

# **ANNUAL REPORT OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS 2013**

**ANNUAL REPORT OF THE OFFICE OF THE SPECIAL  
RAPPOREUR FOR FREEDOM OF EXPRESSION**



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# **ANNUAL REPORT OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS 2013**

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## **ANNUAL REPORT OF THE OFFICE OF THE SPECIAL RAPPOREUR FOR FREEDOM OF EXPRESSION**

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**Special Rapporteur for Freedom of Expression**

GENERAL SECRETARIAT  
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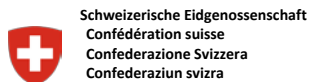
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2013**

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## TABLE OF ACRONYMS AND REFERENCES

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 2013

## 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 2013 follows the basic structure of previous annual reports and fulfills the mandate established by the IACHR for 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, and the activities carried out in 2013.

4. Chapter II presents the now-customary evaluation of the situation of freedom of expression in the hemisphere. In 2013, 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 being faced by States in the region. In particular, Chapter II of this report places emphasis on the murders, detentions, attacks, and threats against journalists, especially in the context of protests. 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, not only to provide reparation to the victims and their families, but also to prevent future occurrences of violence and intimidation. Similarly, the Office of the Special Rapporteur considers it important to draw attention to other aspects of freedom of expression in the Americas, such as the application of criminal legislation to prosecute those who have made

declarations that offend public servants, the use of stigmatizing declarations against journalists and the media by senior state authorities, and surveillance programs that endanger freedom of expression.

6. Chapter III of this report presents a review of international standards in the field of prevention, protection and the fight against impunity in crimes against journalists. In this report, among other things, the progress and challenges of programs and mechanisms in the field of protection and prevention of violence against journalists that certain countries in the region have developed are studied, and specific recommendations are presented to improve protection for journalists and the fight against impunity of these crimes. Chapter IV of the report includes a systematization of standards aimed at promoting respect for freedom of expression on the Internet. This chapter analyzes best practices in this field, along with applicable international doctrine and jurisprudence.

7. Chapter V of the report by the Office of the Special Rapporteur presents the most important aspects of regulation of agencies that guarantee access to information and which operate in the Americas, as well as a selection of outstanding decisions on the scope of the right of access to information. Finally, the report culminates with a chapter containing conclusions and recommendations. The objective of this practice is to foster a fluid dialogue with the member States to make the Americas an example in the field of respect, guarantee and promotion of the right to freedom of expression.

8. 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[.]”

9. The Office of the Special Rapporteur expresses its appreciation for financial contributions received in 2013 from the Republic of Costa Rica, the United States of America, the Swedish Agency for International Development Cooperation, the Swiss Confederation, Finland and France.

10. 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.

11. 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 existing problems 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 97<sup>th</sup> 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 98<sup>th</sup> 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.<sup>1</sup>*

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.<sup>2</sup>*

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:

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<sup>1</sup> 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.

<sup>2</sup> 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.

*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.*<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup> 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

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<sup>3</sup> Plan of Action. [Third Summit of the Americas](#). April 20-22, 2001. Québec, Canada.

<sup>4</sup> IACHR. Annual Report 2004. [Annual Report 2004. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.222. Doc. 5 rev. 23 February 2005. Chapters II, V and VII.

<sup>5</sup> IACHR. [Annual Report 2005. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). OAS/Ser.L/V/II.124 Doc. 7. 27 February 2006. Chapter V and VI.

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.

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*.<sup>6</sup>

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

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<sup>6</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Estudio Especial sobre el Derecho de Acceso a la Información](#). August, 2007.



Governance, as well as with input from delegations of the Member States, was approved in April 2008 by the Committee on Juridical and Political Affairs.

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

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

15. In that same resolution, the General Assembly entrusted the Department of International Law, with the collaboration of the Office of the Special Rapporteur, the Inter-American Juridical Committee and the Department of State Modernization and Governance, as well as the cooperation of Member States and civil society, with drafting a Model Law on Access to Public Information and a guide for its implementation, in keeping with the Inter-American standards on the issue. In order to comply with this mandate, a group of experts was formed - in which the Office of the Special Rapporteur took part - that met three times during the year to discuss, edit and finalize the documents. The final versions of the two instruments were approved by a group of experts in March 2010 and presented to the Committee on Political and Juridical Affairs of the Permanent Council in April of 2010. In May of 2010, the Permanent Council submitted a resolution and the text of the Model Law to the General Assembly, which issued resolution AG/RES 2607 (XL-O/10) in June of 2010. This resolution approved the text of the Model Law<sup>7</sup> 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.

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<sup>7</sup> OAS. [The Model Law and its Implementation Guide](#) Resolution AG/RES 2607 (XL-O/10).

18. In 2013, the General Assembly approved resolution AG/RES 2811 (XLIII-0/13) on Access to Information and Protection of Personal Data, which, among others, instructs the Office of the Special Rapporteur for Freedom of Expression of the IACHR to continue to include in the annual report of the IACHR a report on the situation or status of access to public information in the region and its effects on the exercise of freedom of expression, with the support of the Department of International Law. The report includes information on national legislation, experiences and good practices in the field of access to public information in the region.

19. 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**

20. 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.<sup>8</sup>

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

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

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<sup>8</sup> See Articles 40 and 41 of the American Convention and Article 18 of the Statute of the IACHR.

22. 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 132<sup>nd</sup> period of sessions. Following the round of interviews, on July 21, 2008, the IACHR selected Colombian attorney Catalina Botero Marino as Special Rapporteur.<sup>9</sup> The new Special Rapporteur assumed the post on October 6, 2008. During its 141<sup>st</sup> 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.<sup>10</sup>

### **C. Principal Activities of the Office of the Special Rapporteur**

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

24. This section of the report summarizes very generally the tasks that have been accomplished, with particular emphasis on the activities carried out in 2013.

#### **1. Individual Case System**

25. 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.

26. 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.

27. 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:

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<sup>9</sup> IACHR. July 21, 2007. Press Release No. 29/08. [IACHR Elects Catalina Botero Marino as Special Rapporteur for Freedom of Expression](#).

<sup>10</sup> IACHR. April 1, 2011. Press Release No. 28/11. [IACHR Concludes Its 141<sup>st</sup> Regular Session](#).

- *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 Rios 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.

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);<sup>11</sup> (ii) Herrera Ulloa v. Costa Rica;<sup>12</sup> (iii) López Ulacio

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<sup>11</sup> 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.

<sup>12</sup> 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.

v. Venezuela;<sup>13</sup> (iv) Peña v. Chile;<sup>14</sup> (v) Globovisión v. Venezuela;<sup>15</sup> (vi) Tristán Donoso v. Panama;<sup>16</sup> (vii) Yáñez Morel v. Chile;<sup>17</sup> (viii) Pelicó Pérez v. Guatemala;<sup>18</sup> and (ix) Rodríguez Castañeda v. Mexico;<sup>19</sup> (x) Leo Valladares Lanza and Daysi Pineda Madrid v. Honduras;<sup>20</sup> (xi) Journalists of La Voz de Zacate Grande (Honduras),<sup>21</sup> y (xii) Lucía Carolina Escobar Mejía, Cledy Lorena Caal Cumes, Gustavo Girón v. Guatemala,<sup>22</sup> (xiii) Emilio Palacio, Carlos Nicolás Pérez Lapentti, Carlos Pérez Barriga and César Pérez

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<sup>13</sup> 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*.

<sup>14</sup> 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.

<sup>15</sup> 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.

<sup>16</sup> 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.

<sup>17</sup> 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.

<sup>18</sup> 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.

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

<sup>20</sup> 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.

<sup>21</sup> 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.

<sup>22</sup> 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.

Barriga v. Ecuador<sup>23</sup>; (xiv) 15 workers of Progreso Radio v. Honduras<sup>24</sup>; and (xv) Yoani María Sánchez Cordero v. Cuba<sup>25</sup>.

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. In the framework of the 147 Period of Sessions held from March 7 to 22, 2013, several hearings were held on freedom of expression. On March 11, 2013, there was a hearing on the "Situation of Community Radio Stations in Brazil". The hearing was requested by the organizations Article 19 and the World Association of Community Radio Broadcasters (AMARC). Present at the hearing were representatives of the State of Brazil and the petitioning organizations. That same day, a hearing was held on the "Situation of the Right to Freedom of Expression in Cuba", which was requested by the *Diario de Cuba*, *Cubanet* and *Hablemos Press*. Also on that same day, two hearings on Peru were held. One, on the "Situation of the Right to Freedom of Expression in Peru", was requested by the Instituto de Defensa Legal (IDL); a second hearing on Human Rights and Social Protest in Peru was requested by a group of organizations including the Fundación Ecuémica para el Desarrollo y la Paz (FEDEPAZ), Fundación Ecuémica para el Desarrollo y la Paz (GRUFIDES), the Coordinadora Nacional de Derechos Humanos (CNDDHH) and the Center for Justice and International Law (CEJIL). Present at both hearings were petitioners as well as representatives of the State. On March 12, a hearing was held on the "Situation of the Right to Freedom of Expression in Ecuador", which was requested by a group of organizations including the Fundación Andina para la Observación y Estudio de Medios (FUNDAMEDIOS), the Asociación Ecuatoriana de Editores de Periódicos (AEDEP) and the Asociación Ecuatoriana de Editores de Periódicos (UNP). Representatives of the State and the petitioners were present at the hearings. Finally, on March 15, a hearing was held on the "Situation of the Right to Freedom of Expression of the Indigenous Peoples in Guatemala", which was requested by de Movimientos de Radios Comunitarias de Guatemala, composed by the Asociación de Radios Comunitarias de Guatemala (ARCG), the Asociación Mujb'ab' Lyol (Encuentro Expresiones), the

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<sup>23</sup> Decisión de la CIDH de 21 de febrero de 2012 en la cual se solicitó al Estado de Ecuador suspender de inmediato los efectos de la sentencia del 15 de febrero de 2012, a fin de garantizar el derecho a la libertad de expresión. El 9 de marzo de 2012, la CIDH levantó estas medidas cautelares y archivó el expediente, después de recibir una comunicación, de fecha 29 de febrero de 2012, mediante la cual los solicitantes requerían dicho levantamiento, en vista de que habían cesado las causas de urgencia inmediata que las motivaron.

