶ Republic of Argentina. Contentious Administrative and Tributary Court N° 2 of the autonomous city of Buenos Aires. Martínez. April 29, 2009. *Diego v. Gobierno de la Ciudad Autónoma de Buenos Aires*. Consideración VI. Available at: <http://www.cdpd.gov.ar/imageonarticuloscpdp/falloonmartinez.pdf>

⁵⁷ Republic of Argentina. Contentious Administrative and Tributary Court N° 2 of the autonomous city of Buenos Aires. Martínez. April 29, 2009. *Diego v. Gobierno de la Ciudad Autónoma de Buenos Aires*. Consideraciones VII y VIII. Available at: <http://www.cdpd.gov.ar/imageonarticuloscpdp/falloonmartinez.pdf>

⁵⁸ Republic of Argentina. Contentious Administrative and Tributary Court N° 2 of the autonomous city of Buenos Aires. Martínez. April 29, 2009. *Diego v. Gobierno de la Ciudad Autónoma de Buenos Aires*. Available at: <http://www.cdpd.gov.ar/imageonarticuloscpdp/falloonmartinez.pdf>

⁵⁹ Republic of Argentina. Contentious Administrative and Tributary Court N° 2 of the autonomous city of Buenos Aires. Martínez. April 29, 2009. *Diego v. Gobierno de la Ciudad Autónoma de Buenos Aires*. Consideración III. Available at: <http://www.cdpd.gov.ar/imageonarticuloscpdp/falloonmartinez.pdf>

⁶⁰ Republic of Costa Rica. Constitutional Chamber of the Supreme Court of Justice. March 18, 2011. Judgment 2011-003320. Available at: http://200.91.68.20/pj/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=TSS&nValor1=1&cmbDespacho=0007&txtAnno=2011
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information in the possession of the respective public entities and bodies, regardless of its format, whether it be documentary (files, records, archives), electronic or digital (databases, electronic files, automated filing systems, diskettes, compact discs), audiovisual, tape-recorded, etc.”⁶¹

9. Case law on the material possibility of disclosing the requested information

43. In Judgment 354/11, of November 22, 2011, the Court of Civil Appeals of Uruguay (Third Rotation)⁶² ordered the Ministry of Interior to provide the following information: the number of labor union organizations in a field, the number of members in each organization, and the number of labor union hours requested and granted in the period from February to November, 2011. In this case, the Ministry met the request for the specified information with silence, having reportedly stated before the court that its denial of access was justified on the basis of physical (nonexistent information) and legal (sensitive information) impossibility.

44. With regard to the impossibility of turning over information, the Court preliminarily dismissed “the respondent’s simple assertion that it does not possess the records requested, and that the subject matter of the request is therefore impossible.” With respect to the subject matter of the information, the Court found it necessary “to examine whether the plaintiff’s request entails the ‘production of information,’” to which, according to the Court, the respondent would not, in principle, be obligated. The decision stated that, “it must be understood that the request is for information about: (a) the number of labor union organizations in the field; (b) the number of members in each one; (c) the number of labor union hours requested from February 2011 to the present (specified month by month) for each organization; (d) the number of hours granted by the Ministry to each organization from February to the present.” The Court thus opined that, “to the extent that the data, although not systematized, can be recorded in some form in the respondent’s records and proceedings, it must be underscored that there is no demand for ‘production,’ but rather simply for compilation. Therefore, it is clear that they are not exempt from the potential aim of the ‘improper *habeas data*’—as the provisions of Law 18.381 have been referred to in scholarly writings.” This is the case, in that the Ministry, “at least in paying the salaries of its employees, had to have made records from which much of the information requested by the plaintiff can be gleaned.” In addition, “the number of labor unions recognized by the respondent must be evident at least from the deduction of union dues from payments and/or the allocation of ‘labor union hours’ of leave granted to its employees. The number of members of each labor union can also be easily calculated in view of identical considerations, and the number of hours requested and granted will also emerge from those records.”⁶³

45. The Constitutional Court of Peru, in a decision of August 22, 2011,⁶⁴ ruled that the defense alleging the nonexistence of information was inadmissible to justify the denial of access. In the opinion of the Court, the guarantee of the right to access to public information “includes not only the obligation of public bodies to turn over the information requested but also that the information be

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⁶¹ Republic of Costa Rica. Constitutional Chamber of the Supreme Court of Justice. March 18, 2011. Judgment 2011-003320. *Consideración* IV. Available at: http://200.91.68.20/pj/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=TSS&nValor1=1&cmbDespacho=0007&txtAnno=2011&strNomDespacho=Sala%20Constitucional&nValor2=506651&IResultado=&IVolverIndice=¶m01=Judgments%20por%20Despacho¶m2=3&strTipM=T&

⁶² Oriental Republic of Uruguay. Court of Civil Appeals (Third Rotation). November 22, 2011. *Sindicato de Policía del Uruguay v. Ministerio del Interior- Acceso a la Información Pública Art. 22 Ley 18.381*, i.u.e. 2-105220/2011. Available at: <http://bjn.poderjudicial.gub.uy/BJNPUBLICA/hojalnsumo2.seam?cid=323>

⁶³ Oriental Republic of Uruguay. Court of Civil Appeals (Third Rotation). November 22, 2011. *Sindicato de Policía del Uruguay v. Ministerio del Interior- Acceso a la Información Pública Art. 22 Ley 18.381*, i.u.e. 2-105220/2011. Considerando V Available at: <http://bjn.poderjudicial.gub.uy/BJNPUBLICA/hojalnsumo2.seam?cid=323>

⁶⁴ Republic of Peru. Constitutional Tribunal. First Chamber. Exp. N° 01410-2011-PHD/TC. August 22, 2011. Available at: <http://www.tc.gob.pe/jurisprudencia/2011/01410-2011-PHD/TC>

complete, up-to-date, accurate, and true. Thus, if the right to access to information in its positive aspect imposes the duty to inform upon government bodies, in its negative aspect it requires that the information provided not be false, incomplete, fragmented, circumstantial, or confusing.”⁶⁵

46. In this case, a municipal government had alleged the “nonexistence” of the “file in which the property title was granted.” The Constitutional Court rejected this defense on the argument of the government’s duty to safeguard information storage media. The Court held that, “although it is inferred [...] that the information requested by the plaintiffs was transferred from one file to another, it is the responsibility of the municipality to keep such information, and therefore it cannot avail itself of its “nonexistence” in order to avoid its obligation to provide it to the plaintiffs.” The Court determined that, “the necessary procedures to locate the requested documentation must be exhausted. In its absence, and if it is proven to have been lost, the pertinent administrative file must be reconstructed, in order for copies to then be provided to the interested parties.”⁶⁶

10. Case law on the right to access to information on the salaries and incomes of public servants or contractors paid with public funds

47. In decision TC/0042/12 of September 21, 2012,⁶⁷ the Constitutional Court of the Dominican Republic ruled on a motion for the review of an amparo petition relating to the denial of access to information on the payroll and salaries of advisers working for the House of Representatives. The Court found that information relating to “names, positions, and salaries” in a public entity (House of Representatives) was not confidential. To reach this conclusion, the Court found it necessary to “weigh” the fundamental rights in apparent conflict—that is, the right to access to information and the right to privacy. This takes account of the fact that, according to one of the positions argued in the case, access to information relating to payroll and salaries—because it is private in nature—could “leave open the possibility of penetrating the private sphere of individuals.”

48. In its balancing test, the Court found that “a name is a piece of information that makes it possible to identify people individually. [But it does not] involve data or information that every person might keep in a private personal and family space, removed from outside interference.” It further considered that, “the purpose of the right of free access to public information is to monitor the use and management of public resources and, consequently, to put up obstacles to government corruption.” Based on these premises, the Court concluded that “although the right to privacy is a fundamental value in the democratic system, just like the protection of personal data, they cannot (sic) generally—although they can in exceptional cases—restrict the right to free access to public information, since limiting it would deprive citizens of an essential mechanism for the control of government corruption.”

49. In a decision of November 30, 2010, the Constitutional Court of Guatemala⁶⁸ found that the State’s positive duty to publish information on salaries and other emoluments of public servants on its own initiative was consistent with the Constitution. In the Court’s opinion, “those numbers are in the public interest by reason of their origin, which is the national treasury, the product of tax revenues paid by the citizens for the financial support of the State.” It added that, “the citizens, being the holders of the sovereignty delegated to the government, have the prerogative to access the information administered by the government in and for the performance of its duties [...] including the manner in which government

⁶⁵ Republic of Peru. Constitutional Tribunal. First Chamber. Exp. N° 01410-2011-PHD/TC. August 22, 2011. *Fundamento* 4. Available at: <http://www.tc.gob.pe/jurisprudencia/2011/01410-2011-HD.html>

⁶⁶ Republic of Peru. Constitutional Tribunal. First Chamber. Exp. N° 01410-2011-PHD/TC. August 22, 2011. *Fundamento* 8. Available at: <http://www.tc.gob.pe/jurisprudencia/2011/01410-2011-HD.html>

⁶⁷ Dominican Republic. Constitutional Tribunal. September 21, 2012. Judgment TV.0042/12. Available at: <http://www.tribunalconstitucional.gob.do/node/582>

⁶⁸ Republic of Guatemala. Court of Constitutionality. November 30, 2010. Case files 1373-2009, 1412-2009, 1413-2009. Available at: http://www.cc.gob.gt/siged2009/mdIWeb/frnConsultaWebVerDocumento.aspx?St_DocumentoId=819889.html&St_RegistrarConsulta=yes&sF=fraseabuscar

resources are invested. The remuneration of public officials, employees, servants, and advisors to the public sector are, without a doubt, an important item in this respect. Herein lies the inflection point that validates the difference in treatment under the law of individuals who belong to this category, in terms of the open disclosure of their remuneration, as opposed to those in private sector employment relationships.”⁶⁹

50. Finally, the Court found that the information on salaries and other emoluments derived from public funds could not be considered “information included within the core of constitutionally protected personal privacy.” It also found that although it “was not indifferent to the climate of insecurity that afflicts Guatemalan society,” it was of the opinion “that such situation was not attributable to the legislative decision” being reviewed.⁷⁰

51. In a judgment handed down on June 9, 2011,⁷¹ the Federal Supreme Court of Brazil upheld the suspension of the effects of two precautionary measures that barred the disclosure on a website of data on the incomes of public servants employed by the municipality of São Paulo. The precautionary measures had been granted by a lower court at the request of two organizations, under the theory that the disclosure of the information was a violation of the employees’ rights to privacy and private life. In examining the case, the Supreme Court weighed the conflicting rights and concluded that the salaries of the municipal employees was information “of collective or general interest,” and that it was therefore subject “to official disclosure.” According to the Court, in this specific case, the public disclosure of the information did not pose a risk to “the security of the State or society as a whole.” It was also not a violation of the employees’ privacy or private lives, since “the data subject to disclosure referred to state agents (...) acting ‘in that capacity’”, and therefore the disclosure of the information is “the price they pay for choosing a career in public service in a republican State.”⁷²

11. Case law on the obligation to have a simple, rapid, and free administrative procedure for obtaining access to information

52. In a constitutionality decision handed down on November 30, 2010,⁷³ the Constitutional Court of Guatemala addressed the State’s duty to provide an administrative mechanism for gaining access to information at all levels. In this case, the Court dismissed the constitutional challenge alleging that the Access to Information Act should have been passed by a special majority because it affected the autonomy of certain entities (the Act ordered the creation of information units in all government offices, including decentralized and autonomous agencies, as well as the creation of procedures to guarantee access to information). The Court held that the Act did not change the regulation of autonomous entities to the point of “altering their structure, functions, and responsibilities.” In the Court’s opinion, the Act, by creating “rules and procedures for all persons to be able to gain access to the information contained in the records, files, databases or systems of government offices” develops a “general mandate that

⁶⁹ Republic of Guatemala. Court of Constitutionality. November 30, 2010. Case files 1373-2009, 1412-2009, 1413-2009. *Considerando* VII. Available at: http://www.cc.gob.gt/siged2009/mdlWeb/fmConsultaWebVerDocumento.aspx?St_DocumentId=819889.html&St_RegistrarConsulta=yes&sF=fraseabuscar

⁷⁰ Republic of Guatemala. Court of Constitutionality. November 30, 2010. Case files 1373-2009, 1412-2009, 1413-2009. *Considerando* VII. Available at: http://www.cc.gob.gt/siged2009/mdlWeb/fmConsultaWebVerDocumento.aspx?St_DocumentId=819889.html&St_RegistrarConsulta=yes&sF=fraseabuscar

⁷¹ Federative Republic of Brazil. Supreme Federal Tribunal. June 9, 2011. *Segundo Ag. Reg. na Suspensão of Segurança* No. 3.902 – São Paulo. Available at: <http://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=AC&docID=628198>

⁷² Federative Republic of Brazil. Supreme Federal Tribunal. June 9, 2011. *Segundo Ag. Reg. na Suspensão of Segurança* No. 3.902 – São Paulo, para. 15. Available at: <http://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=AC&docID=628198>

⁷³ Republic of Guatemala. Court of Constitutionality. November 30, 2010. Case files 1373-2009, 1412-2009, 1413-2009. Available at: http://www.cc.gob.gt/siged2009/mdlWeb/fmConsultaWebVerDocumento.aspx?St_DocumentId=819889.html&St_RegistrarConsulta=yes&sF=fraseabuscar

concerns all levels of government, and does not affect the essential powers, responsibilities, or structure of decentralized or autonomous entities.” Therefore, it was not necessary to have “the favorable vote of the qualified majority in order to validly enact the challenged law.”⁷⁴

53. The Supreme Court of Panama, in a December 27, 2011⁷⁵ decision, ordered the disclosure of copies of files pertaining to the allocation of land titles, determining that the Ministry of Agricultural Development had hindered access to information by requesting that the petitioner demonstrate particular interest. The Court found that, “since it was not confidential or restricted, the petitioner was fully entitled to request [the information], and therefore the respondent authority’s demand was not necessary for the provision of the copies.” The Court dismissed the ministry’s reasons regarding the complexity of turning over the information, observing that the authority should have “communicated the reasons for the complexity to the petitioner in writing” when it responded to the request at the administrative level, and not at the judicial stage of the proceedings. It concluded that, “the information requested is not confidential or restricted, and therefore the authority had the obligation to heed the request and provide the respective information in writing within the 30-day period established in Article 7 of the Act, with the possibility of extending the period for an additional 30 days if the request was complex or extensive, through written notification to the requesting party of the extension of time and its justification.”⁷⁶

54. At the same time, amparo appeal decision 168/2011 of November 30, 2011,⁷⁷ handed down by the First Division of the Supreme Court of Mexico, ruled on the effectiveness of the administrative guarantee of the right to access to information. The Supreme Court recognized the duty of all parties subject to the Transparency and Access to Public Information Act, including the Office of the Attorney General, to “comply unconditionally with the resolutions issued by the Federal Institute for Access to Public Information in ruling on motions for review,” and added that “the use of *de jure* or *de facto* remedies⁷⁸ aimed at blocking timely and effective access to public information” shall not be valid. This ruling addressed the fact that the Office of the Attorney General had refused to provide access to preliminary investigations, whether through legal channels (challenges to the decisions of the IFAI) or through the unlawful denial of fundamental rights (not turning over the information).

12. Case law on the duty of the State to justify a decision to deny access to information

55. In a decision dated June 5, 2012, the Supreme Court of Panama⁷⁹ heard a *habeas data* action in which a request was made to the Research and Development Department of the Aquatic Resources Authority of Panama for access to a file that contained a request to research genetically modified salmon. The department’s reply was outside the legal time limit, and it denied access to the information on the grounds that it was “restricted.” The Court determined that “even when the public servant who receives a request for information does not possess it, or considers it to be restricted, that public servant has the obligation to communicate this to the petitioner, or specify where the petitioner can

⁷⁴ Republic of Guatemala. Court of Constitutionality. November 30, 2010. Case files 1373-2009, 1412-2009, 1413-2009. *Considerando* III Available at: http://www.cc.gob.gt/siged2009/mdlWeb/frmConsultaWebVerDocumento.aspx?St_DocumentId=819889.html&St_RegistrarConsulta=yes&sF=fraseabuscar

⁷⁵ Republic of Panama. Supreme Court of Justice. December 27, 2011. Case file 1068-10. Available at: <http://bd.organojudicial.gob.pa/registro.html>

⁷⁶ Republic of Panama. Supreme Court of Justice. December 27, 2011. Case file 1068-10. Available at: <http://bd.organojudicial.gob.pa/registro.html>

⁷⁷ United States of Mexico. Supreme Court of Justice. First Chamber. November 30, 2011. Amparo Appeal 168/2011. Available at: <http://www2.scjn.gob.mx/red2/Case fileon>

⁷⁸ United States of Mexico. Supreme Court of Justice. First Chamber. November 30, 2011. Amparo Appeal 168/2011. Consideración 3. Available at: <http://www2.scjn.gob.mx/red2/Case fileon>

⁷⁹ Republic of Panama. Supreme Court of Justice. June 5, 2012. Case file 748-11. Available at: <http://bd.organojudicial.gob.pa/registro.html>

obtain the requested information in the event that it is an extensive or complicated request; for this, the public servant [...] has a period of thirty (30) days.” The Court also underscored the duty of government bodies to justify in detail every refusal to turn over information: “the institutions of the State that refuse to provide information on the grounds that it is confidential or restricted, must do so in a well-founded decision, establishing the reasons for the denial, as well as the legal basis for those reasons.” In addition, the Supreme Court held that the government body must also explain in writing to the petitioner “the reasons for which it failed to respond to the request on time,” in those cases in which the reply is not issued within the legally established time period.⁸⁰

13. Case law on affirmative administrative silence

56. The Court of Civil Appeals of Uruguay (Third Rotation), in Judgment 354/11 of November 22, 2011,⁸¹ found that failing to reply to a request for information from an individual triggered the government’s obligation to turn over the requested information by virtue of the concept of affirmative administrative silence. On this point, it stated: “[t]he provision [Article 18 of Law 18.381] states that the interested party ‘shall be able to access,’ which, in conjunction with the aforementioned section (affirmative silence), leads to the conclusion that the absence of an express decision, unlike what is set forth in the Constitution of the Republic in relation to a common administrative petition, assumes that the petition is admitted—not denied.” The Court concluded that: “the legal system prioritizes the right to information over the government’s delay in rendering a decision.” This is in the application of “a type of ‘rule of admission’ similar to that established under our procedural law when there is no effective challenge.”⁸²

14. Case law on the obligation to provide an appropriate and effective judicial remedy

57. In a May 28, 2010 decision, the Third Chamber of the Civil and Commercial Appeals Division of the Province of Salta, Argentina⁸³ ruled on a petition for amparo stemming from a request for access to information detailing government advertising expenditures in the Province of Salta. Before ruling on the merits, the Court considered the admissibility of amparo to address violations of fundamental rights, including the right to access to information, while administrative proceedings (seeking access to information) are still pending. The Court opined that: “preliminarily, it is necessary to establish that—by constitutional mandate—the action of *amparo* is admissible with respect to any decision, act, or omission of public authorities, except judicial authorities, or individuals who currently or imminently will harm, restrict, alter, or threaten, clearly arbitrarily or unlawfully, the rights and guarantees explicitly or implicitly recognized in the national and provincial constitutions, for purposes of putting a stop to the harm committed or the threat of harm (art. 87 of the Constitution of Salta).”⁸⁴

⁸⁰ Republic of Panama. Supreme Court of Justice. June 5, 2012. Case file 748-11. Available at: <http://bd.organojudicial.gob.pa/registro.html>

⁸¹ Oriental Republic of Uruguay. Court of Civil Appeals (Third Rotation). November 22, 2011. *Sindicato de Policía del Uruguay v. Ministerio del Interior- Acceso a la Información Pública Art. 22 Ley 18.381*, i.u.e. 2-105220/2011. Available at: <http://bjn.poderjudicial.gub.uy/BJNPUBLICA/hojalnsumo2.seam?cid=323>

⁸² Oriental Republic of Uruguay. Court of Civil Appeals (Third Rotation). November 22, 2011. *Sindicato de Policía del Uruguay v. Ministerio del Interior- Acceso a la Información Pública Art. 22 Ley 18.381*, i.u.e. 2-105220/2011. *Considerando III*. Available at: <http://bjn.poderjudicial.gub.uy/BJNPUBLICA/hojalnsumo2.seam?cid=323>

⁸³ Republic of Argentina. Chamber III of the Civil and Commercial Appeals Chamber of the Province of Salta. May 28, 2010. CORNEJO, Virginia v. *SECRETARÍA GENERAL DE LA GOBERNACIÓN DE LA PROVINCIA DE SALTA – ACCIÓN DE AMPARO*- Case files N° CAM 301.440/10. Available at: http://justicia.salta.gov.ar/nuevo/index.php?option=com_content&view=article&id=325:publicidad-oficial-sala-iii&catid=48:derecho-de-acceso-a-la-informacion-publica

⁸⁴ Republic of Argentina. Chamber III of the Civil and Commercial Appeals Chamber of the Province of Salta. May 28, 2010. CORNEJO, Virginia v. *SECRETARÍA GENERAL DE LA GOBERNACIÓN DE LA PROVINCIA DE SALTA – ACCIÓN DE AMPARO*- Case files N° CAM 301.440/10. *Consideración I*. Available at: http://justicia.salta.gov.ar/nuevo/index.php?option=com_content&view=article&id=325:publicidad-oficial-sala-iii&catid=48:derecho-de-acceso-a-la-informacion-publica

58. The case discussed whether the amparo was admissible, inasmuch as the act of authority (of the Office of the Governor of Salta) that denied the access was not a final decision but rather a “mere opinion.” In the Court’s view, “the preclusion of the *amparo* because of the existence of other appeals cannot be founded on a merely procedural appraisal, since the purpose of *amparo* is to effectively protect rights rather than to arrange or protect spheres of jurisdiction. Indeed, in principle, opinions—including those of which the parties have been notified—are not the proper basis for an *amparo* petition, as they are not administrative acts in themselves, but rather mere preparatory acts.” Nevertheless, the Court found that, “the argument in question is not worthy of consideration, given that the procedural position taken by the Office of the Governor on the record finds support in, and coincides with, the legal grounds of the opinion being challenged by the *amparo* petitioner. As such, referring the case to the conclusion of the pending administrative proceeding would amount to a solution that is merely procedural, and contrary to the proper service of justice.” Thus, according to the Court, “it is not necessary to go through administrative proceedings prior to filing an *amparo* petition if, it being filed directly, the public authority objects to the petitioner’s argument and upholds the legitimacy of the harmful act in the *amparo* proceedings; otherwise, the requirement of exhausting administrative proceedings would be transformed into a useless procedure.” In this respect, “the position taken in the instant case is the one that is most consistent with the jurisprudence of the Inter-American Court of Human Rights, inasmuch as the State must guarantee the existence of a simple, rapid, and effective judicial remedy to challenge the denial of information in violation of the right of the requesting party and, if appropriate, to allow for the pertinent body to be ordered to turn it over (*Case of Claude Reyes et al. v. Chile*). On the contrary, sending the petitioner to conclude the administrative proceedings that resulted from his request for information would violate the principles of simplicity, expediency, and effectiveness of the judicial remedy upheld by the Inter-American Court.”⁸⁵

59. The Constitutional Court of Guatemala, in an August 24, 2010 decision⁸⁶ concerning the existence of an effective judicial mechanism for the protection of the right to access to information, held that “all government acts are public, with the exceptions contained in the Constitution. Interested parties have the right to obtain, at any time, the reports, copies, reproductions, and certifications they request, and to view the files they wish to consult, unless they pertain to military or diplomatic national security matters, or to information provided by individuals under a promise of confidentiality. Amparo as a guarantee against arbitrariness is viable in the prioritization of this constitutional right, which must be fully respected.”⁸⁷

60. In a decision handed down on September 5, 2010,⁸⁸ the Constitutional Court of Peru addressed the simplicity of the judicial proceeding of *habeas data* for purposes of guaranteeing access to public information. In its rejection of the lower court’s arguments regarding the supposed existence of special admissibility requirements, the Court found that, “[i]n a *habeas data* case, the only prerequisite for filing the complaint is that provided in Article 62 [of the Code of Constitutional Procedure]. An unsatisfactory response, or silence on the part of the requested party, are reasons for the court to act in order to reestablish the exercise of the violated right.” The Court also found that “in *habeas data* cases, the courts must adhere strictly to Article 62 of the Code of Constitutional Procedure, according to which

⁸⁵ Republic of Argentina. Chamber III of the Civil and Commercial Appeals Chamber of the Province of Salta. May 28, 2010. *CORNEJO, Virginia v. SECRETARÍA GENERAL DE LA GOBERNACIÓN DE LA PROVINCIA DE SALTA – ACCIÓN DE AMPARO*- Case files N° CAM 301.440/10. Consideración II. Available at: http://justicia.salta.gov.ar/nuevo/index.php?option=com_content&view=article&id=325:publicidad-oficial-sala-iii&catid=48:derecho-de-acceso-a-la-informacion-publica

⁸⁶ Republic of Guatemala. Court of Constitutionality. August 24, 2010. Case file 1828-2010. Available at: http://www.cc.gob.gt/siged2009/mdlWeb/frmConsultaWebVerDocumento.aspx?St_DocumentId=815140.html&St_RegistrarConsulta=no

⁸⁷ Republic of Guatemala. Court of Constitutionality. August 24, 2010. Case file 1828-2010. Considerando I. Available at: http://www.cc.gob.gt/siged2009/mdlWeb/frmConsultaWebVerDocumento.aspx?St_DocumentId=815140.html&St_RegistrarConsulta=no

⁸⁸ Republic of Peru. Constitutional Tribunal. First Chamber. Exp. N° 00565-2010-PHD/TC. September 5, 2010. Available at: <http://www.tc.gob.pe/jurisprudencia/2010/00565-2010-HD.html>

the only prerequisite for filing the claim is the written, dated request and the respondent's refusal to turn over the information requested."⁸⁹

15. Case law on active transparency

61. The Constitutional Division of the Supreme Court of Costa Rica, in a March 18, 2011 decision,⁹⁰ reiterated "the duty of public entities to provide information, [in view of which they] must provide facilities and eliminate existing obstacles. News professionals are intermediaries between public entities and the recipients of the information, and therefore they also have the right to obtain information and the duty to convey it as accurately as possible. The subject matter of the right to information is news, and therefore those events that may be of public significance must be understood as such."⁹¹

62. In Judgment 48 of September 11, 2009, the Trial Court of Mercedes, Uruguay (Second Rotation)⁹² ruled on a *habeas data* petition filed against the Departmental Board of Soriano, seeking the disclosure of information on the procurement of government advertising. In relation to the principle of active transparency, the Court found that the information on the procurement of government advertising should have been disclosed by the respective agency, not only upon request but also on its own initiative—to the extent that such information is not "turned over to the Board, but rather produced by the Board, and is public information from the moment it is [included] in the Board's five-year budget." Furthermore, according to Article 5 of the Access to Information Act, such information must be disseminated "on an ongoing basis" because it is "information about an allocated budget and its execution."

16. Case law on the duty to disseminate truthful information on sexual and reproductive rights

63. In decision T-627 of 2012, handed down on August 10, 2012,⁹³ the Constitutional Court of Colombia ruled on a special petition for a constitutional remedy (*tutela*) filed by a group of 1279 women against employees of the Office of the Attorney General of the Nation. In this case, the women stated that employees of the Attorney General's Office, in various contexts and by various means, had failed to recognize their right to accurate information on sexual and reproductive rights. The women alleged that the Attorney General's Office had misinterpreted decisions of the Constitutional Court relating to several of these rights, such as the voluntary termination of pregnancy under legally permissible circumstances, the mandatory nature of campaigns to promote those rights, the absence of institutional conscientious objection in such contexts, and others. The Constitutional Court found that the appropriate framework for examining the case was, in principle, sexual and reproductive rights, which include "reproductive self-

⁸⁹ Republic of Peru. Constitutional Tribunal. First Chamber. Exp. N° 00565-2010-PHD/TC. September 5, 2010. Fundamento §2.4. Available at: <http://www.tc.gob.pe/jurisprudencia/2010/00565-2010-HD.html>

⁹⁰ Republic of Costa Rica. Constitutional Chamber of the Supreme Court of Justice. March 18, 2011. Judgment 2011-003320. Available at: http://200.91.68.20/pi/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=TSS&nValor1=1&cmbDespacho=0007&txtAnno=2011&strNomDespacho=Sala%20Constitucional&nValor2=506651&IResultado=&IVolverIndice=¶m01=Judgments%20por%20Despacho¶m2=3&strTipM=T&

⁹¹ Republic of Costa Rica. Constitutional Chamber of the Supreme Court of Justice. March 18, 2011. Judgment 2011-003320. *Consideración* IV. Available at: http://200.91.68.20/pi/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=TSS&nValor1=1&cmbDespacho=0007&txtAnno=2011&strNomDespacho=Sala%20Constitucional&nValor2=506651&IResultado=&IVolverIndice=¶m01=Judgments%20por%20Despacho¶m2=3&strTipM=T&

⁹² Oriental Republic of Uruguay. Trial Court of Mercedes (Second Rotation). September 11, 2009. *AA v. Junta Departamental de Soriano- Acción de Amparo. I.u.e. 381-545/2009*. Available at: http://www.uaip.gub.uy/wponwcm/connect/60fff8804ad59ad8a98beb5619f13f97/Judgment-juzgado-letrado-de-2do-tumo-de-mercedes.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=60fff8804ad59ad8a98beb5619f13f97

⁹³ Republic of Colombia. Constitutional Court. August 10, 2012. Judgment T-627 of 2012. Available at: <http://www.corteconstitucional.gov.co/relatoria/2012/t-627-12.htm>

determination, access to reproductive health services, and the right to information on reproductive matters.”

64. With respect to the right to access to information on reproductive issues, the Court found, consistent with the inter-American standards, that: “both Article 20 of the [Colombian] Constitution and Article 13 of the ACHR on the right to information, by not having any limitation in terms of subject matter, protect information on reproductive issues and, consequently, all of the rules on its content that were summarized in paragraphs 4 to 6 are also applicable here. Nevertheless, in the aforementioned thematic report [*Access to Information on Reproductive Issues from a Human Rights Perspective*]⁹⁴, the IACHR identifies some of the international standards that are especially important on this issue and that the Court finds worth mentioning: (i) the obligation of active transparency, (ii) access to information, and (iii) the obligation to disclose timely, complete, accessible, and reliable information.”⁹⁵

65. Later, the Court acknowledged the fundamental importance of the right to access to information in the context of sexual and reproductive rights. It held, in the following terms, that it was essential to the exercise of individual autonomy and to the eradication of discrimination against women: “if information is important for the exercise of all fundamental rights, insofar as it makes it possible to know their content and the mechanisms for asserting them, it becomes vital when it concerns reproductive rights, especially in the case of women. There are two reasons for this. First, [...] this category of rights makes it easier [...] to make decisions freely on different aspects of reproduction, and without information on the available options and the ways in which to make use of them, it is impossible to do so. The second reason is that one of the mechanisms for perpetuating the discrimination historically experienced by women has been—and continues to be—precisely to deny or hinder access to accurate and impartial information in this area, with the objective of denying them control over this type of decision. In its recent report on the issue, the IACHR recognized this, and thus noted that the States parties to the ACHR must permit access to information on those issues, and furthermore, must provide them on their own initiative (duty of active transparency).”⁹⁶

66. The Court found that when the employees of the Attorney General’s Office express themselves—like all public servants acting in their official capacity—they do not do so in the exercise of their freedoms, but rather in the exercise of an authority governed by and subject to the principle of legality in government. The expressions of public servants are then, according to the Court, manifestations of the exercise of the “power/duty of communication with the public.” This power/duty is subject to certain limits, which, according to the Court, are as follows: “(i) accuracy and impartiality in conveying information; (ii) minimally sufficient factual justification and reasonableness of its opinions and, in all cases, (iii) respect for fundamental rights, especially of those subject to special constitutional protection.”⁹⁷ In addition to these limits, the Court found that the abuse of the power/duty of communication or of a public servant’s authority should be held to strict standards in light of the “prominent status [of the public servant] vis-à-vis the public,” especially “when the mass media are used.”⁹⁸

⁹⁴ IACHR. *Access to Information on Reproductive Health from a Human Rights Perspective*. OEA/Ser.LV/II. Doc. 61. November 22, 2011. Available at: <http://www.oas.org/en/iachr/women/docs/pdf/ACCESS%20TO%20INFORMATION%20WOMEN.pdf>

⁹⁵ Republic of Colombia. Constitutional Court. August 10, 2012. Judgment T-627 of 2012. Consideración 46. Available at: <http://www.corteconstitucional.gov.co/relatoria/2012/t-627-12.htm>

⁹⁶ Republic of Colombia. Constitutional Court. August 10, 2012. Judgment T-627 of 2012. Consideración 46. Available at: <http://www.corteconstitucional.gov.co/relatoria/2012/t-627-12.htm>

⁹⁷ Similarly, see IACHR, Office of the Special Rapporteur for Freedom of Expression. *Inter-American Legal Framework of the Right to Freedom of Expression*. OEA/Ser.LV/II CIDH/RELE/INF. 2/09. December 30, 2009. Paras. 200-206. Available at: <http://www.oas.org/en/iachr/expression/doc/publication/INTER-AMERICAN%20LEGAL%20FRAMEWORK%20OF%20THE%20RIGHT%20TO%20FREEDOM%20OF%20EXPRESSION%20FINAL%20PORTADA.pdf>

⁹⁸ Republic of Colombia. Constitutional Court. August 10, 2012. Judgment T-627 of 2012. Consideración 13. Available at: <http://www.corteconstitucional.gov.co/relatoria/2012/t-627-12.htm>

67. In this specific case, the Court evaluated three circumstances pertinent to the right to access to information. First, it considered that the Attorney General, by changing the meaning of an order of the Constitutional Court related to sexual and reproductive rights in an official statement “violated the public’s right to receive information or to be accurately informed of a matter of public interest.” Indeed, the Court affirmed that “this public servant changed the meaning of the order in the aforementioned judgment by referring to ‘the order [...] to design and implement mass campaigns to promote abortion as a right,’ when in reality the operative part of the judgment ordered ‘mass campaigns to promote sexual and reproductive rights to help ensure that women throughout the country can freely and effectively exercise these rights.’ It is clear that the Court did not order the promotion of abortion, as the Attorney General asserted in the statement [...]. The Attorney General exceeded one of the limits that this Court has imposed on the exercise of his power/duty of communication with the public, which is the accuracy of information.”⁹⁹ Second, the Court found that one of the employees of the Attorney General’s Office, by publicly asserting the supposed unenforceability of Judgment T-388 of 2009 (in which the Court ordered campaigns to promote sexual and reproductive rights), and suggesting the need to wait for the decision on a motion to vacate that judgment, had “violated the fundamental right of the country’s women to information on reproductive matters,” by delaying the execution of the campaigns to promote sexual and reproductive rights. Finally, in relation to the scientific nature of emergency oral contraception, staff members of the Attorney General’s Office stated in the mass media that it was an “abortifacient.” After evaluating the scientific evidence in the case, the Court found that the official position of the Attorney General’s Office was inconsistent with the expert science, and therefore disregarded the limits of the “power/duty of government employees to communicate with the public,” and threatened the sexual and reproductive rights of women. With respect to this issue, the Court ordered “the modification of the official position of the Office of the Attorney General inasmuch as, in Colombia: (i) emergency oral contraception prevents conception and does not cause abortion, (ii) its use is not restricted to the situations in which abortion is decriminalized, (iii) women who avail themselves of it outside the decriminalized grounds for abortion do not, in any case, commit the offense of abortion, and (iv) it is part of the reproductive health services that Colombian women are free to choose. Furthermore, said modification must be made (i) by the Attorney General, (ii) publicly, and (iii) as widely and with the same relevance as the statements given to the newspaper *El Espectador* on December 7, 2009.”¹⁰⁰