<sup>24</sup> Ampliación de medida cautelar. Decisión de la CIDH de 25 de mayo de 2012 en la cual se solicitó al Estado de Honduras informar a la CIDH sobre la concertación con los beneficiarios de la implementación de la MC 399/09, que protege a varios trabajadores de Radio Progreso en Honduras, desglosada de la MC 196/09 el 1 de abril de 2011.

<sup>25</sup> Decisión de la CIDH de 9 de noviembre de 2012 en la cual se solicitó al Estado de Cuba que adopte las medidas necesarias para garantizar la vida y la integridad física de Yoani María Sánchez Cordero y su familia, que concierte las medidas a adoptarse con la beneficiaria y sus representantes, y que informe sobre las acciones adoptadas a fin de investigar los hechos que dieron lugar a la adopción de medidas cautelares.

Asociación Sobrevivencia Cultural, Colectivo de Investigaciones Sociales y Laborales (COISOLA) and the Asociación de Desarrollo Integral Tzutuhil (ADITZU). Representatives of the petitioning organizations and of the State of Guatemala were present<sup>26</sup>.

33. In the framework of the 149 Period of Sessions, held from October 28 to November 1, 2013, various hearings were held on freedom of expression. On October 28, 2013, a hearing was held on “Freedom of Expression and Communications Surveillance by the United States”, which was requested by the American Civil Liberties Foundation (ACLU). Present at the hearing were representatives of the petitioners and of the Government of the United States. That same day, a hearing was held on the “Right to Freedom of Expression and Association in Ecuador”, which was requested by a group of organizations made up of Corporación de Estudios Para el Desarrollo (CORDES), Federación de Barrios de Quito (FBQ), Confederación Unitaria de Comerciantes Minoristas y Trabajadores Autónomos del Ecuador (CUCOMITAE), FUNDAMEDIOS, Asociación Red de ONG de Guayaquil (AROG), Federación de Estudiantes Secundarios del Ecuador (FESE), along with a group of private individuals. The State was not present at this hearing. On October 29, a hearing was held on “Freedom of Expression, Contempt and Crimes against Honor in Brazil”, requested by the organization Article 19. Representatives of the State and of the petitioners were present. On October 31, a hearing was held on “Situation of the Right to Freedom of Expression and Access to Information in Venezuela”, which was requested by the organizations Instituto Prensa y Sociedad (IPYS), Centro de Derechos Humanos de la Universidad Católica Andrés Bello, the Sindicato Nacional de Trabajadores de la Prensa (SNTP), the Colegio Nacional de Periodistas, Programa Venezolano de Educación–Acción en Derechos Humanos (PROVEA) and Espacio Público. Various representatives of the organizations and of the State were present at the hearing. On November 1, a hearing was held on “Situation of the Right to Freedom of Expression in Argentina”, which was requested by a group of independent journalists consisting of Magdalena Ruiz Guiñazú, Joaquín Morales Solá, Nelson Alberto Castro, José Ricardo Eliashev, Alfredo Lewkowicz, Luis Miguel Majul and Mariano Obarrio. Representatives of the State and of the petitioners attended the hearing.

#### **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 fifteen years, the Office of the Special Rapporteur has organized seminars throughout the region, in many cases with the cooperation of universities, government institutions, and nongovernmental organizations.

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

36. The meetings with those involved open the door for more people to be able to use the inter-American human rights system to present their problems and complaints. The seminars also enable the Office of the Special Rapporteur to expand its network of contacts. In addition, the

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<sup>26</sup> IACHR. 147<sup>th</sup> Period of sessions. Available for consultation at: <http://www.oas.org/es/cidh/actividades/sesiones.asp>

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 2013.

38. On January 30 and 31, 2013, the team from the Office of the Special Rapporteur took part in a Regional Experts Workshop on Freedom of Expression, Digitalization and Internet Regulation. The event was co-organized by Open Society Foundations, Trust for the Americas and the Office of the Special Rapporteur. The United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression also participated, along with 24 other guests from 13 countries of the Americas.

39. On April 5-6, the Special Rapporteur took part in a meeting of experts on the Project for Principles on National Security and the Right to Information held in Pretoria, South Africa. The event was organized by the Human Rights Center at the University of Pretoria and Open Society Justice Initiative (OSJI). At this event, special rapporteurs on freedom of expression Pansy Tlakula, Special Rapporteur for Freedom of Expression and Access to Information of the African Commission on Human and Peoples' Rights; Frank La Rue, United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Catalina Botero, Special Rapporteur for Freedom of Expression of the IACHR; Günter Schirmer, Deputy Head of the Secretariat of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe. The workshop provided inputs for drafting the declaration of the "General Principles on National Security and the Right to Information."

40. On April 18, 2013, the Office of the Special Rapporteur took part in a conference on Freedom of Expression and the Internet at the *Congresso Brasileiro de Internet* in Brasilia, organized by the la Associação Brasileira de Internet (ABRANET).

41. On April 4, 2013, the Office of the Special Rapporteur participated in the annual meeting of the American Society for International Law on Freedom of Expression and the Internet in the event "Challenges and Approaches to Effective Cyberspace Governance in a Multipolar World," held in Washington, DC.

42. On May 2-4, the Special Rapporteur for Freedom of Expression participated in a series of events within the Conference "Safe to Speak: Securing Freedom of Expression in all Media," organized by UNESCO, the Government of Costa Rica and the University for Peace in celebration of World Freedom of the Press Day.

43. On May 2, the Special Rapporteur attended a meeting at the University for Peace with authorities from the United Nations Regional Office for Latin America and the Caribbean, which was attended by the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Frank La Rue. The purpose of the meeting was to discuss measures to be adopted by UNESCO and other key actors in the implementation and adaptation of the United Nations Action Plan on Journalists' Security in Latin America and the Caribbean.

44. On May 3, the Special Rapporteur took part in the release of the Joint Declaration on Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition, which was drafted

jointly by the Special Rapporteur for Freedom of Expression of the IACHR, the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, the Representative for Freedom of the Press of the Organization for Security and Cooperation in Europe (OSCE) and the Special Rapporteur of the African Commission on Human and Peoples' Rights (CADHP) on Freedom of Expression and Access to Information. The event was organized by the organization Artículo 19 in San José, Costa Rica.

45. On May 3, the Special Rapporteur participated in a meeting organized by UNESCO with authorities from the States of Honduras, Colombia, Mexico and Brazil. The objective was to present the United Nations Plan on Journalists' Security and specifically to promote a dialogue on good practices for protecting journalists and combating impunity in crimes against journalists. That same day, the Special Rapporteur gave a presentation on the mandate of the Special Rapporteur and the fight against impunity, organized by the Union Internationale des Avocats (UIA).

46. On May 4, the Special Rapporteur took part in the event titled Knowledge-Driven Media Development in Latin American, organized by UNESCO. The main objective was to analyze experiences and share information on the results of interventions to develop the communications media in Latin America and the Caribbean.

47. On June 3-7, 2013, the Special Rapporteur participated in activities scheduled within the General Assembly of the OAS, along with the delegation from the IACHR.

48. On June 11-13, 2013, the team from the Office of the Special Rapporteur took part in a visit to Guatemala to carry out promotional activities on the right to freedom of expression in the Inter-American Human Rights System. On June 11, the team participated in a seminar on the right of access to information held in coordination with Acción Ciudadana, Trust for the Americas and Open Society Foundations at the Hotel Princess. On June 11 and 12, they gave a seminar on the right to access to information at the Universidad Rafael Landívar that was simultaneously transmitted from the Central Campus in Guatemala City to the university's regional campuses in Quetzaltenango, Huehuetenango and Verapaz. Journalists from various regions attended, along with members of human rights organizations and academia.

49. On July 3-6, the team from the Office of the Special Rapporteur made a promotional visit to Mexico. Thus, on July 3, participated in a seminar on the right to freedom of expression in the Inter-American Human Rights System at the UNAM; on July 4, they participated in an event on the right to access to information organized by the IFAI, and on July 6 took part in the diploma course on human rights being given by the Office of the High Commissioner for Human Rights and the Universidad Iberoamericana, about the right to freedom of expression in the Inter-American Human Rights System.

50. On July 19, the Special Rapporteur participated in a course for public officials on the Inter-American Human Rights System, which was held at the offices of the IACHR. The topic addressed was Freedom of Expression in the Inter-American System.

51. On August 8, the Office of the Special Rapporteur organized a seminar titled "The Right to Freedom of Expression in the Inter-American Human Rights System," in coordination with the Journalism Studies Center at the Universidad de Los Andes in Colombia, with the aim of disseminating international standards on the right to information and opinion.

52. On September 17-19, 2013, the team from the Office of the Special Rapporteur took part in a visit to Panama City to carry out promotional activities on the right to freedom of expression in the Inter-American Human Rights System. Thus, on September 17, they held a seminar on Inter-American Standards for the Right to Freedom of Expression in coordination with the Office of the Public Prosecutor of Panama. The event was attended by more than 100 prosecutors, members of the Office of the Public Prosecutor and judicial sector employees. On September 18, they participated in a seminar on the right to access to information held in coordination with the Journalists' Forum, Trust for the Americas and Open Society at the Hotel Sheraton. The president commissioner of the IFAI, Jacqueline Peschard and Edison Lanza of the Council for Transparency of Chile took part in this event. On September 18 and 19, the team from the Office of the Special Rapporteur taught a seminar on the right to freedom of expression at the Universidad Santa María la Antigua. Journalists from various regions and members of human rights organizations and academia attended the event.

53. On September 29, the Special Rapporteur made a visit to Mexico, where she took part in the Forum on "Protection of Journalists and Freedom of Expression", organized by the Under-Secretary for Human Rights of the Ministry of Interior in Mexico City D.F., a lecture titled "Inter-American Standards in Relation to the Protection of Journalists." That same day, she gave a conference at UNAM University on "Jurisprudence in the Field of Freedom of Expression and Access to Information, Reflections on the Subject. The Right to Rectification and Response."

54. On October 4, the Special Rapporteur participated, via videoconference, in a forum on Draft Legislation for Audiovisual Services in Montevideo, Uruguay. In addition to the Special Rapporteur, the following persons participated in the conference: the ProSecretary of the Office of the President of Uruguay, Diego Cánepa; the director of the Americas Division of Human Rights Watch, José Miguel Vivanco; the coordinator of the Americas Committee to Protect Journalists, Carlos Lauría; and the director for the Americas of Reporters Without Borders, Bernoit Hervieu.

55. On October 10-14, the Special Rapporteur visited Rio de Janeiro, Brazil. On October 11, she gave a conference on the principles of freedom of expression for free and inclusive radio broadcasting, in an event organized by Open Society Foundation. On October 12-13 she participated in the 8th Global Investigative Journalism Conference, at the Pontificia Universidad Católica of Rio de Janeiro. In addition to giving the opening address, she participated in various sessions of the roundtable on the protection of journalists and the roundtable on legal mechanisms for the protection of journalists.

56. On October 21-22, the Special Rapporteur participated in the international event "Press Freedom, Press Standards and Democracy in Latin America," at Columbia University in New York.

57. On December 5-6, the team from the Office of the Special Rapporteur gave a seminar on Inter-American Standards on Freedom of Expression at the Pontificia Universidad Católica of Peru.

58. On December 12-13, the Special Rapporteur conducted a joint academic visit to Brazil with the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Frank La Rue. On December 12, the rapporteurs participated in the World Human Rights Forum (WHRF), in Brasilia, Brazil. This forum is an initiative of the Secretariat for Human Rights of the Presidency of the Republic in collaboration with the civil society, international organizations, institutions and associated countries. In this forum, the rapporteurs held a joint conference on Internet, Privacy, and Freedom of Expression and another conference on Communication

Rights and Democratic Media. During the visit, they held joint meetings with various State representatives. Thus, the rapporteurs met with the Minister of the Controladoria-Geral da União (CGU), Jorge Hage and all the State Secretaries, the Secretary national anti-corruption, Ombudsman "*Ouvidor*" General of the Nation, Secretary of transparency and other senior officials of the Executive Branch on issues of access to information. They also met with the President of the Federal Supreme Court to define the terms of a cooperation agreement and dictate a joint workshop on access to information to officials of the CGU. At the end of the visit, the agreement between the Judiciary Branch and the Rapporteurs to conduct a training program to more than 300 judges from Brazil was successfully signed.

## **5. Annual report and development of expert knowledge**

59. 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 States of the hemisphere, which includes noting the main threats to the exercise of the right to freedom of expression and the progress that has been made in this area.

60. 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).

61. 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 2013, the Office of the Special Rapporteur worked on the thematic reports included as thematic chapters of this report.

62. During 2013, the Office of the Special Rapporteur drafted a report on international standards in the field of prevention, protection and the fight against impunity in crimes against journalists. In this report, among other things, developments and challenges in programs and mechanisms in the field of protection and prevention of violence against journalists that have been carried out by certain countries in the region are studied, and specific recommendations made to improve protection for journalists and the fight against impunity in crimes committed against them. The results of this study are included in Chapter III of this report.

63. The Office of the Special Rapporteur also drafted a thematic report on freedom of expression on the Internet. To do so, best practices in this field were analyzed, along with applicable international doctrine and jurisprudence. The result of the report is the systematization of standards aimed at promoting respect for freedom of expression on the Internet.

64. Also, during this period, the Office of the Special Rapporteur drafted a report on the right to access to information, specifically with reference to agencies that guarantee access to information that operate in the Americas. The report includes a description of a selection of important decisions by authorities responsible for application, regarding the scope of the right to access to information. There was support from the Department of International Law of the OAS in drafting the report.



## 6. Special statements and declarations

65. 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.

66. 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.

67. 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.

68. 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); freedom of speech on the Internet (2011); and crimes against freedom of expression (2012).<sup>27</sup>

69. On May 3, the Special Rapporteur, the United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression, the Representative for Freedom of the Communications Media of the Organization for Security and Cooperation in Europe (OSCE) and the Special Rapporteur of the African Commission on Human Rights and Peoples Rights

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<sup>27</sup> The abovementioned joint declarations are available for consultation at: <http://www.cidh.oas.org/relatoria/docListCat.asp?catID=16&IID=1>

(CADHP) issued a joint declaration on the protection of freedom of expression and diversity in the digital terrestrial transition.<sup>28</sup>

70. On June 21, 2013, the Special Rapporteur, the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression produced a joint declaration on surveillance programs and their impact on freedom of expression.<sup>29</sup>

71. On September 13, 2013, the Office of the Special Rapporteur issued a joint press release with the United Nations Special Rapporteur for Protection and Promotion of Freedom of Opinion and Expression on Violence against Journalists and Media Workers in the Context of Protests.<sup>30</sup>

72. Durante 2013, the Office of the Special Rapporteur issued 17 press releases<sup>31</sup> calling attention to incidents related to freedom of thought and expression. The statements highlight especially worrying incidents and local best practices, and explain the corresponding regional standards. The press releases issued during 2011 can be accessed through the website of the Office of the Special Rapporteur, available at: <http://www.oas.org/en/iachr/expression/index.asp>.

#### **D. Funding**

73. 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 97<sup>th</sup> 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 office found full support among the OAS Member States.<sup>32</sup>

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<sup>28</sup> The Special Rapporteur, the United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression, the Representative for Freedom of the Communications Media of the Organization for Security and Cooperation in Europe (OSCE), Special Rapporteur of the African Commission on Human Rights and Peoples Rights (CADHP) and the Special Rapporteur for Freedom of Expression of the Inter American Commission on Human Rights. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#).

<sup>29</sup>The Special Rapporteur, the United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression Special Rapporteur for Freedom of Expression of the Inter American Commission on Human Rights. June 21 2013. [Joint Declaration on Surveillance Programs and their Impact on Freedom of Expression](#).

<sup>30</sup> The Special Rapporteur, the United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression Special Rapporteur for Freedom of Expression of the Inter American Commission on Human Rights. Joint Statement. September 13, 2013. [Joint Declaration on Violence Against Journalists and Media Workers in the Context of Protests](#).

<sup>31</sup> In 2013 the IACHR Office of the Special Rapporteur issued the following press releases: IACHR. Office of the Special Rapporteur for Freedom of Expression. December 11, 2013, [Press Release R 98/13](#); November 11, 2013 [Press Release R 85/13](#); October 10, 2013, [Press Release R75/13](#); September 20, 2013, [Press Release R69/13](#); September 13, 2013, [Joint Statement](#); July 22, 2013, [Press Release R53/13](#); July 15, 2013, [Press Release R50/13](#); June 28, 2013, [Press Release R47/13](#); June 21, 2013, [Joint Statement](#); June 17, 2013, [Press release R43/13](#); May 15, 2013, [Press Release R36/13](#); May 3, 2013, [Press Release R31/13](#); April 17, 2013, [Press Release R25/13](#); April 17, 2013, [Press Release R26/13](#); March 12, 2013, [Press Release R18/13](#); March 6, 2013, [Press Release R15/13](#); February 28, 2013, [Press Release R12/13](#).

<sup>32</sup> 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.

74. In March 1998, during its 98<sup>th</sup> 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.<sup>33</sup> 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.