17. Case law on access to information consisting of personal data

68. In a decision of March 14, 2007, the Superior Court of Justice of Brazil¹⁰¹ ruled on a *habeas data* petition, ordering the Commander of the Air Force to provide a Chief Petty Officer with copies and certifications of all of the documents used to support the Air Force’s decision to deny him the right to enroll in a course for a promotion. The Court concluded that such information was not confidential, notwithstanding the existence of laws that established it as such. It found that the disclosure of the information requested did not entail a risk “to the security of the State or society.” On this point, the Court cited the opinion of the Prosecutor, who considered that the disclosure of the information did not affect national security: “the concept of national security [...] is not elastic; it should not be interpreted so broadly that it favors and promotes secrecy and authoritarianism, directly opposing the principle of democracy. [...] The information contained [in the documents] is eminently private material that is unrelated to the concept of national security, which includes specific situations involving the defense of

⁹⁹ Republic of Colombia. Constitutional Court. August 10, 2012. Judgment T-627 of 2012. Consideración 56. Available at: <http://www.corteconstitucional.gov.co/relatoria/2012/t-627-12.htm>

¹⁰⁰ Republic of Colombia. Constitutional Court. August 10, 2012. Judgment T-627 of 2012. Consideración 72. Available at: <http://www.corteconstitucional.gov.co/relatoria/2012/t-627-12.htm>

¹⁰¹ Federative Republic of Brazil. Superior Court of Justice. Third Session. March 14, 2007. *Habeas data* No. 91-DF. Case file 2003/0235568-0. Available at: https://ww2.stj.jus.br/revistaeletronica/Abre_Documento.asp?sSeq=669609&sReq=200302355680&sData=20070416&formato=PDF

national borders, the keeping of the peace at home and abroad, and the preservation of democratic institutions.”¹⁰²

69. Decision T-1037 of 2008, handed down by the Constitutional Court of Colombia on October 23, 2008, dealt with the case of a journalist to whom a security team had been assigned—because of threats she had received—and then withdrawn. During the *tutela* (*amparo*) case, it was learned that the assigned bodyguard had been conducting intelligence activities unlawfully and without the journalist’s knowledge. On the issue of *tutela*, initially meant to address the reestablishment of the security team, the Court also observed the violation of the journalist’s right to know and control her personal data or *habeas data*. In this context, the Court recognized the right of access to one’s own personal information in State intelligence records, and ordered the State security agency to provide all personal information it had on the journalist. The Court stated, “in principle, and unless there is a law that establishes otherwise, the information contained in State records is public. However, if this information concerns the private, personal, or confidential data of an individual, and those data are not of public relevance, in principle, they can neither be captured and filed away nor disclosed, as they are protected by the right to privacy. Nonetheless, if the information is contained in an official record—unless it is expressly classified—the individual owner of that data has the fundamental right to access it.”¹⁰³ Later, the Court concluded: “indeed, a person who has requested and obtained the protection of the State because she is at extraordinary risk has a fundamental constitutional right to know all of the information about her contained in intelligence records and all of the reports prepared by the persons in charge of protecting her, with the exception of information that is part of a judicial investigation and is subject to confidentiality on that basis.”¹⁰⁴

18. Case law on the general system of limits to the right to access to information

70. The Constitutional Division of the Supreme Court of El Salvador, in a decision of December 5, 2012,¹⁰⁵ held that the Regulations to the Public Information Access Act that introduced additional criteria to those established in the Act itself for the classification of confidential information constituted an excess of jurisdiction. On this point, the Court held that the regulations had failed to recognize the legal status of the right to access to information as a fundamental right. Indeed, the Court opined that, “one of the things regulations cannot do is *to limit* fundamental rights, and therefore it has been made clear that regulations only have the authority *to regulate* fundamental rights, while a limitation or restriction of rights can only be made by statute” (italics in the original). The Court continued, “Art. 29 RELAI [the challenged article] in fact adds other ‘grounds of confidentiality’ to the ones provided for in Art. 19 LAI [Access to Information Act], to wit: hindrance to the performance of the requested body’s duties, national security, political security, and national interest.” According to the Court, “the assumptions of confidential information operate as reasons to prevent individuals from accessing public information or, in other words, *to limit* the exercise of this fundamental right. This characterization of the reasons for confidentiality, which are added by the regulations, is the key to ruling on the alleged unconstitutionality, as (...) limitations to fundamental rights are typically the subject of the regulatory activity of the Legislative Assembly by statute.” The Court thus concluded that, “no regulation or regulatory instrument other than a statute can create or impose limitations to the right to access to information.”

¹⁰² Federative Republic of Brazil. Superior Court of Justice. Third Session. March 14, 2007. *Habeas data* No. 91-DF. Case file 2003/0235568-0. Available at: https://ww2.stj.jus.br/revistaeletronica/Abre_Documento.asp?sSeq=669609&sReg=200302355680&sData=20070416&formato=PDF

¹⁰³ Republic of Colombia. Constitutional Court. October 23, 2008. Judgment T-1037 of 2008. Consideración 26. (citations omitted) Available at: <http://www.corteconstitucional.gov.co/Judgmenton2008/T-1037-08.rtf>

¹⁰⁴ Republic of Colombia. Constitutional Court. October 23, 2008. Judgment T-1037 of 2008. Consideración 31. Available at: <http://www.corteconstitucional.gov.co/Judgmenton2008/T-1037-08.rtf>

¹⁰⁵ Republic of El Salvador. Constitutional Chamber of the Supreme Court of Justice. Judgment 13-2012 (Unconstitutionality). December 5, 2012. Available at: <http://www.jurisprudencia.gob.sv/visormlx/pdf/13-2012.pdf>

71. Also regarding the limits to the right to access to information, the March 18, 2011 decision of the Constitutional Division of the Supreme Court of Costa Rica¹⁰⁶ reiterated the following: “(1) The subject matter of the right is ‘information on matters of public interest,’ so that when the government information that is sought is not about such a matter, the right is diminished and the information cannot be accessed. (2) The second limit is established in Article 30(2) of the Constitution, which stipulates that, ‘State secrets are exempt.’” In the Court’s opinion, “the handling of State secrets, insofar as they are an exception to the constitutional principles or values of transparency and disclosure in government, must be interpreted and applied, at all times, restrictively. [...] As far as the restrictions or extrinsic limits to the right to access to government information are concerned, there are the following: (1) [...] public morals and public order; (2) the sphere of privacy that is inviolable by all other legal persons, so that the private, sensitive, or nominative information that a public entity or body has gathered, processed, and stored, and has in its physical or digital archives, records, and files, cannot be accessed by any person [...]; and (3) the investigation of crimes.”¹⁰⁷

72. Finally, in decision T-1037 of 2008, handed down on October 23, 2008, the Colombian Constitutional Court ruled on the right to access one’s own personal information contained in government files, and on the application of the so-called principles of *habeas data* recognized in Colombian case law. It held “that the information contained in State databases—including intelligence reports—cannot be kept confidential from the individual owner of the information, at least until and unless a statute consistent with the Constitution is passed. The exception to this is if there is express legal authorization for it—for example, if the information is part of a criminal investigation that, consequently, despite being confidential, is reviewed by a court. Indeed, at least for now, only this type of information can legally be kept confidential from its owner.”

73. The Court later concluded, “given that intelligence data can only be kept confidential from its owner if so established by a law that is specific, clear, and compatible with the Constitution, and that the existing provisions support only the confidentiality of information that is part of a judicial investigation, only this information may be withheld from its owner.”¹⁰⁸ Based on these arguments, the Constitutional Court ordered the security agency of the Colombian State to turn over all of the petitioner’s personal information that had been unlawfully obtained.

¹⁰⁶ Republic of Costa Rica. Constitutional Chamber of the Supreme Court of Justice. March 18, 2011. Judgment 2011-003320. Available at: http://200.91.68.20/pi/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=TSS&nValor1=1&cmbDespacho=0007&txtAnno=2011&strNomDespacho=Sala%20Constitucional&nValor2=506651&IResultado=&IVolverIndice=¶m01=Judgments%20por%20Despacho¶m2=3&strTipM=T&

¹⁰⁷ Republic of Costa Rica. Constitutional Chamber of the Supreme Court of Justice. March 18, 2011. Judgment 2011-003320. *Consideración* IV. Available at: http://200.91.68.20/pi/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=TSS&nValor1=1&cmbDespacho=0007&txtAnno=2011&strNomDespacho=Sala%20Constitucional&nValor2=506651&IResultado=&IVolverIndice=¶m01=Judgments%20por%20Despacho¶m2=3&strTipM=T&

¹⁰⁸ Republic of Colombia. Constitutional Court. October 23, 2008. Judgment T-1037 of 2008. *Consideración* 29. Available at: <http://www.corteconstitucional.gov.co/Judgmenton2008/T-1037-08.rtf>

CHAPTER V CONCLUSIONS AND RECOMMENDATIONS

1. As on previous occasions, the Office of the Special Rapporteur closes its annual report with a chapter of conclusions and recommendations. The objective of this practice is to begin a fluid dialogue with Member States that will enable the Americas to emerge as an example in the area of respect, protection, and promotion of the right to freedom of expression.

A. Violence against journalists and media outlets

2. According to the information received by the Office of the Special Rapporteur, at least 26 people have been murdered in the region, while several others disappeared or were dislocated from the areas in which they worked, for reasons that could have been related with their exercise of freedom of expression. In addition to these tragic events, there were dozens of complaints of violence, attacks, threats, and intimidation against communicators and media outlets, presumably in connection with their exercise of freedom of expression.

3. It is important to highlight that during 2012 there was also important progress in the investigation, trial, and punishment of some of those responsible for crimes committed against journalists in past years. However, despite these efforts, the majority of these crimes remain in a troubling state of impunity.

4. On this point, as in previous years, the Office of the Special Rapporteur recommends that member States:

- a. Adopt adequate preventive mechanisms in order to avert violence against media workers, including the public condemnation of all acts of aggression, the training of public officials, particularly police and security forces, and, if necessary, the adoption of operation manuals or guidelines regarding respect for the right to freedom of expression.
- b. Adopt the measures necessary to guarantee the security of those who are at special risk by virtue of exercising their right to freedom of expression, whether the threats come from state agents or private individuals.
- c. Carry out serious, impartial, and effective investigations of the murders, attacks, threats, and acts of intimidation committed against journalists and media workers. This entails the creation of specialized units and special investigative protocols, as well as the identification and exhaustion of all possible case theories related to the professional work of the victim.
- d. Bring to trial, before impartial and independent tribunals, all those responsible for the murders, attacks, threats, and acts of intimidation based on the exercise of freedom of expression, and provide adequate reparations to the victims and their family members.
- e. Adopt the necessary measures so that media workers in situations of risk who have been displaced or exiled can return to their homes in conditions of safety. If these persons cannot return, the States must adopt measures so that they can stay in their chosen place in conditions of dignity, with security measures, and with the necessary economic support to maintain their work and their family lives.

B. Criminalization of expression and proportionality of subsequent liability

5. Some Member States witnessed criminal complaints filed by State officials in response to the publication of opinions or information related to matters in the public interest. It is true that in some of the cases studied, the criminal proceedings were dismissed. However, in others the judges issues

criminal convictions against the journalists. The Office of the Special Rapporteur verifies that there are still criminal codes that have yet to be adjusted to inter-American standards on the subject of freedom of expression, and that allow for the imposition of disproportionate measures that can have the kind of chilling effect that is incompatible with a democratic society. Similarly, the Office of the Special Rapporteur received information on the need to adjust civil laws to prevent the disproportionate use of pecuniary sanctions.

6. Likewise, the Office of the Special Rapporteur observes that it is necessary for States to design regulatory frameworks that respect the exercise of social protest. States must not fail to take into account that, when facing institutional frameworks that do not favor participation or that present serious barriers to accessing more traditional methods of mass communication, public protest can become the only method that truly permits sectors that are discriminated against or marginalized from the public discourse to make their points of view heard and considered.

7. In regard to statutes that criminally or civilly sanction expression, the Office of the Special Rapporteur recommends that Member States:

- a. Promote the repeal of contempt (*desacato*) laws, whatever their form, given that these norms are contrary to the American Convention on Human Rights and restrict public debate, an essential element of the practice of democracy.
- b. Promote the modification of laws on criminal defamation with the objective of eliminating the use of criminal proceedings to protect honor and reputation when information is disseminated about issues of public interest, about public officials, or about candidates for public office. Protecting the privacy or the honor and reputation of public officials or persons who have voluntarily become involved in issues of public interest, should be guaranteed only through civil law.
- c. Promote the inclusion of inter-American standards in civil legislation so that civil proceedings against individuals who have made statements about public officials or about matters of public interest apply the standard of actual malice, in accordance with principle 10 of the Declaration of Principles, and are proportionate and reasonable.
- d. Promote the modification of ambiguous or imprecise criminal laws that disproportionately limit the right to freedom of expression, such as those aimed at protecting the honor of ideas or institutions, with the aim of eliminating the use of criminal proceedings to inhibit free democratic debate about all issues of public interest.
- e. Establish clear regulations that guarantee the legitimate exercise of social protest and that impede the application of disproportionate restrictions that can be used to inhibit or suppress expressions that are critical or dissenting.

C. Statements of high-level State authorities

8. In 2012, the Office of the Special Rapporteur continued to receive information on statements made by high-ranking State officials discrediting the journalistic work of some communicators, media outlets and non-governmental organizations, accusing them of illicit acts based on the editorial slant of the media outlet or journalist or the watchdog activities of the organization. It is particularly concerning that in some of these cases, the statements were followed by violence or the opening of disciplinary procedures that threatened the permanent withdrawal of operating concessions, permits, or licenses of critical media outlets. The Office of the Special Rapporteur exhorts State authorities to contribute decisively to building an environment of tolerance and respect in which all individuals can express their thoughts and opinions without fear of being attacked, punished, or stigmatized for them.

9. Regarding statements of high-level State officials, the Office of the Special Rapporteur recommends that member States:

- a. Encourage democratic debate through public declarations, practices, and policies that promote tolerance and respect of all individuals, under equal conditions, whatever their thoughts or ideas.
- b. Exhort the authorities to refrain from making public statements or using state media outlets to carry out public campaigns that can encourage violence against individuals because of their opinions. In particular, avoid statements that could stigmatize journalists, media outlets, and human rights defenders.

D. Prior censorship

10. The Office of the Special Rapporteur received information about judicial decisions that prohibited the circulation of information of public interest this year. Member States must take into account that Article 13.2 of the American Convention explicitly establishes that the exercise of the right to freedom of expression shall not be subject to prior censorship.

11. On this point, the Office of the Special Rapporteur recommends that member States:

- a. Eliminate any norm that enables prior censorship by any state organ, and also any prior condition that may imply censorship of freedom of expression, such as prior requirements of truthfulness, timeliness, or impartiality of information.

E. Discriminatory distribution of government advertising

12. The Office of the Special Rapporteur received complaints pertaining to distribution of government advertising that was intended to punish or reward media outlets according to their editorial positions. It is necessary for member States to have statutory frameworks that establish clear, transparent, objective, and non-discriminatory criteria for determining the distribution of official advertising.

13. On this point, the Office of the Special Rapporteur recommends that member States:

- a. Abstain from using public power to punish or reward media and journalists in relation to their editorial stance or coverage of certain information, whether through the discriminatory and arbitrary assignment of government advertising or other indirect means aimed at impeding communication and the circulation of ideas and opinions.
- b. Regulate these matters in accordance with the current inter-American standards on freedom of expression.

F. Progress on access to information

14. During this period, the Office of the Special Rapporteur once more noted the incorporation of the inter-American system's standards on access to information into the domestic legal regimes of several States, either through the approval of special access to information laws or through decisions by their domestic courts. However, it was noted that in several Member States there continue to be difficulties in regulating the exceptions to the exercise of this right and in the implementation of some laws.

15. With regard to access to information, the Office of the Special Rapporteur recommends that Member States:

- a. Continue promulgating laws that permit effective access to information and complementary norms that guarantee its adequate implementation, in conformity with the international standards in this area.

- b. Guarantee effectively, both *de jure* and *de facto*, the right of *habeas data* of all persons, this being an essential element of freedom of expression and the democratic system.
- c. Encourage the effective and efficient implementation of norms on access to information, adequately training public employees and informing the citizenry in order to eradicate the culture of secrecy and provide citizens the tools to effectively monitor state activities, public administration and the prevention of corruption, all essential to the democratic process.

G. Allocation of radio frequencies

16. During this period, the Office of the Special Rapporteur continued to emphasize the need for Member States to have a competent authority in charge of radio broadcasting that is technical, independent of the government, autonomous in the face of political pressure, and subject to due process guarantees and strict judicial review. Finally, the Office of the Special Rapporteur observed this year that in some States, processes of allocating licenses or frequencies that are open, public, and transparent, subject to clear and pre-established rules, and only those requirements that are strictly necessary, just, and equitable, have not been implemented.