75. In terms of international cooperation projects, it is important to mention that the Office of the Special Rapporteur develops them in strict adherence to the agenda or work plan that has been approved by the IACHR. Based on that work plan, the Office of the Special Rapporteur develops specific projects that are subject to rigorous procedures within the OAS so that they meet the approval of the Project Evaluation Committee (CEP) and the office of legal affairs and the financial office, among others. Once a project has successfully undergone these procedures, it is presented for the open, public competitions held by cooperation agencies. This process ensures that the cooperation funding exactly matches the Office of the Special Rapporteur's own priorities. Through this technical mechanism for obtaining funds, the Office of the Special Rapporteur has managed to increase its income by more than 50% in recent years. On this same subject, it is pertinent to add that 12% of the funds obtained by the Office of the Special Rapporteur (13.6% of all funds executed by the office) must be designated for central administration of the OAS as indirect cost recovery or ICR.<sup>34</sup>

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<sup>33</sup> All the information is available for consultation at: OAS. Board of External Auditors. Report to the Permanent Council Annual Audit of Accounts and Financial Statements for the years ended December 31, 2012 and 2011. Section II. Specific Funds. Statement by programs. Pp. 70-72; 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.

<sup>34</sup> OAS. General Standards to Govern the Operations of the General Secretariat of the Organization of American States. Chapter IV (General Provisions of a Financial and Budgetary Nature). OEA/Ser.D/I.1.2 Rev.16. June 4, 2012. Article 80. Available for consultation at: <http://www.oas.org/legal/english/Standards/GenStIndex.htm>; OAS. General Secretary. Executive Order 07-01 Rev 1. Policy on Indirect Cost Recovery. May 29, 2007. Available for consultation at: <http://www.oas.org/legal/english/gensec/EXOR0701REV1.pdf>

76. 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 2013, the Office of the Rapporteur calls attention to the projects that have been carried out satisfactorily thanks to the contributions of the Republic of Costa Rica, The United States of America, the Swedish Agency for Cooperation in International Development, the Swiss Confederation, Finland and France. 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**

77. 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. 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 2013, Belén Saavedra (Chile), Isabel San Martín (Spain) and Astrid García (Guatemala) contributed their work and enthusiasm very constructively to the Office of the Special Rapporteur.



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

### A. Introduction and methodology

1. This chapter describes some of the most important aspects of the situation of freedom of expression in the hemisphere during 2013. Its objective is to foster a constructive dialogue with the Member States of the OAS, calling attention to the reported advances as well as the problems and challenges that have required action during this year. The Office of the Special Rapporteur has confidence in the will of the OAS Member States to promote resolutely the right to freedom of expression and, to that end, publicizes their best practices, reports some serious problems observed, and offers viable and practical recommendations rooted in the Declaration of Principles.

2. As in previous annual reports, this chapter notes those aspects of the right to freedom of expression that most merit attention and that have been reported to the Office of the Special Rapporteur during the year. Following the methodology of previous annual reports, this chapter is based on information received by the Office of the Special Rapporteur from various States, intergovernmental and non-governmental sources. The Office of the Special Rapporteur takes particular interest in the information provided by States, presented during the hearings held by the IACHR, submitted by non-governmental organizations in the region and contained in alerts sent by media outlets and media workers. In all cases, the information is contrasted and verified. The Office presents only that information which it thinks will help the States identify worrisome problems or tendencies that could eventually cause irreparable effects if not addressed.

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

4. The cases selected in each topic serve as examples in relation to the respect and exercise of freedom of expression. Sources are cited in all cases. In some instances, the Office of the Special Rapporteur received information that it could not confirm and such information is not included. Such omissions should be considered in that context. In the majority of cases, the Office of the Special Rapporteur identifies the direct source, citing the address of the corresponding Web site. When the information is not published directly by the source, the report cites the date the Office of the Special Rapporteur received the information in its electronic mailbox. This report does not include information submitted to the Office of the Special Rapporteur through requests for precautionary measures, or other information which has not yet been made public.

5. In preparing this chapter of its 2013 Annual Report, the Office of the Special Rapporteur generally took into account information received until November 1, 2013. Information regarding incidents that occurred after the date the 2013 Annual Report went to press is available in the press

release section of the websites of the Office of the Special Rapporteur (<http://www.oas.org/en/iachr/expression/index.asp>) and the IACHR (<http://www.oas.org/en/iachr/default.asp>).

6. Finally, the Office of the Special Rapporteur acknowledges the collaboration of the OAS Member States and the civil society organizations that, following existing practice, contributed information about the situation of the exercise of freedom of expression in the hemisphere. As it does every year, the Office of the Special Rapporteur encourages the continuation of such practice, which are indispensable to the value of future reports.

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

### **1. Antigua and Barbuda**

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

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

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<sup>1</sup> International Press Institute. April 18, 2013. [Antiquan political leaders commit to repealing criminal defamation](#); The New York Carib News/CMC. February 12, 2013. [Criminal defamation laws remain widespread in the Caribbean](#); Jamaica Observer. July 30, 2013. [Caribbean governments urged to repeal archaic criminal defamation laws](#); Observer Media Group/CMC. July 29, 2013. [Repeal archaic criminal defamation laws](#).

<sup>2</sup> Caribarena Antigua. June 19, 2013. [Caribarena Responds to Asot Michael's Misleading Press Release](#); International Press Institute. July 30, 2013. [Intimidation, cyber attacks allegedly threaten Antiquan investigative news site](#); Observer Media Group. August 1, 2013. [IPI condemns alleged threats against Caribarena](#).

<sup>3</sup> Observer Media Group. May 4, 2013. [Asot sues principal of Caribarena for libel](#); Caribbean News Now. June 18, 2013. [Antigua-Barbuda MP wins high court judgment against publisher](#); Observer Media Group. June 18, 2013. [Asot wins judgement against Caribarena in libel case](#); International Press Institute. July 30, 2013. [Intimidation, cyber attacks allegedly threaten Antiquan investigative news site](#); Caribarena Antigua. June 19, 2013. [Caribarena Responds to Asot Michael's Misleading Press Release](#).

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

## 2. Argentina

### A. Progress

10. The Office of the Special Rapporteur was informed that Argentina's Supreme Court of Justice upheld the conviction of two police officers accused of "illegitimate deprivation of liberty and aggravated threats" against journalist Daniel Malnatti.<sup>4</sup> In 2002, Malnatti was covering a story for the television program CQC, at an event of then-presidential candidate Carlos Menem, when Malnatti was assaulted by the police officers. The journalist was threatened and pushed into an elevator after refusing to leave the place where the event was taking place.<sup>5</sup>

11. On January 3, the Buenos Aires Federal Court reportedly dismissed a lawsuit that the head of the Federal Administration of Public Revenue (AFIP), Ricardo Echegaray, had brought against journalist Luis Majul for "false allegations," after the journalist alleged he was being persecuted by the tax collection agency.<sup>6</sup>

12. In March, journalist Mariel Fitz Patrick, with the support of the Asociación por los Derechos Civiles (ADC), reportedly filed a writ of *amparo* (judicial protection of civil rights) against the executive branch to obtain access to contracts between the State and the production company Pensado Para Televisión in the years 2010, 2011 and 2012,<sup>7</sup> after the leadership of the Cabinet of Ministers had denied her access to the information on grounds that she had to demonstrate a legitimate interest.<sup>8</sup> On June 11, the Eleventh Court of Administrative Matters granted the writ of *amparo*.<sup>9</sup> In the decision, the judge adopts the arguments made by the prosecutor, who indicated that "citizens' right of access to public information on the activities of the government constitutes a basic requirement of the democratic rule of law, as it involves a fundamental human right, an instrument for citizen participation, an element to guarantee other rights, a mechanism for improving governance, and finally, it constitutes an essential means to establish control over the *res publica*." The judgment states that "barring

<sup>4</sup> Corte Suprema de Justicia de la Nación. [Causa Nº 14773/2002. Chaile, Miguel Ángel, Soria, Juan Jesús s/ privación ilegítima de la libertad y amenazas agravadas](#). December 27, 2012.

<sup>5</sup> Foro de Periodismo Argentino (FOPEA). January 23, 2013. [Condena a dos policías por agresión al periodista Daniel Malnatti](#); La Gaceta. July 3, 2009. [Condenan a los agresores de Malnatti](#).

<sup>6</sup> La Nación. January 3, 2013. [La Justicia anuló la denuncia de Echegaray contra Majul](#); Todo Noticias. January 3, 2013. [Anularon la causa que Echegaray le inició a Luis Majul](#); Knight Center for Journalism in the Americas. January 4, 2013. [Lawsuit against journalist dismissed in Argentina](#).

<sup>7</sup> Asociación por los Derechos Civiles (ADC). March 4, 2013. [Demanda contra el Estado para acceder a los contratos de la TV Pública](#); Territorio Digital. March 4, 2013. [Periodista realiza demanda contra el Estado para acceder a los contratos de la Televisión pública](#).

<sup>8</sup> Señales. March 4, 2013. [Contratos en TV pública. Demandan al Estado porque impide acceso a información pública](#).