17. On this point, the Office of the Special Rapporteur recommends that Member States:

- a. Ensure the existence of transparent, public, and equitable criteria for the allocation of radio frequencies and the new digital dividend. These criteria must take into account the concentration of ownership or control of communications media, and assign the administration of the radio electric spectrum to an organ independent from political and economic interests, subject to due process and judicial oversight.
- b. Promote effective policies and practices that permit access to information and the equal participation of all sectors of society so that their needs, opinions, and interests will be contemplated in the design and adoption of public policy decisions. Additionally, adopt legislative and other measures that are necessary to guarantee pluralism, including laws that prevent the existence of public or private monopolies.
- c. Legislate in the area of community radio broadcasting, in a manner that will produce an equitable division of the spectrum and the digital dividend to community radio stations and channels. The allocation of these frequencies must take into account democratic criteria that guarantee equal opportunities to all individuals in the access and operation of these media in conditions of equality, without disproportionate or unreasonable restrictions, and in conformity with Principle 12 of the Declaration of Principles and the "Joint Declaration on Diversity in Broadcasting." (2007)
- d. Launch regional efforts to regulate the State's authority to control and supervise the allocation of public goods or resources related directly or indirectly with the exercise of freedom of expression. On this point, the task is to adjust institutional frameworks with two central objectives: first, to eliminate the possibility that State authority is used to reward or punish media outlets according to their editorial positions, and second, to foster pluralism and diversity in the public debate.

18. The Office of the Special Rapporteur thanks the various Member States that have collaborated with it during 2012, as well as and the IACHR and its Executive Secretariat for their constant support. The Office of the Special Rapporteur especially recognizes those independent journalists and media workers who, on a daily basis, carry out the important work of informing society. Finally, the Office of the Special Rapporteur profoundly laments the murders of journalists who lost their lives defending the right of every person to freedom of expression and information.

APPENDIX

A. AMERICAN CONVENTION ON HUMAN RIGHTS

(Signed at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, 22 November 1969)

Article 13

Article 13. Freedom of Thought and Expression

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

- a) respect for the rights or reputations of others; or
- b) the protection of national security, public order, or public health or morals.

3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.

5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

B. INTER-AMERICAN DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION**PREAMBLE**

REAFFIRMING the need to ensure respect for and full enjoyment of individual freedoms and fundamental rights of human beings under the rule of law;

AWARE that consolidation and development of democracy depends upon the existence of freedom of expression;

PERSUADED that the right to freedom of expression is essential for the development of knowledge and understanding among peoples that will lead to a true tolerance and cooperation among the nations of the hemisphere;

CONVINCED that any obstacle to the free discussion of ideas and opinions limits freedom of expression and the effective development of a democratic process;

CONVINCED that guaranteeing the right to access to information held by the State will ensure greater transparency and accountability of governmental activities and the strengthening of democratic institutions;

RECALLING that freedom of expression is a fundamental right recognized in the American Declaration on the Rights and Duties of Man and the American Convention on Human Rights, the Universal Declaration of Human Rights, Resolution 59 (1) of the United Nations General Assembly, Resolution 104 adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO), the International Covenant on Civil and Political Rights, as well as in other international documents and national constitutions;

RECOGNIZING that the member states of the Organization of American States are subject to the legal framework established by the principles of Article 13 of the American Convention on Human Rights;

REAFFIRMING Article 13 of the American Convention on Human Rights, which establishes that the right to freedom of expression comprises the freedom to seek, receive and impart information and ideas, regardless of borders and by any means of communication;

CONSIDERING the importance of freedom of expression for the development and protection of human rights, the important role assigned to it by the Inter-American Commission on Human Rights and the full support given to the establishment of the Office of the Special Rapporteur for Freedom of Expression as a fundamental instrument for the protection of this right in the hemisphere at the Summit of the Americas in Santiago, Chile;

RECOGNIZING that freedom of the press is essential for the full and effective exercise of freedom of expression and an indispensable instrument for the functioning of representative democracy, through which individuals exercise their right to receive, impart and seek information;

REAFFIRMING that the principles of the Declaration of Chapultepec constitute a basic document that contemplates the protection and defense of freedom of expression, freedom and independence of the press and the right to information;

CONSIDERING that the right to freedom of expression is not a concession by the States but a fundamental right;

RECOGNIZING the need to protect freedom of expression effectively in the Americas, the Inter-American Commission on Human Rights, in support of the Special Rapporteur for Freedom of Expression, adopts the following Declaration of Principles:

PRINCIPLES

1. Freedom of expression in all its forms and manifestations is a fundamental and inalienable right of all individuals. Additionally, it is an indispensable requirement for the very existence of a democratic society.
2. Every person has the right to seek, receive and impart information and opinions freely under terms set forth in Article 13 of the American Convention on Human Rights. All people should be afforded equal opportunities to receive, seek and impart information by any means of communication without any discrimination for reasons of race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition.
3. Every person has the right to access to information about himself or herself or his/her assets expeditiously and not onerously, whether it be contained in databases or public or private registries, and if necessary to update it, correct it and/or amend it.
4. Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.
5. Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.
6. Every person has the right to communicate his/her views by any means and in any form. Compulsory membership or the requirements of a university degree for the practice of journalism constitute unlawful restrictions of freedom of expression. Journalistic activities must be guided by ethical conduct, which should in no case be imposed by the State.
7. Prior conditioning of expressions, such as truthfulness, timeliness or impartiality is incompatible with the right to freedom of expression recognized in international instruments.
8. Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential.
9. The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.
10. Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.
11. Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as "*desacato laws*," restrict freedom of expression and the right to information.

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

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

C. JOINT DECLARATIONS

1. JOINT DECLARATION ON CRIMES AGAINST FREEDOM OF EXPRESSION

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.

Having met in Paris on 13 September 2011 and in Tunis on 4 May 2012 and having discussed these issues together with the assistance of ARTICLE 19, *Global Campaign for Free Expression* and the *Centre for Law and Democracy*;

Recalling and reaffirming our Joint Declarations of 26 November 1999, 30 November 2000, 20 November 2001, 10 December 2002, 18 December 2003, 6 December 2004, 21 December 2005, 19 December 2006, 12 December 2007, 10 December 2008, 15 May 2009, 3 February 2010 and 1 June 2011;

Emphasizing, once again, the fundamental importance of freedom of expression both in its own right and as an essential tool for the defense of all other rights, as a core element of democracy and for advancing development goals;

Expressing our abhorrence over the unacceptable rate of incidents of violence and other crimes against freedom of expression, including killings, death-threats, disappearances, abductions, hostage takings, arbitrary arrests, prosecutions and imprisonments, torture and inhuman and degrading treatment, harassment, intimidation, deportation, and confiscation of and damage to equipment and property;

Noting that violence and other crimes against those exercising their right to freedom of expression, including journalists, other media actors and human rights defenders, have a chilling effect on the free flow of information and ideas in society ('censorship by killing'), and thus represent attacks not only on the victims but on freedom of expression itself, and on the right of everyone to seek and receive information and ideas;

Concerned about the particular challenges and danger faced by women exercising their right to freedom of expression, and denouncing gender specific crimes of intimidation including sexual assaults, aggression and threats;

Mindful of the important contribution to society made by those who investigate into and report on human rights abuses, organized crime, corruption, and other serious forms of illegal behavior, including journalists, media actors and human rights defenders, and of the fact that the nature of their professions makes them susceptible to criminal retribution, and that they may, as a result, be in need of protection;

Condemning the prevailing state of impunity for crimes against freedom of expression and the apparent lack of political will in some countries to address these violations, with the result that an unacceptable number of these crimes are never prosecuted, which emboldens the perpetrators and instigators and substantially increases the incidence of these crimes;

Noting that independent, speedy and effective investigations into and prosecutions of crimes against freedom of expression are essential to addressing impunity and ensuring the respect for the rule of law;

Stressing the fact that crimes against freedom of expression, if committed by State authorities, represent a particularly serious breach of the right to freedom of expression and the right to information, but that States also have an obligation to take both preventive and reactive measures in situations where non-

state actors commit crimes against freedom of expression, as part of States' obligation to protect and promote human rights;

Aware of a number of root causes that contribute to crimes against freedom of expression, such as high prevailing rates of corruption and/or organized crime, the presence of armed conflict and lack of respect for the rule of law, as well as the particular vulnerability of some of those who investigate and report on these problems;

Cognizant of a number of international standards that are relevant to this issue, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Geneva Conventions of 1949 and their Additional Protocols, the International Convention for the Protection of All Persons from Enforced Disappearance, UN Security Council Resolution 1738 (2006), UN Human Rights Council Resolution 12/16: Freedom of opinion and expression, the 2007 UNESCO Medellin Declaration and the 2010 UNESCO Decision on the Safety of Journalists and the Issue of Impunity;

Adopt, in Port of Spain, Trinidad and Tobago, on 25 June 2012, the following Joint Declaration on Crimes against Freedom of Expression:

1. General Principles

- a. State officials should unequivocally condemn attacks committed in reprisal for the exercise of freedom of expression and should refrain from making statements that are likely to increase the vulnerability of those who are targeted for exercising their right to freedom of expression.
- b. States should reflect in their legal systems and practical arrangements, as outlined below, the fact that crimes against freedom of expression are particularly serious inasmuch as they represent a direct attack on all fundamental rights.
- c. The above implies, in particular, that States should:
 - i. put in place special measures of protection for individuals who are likely to be targeted for what they say where this is a recurring problem;
 - ii. ensure that crimes against freedom of expression are subject to independent, speedy and effective investigations and prosecutions; and
 - iii. ensure that victims of crimes against freedom of expression have access to appropriate remedies.
- d. In situations of armed conflict, States should respect the standards set out in Article 79 of Protocol I additional to the Geneva Conventions, 1977, which provides that journalists are entitled to the same protections as civilians, provided they take no action adversely affecting their status.

2. Obligations to Prevent and Prohibit

- a. States have an obligation to take measures to prevent crimes against freedom of expression in countries where there is a risk of these occurring and in specific situations where the authorities know or should have known of the existence of a real and immediate risk of such crimes, and not only in cases where those at risk request State protection.
- b. These obligations include the following legal measures:
 - i. the category of crimes against freedom of expression should be recognized in the criminal law, either explicitly or as an aggravated circumstance leading to heavier penalties for such crimes, taking into account their serious nature; and

- ii. crimes against freedom of expression, and the crime of obstructing justice in relation to those crimes, should be subject to either unlimited or extended statutes of limitations (i.e. the time beyond which prosecutions are barred).
- c. These obligations include the following non-legal measures:
 - i. appropriate training on crimes against freedom of expression, including gender specific crimes, should be provided to relevant law enforcement officials, including the police and prosecutors, as well, where necessary, to military personnel;
 - ii. operation manuals and guidelines should be developed and implemented for law enforcement officials when dealing with crimes against freedom of expression;
 - iii. training supported by the State should be available for individuals who may be at risk of becoming victims of crimes against freedom of expression and this issue should be covered in university courses on journalism and communications;
 - iv. systems to ensure effective access to information about the circumstances, investigation and prosecution of crimes against freedom of expression, including media access to the courts, should be put in place, subject to appropriate guarantees of confidentiality; and
 - v. consideration should be given to putting in place general measures of protection such as providing health care, insurance and other benefit programmes to individuals who may be at risk of becoming victims of crimes against freedom of expression.

3. Obligations to Protect

- a. States should ensure that effective and concrete protection is made available on an urgent basis to individuals likely to be targeted for exercising their right to freedom of expression.
- b. Specialised protection programmes, based on local needs and challenges, should be put in place where there is an ongoing and serious risk of crimes against freedom of expression. These specialised programmes should include a range of protection measures, which should be tailored to the individual circumstances of the person at risk, including his or her gender, need or desire to continue to pursue the same professional activities, and social and economic circumstances.
- c. States should maintain detailed and disaggregated statistics on crimes against freedom of expression and the prosecution of these crimes, among other things to facilitate better planning of prevention initiatives.

4. Independent, Speedy and Effective Investigations

When a crime against freedom of expression takes place, States should launch an independent, speedy and effective investigation, with a view to bringing to trial, before impartial and independent tribunals, both perpetrators and instigators of these crimes.

Such investigations should meet the following minimum standards:

- a. Independent
 - i. The investigation should be carried out by a body that is independent from those implicated in the events. This implies both formal hierarchical and institutional independence, and practical arrangements to secure independence.
 - ii. When there are credible allegations of involvement of State agents, the investigation should be carried out by an authority outside of the jurisdiction or sphere of influence of those authorities, and the investigators should be able to explore all allegations fully.

- iii. An effective system should be put in place for receiving and processing complaints regarding investigations by law enforcement officials of crimes against freedom of expression, which is sufficiently independent of those officials and their employers, and which operates in a transparent manner.
 - iv. Where the seriousness of the situation warrants it, in particular in cases of frequent and recurrent crimes against freedom of expression, consideration should be given to establishing specialized and dedicated investigative units – with sufficient resources and appropriate training to operate efficiently and effectively – to investigate crimes against freedom of expression.
- b. Speedy
- i. The authorities should make all reasonable efforts to expedite investigations, including by acting as soon as an official complaint or reliable evidence of an attack against freedom of expression becomes available.
- c. Effective
- i. Sufficient resources and training should be allocated to ensure that investigations into crimes against freedom of expression are thorough, rigorous and effective and that all aspects of such crimes are explored properly.
 - ii. Investigations should lead to the identification and prosecution of all of those responsible for crimes against freedom of expression, including direct perpetrators and instigators, as well as those who conspire to commit, aid and abet, or cover up such crimes.
 - iii. Where there is some evidence that a crime which has been committed may be a crime against freedom of expression, the investigation should be conducted with the presumption that it is such a crime until proven otherwise, and relevant lines of enquiry related to the victim's expressive activities have been exhausted.
 - iv. Law enforcement bodies should take all reasonable steps to secure relevant evidence and all witnesses should be questioned with a view to ascertaining the truth.
 - v. The victims, or in case of death, abduction or disappearance the next-of-kin, should be afforded effective access to the procedure. At the very least the victim or the next-of-kin must be involved in the procedure to the extent necessary to safeguard their legitimate interests. In most instances, this will require giving access to certain parts of the proceedings and also to the relevant documents to ensure participation is effective.
 - vi. Civil society organizations should be able to lodge complaints about crimes against freedom of expression – of particular importance in cases involving killings, abductions or disappearances where the next-of-kin are unwilling or unable to do so – and intervene to in the criminal proceedings.
 - vii. Investigations should be conducted in a transparent manner, subject to the need to avoid prejudice to the investigation.
 - viii. Restrictions on reporting on court cases involving prosecutions of crimes against freedom of expression should be limited to highly exceptional cases where clearly overriding interests prevail over the particularly strong need for openness in such cases.
 - ix. In addition to criminal investigations, disciplinary proceedings should be carried out where there is evidence that public officials have committed crimes against freedom of expression in the course of their professional duties.

5. Redress for Victims

- a. Where crimes against freedom of expression are committed, the victims should be able to pursue appropriate civil remedies, regardless of whether or not a criminal act has been established.

- b. Where a conviction is entered for a crime against freedom of expression, a system should be in place to ensure that an adequate remedy is provided to the victims, without the need for them to pursue independent legal action. Such remedies should be proportionate to the gravity of the violations, and should include financial compensation, and a range of measures to rehabilitate the victims and to facilitate the return of victims to their homes in conditions of safety and/or to reinstate them in their work if they so desire.

6. Role of other stakeholders

- a. Inter-governmental organisations should continue to prioritise the fight against impunity for crimes against freedom of expression and use available review mechanisms to monitor whether States are complying with their international obligations in this area.
- b. State and non-state donors should be encouraged to fund projects which aim to prevent and combat crimes against freedom of expression.
- c. Media organisations should be encouraged to provide adequate safety, risk awareness and self-protection training and guidance to both permanent and freelance employees, along with security equipment where necessary.
- d. Relevant civil society organisations and media should be encouraged, as appropriate, to continue to monitor and report on crimes against freedom of expression, to coordinate global campaigns on crimes against freedom of expression, and to consolidate documentation, for example through a central website/portal.

Frank LaRue
UN Special Rapporteur on Freedom of Opinion and Expression

Dunja Mijatović
OSCE Representative on Freedom of the Media

Catalina Botero Marino
OAS Special Rapporteur on Freedom of Expression

Faith Pansy Tlakula
ACHPR Special Rapporteur on Freedom of Expression and Access to Information

2. JOINT DECLARATION ABOUT FREE SPEECH ON THE INTERNET

The UN Special Rapporteur for Freedom of Opinion and Expression and the IACHR-OAS Special Rapporteur on Freedom of Expression.

Washington, D.C., January 20, 2012—The Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR), Catalina Botero Marino, and the United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Frank La Rue, today called on the United States to be vigorous in protecting freedom of speech on the Internet. The Special Rapporteurs recalled that legislation regulating the Internet should take into account the special characteristics of the Internet as a unique and transformative tool that enables billions of individuals to exercise their right to freedom of thought and expression as well as a range of other human rights.

The Special Rapporteurs have taken particular note of the discussions surrounding two Internet piracy bills currently pending in the United States Congress, the Stop Online Piracy Act (SOPA) and the PROTECT IP Act. While these bills pursue a legitimate objective in seeking to protect intellectual property rights, serious concerns have been raised regarding their impact on freedom of expression. In particular, versions of the draft legislation have the potential to silence a good deal of entirely lawful speech, for example by creating an extrajudicial ‘notice-and-termination’ procedure, by requiring websites to police their user-generated content for copyright infringement, and by allowing for an entire website to be targeted if even a small portion of its content is deemed to infringe. The Special Rapporteurs note with satisfaction that in recent days, certain Congressional leaders stated their intention to suspend debate on SOPA in order to pursue further discussion and consensus, while the Obama Administration announced that it “will not support legislation that reduces freedom of expression, increases cybersecurity risk, or undermines the dynamic, innovative global Internet.”

In June 2011, the UN and IACHR Special Rapporteurs joined with their fellow special mandate holders from the Organization for Security and Co-operation in Europe (OSCE) and the African Commission on Human and Peoples’ Rights to issue a [Joint Declaration on Freedom of Expression and the Internet](#). This Joint Declaration states that while freedom of expression, including on the Internet, is not absolute, tailored approaches must be developed that respond to illegal content while recognizing the Internet’s unique characteristics and its ability to deliver positive freedom of expression outcomes. The Declaration states that intermediaries should not be required to monitor user-generated content, and stresses the need to protect them from liability unless they specifically intervene in content or disobey a court order to remove such content. The Declaration further states that jurisdiction in legal cases relating to Internet content should be restricted to States to which those cases have a real and substantial connection.

In addition, all restrictions on freedom of expression, including those that affect speech on the Internet, should be clearly and precisely established by law, proportionate to the legitimate aims pursued, and based on a judicial determination in adversarial proceedings. In this regard, legislation regulating the Internet should not contain vague and sweeping definitions or disproportionately affect legitimate websites and services.

The UN and IACHR Special Rapporteurs call on the United States to uphold international free speech norms, including those reflected in the aforementioned Joint Declaration, which seeks to promote universal access to the Internet while preserving its role as a revolutionary medium for participatory information sharing and collaboration in the creation of content. In considering both domestic legislation and international treaties such as the Anti-Counterfeiting Trade Agreement, States should recall that while freedom of expression may be limited in the pursuit of legitimate objectives such as the prevention of crime or the protection of the rights of others, such limitations should be narrowly tailored and interfere to the least extent possible with the right to freedom of expression. Any measure that affects speech on the Internet should be specifically designed to preserve the Internet’s unique capacity to promote freedom of expression by facilitating the free exchange of information and ideas instantaneously and inexpensively regardless of frontiers.

Frank LaRue
United Nations Special Rapporteur
On the Promotion and Protection of the Right to Freedom of Opinion and Expression

Catalina Botero Marino
Special Rapporteur on Freedom of Expression
Inter-American Commission on Human Rights

D. PRESS RELEASES

1. PRESS RELEASE R126/11

OFFICE OF THE SPECIAL RAPPORTEUR REGRETS DEATH OF JOURNALIST AND SHOOTING AGAINST A NEWSPAPER IN HONDURAS

Washington D.C., December 8, 2011– The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) deeply regrets the death of the journalist Luz Marina Paz, which took place on December 6, and the shooting against the newspaper *La Tribuna*, on the morning of December 5, and urges the Honduran State to investigate both crimes in an exhaustive, timely and diligent way.

According to the information received, two men on a motorcycle shot to death journalist Luz Marina Paz and a driver, in a neighborhood on the outskirts of Tegucigalpa, when they were heading to the radio station where she worked. The journalist was a host on the show “*Tres en la Noticia*,” at *Cadena Hondureña de Noticias (CHN)*. Previously she had worked at *Radio Globo* for 8 years. Paz had a reputation of practicing investigative journalism and being a critic of the coup d’état that happened on June 28, 2009. The Office of the Special Rapporteur for Freedom of Expression had learned that authorities are analyzing different hypotheses about the causes underlying the killing of Luz Marina Paz. However, this office calls on the authorities not to rule out the possibility that the crime was connected to the journalist’s professional activities.

In the case of the shooting against *La Tribuna*, according to the available information, early on the morning of December 5, several men on a car shot at the building’s main entrance, injured a security employee and caused damages to the newspaper facade. According to the information received, in recent days the newspaper had received several threats after publishing articles about the operation of criminal groups and issues of corruption.

The Office of the Special Rapporteur considers it essential for the Honduran State to clarify the motive for these crimes; identify, prosecute, and punish those responsible; and adopt fair measures of reparation for the victim’s next of kin. The Office of the Special Rapporteur insists that the State needs to create special investigative bodies and protocols, as well as protection mechanisms designed to ensure the safety of those who are being threatened because of their work in journalism. In light of the series of murders committed against journalists in Honduras, it is critical that the State carry out a complete, effective, and impartial investigation of these crimes, which have a negative impact on all of Honduran society.

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

2. PRESS RELEASE R134/11

OFFICE OF THE SPECIAL RAPPORTEUR EXPRESSES CONCERN OVER CRIMINAL VERDICT AGAINST JOURNALIST IN ECUADOR

Washington D.C., December 27, 2011– The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) expresses its concern regarding the criminal conviction to three months in prison against the director of *Diario Hoy*, Jaime Mantilla Anderson, issued in Ecuador on December 21 by the Tenth Criminal Court of Pichincha.

According to the information received, the case arose out of a series of reports published in *Diario Hoy* in September and October of 2009 regarding the current Chairman of the Board of the Central Bank, Pedro Delgado, who sued the journalist. The reports questioned, among other things, the alleged power of Delgado in making important economic decisions. The sentence was issued after the director of *Diario Hoy* had refused to give the names of the journalists who had written said articles. In the trial, the Judicial Police of Pichincha were ordered to carry out the “immediate localization and capture” of Mantilla, and to transfer him to a prison in Quito. The decision did not establish the payment of damages because the complaint did not request them. According to the information received, after the sentence had been issued, Delgado forgave the journalist and desisted from continuing proceedings. Mantilla expressed his intention to challenge the sentence given that, in his opinion, his right to freedom of expression has been violated.

The existence and application of laws that criminalize expressions offensive to public officials, or *desacato* laws, in all of their forms, are contrary to inter-American standards in the area of freedom of expression. The [Inter-American Commission on Human Rights](#), based on the [American Convention on Human Rights](#), established more than a decade ago that the use of the criminal law to sanction expressions about public officials violates article 13 of the American Convention, which protects freedom of expression. Such sanctions are unnecessary, disproportionate, and cannot be justified by any imperative social interest; they also constitute a form of indirect censorship given their intimidating and chilling effect on the discussion of matters in the public interest.

Principle 11 of the IACHR’s [Declaration of Principles on Freedom of Expression](#) maintains that “Laws that penalize offensive expressions directed at public officials, generally known as ‘*desacato laws*,’ restrict freedom of expression and the right to information.” Also, Principle 10 of this Declaration establishes that “the protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.”

The Office of the Special Rapporteur for Freedom of Expression was created by the Inter-American Commission on Human Rights (IACHR), to encourage the defense of the right to freedom of thought and expression in the hemisphere, given the fundamental role this right plays in consolidating and developing the democratic system.

3. PRESS RELEASE R06/12

UN AND IACHR SPECIAL RAPPORTEURS FOR FREEDOM OF EXPRESSION RENEW CALL TO PROTECT FREE SPEECH ON THE INTERNET

Washington, D.C., January 20, 2012—The Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR), Catalina Botero Marino, and the United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Frank La Rue, today called on the United States to be vigorous in protecting freedom of speech on the Internet. The Special Rapporteurs recalled that legislation regulating the Internet should take into account the special characteristics of the Internet as a unique and transformative tool that enables billions of individuals to exercise their right to freedom of thought and expression as well as a range of other human rights.

The Special Rapporteurs have taken particular note of the discussions surrounding two Internet piracy bills currently pending in the United States Congress, the Stop Online Piracy Act (SOPA) and the PROTECT IP Act. While these bills pursue a legitimate objective in seeking to protect intellectual property rights, serious concerns have been raised regarding their impact on freedom of expression. In particular, versions of the draft legislation have the potential to silence a good deal of entirely lawful speech, for example by creating an extrajudicial ‘notice-and-termination’ procedure, by requiring websites to police their user-generated content for copyright infringement, and by allowing for an entire website to be targeted if even a small portion of its content is deemed to infringe. The Special Rapporteurs note with satisfaction that in recent days, certain Congressional leaders stated their intention to suspend debate on SOPA in order to pursue further discussion and consensus, while the Obama Administration announced that it “will not support legislation that reduces freedom of expression, increases cyber security risk, or undermines the dynamic, innovative global Internet.”

In June 2011, the UN and IACHR Special Rapporteurs joined with their fellow special mandate holders from the Organization for Security and Co-operation in Europe (OSCE) and the African Commission on Human and Peoples’ Rights to issue a [Joint Declaration on Freedom of Expression and the Internet](#). This Joint Declaration states that while freedom of expression, including on the Internet, is not absolute, tailored approaches must be developed that respond to illegal content while recognizing the Internet’s unique characteristics and its ability to deliver positive freedom of expression outcomes. The Declaration states that intermediaries should not be required to monitor user-generated content, and stresses the need to protect them from liability unless they specifically intervene in content or disobey a court order to remove such content. The Declaration further states that jurisdiction in legal cases relating to Internet content should be restricted to States to which those cases have a real and substantial connection.

In addition, all restrictions on freedom of expression, including those that affect speech on the Internet, should be clearly and precisely established by law, proportionate to the legitimate aims pursued, and based on a judicial determination in adversarial proceedings. In this regard, legislation regulating the Internet should not contain vague and sweeping definitions or disproportionately affect legitimate websites and services.

The UN and IACHR Special Rapporteurs call on the United States to uphold international free speech norms, including those reflected in the aforementioned Joint Declaration, which seeks to promote universal access to the Internet while preserving its role as a revolutionary medium for participatory information sharing and collaboration in the creation of content. In considering both domestic legislation and international treaties such as the Anti-Counterfeiting Trade Agreement, States should recall that while freedom of expression may be limited in the pursuit of legitimate objectives such as the prevention of crime or the protection of the rights of others, such limitations should be narrowly tailored and interfere to the least extent possible with the right to freedom of expression. Any measure that affects speech on the Internet should be specifically designed to preserve the Internet’s unique capacity to promote freedom of expression by facilitating the free exchange of information and ideas instantaneously and inexpensively regardless of frontiers.

4. PRESS RELEASE 13/12

IACHR URGES PANAMA TO GUARANTEE PROTESTERS' PHYSICAL INTEGRITY AND SECURITY

Washington, D.C. February 7, 2012 – The Inter-American Commission on Human Rights (IACHR) urges the State of Panama to guarantee the physical integrity and security of leaders and members of the Ngöbe Buglé indigenous peoples, who protest against legislation related to the execution of investment projects in their territories.

According to publicly available information, members of the Ngöbe Buglé indigenous peoples blocked for several days the Inter-American highway in a protest related to the discussion in Congress of bill No. 415, “Which establishes a Special Regime for the Protection of Mineral, Water, and Natural Resources in the community of Ngöbe Buglé.”

According to information received, on February 5th the security forces of Panama conducted an operation in order to lift the blockade of the highway. In this context, information was received about the death of Jeronimo Rodriguez Tugri, and that other dozens of persons were allegedly injured. In addition, it was informed that inhabitants of the conflict area declared to local radio stations that armed police agents entered into several homes.

Also, the IACHR and its Special Rapporteurship on Freedom of Expression received information that indicates that the Government has ordered to suspend cell phone services as a measure to control the protest. As a consequence, the area is allegedly incommunicated, seriously affecting the right to freedom of expression of the people in Panama.

The Inter-American Commission reminds the State of its obligation to conduct a judicial inquiry into these acts of violence and repair the consequences. In addition, the IACHR calls on the State to take the steps that are necessary to guarantee access to health care for all the injured. In the light of information received according to which several persons were allegedly detained during these incidents, the IACHR urges the State of Panama to respect the rights to personal integrity and to judicial guarantees.

Furthermore, the Inter-American Commission reminds that it is necessary to adopt mechanisms to prevent excessive use of force on the part of public agents in marches and protest demonstrations. In this regard, the IACHR calls on the State to urgently adopt all necessary measures for the due protection of the protesters within the framework of respect of inter-American human rights standards.

As the organs of the Inter-American Human Rights System have reiterated, States must guarantee that indigenous peoples are consulted on all matters that may affect them, taking into account that this consultation must be aimed at reaching agreement with regard to the administrative or legislative actions that have an impact upon their rights.

On February 5, 2012, the IACHR sent a request of information to the Government of Panama related to these events.

A principal, autonomous body of the Organization of American States (OAS), the IACHR derives its mandate from the OAS Charter and the American Convention on Human Rights. The Inter-American Commission has a mandate to promote respect for human rights in the region and acts as a consultative body to the OAS in this matter. The Commission is composed of seven independent members who are elected in an individual capacity by the OAS General Assembly and who do not represent their countries of origin or residence.

5. PRESS RELEASE R17/12

OFFICE OF THE SPECIAL RAPPORTEUR CONDEMNS MURDER OF JOURNALIST IN BRAZIL

Washington D.C. February 13, 2012 - The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murders of Brazilian reporter Mário Randolph Marques Lopes and his girlfriend, Maria Aparecida Guimarães, which took place in the early hours of February 9 in Barra do Pirai, state of Rio de Janeiro. The Office of the Special Rapporteur urges the authorities to conduct a prompt and diligent investigation to establish the motive of the crime, identify and appropriately punish the perpetrators, and provide adequate reparations to the victims' family members.

According to the information received, on the night of February 8 at least three unknown individuals apparently kidnapped the reporter and his girlfriend. The two dead bodies, both with gunshot wounds, were found on the street the next morning in a Barra do Pirai neighborhood. Mario Randolph Marques Lopes was editor in chief of [Vassouras na Net](#), an online newspaper of the town of Vassouras, where he used to strongly criticize and denounce local public officials. Marques Lopes had been the victim of another attack last July, when he was shot several times.

The Office of the Special Rapporteur calls upon the Brazilian authorities to adopt all necessary measures to avoid the repetition of these types of crimes, identify and punish all the direct perpetrators and masterminds, and ensure that the victims' families receive adequate reparation.

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

The Office of the Special Rapporteur for Freedom of Expression was created by the Inter-American Commission on Human Rights (IACHR) to encourage the defense of the right to freedom of thought and expression in the hemisphere, given the fundamental role this right plays in consolidating and developing the democratic system.

6. PRESS RELEASE R18/12**OFFICE OF THE SPECIAL RAPPORTEUR CONDEMNS A NEW MURDER OF A JOURNALIST IN BRAZIL**

Washington D.C., February 15, 2012 – The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murder of Brazilian journalist Paulo Roberto Cardoso Rodrigues, which took place on February 12 in Ponta Porá, Mato Grosso do Sul, on the border with Paraguay. The Office of the Special Rapporteur expresses its concern over this second murder of a journalist in less than a week and asks the authorities to conduct a prompt and diligent investigation to establish the motive of the crime, identify and appropriately punish the perpetrators.

According to the information received, on the evening of February 12, two men on a motorcycle fired gunshots at the vehicle driven by Cardoso Rodrigues, a.k.a. Paulo Rocaro, wounding him several times. The reporter was taken to a hospital where he died hours later. Cardoso Rodrigues had a long career in newspaper and was the editor in chief of the *Jornal da Praça* and founder of the *Mercosul News* website. The journalist was critical of his town's local authorities.

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

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7. PRESS RELEASE R20/12

UN AND IACHR SPECIAL RAPPORTEURS FOR FREEDOM OF EXPRESSION STATE DEEP CONCERN OVER DECISION TO AFFIRM JUDGMENT AGAINST JOURNALISTS IN ECUADOR

Washington D.C., February 16, 2012 – The Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR), Catalina Botero Marino, and the United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Frank La Rue, express deep concern over the decision of the National Court of Justice of Ecuador affirming the criminal and civil judgment against three executives and a journalist from *El Universo* newspaper to three years in jail and to pay \$40 million, for the publication of a column that offended President Rafael Correa.

According to the information received, on February 16 the Specialized Criminal Chamber of the National Court of Justice affirmed the decision against the newspaper and its board members Carlos Nicolás Pérez Lapentti, Carlos Pérez Barriga and César Pérez Barriga for the offense of criminal defamation of an authority. On December 27, 2011, the same Chamber had rendered final the judgment against the column's author and editor of the opinion section, Emilio Palacio.

The case arose from an opinion column published by Palacio on February 6, 2011, entitled “No a las Mentiras” [No to Lies], in which he harshly challenged decisions allegedly made by President Correa during the events of September 30, 2010. The President denied Palacio's assertions and considered that they damaged his reputation. Accordingly, the President filed the complaint on March 21, 2011. On July 20, 2011, the trial court handed down its conviction. That judgment was affirmed in its entirety by the Second Criminal Chamber of the Provincial Court of Guayas last September 20.

Articles 489, 491, and 493 of TITLE VII of the Ecuadorian [Criminal Code](#), entitled “CRIMES AGAINST HONOR,” establish, inter alia, enhanced penalties for persons who make “a false criminal accusation” or “any other expression made to discredit, dishonor, or disparage” an “authority.” In particular, under Article 493, persons who “make defamatory accusations against an authority” may be punished by a fine and one to three years in prison.

The [Inter-American Commission on Human Rights](#), based on the [American Convention on Human Rights](#), established more than a decade ago that the use of the criminal law to sanction expressions about public officials violates article 13 of the American Convention, which protects freedom of expression. Such sanctions are unnecessary, disproportionate, and cannot be justified by any imperative social interest; they also constitute a form of indirect censorship given their intimidating and chilling effect on the discussion of matters in the public interest.

Principle 11 of the IACHR's [Declaration of Principles on Freedom of Expression](#) maintains that “Laws that penalize offensive expressions directed at public officials, generally known as ‘desacato laws,’ restrict freedom of expression and the right to information.” Also, [Principle 10 of this Declaration](#) establishes that “the protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.”