<sup>9</sup> Juzgado Contencioso Administrativo Federal 11. Causa No. 1409/13 "Fitz Patrick Mariel C/EN-JGM-S/ Amparo Ley 16. 986". June 11, 2013. Available for consultation at: <http://www.adc.org.ar/2013/wp-content/uploads/2013/11/Fitz-Patrick-AIP-Sentencia-y-dictamen-fiscal-de-primera-instancia-junio13.pdf>



exceptions that must be established legislatively and interpreted restrictively: Everyone has the right to request, access, and receive information that the National State possesses or controls. The prosecutor understands that in the said case the provisions of Annex VII of Decree 1172/03 are applicable. The provision “does not require proving any qualified legal interest.” In this sense, the prosecutor understands that “the right in question contains the state’s duty to inform the citizenry when it is reasonably required, without having to prove direct interest to obtain the information.” The judgment mentions the ‘conventionality control’ that must be made, pursuant to the Inter-American Court’s doctrine in the Case of *Almonacid Arellano et al. v. Chile*, and it found that the right of access to public information must be examined in accordance with the body of international human rights law, which carries constitutional status. Particularly, it refers to that established by the IACHR in the Special Study on the Right of Access to Public Information of the Office of Special Rapporteur for Freedom of Expression, in the sense that the information requested “should be provided without the need to prove a direct interest or a personal impairment to obtain it.”<sup>10</sup> The State appealed the judgment and on October 31 the Fourth Division Chamber of the Federal Appeals Court of Administrative Matters [*Sala IV de la Cámara Nacional de Apelaciones en lo Contencioso Administrativo Federal*] ratified the decision.<sup>11</sup>

13. On June 19, the Fifth National Appeals Chamber of the Federal Court of Administrative Matters ordered the Office of the Inspector General of Justice (ICG) to turn over information about companies and corporations connected with a legal case.<sup>12</sup> The Federal Court of Administrative Matters stated that “the principle of disclosure of government acts constitutes one of the pillars of every republican government [...] This right, while not expressly spelled out in the Constitution, has been recognized in case law of the Supreme Court as a social right, one that guarantees to every person—physical or legal, public or private—cognizance of and participation in everything related to political, governmental, and administrative processes.” Likewise, it stated that “no special prerequisite is needed for any person, in any capacity, to be able to request, access and receive information;” no impediment exists, and it is not necessary to establish the existence of a subjective right or legitimate interest to do so.<sup>13</sup>

14. The First,<sup>14</sup> Second,<sup>15</sup> Third,<sup>16</sup> and Fourth<sup>17</sup> Chambers of the National Court of Appeals for Administrative Matters rescinded fines imposed on consulting companies for publishing inflation

<sup>10</sup> Juzgado Contencioso Administrativo Federal 11. Causa No. 1409/13 “Fitz Patrick Mariel C/EN-JGM-S/ Amparo Ley 16. 986”. June 11, 2013. Available for consultation at: <http://www.adc.org.ar/2013/wp-content/uploads/2013/11/Fitz-Patrick-AIP-Sentencia-y-dictamen-fiscal-de-primera-instancia-junio13.pdf>

<sup>11</sup> Cámara Nacional de Apelaciones en lo Contencioso Administrativo Federal, Sala IV. Causa no. 1.409/2013 “Fitz Patrick Mariel C/EN-JGM-S/ Amparo Ley 16. 986”. October 31, 2013. Available for consultation at: <http://www.adc.org.ar/2013/wp-content/uploads/2013/11/Fallo-FitzPatrick-ContenciosoFederal-nov13.pdf>

<sup>12</sup> Cámara Nacional de Apelaciones en lo Contencioso Administrativo Federal, Sala V. Causa No. 33762/2012. Gil Lavedra Ricardo Rodolfo C/EN-M) Justicia y DDHH – IGJ-S/Amparo Ley 16.986. June 19, 2013. Available for consultation at: <http://www.adc.org.ar/download.php?fileId=712>

<sup>13</sup> Cámara Nacional de Apelaciones en lo Contencioso Administrativo Federal, Sala V. Causa No. 33762/2012. Gil Lavedra Ricardo Rodolfo C/EN-M) Justicia y DDHH – IGJ-S/Amparo Ley 16.986. June 19, 2013. Available for consultation at: <http://www.adc.org.ar/download.php?fileId=712>

<sup>14</sup> Cámara Nacional de Apelaciones en lo Contencioso Administrativo Federal, Sala I. [Causa 30.936/2011 “FIEL c/ DNCI – Disp 164/11”](#). May 9, 2013; Cámara Nacional de Apelaciones en lo Contencioso Administrativo Federal, Sala I. [Causa 30.943/2011 “Eco Go SA c/ DNCI – Disp 115”](#). May 9, 2013.

<sup>15</sup> Cámara Nacional de Apelaciones en lo Contencioso Administrativo Federal, Sala II. April 30, 2013. [Expte. No 46.581/2011 “Latin Eco SA c/ DNCI – Disp. No 179/11”](#). April 30, 2013; Cámara Nacional de Apelaciones en lo Contencioso Administrativo Federal, Sala II. [Exp.: 23273/2012 – “Finsoport SA c/ DNCI – Disp 116/11”](#). April 30, 2013.

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

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

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

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<sup>16</sup> Cámara Nacional de Apelaciones en lo Contencioso Administrativo Federal, Sala III. [Causa 35626/2011. Efimak SRL c/ DNCI – Disp 169/11](#). May 2, 2013; Cámara Nacional de Apelaciones en lo Contencioso Administrativo Federal, Sala III. [Causa 46818/2011 - "Bevacqua Graciela Cristina c/ DNCI – Disp 267/11](#). May 2, 2013.

<sup>17</sup> Cámara Nacional de Apelaciones en lo Contencioso Administrativo Federal, Sala IV. [Causa 994/2012. "Gabriel Rubinstein y Asoc. SH c/ DNCI – Disp 163/11](#). May 7, 2013.

<sup>18</sup> Centro de Información Judicial. May 13, 2013. [La Cámara Nacional en lo Contencioso Administrativo Federal revocó multas a consultoras privadas](#).

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

<sup>20</sup> InfoLEG/Ministerio de Economía y Finanzas Públicas. [Ley Nº 22.802: Ley de lealtad comercial](#). May 5, 1983.

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

<sup>21</sup> Cámara Nacional de Apelaciones en lo Contencioso Administrativo Federal, Sala II. [Expte. 46581/2011"Latin Eco SA c/ DNCI – Disp 179/11"](#). April 30, 2013.

<sup>22</sup> Corte Suprema de Justicia de la Nación. [Causa L.451. XLIX. Latin Eco S.A c/ DNCI s/ disp. 179/11](#). October 8, 2013; Corte Suprema de Justicia de la Nación. [Causa F. 400. XLIX. Finsoport S.A c/ D.N.C.I. – disp. 116/11 s/ recurso](#). October 8, 2013; Corte Suprema de Justicia de la Nación. [Causa G. 547. XLIX Gabriel Rubinstein y Asoc. SH c/DNCI – disp. 163/11 s/ recurso](#). October 8, 2013.

<sup>23</sup> Procuraduría de Criminalidad Económica y Lavado de Activos. September 26, 2013. [La Procelac prestará colaboración técnica en las causas contra consultoras](#). Télam. September 30, 2013. [La Procuraduría de Criminalidad Económica interviene en las denuncias contra consultoras](#).

city of Buenos Aires and that “faithfully [meets] the guidelines of proportionality and equity established” by the judgment.<sup>24</sup>

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

## **B. Supreme Court of Justice ruling on the Audiovisual Communication Services Act**

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

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

- a. That the right to freedom of expression involves not only the individual right to issue and express thought but also the social right to information with respect to individuals. That in its collective dimension, the right to freedom of expression is a necessary

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<sup>24</sup> Perfil. June 6, 2013. [Ordenan al Gobierno que redistribuya la pauta oficial en favor de Canal 13](#); Rosario Noticias. June 2013. [El Gobierno tendrá que darle publicidad oficial al Grupo Clarín](#); iProfesional. June 7, 2013. [La Justicia le ordenó a Cablevisión reordenar su grilla de canales](#).

<sup>25</sup> I/A Court H.R. *Case of Kimel v. Argentina. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights February 5, 2013.

<sup>26</sup> Law No. 26.522 repeals Law No. 22.285 (Assigns the objectives, policies and bases to be observed by broadcasting services), approved on September 15, 1980. Boletín Oficial de la República Argentina. Año CXVII. Número 31.756. October 10, 2009. Ley 26.522. Regúlanse los Servicios de Comunicación Audiovisual en todo el ámbito territorial de la República Argentina. Available for consultation at: <http://www.infoleg.gov.ar/infoleginternet/anexos/155000-159999/158649/norma.htm>

<sup>27</sup> Writ filed jointly with Arte Radiotelevisivo Argentina S.A, Cablevisión S.A, Multicanal S.A, Radio Mitre S.A and Teledigital Cable S.A.

<sup>28</sup> Corte Suprema de Justicia de la Nación. [Grupo Clarín SA y otros c/Poder Ejecutivo Nacional y otros/ acción meramente declarativa](#). October 29, 2013.

<sup>29</sup> Juzgado Nacional de Primera Instancia en lo Civil y Comercial Federal N° 1. [Grupo Clarín SA y otros c/Poder Ejecutivo Nacional y otros/ acción meramente declarativa expte. no. 119/2010](#). December 14, 2012.

<sup>30</sup> Cámara Nacional de Apelaciones en lo Civil y Comercial Federal. [Causa N° 119/2010 –I- Grupo Clarín S.A. y otro c/Poder Ejecutivo Nacional y otro s/acción meramente declarativa](#). April 17, 2013.

<sup>31</sup> Corte Suprema de Justicia de la Nación. [Grupo Clarín AS y otros c/Poder Ejecutivo Nacional y otros/ acción meramente declarativa](#). October 29, 2013.

instrument to guarantee freedom of information and formation of public opinion, and as such, fundamentally constitutes a precondition of the democratic system. In this sense, it explained that “democratic debate requires greater pluralism and the broadest opportunities for expression by the diverse representative sectors of society. If not, there would not be a true exchange of ideas, which as a direct consequence would generate impoverishment of public debate, affecting collectively made decisions.”

- b. That in contrast to what occurs with freedom of expression in its individual dimension, where the regulatory activity of the State is minimal, “the collective dimension requires active protection by the State, meaning its intervention here is more significant.” It affirmed that “the media play a relevant role in the formation of public discourse, which is why the State’s interest in regulation is not in question.” In this framework, it held that the State can decide on the form that it deems appropriate to promote real opportunities for expression by citizens and thereby strengthen public debate. The options that the State would have in order to ensure greater pluralism in the expression of ideas include “the adoption of *a priori* rules that equitably organize and distribute citizens’ access to the mass media. Pursuant to this, it is up to the State to establish whatever guidelines it deems most appropriate to ensure public debate and the free and universal exchange of ideas. The Office of the Special Rapporteur for Freedom of Expression of the OAS [has indicated that] it favors this type of regulation.” The court indicated that “this type of regulatory policy by the State can apply to any type of licenses, whether or not they use the radio electric spectrum. That is the case, because the basis for the regulation does not lie solely in the limited nature of the spectrum as a public good, but fundamentally in guaranteeing the plurality and diversity of voices that a democratic system requires, including both in the media that use the spectrum and those whose technologies do not use that space.”
- c. In the case under study, the Court found that “indirect violation of freedom of expression requires the economic sustainability of the enterprise be affected,” something that must be proven by the group bringing the action. It explained that it involves a different standard from that used by the high court in its ruling in the case of Editorial Río Negro S.A. c/Neuquén, because the law in question does not establish differentiated treatment that requires “starting from a suspicion of illegitimacy of the law, shifting the burden of proof.” According to the Supreme Court, the law “promotes freedom of expression in its collective dimension, establishing equal limits for all license holders.” In examining the evidence provided, the Court concluded that even a drop in profitability does not prove that the plaintiff’s adaptation to the licensing system established by law endangers the economic or operational feasibility of the group or its enterprises. Therefore, Grupo Clarín’s right to freedom of expression would not be affected. It indicated, however, that in this case, the group’s property rights are limited.
- d. That when what is involved are laws on property issues that restrict rights of that nature, constitutional oversight is not as strict, allowing lawmakers greater discretion. According to the Supreme Court, under this type of constitutional scrutiny, it is not the responsibility of courts to review the necessity of the means selected by lawmakers for fulfillment of the ends (strict standard of control). In other words, “it must not examine whether it was indispensable to legislate in this regard, or if there would be other equally suitable alternative means which, at the same time, would have caused less

restriction of the rights involved, in that this would imply entering the realm of exclusive legislative discretion. [...] The choice of the form considered adequate to promote the proposed objectives is a matter left to the lawmakers and outside of the judges' control. [...] Thus, in this case, the task of the Court is not to decide whether law 26,522 is the best possible solution, but rather to determine whether the means chosen are suitable and proportionate to their objectives."

- e. That in relation to the objectives of the law, the restrictions on the accumulation of licenses imposed by the law (Article 45) "seek as their main objectives to promote freedom of expression as a collective good and to preserve the right to information for all individuals." That "no greater effort to explain is required in order to conclude that the measures in question are suitable to fulfill the above-mentioned objectives, because the restrictions on the number of licenses and registrations appear to be appropriate or suitable for permitting participation by a larger number of voices [...] It is evident that limiting the quantity of licenses and registrations for all media operators prevents concentration, thereby permitting greater participation and diversity of opinions." Regarding the proportionality of the measure, the Court indicated that "the losses of revenue and profitability to which the experts refer in their reports constitute logical consequences of the reduction of benefits from economies of scale, as an unavoidable result of all business restructuring processes aimed at avoiding or limiting situations of concentration. In the cost-benefit analysis implicit in the judgment of proportionality, the function performed by the media in a democratic society must not be lost sight of. In contrast to other markets, in communications, concentration has social consequences that affect the right to information, an essential right for individual freedoms." It concluded that "for the reasons cited, the set of objectives that are the purpose of the law and the nature of the rights in play, the restrictions on the plaintiff's property rights – insofar as they do not endanger their sustainability and only translate into possible losses of profitability – do not appear to be unjustified. That is the case to the extent that such strictly property-based restrictions are not disproportionate with respect to the institutional weight of the law's objectives.
- f. That with special reference to broadcasting services that do not use the radio electric spectrum, it reiterated that "the State has the power to decide whether to regulate the market or leave it to the rules of free competition. It can be argued that the law's objectives could equally be achieved without the restrictions provided for in Article 45 of the law – precisely because of the unlimited character of the spectrum – but that would imply improper judgment regarding the needs of the measure."
- g. That "everything that has been said about the law and its purpose of achieving plurality and diversity in the mass media would lose its meaning without the existence of transparent public policies in the field of government advertising. The State's duty to guarantee freedom of expression is undermined if, by means of subsidies, in the distribution of government advertising or any other benefit, the media were to become mere instruments of support for a particular political current or a way to eliminate dissent and the plural debate of ideas. The same thing happens if the public media, instead of giving voice and satisfying the needs for information of all sectors of society, were to become venues at the service of governmental interests."

- h. That the law's objectives can also not be ensured if "the agency charged with its application is not a technical and independent body protected against improper interferences, both by the government and other pressure groups. The authority for application must strictly comply with the principles established in the Constitution, in international treaties incorporated into the Constitution and the law itself. Equal treatment must be respected, both in awarding and revoking licenses, without discrimination based on dissident opinions while guaranteeing citizens' right of access to plural information."

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

20. The Office of the Special Rapporteur received information on a number of journalists being assaulted while they were covering the news. For example, the Office of the Rapporteur received information indicating that individuals reportedly assaulted journalist Oscar Alfredo Di Vincenzi, of the newspaper *PerteneSer* and the radio station *Punto Cero 94.1*;<sup>32</sup> photographer Sebastián Granata, of *Página 12* newspaper's 'Rosario' supplement;<sup>33</sup> photography student Pablo Lucero, a contributor to FM station *Radio Nuevos Horizontes*, of the NGO *Abriendo Horizontes*;<sup>34</sup> press photographers with the media outlets *El Ancasti*, *El Esquiú*, and *La Unión*;<sup>35</sup> journalist Daniel Rodríguez, of the radio station *Amir FM*;<sup>36</sup> journalists César Mendoza, of the newspaper *Norte* and Orlando Torres of *FM Mercurio*;<sup>37</sup> and journalist Sandra Borghi, of *Todo Noticias* and *Canal 13*.<sup>38</sup>

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

<sup>33</sup> He reportedly was assaulted and pushed out of a meeting of the Board of Directors of the Argentina Agrarian Federation, which took place in Rosario. Télam. January 10, 2013. [Agreden a un reportero gráfico al intentar cubrir una reunión de la Federación Agraria](#); Agencia Periodística de Buenos Aires. January 10, 2013. [Agreden a fotógrafo cuando cubría una reunión de la Federación Agraria](#).

<sup>34</sup> He reportedly was assaulted while he was taking photographs in the vicinity of a house in Córdoba where a man accused of child abuse had committed suicide. Foro de Periodismo Argentino (FOPEA). February 7, 2013. [Agredieron a un voluntario de una radio comunitaria en Córdoba](#); La Voz. February 7, 2013. [Agreden a voluntario de radio comunitaria](#).

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

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

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

<sup>38</sup> She reportedly was the target of insults while she was covering news about the health of President Cristina Fernández de Kirchner, at the entrance to the Fundación Favaloro. Someone reportedly came after her with a pair of scissors, but members of the presidential protection service and the Federal Police prevented the attack. Unión de Trabajadores de

21. In the process of covering various protest demonstrations, the following journalists were reportedly assaulted by alleged demonstrators: cameraman José Escudero, of *Canal Doce*, and freelance photographer Paul Amiune;<sup>39</sup> journalist Dominique Metzger, of *Todo Noticias*; Marcelo Moniti, of *América TV*, and journalists from *Crónica TV*;<sup>40</sup> reporter María Belén López del Río and cameraman Santiago Ventura, of the news agency *Télam*;<sup>41</sup> journalist Cynthia García, from the program '678' on *Televisión Pública*, and reporters from the program 'Duro de Domar' of *Canal 9*;<sup>42</sup> journalists of *Cadena 3*, of *Canal 10*, of Servicios de Radio y Televisión de la Universidad Nacional de Córdoba and of *El Doce*;<sup>43</sup> journalists Roxana Martínez, of the channel *El Doce*, and Leonardo Guevara, of the radio station *Mitre*;<sup>44</sup> and journalist Marcelo Bertona, of the channel *Showspost*, and Juan Pablo Luna, of the radio station *Impacto*.<sup>45</sup>

22. In addition, the Office of the Special Rapporteur received information on threats reportedly received by journalists, possibly as a result of their work. For example, journalist Tomás Eliashev, of the magazine *Veintitrés*;<sup>46</sup> journalist Adrián Valenzuela, of *Radio Vos 90.1* in Salta;<sup>47</sup>

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Prensa de Buenos Aires (UTPBA). [Agresión a la periodista Sandra Borghi](#); La Razón. October 10, 2013. [Agresión a la periodista Sandra Borghi](#).