The [Inter-American Court](#) has also established, with regard to eventual civil sanctions, that civil judgments in cases involving freedom of expression must be strictly proportional so as not to have a chilling effect on said freedom, since “the fear of a civil penalty, [in light of a] claim [...] for [...] very steep civil [damages], may be, in any case, equally or more intimidating and inhibiting for the exercise of freedom of expression than a criminal punishment, since it has the potential to [compromise] the personal and family life of an individual who accuses a public official, with the evident and very negative result of

self-censorship both in the affected party and in other potential critics of the actions taken by a public official.”

The United Nations Rapporteur, for his part, has stated that in accordance with [Article 19 of the International Covenant on Civil and Political Rights](#), public officials must be subject to a higher level of scrutiny and criticism in light of the public nature of their position.

8. PRESS RELEASE R24/12

OFFICE OF THE SPECIAL RAPPORTEUR EXPRESSES CONCERN OVER CRIMINAL CONVICTION OF JOURNALIST IN COLOMBIA

Washington, D.C., March 1, 2012 — The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) expresses its concern regarding the 18 month prison sentence given to journalist Luis Agustín González, handed down on February 29 by the Criminal Chamber of the Superior Court of Cundinamarca in Colombia.

According to the information received, Luis Agustín González was found guilty of defamation and acquitted of calumny. In addition to the prison sentence, González must pay the equivalent of 17 minimum-wage monthly salaries (around US\$5,000) The journalist, who is the director of the newspaper *Cundinamarca Democrática*, had been sued by former governor Leonor Serrano de Camargo, who alleged that the publication of an editorial in the [44th edition of the paper in 2008](#), calling into question Serrano's candidacy for the Senate, harmed her honor and good name.

In September 2012, the reporter had been convicted of both crimes by a judge of first instance. On October 15, 2011, President Juan Manuel Santos expressed that he opposed the verdict and strongly stated that the expression of critical opinions against public officials should not be a crime. Similarly, the Constitutional Court of Colombia has indicated that when judges consider cases involving alleged defamation and calumny that implicate public officials, they should interpret the offenses narrowly in a way that favors "an expansive view of the freedom of expression," which has a privileged status in the Colombian legal order. González announced his intention to challenge the appellate decision by filing an extraordinary remedy of cassation.

The Office of the Special Rapporteur has expressed its concern over the application of the crime of defamation against individuals who have limited themselves to denouncing or expressing opinions critical of those who hold or have held public office. Individuals who hold or have held public office have a duty to withstand a higher degree of criticism and scrutiny, precisely because they voluntarily assume the administration of important public responsibilities.

Principle ten of the [Declaration of Principles on Freedom of Expression of the Inter-American Commission on Human Rights](#) establishes that: "The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news."

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9. PRESS RELEASE R26/12**OFFICE OF THE SPECIAL RAPPORTEUR CONDEMNS MURDER OF JOURNALIST IN HAITI**

Washington D.C. March 8, 2012—The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murder of Haitian journalist Jean Liphète Nelson, which took place on March 5 in Cité Soleil. The Office of the Rapporteur urges the competent Haitian authorities to carry out a diligent, timely, and thorough investigation and not to rule out the possibility that this crime is related to the victim's work in the media.

According to the information available, the reporter was traveling in a car when he was blocked by two individuals who fired several gunshots. Jean Liphète Nelson was taken to a hospital where he later died. He was the director of community radio *Boukman (95.9 FM)*, a broadcast station created in 2006 that focuses on social issues, civic education and the promotion of human values.

The authorities have not determined the motives behind the killing and are investigating several hypotheses. The Office of the Special Rapporteur requests that the authorities not discount the possibility that the death was tied to the journalist's professional activities and urges them to conduct a thorough investigation, to clarify the circumstances of the crime, to identify and punish those responsible, and to ensure just compensation for the victims' next of kin.

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

The Office of the Special Rapporteur for Freedom of Expression was created by the Inter-American Commission on Human Rights (IACHR) to encourage the defense of the right to freedom of thought and expression in the hemisphere, given the fundamental role this right plays in consolidating and developing the democratic system.

10. PRESS RELEASE R29/12**OFFICE OF THE SPECIAL RAPPORTEUR CONDEMNS MURDER OF JOURNALIST IN COLOMBIA**

Washington D.C., March 19, 2012 – The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murder of Colombian broadcast journalist Argemiro Cárdenas Agudelo, which took place on March 15 in Dosquebradas, department of Risaralda, and urges the competent authorities to carry out a diligent, timely, and thorough investigation and not to rule out the possibility that this crime is related to the victim's work in the media.

According to the information received, when the communicator was at the radio station where he worked, he received a phone call requesting that he meet with someone. As he was on his way to the meeting, an unknown person approached him and shot him several times in plain view. Argemiro Cárdenas had been the mayor of Dosquebradas, and he was the founder and manager of the community radio station *La Metro Radio 92.1 FM*. He was the director of the *Cafetera Radial Radio Network (Red Radial Cafetera)* and representative of the western region of Colombia before the Consultative Committee of Radio of the Ministry of Information and Communication Technologies (MINTIC). On March 1, he had been nominated for the position of National Representative of the World Association of Community Radios (AMARC).

The authorities have not determined the causes behind the killing and are investigating several hypotheses. The Office of the Special Rapporteur urges them to clarify the motives of the crime, to identify and punish those responsible, and to ensure just compensation for the victims' next of kin.

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

The Office of the Special Rapporteur for Freedom of Expression was created by the Inter-American Commission on Human Rights (IACHR) to encourage the defense of the right to freedom of thought and expression in the hemisphere, given the fundamental role this right plays in consolidating and developing the democratic system.

11. PRESS RELEASE R40/12**OFFICE OF THE SPECIAL RAPPORTEUR CONDEMNS MURDER OF JOURNALIST AND POLITICAL BLOGGER IN BRAZIL**

Washington D.C., April 26, 2012 – The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murder of Brazilian journalist and political blogger Décio Sá, which took place on April 23 in the city of São Luis, capital of the state of Maranhão.

According to reports, Sá was in a restaurant when a gunman entered the establishment and shot him several times in the back. Maranhão's Minister of Public Safety, Aluísio Mendes, stated that the journalist's murder was reportedly a contract killing. The Minister ordered the immediate creation of a special task force to investigate the attack and to identify the perpetrators, furthermore he said that all investigations would be expedited to avoid impunity in this case.

Sá worked as a political affairs journalist at the newspaper *O Estado*, and wrote a blog called *Blog do Décio*, through which he denounced acts of corruption. His blog had become one of the most widely read blogs in the region.

The Office of the Special Rapporteur asks the authorities to conduct a prompt and diligent investigation to establish the motives for the murder, identify and punish those responsible and to ensure that the victim's relatives receive fair reparations from the perpetrators.

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

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12. PRESS RELEASE R41/12**OFFICE OF THE SPECIAL RAPPORTEUR CONDEMNS MURDER OF JOURNALIST IN VERACRUZ**

Washington, D.C., April 30, 2012 –The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murder of journalist Regina Martinez, whose body was found with signs of violence on April 28th at her home in Veracruz, Mexico. The Office of the Special Rapporteur urges the authorities to conduct a prompt and diligent investigation to identify and punish those responsible for this crime. According to the information received, the government of the state of Veracruz requested the collaboration of the Attorney General of the Republic in order to carry out the appropriate investigations.

According to the information received, Regina Martinez was a correspondent for the magazine *Proceso* in Veracruz, a publication with nationwide circulation devoted to analysis and investigation, and she wrote critical articles about state politics and organized crime. *Proceso* has been the target of massive buy-outs of its issues by parties that consider themselves to be affected by its reports, and on several occasions, it has withheld the name of its journalists covering security issues at the regional level. The murder of Regina Martinez adds to the 10 homicides of communicators that were committed in Mexico in 2011. In addition to the correspondent for *Proceso*, over the last 12 months, the murders of Miguel Ángel López Velasco, Misael López Solana, Yolanda Ordaz and Noel López Olguín have taken place in Veracruz.

The Office of the Special Rapporteur reiterates its concern for the persistent acts of violence against social communicators in Mexico and urgently calls on the authorities to strengthen the Office of the Special Prosecutor on Crimes Committed against Freedom of Expression (FEADLE, in its Spanish acronym) and to implement both the Law for the Protection of Human Rights Defenders and Journalists and the constitutional reform that would give federal authorities the power to investigate and prosecute crimes affecting freedom of expression.

The Office of the Special Rapporteur insists that in order to ensure that this crime does not result in impunity and that similar crimes are not committed, it is of utmost importance that all parties who are responsible for the murders are identified, tried and punished, and that the perpetrators provide just reparations to the victims' families.

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

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13. PRESS RELEASE R42/12**OFFICE OF THE SPECIAL RAPPORTEUR EXPRESSES CONCERN FOR KIDNAPPING OF FRENCH JOURNALIST IN COLOMBIA**

Washington, D.C., May 1, 2012 – The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) states its concern for the kidnapping of French journalist Romeo Langlois, on April 28th in Caquetá, Colombia.

According to reports, the journalist was covering an anti-narcotics operation carried out by an army unit when the unit was attacked by the FARC. Langlois was injured during the attack, and afterward, his whereabouts could not be determined. Colombian authorities have stated that there are indications that the reporter is in the custody of the FARC. At the beginning of April, this illegal organization had vowed to refrain from kidnapping.

The Office of the Special Rapporteur considers it vital that the life, integrity and liberty of the journalist be unconditionally respected, and it demands that he be released immediately.

The IACHR has specified that independent journalists who cover armed conflict do not lose their status as civilians, regardless of the risks to which they are exposed as a result of the conflict. As such, they continue to be protected by the applicable guarantees of international human rights law and international humanitarian law, particularly by the guarantees derived from the principle of distinction.

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

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14. PRESS RELEASE R44/12**OFFICE OF THE SPECIAL RAPPORTEUR CONDEMNS MURDERS OF FOUR MEDIA WORKERS IN VERACRUZ, MEXICO**

Washington, D.C., May 4, 2012 – The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murder of three photographers and the administrative professional of a newspaper, whose bodies were discovered in Veracruz, Mexico, on May 3rd. The Office of the Special Rapporteur expresses its profound concern for the recurrence of extremely serious acts of violence against the press in Mexico, particularly in Veracruz, where at least nine media and communications workers have been killed in the last 12 months.

According to the information received, graphic reporters Gabriel Hugué and Guillermo Luna, who covered the police beat for several media outlets in Veracruz, had been missing since the evening of May 2nd. The following day, their bodies appeared wrapped in plastic bags in a place known as Canal de la Zamorana 1 in the port of Veracruz. The journalists had worked for the newspaper *Notiver* until 2011. In addition to their bodies, the remains of Esteban Rodríguez, former photographer of the newspaper *AZ* and *TV Azteca*, and of Irasema Becerra, administrative professional of the newspaper *El Dictamen*, were also found in Veracruz. In 2011, Hugué, Luna, and Rodríguez had abandoned the state of Veracruz in response to threats they had received.

These murders add to the toll of the other five homicides of journalists committed in Veracruz during the past year. On April 28th, journalist [Regina Martínez](#) was found dead at her house in Veracruz with signs of violence. She was a correspondent for the magazine *Proceso*, a publication with nationwide circulation devoted to analysis and investigation, and she wrote critical articles about state politics and organized crime. [Noel López Olguín](#), who disappeared on March 8, 2011 and was found on May 31, 2011, and who collaborated with different local media outlets; the columnist and assistant director of *Notiver*, [Miguel Ángel López Velasco \(known as Milo Vela\) and his son, Misael López Solana](#), who was a photographer for the same newspaper, were killed on June 20, 2011; and [Yolanda Ordaz](#), a reporter for *Notiver*, who was found on July 26, 2011. In 2011, at least 8 communicators and media workers died in Mexico as part of crimes that could be related to the exercise of their profession. In its [Annual Report of 2007](#), the Office of the Special Rapporteur documented that on May 3rd of that year, a human head was thrown in front of the headquarters of *Notiver* with a note saying “this is a gift for the journalists, more heads will roll as Milo Vela well knows.” The Office of the Special Rapporteur reiterates its concern for the persistent violence committed against social communicators in Mexico, particularly in Veracruz, and it calls attention to the fact that five of the victims have been linked to the newspaper *Notiver*. The Office of the Special Rapporteur exhorts the Mexican authorities to act urgently in investigating these crimes in a prompt and diligent manner, to identify, try, and punish all of the responsible parties, and to guarantee that the perpetrators provide just reparations to the victims’ families.

The Office of the Special Rapporteur takes note of the actions already taken by the authorities to investigate the crimes involving the journalist Regina Martínez and the photographers who were killed on May 3rd. These actions reportedly include the possible collaboration of the Attorney General of the Republic (PGR, in its Spanish acronym) and the designation of a special investigative commission comprised of 10 experts and led by the Office of the Special Prosecutor on Crimes Committed against Freedom of Expression (FEADLE in its Spanish acronym). Similarly, with respect to the murder of Regina Martínez, the government of Veracruz put together a Special Commission of investigation and requested the participation of the PGR, the State Human Rights Commission, the National Human Rights Commission, as well as the participation of a journalist from the magazine *Proceso*, among other measures. The PGR purportedly requested the case file from the Attorney General of Veracruz in order to determine the viability of collaborating in the investigation.

It is of utmost importance to halt this serious wave of violence against journalists through effective mechanisms of protection and investigation, which is why it is fundamental that the FEADLE be strengthened, that the recently passed Law for the Protection of Human Rights Defenders and Journalists

be implemented, and that the state legislatures pass the constitutional reform that would give federal authorities the power to investigate and prosecute crimes affecting freedom of expression.

The Office of the Special Rapporteur exhorts the Mexican authorities to prevent impunity from prevailing when crimes are committed against communicators. While the current process of federalization is being implemented, the Office of the Special Rapporteur believes it is necessary that urgent measures be adopted, so as to allow the activation of all existing mechanisms by which the federal authorities can assume control of the investigation of the homicides that have been committed.

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

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15. PRESS RELEASE R46/12**OFFICE OF THE SPECIAL RAPPORTEUR OF FREEDOM OF EXPRESSION, THE RAPPORTEURSHIP ON HUMAN RIGHTS DEFENDERS AND THE UNIT FOR THE RIGHTS OF PERSONS LGBTI CONDEMN MURDER OF JOURNALIST AND LGBTI ACTIVIST IN HONDURAS**

Washington, D.C., May 11, 2012 – The Office of the Special Rapporteur for Freedom of Expression, the Rapporteur on Human Rights Defenders and the Unit for the rights of persons LGBTI of the Inter-American Commission on Human Rights (IACHR) condemn the murder of Erick Alex Martínez Ávila, a journalist and defender of the rights of the gay, lesbian, bisexual and transsexual population, who went missing on May 5th and was found dead two days later.

According to the information received, on May 7th, members of the community of Guasculile found the body of a young man that was later identified as belonging to Martínez Ávila alongside a highway between the cities of Olancho and Tegucigalpa.

Erick Alex Martínez Ávila worked in the area of public relations, monitoring and evaluation at the Kukulcán Association, an organization dedicated to defending the rights of lesbians, gays, and transsexual and bisexual persons. He was recently named as a candidate for local primary elections of the Libertad y Refundación party, and he was an active member of the Roundtable for Sexual Diversity of the National Resistance Front.

In its Second Report on the [Situation of Human Rights Defenders in the Americas](#), the IACHR highlighted the vast amount of information received regarding murders, threats, and criminalization of the activities of defenders of the LGBTI community, as well as the lack of a gender-sensitive approach to the investigation of human rights violations. Also, in the report [Honduras: Human Rights and Coup d'Etat](#), the IACHR noted the deepening of discrimination and risk situation against members of lesbians, gays, and bisexual, transgender and intersex people in Honduras. The IACHR urges the Honduran State to investigate this crime in a thorough, timely and diligent manner, without discarding the possibility that the homicide may be related to the exercise of the victim's profession.

For the IACHR it is of fundamental importance that the Honduran State elucidates the cause of this crime, that it identifies, prosecute and sanction the responsible parties, and that it adopt measures to guarantee that the perpetrators provide just reparations to the victim's family.

16. PRESS RELEASE 47/12**MEXICO: INTERNATIONAL AND REGIONAL EXPERTS URGE SWIFT ACTION TO PROTECT HUMAN RIGHTS DEFENDERS AND JOURNALISTS**

Geneva/ Washington, D.C., May 14, 2012 - "The killings and threats repeatedly suffered by rights defenders and journalists in Mexico must stop immediately," urged a group of four experts from the United Nations and the Inter-American Commission on Human Rights, calling on the Government to move ahead with the swift promulgation and effective implementation of the 'Law for the Protection of Human Rights Defenders and Journalists'.

Highlighting the immediacy of the threats facing defenders and journalists, the experts also urged the Government to implement existing protection mechanisms as a matter of urgency, in order to avoid further attacks and loss of life and to complement the new provisions when they come into effect.

The Bill, which has been approved by both chambers of the Federal Congress, seeks to guarantee and safeguard the life, integrity and security of human rights defenders and journalists by creating a mechanism with the authority to implement measures to protect those at risk, as well as at preventing such risks from arising in the future.

"Human rights defenders in Mexico desperately need the State's effective protection now," said Margaret Sekaggya, the United Nations Special Rapporteur on the situation of human rights defenders. "They continue to suffer killings, attacks, harassment, threats, stigmatization and other serious human rights violations."

"The State has to implement, as a matter of priority, a global protection policy for human rights defenders. The lack of appropriate and effective systems for implementing specialized protection measures are related to the situation of defenselessness in which many human rights defenders find themselves, which has caused the death of many of them in recent years," stressed Santiago A. Canton, the Executive Secretary of the Inter-American Commission on Human Rights on behalf of the Rapporteurship of Human Rights Defenders*.