<sup>39</sup> Protestors reportedly pelted them with rocks when they were covering incidents that arose during the local Deliberation Council's handling of a passenger fare increase for urban transportation, in the city of Córdoba. Día a Día. January 10, 2013. [Pasajes violentos para el aumento del boleto](#); La Voz. January 9, 2013. [Incidentes en las afueras del Concejo Deliberante por la suba del boleto](#); Foro de Periodismo Argentino (FOPEA). January 9, 2013. [Otra vez agreden a periodistas en Córdoba durante una manifestación](#).

<sup>40</sup> The incidents reportedly took place when the journalists were covering a protest over the killing of a young woman in the city of Junín, in the province of Buenos Aires. Todo Noticias. March 10, 2013. [Junín: incidentes y represión en la marcha por la adolescente asesinada](#); La Nación. March 11, 2013. [Agredieron a una periodista durante la protesta en Junín](#); Foro de Periodismo Argentino (FOPEA). March 11, 2013. [Graves agresiones a periodistas en Junín, provincia de Buenos Aires](#).

<sup>41</sup> They reportedly were attacked while covering a demonstration in the Plaza de Mayo, in Buenos Aires, in the context of protest campaigns. Télam. [Agredieron a un periodista de la agencia Télam en la marcha opositora](#) (VIDEO); Agencia Periodística de Buenos Aires. April 18, 2013. [Nuevas agresiones a periodistas en la protesta opositora](#).

<sup>42</sup> They reportedly were attacked while covering a demonstration in the Plaza de Mayo, in Buenos Aires, in the context of protest campaigns. Diario Veloz. April 18, 2013. [Cacerolazo 18A: agredieron a periodistas de TELAM, 678 y Duro de Domar](#); Duro de Domar/YouTube. April 18, 2013. [Duro de domar - marcha opositora 18A - Agredieron a los equipos de Telam, 678 y DDD 18-04-13](#).

<sup>43</sup> They reportedly were attacked, threatened, and kept from doing their work by alleged protesters, during a demonstration of the Unión de Tranviarios Automotor in the city of Córdoba. Todo Noticias. April 30, 2013. [Incidentes en Córdoba durante una huelga de choferes](#); Minuto Uno. May 1, 2013. [Serios incidentes en la ciudad de Córdoba durante una huelga](#); IFEX/Foro de Periodismo Argentino (FOPEA). May 6, 2013. [Agresiones a periodistas en Argentina durante marcha](#).

<sup>44</sup> They reportedly were assaulted and intimidated while they were covering a protest by associations of taxi drivers in the city of Córdoba. A police officer who was there reportedly prevented further attacks. La Voz. July 16, 2013. [Agredieron a dos periodistas en la marcha de taxistas](#); Foro de Periodismo Argentino (FOPEA). July 16, 2013. [Agreden a periodistas en Córdoba durante una manifestación](#).

<sup>45</sup> Marcelo Bertona reportedly was attacked and Juan Pablo Luna had his camera stolen while they were covering a demonstration to protest the current Board of Directors of a sports club, the Instituto Atlético Central Córdoba. Foro de Periodismo Argentino (FOPEA). October 1, 2013. [Preocupación por agresiones a periodistas en manifestación de simpatizantes del club Instituto \(Córdoba\)](#).

<sup>46</sup> He reportedly received threats from individuals mentioned in an article he wrote titled "The Fascist Club" ["*El Club de Fachos*"], in which he reported on activities of alleged Nazi-Fascist groups in Argentina. Foro de Periodismo Argentino (FOPEA). January 25, 2013. [Los trabajadores de Veintitrés denuncian amenazas fascistas](#); Télam. January 29, 2013. [Repudian las amenazas de Soaje Pinto al periodista Tomás Eliashev](#); Agencia Popular de Noticias. February 4, 2013. [Repudio a las agresiones y amenazas a trabajadores de prensa](#).

photographers Irma Montiel, of the *Télam* agency, and Manuel Bomheker, of *Radio Nacional*;<sup>48</sup> journalist Alejandro Frías, of the digital newspaper *MDZ Online*;<sup>49</sup> journalist Marcelo Pastore, host of a program on *RTV Noticias*;<sup>50</sup> Tomás Méndez, a journalist with the program 'ADN', on *Canal 10* of Servicios de Radio y Televisión de la Universidad Nacional de Córdoba;<sup>51</sup> and journalists Andrea Dematey and Javier Torre, of the newspaper *Actualidad*.<sup>52</sup>

23. According to information received, a number of journalists were assaulted while covering sporting events. For example, during the broadcast of a soccer match, fans of one of the teams reportedly broke the window of the broadcast booth in which journalists from the *Televisión Pública* program 'Fútbol para Todos' were working.<sup>53</sup> On a second occasion, fans of a team reportedly attacked the booth of journalists Darío Alaniz and Sergio Alcaraz, of the 'Último Recurso' program on the San Luis station *FM Libre*.<sup>54</sup> In addition, during a soccer match, a journalist in the broadcast booth reportedly was threatened with a firearm; and a news crew from *Radio Panorama* was said to have been threatened.<sup>55</sup>

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<sup>47</sup> He reportedly received a threat in the form of a message painted on one of the walls of the radio station, which read, "You are going to die." Foro de Periodismo Argentino (FOPEA). March 22, 2013. [Escritura amenazante en la puerta de una radio en Salta](#); El Intransigente. March 22, 2013. ["Vas a morir", la amenaza al periodista Adrián Valenzuela en su radio](#); Qué Pasa Salta. March 22, 2013. [Amenazas contra el periodista Adrián Valenzuela](#).

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

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

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

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

<sup>52</sup> Agencia Periodística de Buenos Aires. October 23, 2013. [El massista Carlos Selva atenta contra la libertad de expresión](#); Página 12. October 23, 2013. [Mercedes, una ciudad donde impera la ley de la Selva](#); Télam. October 23, 2013. [Denuncian que el intendente de Mercedes presiona a los medios locales](#).

<sup>53</sup> Todo Noticias. March 9, 2013. [Tremendo: hinchas del Rojo rompieron el vidrio de una cabina](#); Minuto Uno. March 9, 2013. [Detuvieron al hinchas que rompió la cabina de Fútbol Para Todos](#); Foro de Periodismo Argentino (FOPEA). March 8, 2013. [Hinchas de futbol rompieron el vidrio de una cabina de transmisión](#).

<sup>54</sup> Deporte San Luis. April 8, 2013. [Estudiantes clasificó. Gutierrez descendió en cobardía](#); Al Toque. April 9, 2013. [Periodistas de San Luis, agredidos en Gutiérrez](#); Foro de Periodismo Argentino (FOPEA). April 6, 2013. [Hostigamiento a periodistas en Mendoza](#).

<sup>55</sup> Diario Panorama. June 17, 2013. [Noche violenta en Mitre: agredieron a jugadores y amenazaron a periodistas](#); La Gaceta. June 16, 2013. [Santiago del Estero: Hinchas de Mitre agredieron a jugadores de Estudiantes de San Luis](#); Foro de Periodismo Argentino (FOPEA). June 16, 2013. [Periodista deportivos amenazados y agredidos durante cobertura futbolística](#).



In addition, alleged fans of a soccer team were reported to have attacked the premises of the radio station *Sol 91.5 FM* while it was broadcasting the sports program 'La Tercera.'<sup>56</sup>

24. According to information received, a number of media outlets and journalists suffered attacks on their headquarters or had their equipment damaged. On a number of occasions, unidentified individuals reportedly damaged the vehicles of several journalists: *Clarín* reporter Julio Rodríguez;<sup>57</sup> journalists Raúl and Víctor Cortez, of *VideoTa*;<sup>58</sup> and journalist Hugo Revol, host of the radio program 'La Mañana en Compañía' on *Visión FM*.<sup>59</sup> In addition, in a number of cases unidentified individuals reportedly attacked facilities and other buildings: at the radio station *FM Horizonte*, a cable connecting broadcast equipment was reportedly cut, damaging the Internet connection;<sup>60</sup> homemade Molotov cocktails (fuel-filled bottles) were reportedly thrown at the offices of a newspaper distribution company;<sup>61</sup> the *Radio Génesis* station was reportedly burned down;<sup>62</sup> shots apparently were fired at the headquarters of *Cablevisión*, part of the *Clarín* media group;<sup>63</sup> intimidating messages were said to have been painted near the home of journalist Julio Blanck, of the newspaper *Clarín* and *Todo Noticias*;<sup>64</sup> a burning tire was apparently thrown through a window at the radio station *FM Paraíso 42*;<sup>65</sup> a fire reportedly was set at the house from which *FM Belgrano 106.9* broadcasts;<sup>66</sup> equipment belonging to

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

<sup>57</sup> Foro de Periodismo Argentino (FOPEA). March 7, 2013. [Hostigan a corresponsal de Clarín en Santiago del Estero](#); *Clarín*. March 7, 2013. [Ataque contra el corresponsal de Clarín en Santiago del Estero](#).