"We have to break the cycle of impunity in Mexico, which is becoming an increasingly violent place for journalists," said Frank La Rue, United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. "The recent killing of four press workers in Veracruz underscores the dire need for concrete steps to be taken to guarantee the safety of journalists and put an end to impunity."

Catalina Botero, Special Rapporteur for freedom of expression of the Inter-American Commission on Human Rights, stressed that "safeguarding journalists and human rights defenders is not only compatible with the fight against crime, it is an essential element of this struggle. The Mexican authorities should take immediate measures to protect those journalists and human rights defenders that are being threatened, as well as to make definitive advances in the struggle against impunity for the crimes that have been committed against them."

The four experts commended the Federal Congress for approving the Bill, pointing out that it would provide added impetus and sustainability to existing protection frameworks, while also strengthening these frameworks.

The Bill was drafted in consultation with civil society organizations, and the Office of the High Commissioner for Human Rights in Mexico provided technical advice throughout the drafting process.

The human rights experts praised the consultative process which allowed multiple stakeholders to play an important role in the drafting of the Bill, and called for the same participatory approach throughout the implementation process. However, they emphasized the urgency of providing effective protection to those

at risk and ensuring that human rights violations against journalists and human rights defenders do not go unpunished.

A principal, autonomous body of the Organization of American States (OAS), the IACHR derives its mandate from the OAS Charter and the American Convention on Human Rights. The Inter-American Commission has a mandate to promote respect for human rights in the region and acts as a consultative body to the OAS in this matter. The Commission is composed of seven independent members who are elected in an individual capacity by the OAS General Assembly.

(*) In keeping with Article 17(2)(a) of the Commission's Rules of Procedure, Commissioner José de Jesús Orozco Henríquez, of Mexican nationality, does not participate in matters concerning said country.

17. PRESS RELEASE R49/12**OFFICE OF THE SPECIAL RAPPORTEUR CONDEMNS ATTACK IN COLOMBIA**

Washington, D.C., May 16, 2012 – The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the terrorist attack in Bogotá that targeted Fernando Londoño Hoyos, director of a morning show at the *Super Radio Station*, and the death of two of his bodyguards. The Office of the Special Rapporteur sends a message of condolence to the victims' families and urges the competent authorities to carry out a diligent, timely, and thorough investigation that identifies the motives and the perpetrators of the criminal act.

According to the information received, on May 15th, a powerful explosive detonated in the vehicle where the ex-Minister of the Interior and of Justice was traveling, causing the death of two victims and injuries to at least 41 people, some of which were particularly serious. The motive for the attack is still unknown, although there are contradicting theories about the possible objectives of the criminals. The ex-Minister was being protected by a strong security detail provided by the Government in light of threats that he had received, and according to reports, the armored car that was given to him enabled him to survive this serious attack. Nevertheless, his driver, Ricardo Rodríguez, and one of his bodyguards, Rosemburg Burbano, were killed. The President of the Republic expressed his categorical rejection of the attack, offering a reward of up to 500 million pesos (US\$ 280,000) for anyone who provides information leading to the capture of the responsible parties, and a special commission has been formed to identify the causes of the attack.

For the Office of the Special Rapporteur, it is necessary for the authorities to act in a timely manner to identify the masterminds and the causes of this crime, to prosecute and sanction the responsible parties, and to demand that they provide adequate reparations to the victims of this serious attack. Terrorist acts that seek to impede the exercise of freedom of expression of any person or to bypass democratic debate about matters of national interest should be met with strict punishment that is proportionate to the level of harm caused.

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18. PRESS RELEASE R52/12**THE OFFICE OF THE SPECIAL RAPPORTEUR CONDEMNS MURDER OF JOURNALIST
KIDNAPPED IN HONDURAS**

Washington D.C., 17 May, 2012. The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murder of radio journalist Alfredo Villatoro, who had been kidnapped on May 9 and was found dead in Tegucigalpa on May 15. The Office of the Special Rapporteur urges authorities to conduct a diligent, timely and thorough investigation that does not rule out the hypothesis that the journalist may have been killed because of his professional practice.

According to the information received, several armed men allegedly took Villatoro when he was on his way to work in the early hours of May 9, after blocking the vehicle he was in. Despite important police efforts, authorities were not able to find the media worker. On May 15, the Villatoro's body was found with two shots in the head in a vacant lot south of Tegucigalpa. Police made public that he appeared to have been murdered there a short time before his body was found. Villatoro was a well-known influential journalist that worked as news coordinator for the *HRN* radio network, one of the country's most important networks, and hosted a morning news broadcast show in that station.

The Office of the Special Rapporteur considers it essential for the Honduran State to clarify the motive for these crimes; identify, prosecute, and punish those responsible; and adopt fair measures of reparation for the victim's next of kin. The Office of the Special Rapporteur insists that the State needs to create special investigative bodies and protocols, as well as protection mechanisms designed to ensure the safety of those who are being threatened because of their work in journalism. In light of the series of murders committed against journalists in Honduras, it is critical that the State carry out a complete, effective, and impartial investigation of these crimes, which have a negative impact on all of Honduran society.

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

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19. PRESS RELEASE R53/12**OFFICE OF THE SPECIAL RAPPORTEUR CONDEMNS MURDER OF CRIME REPORTER IN SONORA, MEXICO**

Washington D.C., May 21, 2012 - The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murder of journalist Marcos Ávila García, whose body was discovered in Sonora on May 18, the day after he was kidnapped. This Office expresses its deep concern over the repetition of extremely grave acts of violence against the press in Mexico, and requests from the authorities a diligent, timely and thorough investigation that adequately explores the hypothesis that the motive behind this crime could be the victim's professional activities.

According to the information received, at least three armed men with their faces covered kidnapped the media worker on the afternoon of Thursday, May 17, while he was at a carwash in Ciudad Obregón, state of Sonora. The authorities launched a significant police deployment to try to find him. On May 18, the reporter's body was found lying next to a highway, with signs of having been tortured and with an alleged message from organized crime. Marcos Avila covered police activities for the daily newspaper *El Regional de Sonora* from Ciudad Obregón. Mr. Avila was recognized as being a serious and very professional journalist.

The murder of Marcos Avila adds to at least another five crimes against media workers committed in Mexico this year that could have been motivated by the victims' professional activities. On April 28th, journalist [Regina Martinez](#) was found dead at her house in Veracruz with signs of violence. On May 3, the bodies of graphic reporters [Gabriel Hugué](#), [Guillermo Luna](#) and [Esteban Rodríguez](#), as well as that of [Irasema Becerra](#), an administrative professional for the newspaper *El Dictamen*, were also discovered in Veracruz.

The Office of the Special Rapporteur has been informed of the measures taken by the Mexican authorities to investigate the crimes against journalists. In the case of Marcos Ávila, the National Human Rights Commission started an investigation ex officio and ordered that the victim's family and his supervisors be interviewed, and that the authorities' investigation be supported in every way. Regarding the homicide of the photographers, actions taken reportedly include the possible collaboration of the Office of the Prosecutor General of the Republic (PGR, in its Spanish acronym) and the designation of a special investigative commission led by the Office of the Special Prosecutor on Crimes Committed against Freedom of Expression (FEADLE in its Spanish acronym). Similarly, with respect to the murder of Regina Martinez, the government of Veracruz put together a special commission of investigation and requested the participation of the PGR, the State Human Rights Commission, the National Human Rights Commission, as well as the participation of a journalist from the magazine *Proceso*, among other measures.

The attacks against the press in Mexico have forced many media outlets to stop publication of news about organized crime as a safety measure, depriving the Mexican society of vital information. The Mexican State must immediately do everything within its reach to stop the surge of violence against journalists, avoid impunity and impede the silencing of the media. It is of great urgency that Mexico implements protection policies for media workers, break the cycle of impunity that invites criminals to commit further crimes against journalists, and understand that protecting the press and human rights defenders is essential to the battle against crime and the protection of democracy.

Accordingly, it must be a priority to effectively and urgently apply the recently approved Law for the Protection of Human Rights Defenders and Journalists, strengthen the FEADLE, and get the states' legislatures to approve the constitutional reform that would enable the federal authorities to investigate and try crimes against the right to freedom of expression. While the ongoing federalization process takes place, activating the existing mechanisms for the federal authorities to conduct the investigation of the murders committed is necessary.

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

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20. PRESS RELEASE R56/12**OFFICE OF THE SPECIAL RAPPORTEUR CELEBRATES LIBERATION OF FRENCH JOURNALIST
IN COLOMBIA**

Washington D.C., May 31, 2012 – The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) celebrates the liberation of French journalist Roméo Langlois on May 30, who had been abducted by FARC in Caquetá, Colombia, on April 28th.

According to the information received, the guerilla group delivered Langlois in good physical condition in the town of San Isidro, Caquetá, to the International Committee of the Red Cross delegates. The reporter had been captured and wounded in a guerilla attack on April 28, while he was accompanying a military patrol to shoot footage of an antidrug raid.

As the Office of the Special Rapporteur has stated, independent journalists who cover armed conflict do not lose their status as civilians, regardless of the risks to which they are exposed as a result of the conflict. As such, they continue to be protected by the applicable guarantees of international human rights law and international humanitarian law, particularly by the guarantees derived from the principle of distinction. The Office of the Special Rapporteur urges the FARC guerilla group to respect the civilian status of the journalists who cover the armed conflict and to refrain from repeating such actions in the future.

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

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21. PRESS RELEASE R62/12**OFFICE OF THE SPECIAL RAPPORTEUR EXPRESSES CONCERN OVER CRIMINAL CONVICTION AGAINST TWO JOURNALISTS IN PERU**

Washington, D.C., June 11, 2012– The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) expresses its concern over the criminal conviction for aggravated defamation issued on June 5th by a Peruvian judge against Juan Carlos Tafur and Roberto More, executive editor and reporter of the *Diario 16* newspaper, stemmed from a news story that involved a former Director of the National Police and former Minister of Interior in alleged illegal activities.

According to the information received, the Twelfth Criminal Court of Lima had sentenced the media workers to 2 years in jail with suspended execution of the sentence and to the payment of 60,000 soles (approximately US\$ 23,000) to Antonio Ketin Vidal Herrera, who felt offended by information published on January 12, 2011 by the newspaper, while he intended to run for vice-president of the Republic.

The Office of the Special Rapporteur acknowledges that this unfortunate court decision against journalists Tafur and More however, occurs in a context where Peruvian President Ollanta Humala has publicly declared several times that he will respect this right and will not resort to criminal proceedings to inhibit debate on issues of public interest. At the same time, the Congress of the Republic of Peru has analyzed various proposals that would eliminate the crime of defamation, at least for public servants, or replace jail sentences with fines or community service. Concurrently, the Supreme Court of Justice has established guidelines for this subject and in recent decisions has revised criminal convictions for defamation issued to current or former public servants.

This Office has expressed on numerous occasions its concern over the charges of criminal defamation brought against those who have denounced or criticized public officials. The tenth principle of the [IACHR Declaration of Principles on Freedom of Expression](#) states: "Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news".

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22. PRESS RELEASE R63/12**OFFICE OF THE SPECIAL RAPPORTEUR EXPRESSES SATISFACTION FOR GUILTY VERDICT
AGAINST A MURDERER OF CAMERAMAN IN EL SALVADOR**

Washington D.C. June 12, 2012. The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) expresses its satisfaction for the guilty verdict issued in El Salvador against one of the murderers of cameraman Alfredo Antonio Hurtado Núñez, a crime that took place in San Salvador on April 25, 2011.

According to the information received, on May 31st the Specialized Court of Sentences A in San Salvador sentenced Jonathan Alexander Martinez Castro to 30 years in jail for the murder of Alfredo Hurtado. The same court ratified the arrest warrant against Marlon Stanley Abrego Rivas, who was allegedly also responsible for the murder and who has not yet been detained.

Alfredo Hurtado was on his way to work on the night of Monday, April 25, 2011, when two armed men boarded the bus in which he was riding and shot him several times. The killers did not steal any of his belongings. Hurtado worked as a cameraman on the night shift for the news program *Teleprensa*, on *Channel 33*, and had more than 20 years of work experience. On a daily basis, he covered criminal activity and information related to gang violence. According to the information available, Martinez and Abrego allegedly shot Hurtado because they believed that his work may have allowed him to identify a member of a gang involved in another murder. The Office of the Special Rapporteur condemned the murder of Hurtado on May 2, 2011, and asked the authorities to conduct a thorough investigation that took into account the possibility that the crime might have been motivated by the victim's work in journalism.

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

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23. PRESS RELEASE R65/12**OFFICE OF THE SPECIAL RAPPORTEUR EXPRESSES CONCERN OVER DISAPPEARANCE OF MEXICAN JOURNALIST AND HER SON**

Washington, D.C., June 13, 2012 - The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) expresses its concern over the disappearance of Mexican journalist Hypatia Stephania Rodríguez Cardoso and her 2-year-old son, which apparently happened in Saltillo, Coahuila, in the early hours of Friday, June 8th.

The Office of the Special Rapporteur asks the State to undertake all the necessary actions to find the reporter and her son alive, and to ensure the investigation looks into the possibility that the disappearance is connected to the reporter's professional activities.

According to the information that has been received, the reporter works for [Zócalo](#), a newspaper of Saltillo, and usually covers news stories on police-related affairs.

On the night of June 7, the journalist went to a social gathering of journalists taking her son along. Once the gathering was over, in the early hours of June 8, she went back to her house and called some colleagues minutes later to say that she had arrived home safely. However, the next day she was discovered missing and her house showed signs of having been searched. Her camera was found destroyed and her car was not found.

Her disappearance was reported to the police on the morning of Saturday, June 9th, at the state's Office of the Prosecutor General, but the investigation has apparently been transferred to the national Office of the Prosecutor General. The Office of the Special Rapporteur acknowledges the intervention of the federal authorities to try to resolve the case and urges all competent authorities to maintain and increase the measures adopted up to now to find the journalist and her son unharmed.

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

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24. PRESS RELEASE R70/12**OFFICE OF THE SPECIAL RAPPORTEUR CONDEMNS MURDER OF JOURNALIST IN XALAPA, VERACRUZ**

Washington D.C., June 18, 2012 – The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murder of police beat reporter Víctor Manuel Báez Chino, who was found dead in the early hours of June 14th in Xalapa, Veracruz. The federal and local authorities in Mexico are encouraged to take urgent measures to halt the wave of violence against journalists and to put into practice all of the available legal instruments to identify and sanction the perpetrators and masterminds of the latest crime.

According to the information received, three armed men in a van kidnapped the journalist on the night of June 13th when he was leaving his office in Xalapa. Police authorities reportedly conducted an immediate search that concluded when the body was found the following morning on a downtown street located near the Xalapa city hall and the offices of two local newspapers. Báez Chino was the editor of the police news section of the newspaper [Milenio - El Portal of Veracruz](#), a publication of the Milenio Group, as well as editor of the news Web site [Police Reporters](#).

The Office of the Special Rapporteur expresses its deep concern at the recurrence of extremely serious attacks against the press in Mexico, where at least seven media workers have been killed this year. Six of these deaths occurred in the state of Veracruz in circumstances that may be related to the victims' journalistic work. On April 28th, journalist [Regina Martínez](#) of the magazine *Proceso* was found dead at her house in Veracruz with signs of violence; on May 3rd, the bodies of graphic reporters [Gabriel Hüge](#), [Guillermo Luna](#) and [Esteban Rodríguez](#), as well as that of [Irasema Becerra](#), an administrative professional for the newspaper *El Dictamen*, were also discovered in Veracruz; and on May 18th the body of reporter [Marcos Ávila García](#) was found in Sonora one day after he had been kidnapped. Furthermore, on June 8th, police reporter [Hypatia Stephania Rodríguez Cardoso and her two-year-old son](#) disappeared, later confirming that they are in hiding in order to protect their safety. The Office of the Special Rapporteur considers it essential that the reporter be given the necessary protective measures in an urgent manner.

As the Office of the Special Rapporteur stated in its [Special Report on Freedom of Expression in México](#), the attacks against the press in this country have forced many media outlets to stop publication of news about corruption or organized crime as a safety measure, depriving the Mexican society of vital information. The Mexican State must immediately do everything within its reach to prevent new attacks motivated by the victim's exercise of freedom of expression, to combat impunity for these crimes, and to prevent the silencing of the media. It is of great urgency that Mexico implements protection policies for media workers and break the cycle of impunity that invites criminals to commit further crimes against journalists. Protecting the press is essential to the battle against crime and the protection of democracy. To this end, it must be a priority for the Mexican state to apply the recently approved [Law for the Protection of Human Rights Defenders and Journalists](#) in an effective and urgent manner, to strengthen the Office of the Special Prosecutor on Crimes Committed against Freedom of Expression (FEADLE in its Spanish acronym), and to publish immediately in the Official Register the provisions of the constitutional reform that gives federal authorities jurisdiction to investigate and try crimes against the exercise of freedom of expression, and which was passed on June 6th in the Permanent Commission of the National Congress. While the ongoing federalization process takes place, it is necessary to activate existing mechanisms so that the federal authorities can conduct the investigation of the murders committed, apprehend and sanction the responsible parties, and guarantee that those responsible provide just reparations to the victims' families.

Principle 9 of the [Declaration of Principles on Freedom of Expression](#) states: "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of

expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

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25. PRESS RELEASE R74/12**SPECIAL RAPPORTEURS FOR FREEDOM OF EXPRESSION LAUNCH JOINT DECLARATION ON
CRIMES AGAINST FREEDOM OF EXPRESSION**

Washington D.C., June 25, 2012 – The need to halt the alarming increase in violence against journalists and media workers is the subject of a joint declaration signed on June 25th by the four Special Rapporteurs for Freedom of Expression during a special meeting in Port of Spain, Trinidad and Tobago.

The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Frank LaRue; the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) of the Organization of American States (OAS), Catalina Botero Marino; the Organization for Security and Cooperation in Europe (OSCE) Representative on Freedom of the Media, Dunja Mijatoviæ; and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression, Faith Pansy Tlakula; issued a joint declaration in which they state their abhorrence over the unacceptable rate of crimes against freedom of expression, including killings, death threats, disappearances, prosecutions, and imprisonments, which target the media and individuals who play a crucial role in informing society.

In the Joint Declaration, the four rapporteurs maintain that crimes against journalists and other communicators represent attacks not only on the victims but on freedom of expression itself, as they have a chilling effect on the free flow of information and ideas and prejudice the rights of society as a whole. They highlight that the prevailing state of impunity increases the incidence of these crimes. As a result, the Declaration outlines the measures that states should take pursuant to their duty to ensure that crimes against freedom of expression are prosecuted and punished and that victims receive appropriate remedies. The four rapporteurs call on states to carry out independent, speedy, and efficient investigations into these crimes, as well as to foster greater transparency in the investigations. The rapporteurs also observe that independent journalists covering situations of armed conflict do not lose their status as civilians, regardless of the risks to which they are exposed as a result of the conflict. As such, they continue to be protected by the applicable guarantees of international human rights law and international humanitarian law.

According to the Declaration, when crimes against freedom of expression are a recurring problem, state authorities should take special steps to prevent them from taking place, such as imposing heavier penalties for these crimes or increasing the applicable statutory limitations periods. In certain circumstances, the creation of specialized investigative units may be warranted. Furthermore, the Declaration stresses the important contribution that individuals who investigate human rights abuses and corruption make to society, and the fact that they are often susceptible to criminal retribution. As such, the rapporteurs urge states to create specialized protection programs where there is an ongoing and serious risk of crimes against freedom of expression and to tailor the protection measures to the needs of the person at risk, taking into account factors such as gender.

With regard to this subject, Catalina Botero stated, "The increase in violence against journalists is truly alarming. The circumstances make it urgent for States to take responsibility for developing more and better measures of prevention, protection, and prosecution in order to stop the recurrence of these crimes, to sanction the responsible parties and to guarantee the right of society to be informed."

According to Frank La Rue, "Any effective action by the State to protect journalists and media workers and outlets begins with the diligent investigation of the crimes against them and the identification, prosecution, and punishment of those responsible, as well as the reparation of the victims."

Dunja Mijatoviæ indicated, "Journalists across the OSCE region and beyond are targeted daily for their critical coverage of politics, the economy, and social affairs, and for investigating crime and corruption. This comprehensive declaration focuses on universal solutions to this modern plague and encourages all

governments and other stakeholders to help counter the killings of journalists, as well as the threats and physical attacks they systematically face.”

For her part, Pansy Tlakula remarked, “The Declaration is timely because it is adopted at a moment when crimes against freedom of expression are increasing in Africa. This Declaration will assist in eradicating the ever-increasing phenomenon of impunity enjoyed by those who commit crimes against freedom of expression, and it will hopefully also enable States to take action against non-State actors.”

The text of the Joint Declaration is available at: [Joint declaration 2012-2 EN](#)

26. PRESS RELEASE R77/12**OFFICE OF THE SPECIAL RAPPORTEUR CONDEMNS MURDER OF PHOTOGRAPHER IN
ECUADOR**

Washington, D.C, July 6, 2012 – The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murder of photographer Byron Baldeon, which took place on July 1st in El Triunfo, a town located near Guayaquil, in Ecuador.

According to the information received, two armed men on a motorcycle shot the photographer several times on the afternoon of July 1st as he arrived home. In May, while exercising his profession, Baldeon had taken photographs of the scene of a robbery. The criminal investigation revealed that several policemen were involved in the robbery. Later, Baldeon was subpoenaed as a witness to the crime. The photographer was as a freelance collaborator of the newspaper *Extra*, where the pictures were published.

The Office of the Special Rapporteur urges the authorities to act in a timely manner to identify the masterminds and the causes of this crime, to prosecute and sanction the responsible parties, and to demand that they provide adequate reparations to the victim's next of kin. Violence against journalists and other communicators represents an unacceptable attack not only on the victims but on society as a whole, as it has a chilling effect on the free flow of information and ideas.

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

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27. PRESS RELEASE R86/12**OFFICE OF THE SPECIAL RAPPORTEUR CONDEMNS KILLING OF SPORTS COMMENTATOR IN BRAZIL**

Washington, D.C, July 11, 2012 - The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murder of the sports journalist Valério Luiz de Oliveira, which took place on July 5 in Goiania, capital city of Goiás state, in Brazil.

According to the information received, a motorcyclist shot the journalist several times as he was coming out of the broadcast station where worked, *Rádio Jornal 820*. According to this information, Valério Luz was considered a controversial and critical figure within the sports journalism community of his region. Because of his commentary, he was not allowed to enter the stadium of a local soccer team and he was reported to have recently received death threats. Luiz also worked at the *PUC-TV* station. Police authorities in Goiás launched an immediate investigation.

The Office of the Special Rapporteur calls upon the Brazilian authorities to adopt all necessary measures to avoid the repetition of these types of crimes, identify and punish all the direct perpetrators and masterminds, and to demand that they provide adequate reparations to the victim's next of kin.

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

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28. PRESS RELEASE R101/12

THE OFFICE OF THE SPECIAL RAPPORTEUR EXPRESSES CONCERN OVER ATTACKS AGAINST EL NORTE NEWSPAPER AND THREATS AGAINST JOURNALISTS IN MEXICO

Washington, D.C., August 3, 2012. – The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) expresses its concern over three attacks against *El Norte* newspaper that have taken place in less than a month in the state of Nuevo León, and several other threats against journalists in different parts of the country. The Office of the Special Rapporteur urges the Mexican authorities to immediately take the necessary measures to protect the newspaper and the journalists that have been threatened, to investigate the incidents thoroughly, to identify and prosecute the responsible parties, and to prevent new aggressions.

According to the information received, in the early hours of July 10, 2012, a person detonated a fragmentation grenade outside the offices of *La Silla*, a supplement of *El Norte* newspaper, in the city of Monterrey. In the afternoon, a branch office of the same newspaper, where the *Linda Vista* supplement is headquartered in the municipality of Guadalupe, north of Monterrey, was allegedly attacked with bullets and a grenade. On the afternoon of Sunday, July 29, several attackers broke into the offices of the *Sierra Madre* supplement, in the municipality of San Pedro, immobilized the security guard, and set the first floor on fire. None of the three attacks caused any injuries.

The Office of the Special Rapporteur also regrets the threats allegedly received by several media workers over the last weeks. On July 16, unidentified individuals broke into the house of Hiram González Machi, a journalist for the *Nuevo Día* newspaper and *Channel 7*, both in Nogales, and left a note that read “You’re going to die, reporter.” The journalist Cecilia Cota Carrasco from *El Diario* newspaper in Sinaloa claimed last weekend that she was threatened by a former candidate for the Federal Congress, who warned her that he was capable of committing violent acts against her and her family. Finally, on July 29, journalist Lydia Cacho, who is the beneficiary of precautionary measures of the IACHR, received new and serious death threats that are directly related to the exercise of her profession.

As the Office of the Special Rapporteur stated in its [Special Report on Freedom of Expression in México](#), the attacks against freedom of expression in this country have forced many journalists and media outlets to refrain from publishing news about corruption or organized crime as a safety measure, depriving Mexican society of vital information.

Protecting the press is essential to the battle against crime and the protection of democracy. To this end, it must be a priority to apply the recently approved Law for the Protection of Human Rights Defenders and Journalists in an effective and urgent manner; to strengthen the Office of the Special Prosecutor on Crimes Committed against Freedom of Expression (FEADLE in its Spanish acronym); and to complete the necessary steps to implement the constitutional reform that gives federal authorities jurisdiction to investigate and try crimes against the exercise of freedom of expression, which was passed on June 6th in the Permanent Commission of the National Congress.

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

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29. PRESS RELEASE R123/12

OFFICE OF THE SPECIAL RAPPORTEUR CONDEMNS MURDER OF NEWSPAPER OWNER IN BRAZIL

Washington, D.C., October 16, 2012 – The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murder of Luiz Henrique Georges, owner of the newspaper *Jornal da Praça*, which took place on October 4 in Ponta Porã, Mato Grosso do Sul in Brazil. The Office of the Special Rapporteur expresses its concern over the second murder of a person linked to this newspaper and requests that the authorities conduct a prompt and diligent investigation to establish the motive of the crime, identify and appropriately punish the perpetrators.

According to the information received, unknown individuals fired gunshots at the vehicle in which Georges and two of his employees were driving. Georges and Nery Gordo Veras were apparently killed immediately, while the other passenger is in the hospital in critical condition. The information available indicates that Georges recently assumed control of *Jornal da Praça*, which had published articles that were critical of candidates for the municipal elections celebrated in Ponta Porã on October 7. On February 12, 2012, [Paulo Roberto Cardoso Rodrigues](#), a journalist for *Jornal da Praça*, was also killed in Ponta Porã.

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

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30. PRESS RELEASE R128/12

OFFICE OF THE SPECIAL RAPPORTEUR WELCOMES IMPORTANT ADVANCES IN FREEDOM OF EXPRESSION IN THE REGION

Washington, D.C., October 26, 2012 – The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) welcomes the important advances in the area of freedom of expression in the region, with particular regard to the emblematic decisions taken by the Parliament of Grenada and the Constitutional Plurinational Court of Bolivia. The Office of the Special Rapporteur congratulates these States for the aforementioned decisions and will disseminate them extensively in the framework of its mandate to promote freedom of expression in the Americas.

According to information received, in July, the Parliament of Grenada passed the Criminal Code (Amendment) Act of 2012, which repealed the offenses of intentional and negligent libel contained in sections 252 and 253 of the Code. These crimes carried a penalty of between six months and two years of imprisonment. The Office of the Special Rapporteur considers this to be a positive legislative achievement, which contributes decisively to the protection of freedom of expression and promotes the strengthening of debate on matters of public interest. The Office of the Special Rapporteur observes that the offenses of seditious libel and defamation of Her Majesty, established in sections 327 and 328 of the Code, remain part of the criminal law of Grenada, and it hopes that these offenses can be reviewed in conformity with the important reforms already adopted.

Furthermore, the Constitutional Plurinational Court of Bolivia declared unconstitutional Article 162 of the Criminal Code, which established aggravated prison terms for the offense of defaming a public official (*desacato*). By means of [Sentence 1250/2012](#) of September 20, 2012, the Court indicated that the provisions of the article were unconstitutional because they disproportionately affected freedom of expression. According to the Constitutional Court, the crime of *desacato* creates an unconstitutional situation of inequality between public officials and citizens and is incompatible with international human rights commitments. Similarly, it emphasized that public officials must be the subject of special and widespread scrutiny, as this promotes vigorous debate about matters of public relevance. The Constitutional Tribunal reaffirmed the binding nature of the judgments of the Inter-American Court of Human Rights and cited extensively to the doctrine of the inter-American system in the area of freedom of expression, including the IACHR's 1994 [Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights](#). The aforementioned sentence constitutes an emblematic advancement in the area of freedom of expression and underscores the importance of bringing domestic legislation into conformity with international standards in this area. The Office of the Special Rapporteur considers that the judgment represents a significant step forward in the protection and strengthening of freedom of expression in the region.

Today, the crime of *desacato* does not exist in the majority of States in the Americas. Furthermore, a number of States have derogated laws that criminalize defamation against public officials. [Mexico](#), for example, repealed the federal norms that permitted individuals who offended the honor of a public official to be tried for criminal defamation, and a number of the states of the Mexican federation have done the same. In 2007, the National Assembly of [Panama](#) similarly decriminalized defamation in relation to criticism or opinions regarding official acts or omissions of high-ranking public servants. In April 2009, the Supreme Court of [Brazil](#) declared the Press Law incompatible with the Brazilian Constitution; the Law had imposed severe prison and pecuniary penalties on journalists for the crime of defamation. In June 2009, the Legislature of [Uruguay](#) eliminated from the Criminal Code the sanctions for the dissemination of information or opinions about public officials and matters of public interest, with the exception of those cases where the person allegedly affected could demonstrate the existence of "actual malice". In November 2009, the legislature of [Argentina](#) passed a reform to the Criminal Code doing away with prison terms for the crime of defamation, and decriminalizing speech about matters of public interest. Following this trend, in December of 2009, the Supreme Court of [Costa Rica](#) derogated a provision of the Press Law that established a prison penalty for crimes against honor. Similarly, in December of 2011 the Legislative Assembly of [El Salvador](#) approved a reform that substituted fines for prison sentences where

crimes against honor are concerned and established greater protection for expressions dealing with public figures or matters of public interest. In States including Colombia, Jamaica and Peru, important initiatives aimed at reforming the respective Criminal Codes have also been presented.

The Office of the Special Rapporteur calls on OAS Member States to follow these important advances and to bring their national legal frameworks into conformity with inter-American freedom of expression standards.

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31. PRESS RELEASE R136/12

OFFICE OF THE SPECIAL RAPPORTEUR CONDEMNS MURDER OF JOURNALIST IN TEHUACÁN, MÉXICO

Washington D.C., November 20, 2012. - The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murder of journalist Adrián Silva Moreno, which took place on November 14 in Tehuacán, Puebla, and urges federal and local Mexican authorities to take urgent action and activate all legal instruments available for identifying and punishing both the perpetrators of and the masterminds behind this crime.

According to the information received, Adrián Silva Moreno and his companion, identified as Misrael López González, were murdered on November 14. The crime could be connected to information the reporter had on gasoline theft in the region. Adrián Silva Moreno contributed to a number of local media outlets, including: *Diario Puntual*, *Radio 11.70 of Tehuacán* and *Global México*.

The Office of the Special Rapporteur expresses its deep concern over the repetition of extremely serious attacks on the media in Mexico. This year, at least eight journalists and media employees have been murdered. On April 28, journalist [Regina Martínez](#) with the magazine *Proceso* was found dead in her house in Veracruz, with the evidence indicating violence. On May 3, the lifeless bodies of photographers [Gabriel Hüge](#), [Guillermo Luna](#) and [Esteban Rodríguez](#), and of [Irasema Becerra](#), an administrative employee with newspaper *El Dictámen*, were found, also in Veracruz. On May 18, the lifeless body of reporter [Marcos Ávila García](#) was found in Sonora, one day after he was kidnapped. Likewise, in the early morning hours of June 14, in Veracruz, [Víctor Manuel Báez Chino](#) was found dead. He was the editor responsible for the police report section of *Diario Milenio - El Portal in Veracruz*, as well as editor of news site *Reporteros Policiacos*.

As the Office of the Special Rapporteur expressed in its [Special Report on Freedom of Expression in Mexico](#), attacks on the media in that country have forced numerous media outlets to stop publishing news on corruption and organized crime as a security measure, thereby depriving Mexican society of basic information. The Mexican State must immediately do everything in its power to prevent new attacks in response to the exercise of freedom of expression, combat impunity and prevent the silencing of the media. It is urgently necessary for the State to implement a policy to protect communicators, thereby breaking the cycle of impunity that encourages criminals to commit new crimes against journalists. Protecting the media is essential for comprehensively combating crime and protecting democracy. To do this, the following must be priorities for the State: the effective and urgent application of the [Law to Protect Human Rights Defenders and Journalists](#), recently passed; the strengthening of the Office for the Specialized Public Prosecutor for Addressing Crimes committed against Freedom of Expression (FEADLE in its Spanish acronym); and the expediting and full implementation of new legislation allowing a constitutional reform that gives federal authorities the power to investigate and try crimes against the exercise of freedom of expression.

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

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32. PRESS RELEASE R139/12**OFFICE OF THE SPECIAL RAPPORTEUR CONDEMNS KILLING OF JOURNALIST IN BRAZIL**

Washington, D.C., November 27, 2012 – The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murder of Eduardo Carvalho, owner and editor of the news website *UH News (Última Hora News)*, which took place on November 21 in Campo Grande, capital of Mato Grosso do Sul in Brazil. The Office of the Special Rapporteur expresses its concern and requests that the authorities conduct a prompt and diligent investigation to establish the motive of the crime, identify and appropriately punish the perpetrators.

According to the information received, an unidentified man shot Carvalho to death while he was outside his home in Campo Grande. The information available indicates that the journalist had received serious threats for publishing allegations against the police and local officials of Mato Grosso do Sul.

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

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33. PRESS RELEASE R143/12**OFFICE OF THE SPECIAL RAPPORTEUR URGES THE AUTHORITIES TO INVESTIGATE DEATH OF A JOURNALIST IN COLOMBIA**

Washington, D.C., December 4, 2012 – The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) expresses its concern for the death of journalist Guillermo Quiroz, which took place on November 27 in Sincelejo, department of Sucre, and asks the authorities to carry out a diligent, timely and exhaustive investigation.

According to the information received, Quiroz was covering a protest against the company Pacific Rubiales in San Pedro, Sucre, when members of the National Police impounded his motorcycle. According to declarations made by Quiroz in a televised interview, members of the police put him into an official vehicle and allegedly beat him and pushed him out while it was in motion. After spending seven days in the intensive care unit of a local hospital, the journalist died. Although some local police authorities originally denied that brutality took place, authorities at the highest levels later reported that the agents who allegedly participated in the events were suspended and that criminal and disciplinary actions were opened.

Reports indicate that prior to these events Quiroz had received threats that were related to his journalistic work.

The Office of the Special Rapporteur urges the competent authorities to clarify the cause of death of Guillermo Quiroz, to identify and sanction the responsible parties, and to ensure that his family receives proper reparations.

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

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