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

<sup>59</sup> The vehicle was sprayed with fuel in Valle Medio, located in the province of Río Negro. *Noticias Net*. April 24, 2013. [Periodista denunció atentado](#); *Noti-Río*. April 23, 2013. [El periodista Hugo Revol sufrió ayer un atentado](#); Foro de Periodismo Argentino (FOPEA). April 22, 2013. [Rocian con combustible el auto de un periodista en Lamarque, Río Negro](#).

<sup>60</sup> Foro de Periodismo Argentino (FOPEA). January 10, 2013. [Denuncian atentado contra una FM en Villa Triful, Neuquén](#); *Diario Andino*. January 17, 2013. [En Triful denuncian atentado contra una FM opositora al gobierno](#).

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

<sup>62</sup> *Plaza de Mayo*. April 5, 2013. [Formosa: queman una radio opositora \(VIDEO\)](#); Foro de Periodismo Argentino (FOPEA). April 6, 2013. [FOPEA repudia incendio intencional de radio](#); *Reporters Without Borders*. April 8, 2013. [Officials in Formosa province suspected in radio station fire](#).

<sup>63</sup> *Clarín*. May 11, 2013. [Disparan contra el edificio de Cablevisión](#); *Todo Noticias*. May 11, 2013. [Atacaron a balazos el frente del edificio de Cablevisión](#); *Día a Día*. May 11, 2013. [Disparan contra el edificio de Cablevisión](#).

<sup>64</sup> *Clarín*. May 17, 2013. [Pintadas intimidatorias contra el periodista Julio Blanck](#); *La Voz*. May 17, 2013. [Pintadas intimidatorias contra periodista de Clarín](#).

<sup>65</sup> The attack reportedly caused damage to the radio station's facilities. *Señales*. June 7, 2013. [Atentaron contra la emisora FM Paraíso 42](#); *FM Sol 94.7*. June 10, 2013. [Grave atentado contra una FM de El Hoyo](#); Foro de Periodismo Argentino (FOPEA). June 7, 2013. [Atentan contra una radio en El Hoyo, Chubut](#).

<sup>66</sup> *Noticias de San Luis*. August 16, 2013. [Incendiaron planta transmisora de Fm Belgrano](#); Foro de Periodismo Argentino (FOPEA). August 16, 2013. [FOPEA repudia incendio intencional a planta transmisora de radio](#).

*Radio Cooperativa AM 770*, in Buenos Aires, reportedly was damaged;<sup>67</sup> and a homemade bomb was apparently thrown at the home of journalist Luis Fernández, where the radio station *FM Libertad* operates.<sup>68</sup>

25. Meanwhile, the Office of the Special Rapporteur was informed of new cases in which journalists have been assaulted or detained by individuals presumed to be law enforcement and public officials. According to information received, the director of the National Public Works and Services [*Obras y Servicios de Federación*] area in the province of Entre Ríos reportedly assaulted journalist René Silva, of the radio station *FM Fantástico 104.5*;<sup>69</sup> journalist Antonio Da Silva, editor and publisher of the newspaper *El Zondino*, in El Zonda, San Juan, reportedly received threats from a provincial official;<sup>70</sup> journalist Luis Gasulla was reportedly threatened following publication of his book “El negocio de los Derechos Humanos”;<sup>71</sup> a journalist and a photographer from the newspaper *Tiempo Sur* were assaulted and insulted by a group of municipal officials presumed to be members of the Union of Municipal Workers and Employees (SOEM);<sup>72</sup> the minister of infrastructure in the province of Buenos Aires reportedly assaulted and threatened journalist Damián Belastegui, a reporter with *Agencia Nova*;<sup>73</sup> journalist Guillermo Lobo, of the *Todo Noticias* channel, was reportedly attacked by an alleged customs

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<sup>67</sup> The station reportedly received calls describing the journalists’ personal activities. Radio Cooperativa AM 770. July 30, 2013. [Atacaron nuestra planta transmisora](#); Foro de Periodismo Argentino (FOPEA). July 31, 2013. [Denuncian un ataque a la Radio Cooperativa AM770](#); Unión de Trabajadores de Prensa de Buenos Aires (UTPBA). [Repudio de la UTPBA](#).

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

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

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

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

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

<sup>73</sup> The official apparently was upset by a question the reporter asked, and he allegedly forced him to turn off his recorder. A group of individuals then were said to have taken the reporter to a room in the center, where the minister allegedly insulted and threatened him. The official was said to have apologized later via his Twitter account. La Nación. April 27, 2013. [Ministro bonaerense insultó y amenazó a periodista, fue denunciado y pidió perdón](#); Foro de Periodismo Argentino (FOPEA). April 26, 2013. [Un periodista fue agredido por el ministro de Infraestructura bonaerense](#); Infobrandsen. April 25, 2013. [El Ministro Aría defiende su posición por la discusión con Belastegui](#).

official;<sup>74</sup> former Secretary of Domestic Commerce Guillermo Moreno, after being upset by a question, reportedly insulted *Clarín* reporters Silvia Naishtat, Walter Curia, and Marina Aizen;<sup>75</sup> and Daniel Ortigoza, journalist and owner of *FM Imperio*, reportedly suffered blows and threats as he was covering the submission of a file in a homicide case in Puerto Esperanza, in the province of Misiones.<sup>76</sup>

26. With respect to the attacks by alleged members of law enforcement, the Office of the Special Rapporteur has received information indicating that journalist Julieta Elgul, of the news program 'Visión 7' on *Televisión Pública*, was injured by two rubber bullets;<sup>77</sup> a TV crew from *Canal 26* reportedly was the victim of attacks by individuals presumed to be members of the Metropolitan Police, as were journalists Ezequiel Medone and Juliana Giménez, of the *Red Nacional de Medios Alternativos*;<sup>78</sup> journalist Santiago Kalinsky, of *FM La Cigarra*, reportedly was struck by individuals presumed to be officers of the provincial police;<sup>79</sup> journalist Pablo Avila of *FM Aires*, in Salta had his camera taken from him;<sup>80</sup> a group of journalists was reportedly attacked by alleged officers of the Airport Security Police; including journalist Martín Rojas, of the *América TV* program 'Intrusos', reportedly received a blow to the chest and was detained and taken to an office and kept from leaving. He was released a short time later;<sup>81</sup> *Todo Noticias* cameraman Osvaldo Berisso and journalist José Hernández and cameramen

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

<sup>75</sup> The official reportedly stated that journalists who work for the newspaper *Clarín* "have their hands stained with blood." *Clarín*. July 5, 2013. [Enojado con una pregunta, Moreno insultó a periodistas](#); *La Nación*. July 5, 2013. [Denuncian que Guillermo Moreno insultó a periodistas de Clarín en la embajada de Estados Unidos](#); *Todo Noticias*. July 4, 2013. [Escándalo de Moreno en la embajada de Estados Unidos](#).

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

<sup>77</sup> The incidents reportedly occurred when she was covering demonstrations by area residents and vendors to protest the enclosure of Parque Centenario, in Caballito, Buenos Aires. *Visión 7/YouTube*. January 30, 2013. [Represión en Parque Centenario: reprimen a cronista de Visión 7](#); *Fundación LED*. January 30, 2013. [El Estado debe garantizar la integridad de los periodistas en su labor](#); *Asociación de Entidades Periodísticas Argentinas (ADEPA)*. January 30, 2013. [Periodista herida en Parque Centenario](#).

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

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

<sup>80</sup> The incidents reportedly occurred to prevent the journalists from documenting the events. The Salta minister of human rights reportedly made her ministry's services available to those who had been assaulted. *Radio Cadena NOA*. February 25, 2013. [Paulo Avila, Periodista de Fm Aires: "El Periodismo también debe saber visibilizar su propia problemática"](#); *Cadena 3*. February 20, 2013. [Incidentes y detenidos en la previa a la fiesta de Salta](#); *Foro de Periodismo Argentino (FOPEA)*. February 19, 2013. [La policía agredió a un periodista en Salta durante una manifestación](#).

<sup>81</sup> The incidents reportedly occurred during coverage of the arrival at Ezeiza airport of former soccer player Diego Maradona and his girlfriend. *Foro de Periodismo Argentino (FOPEA)*. July 5, 2013. [Efectivos de la Policía de Seguridad Aeroportuaria agredieron a periodistas](#); *El Intransigente*. July 6, 2013. [El video de la polémica: Así detuvieron a Martín Rojas, el notero de Intrusos](#) (VIDEO); *Infobae*. July 5, 2013. [Incidentes en la llegada de la novia de Maradona a Ezeiza](#).

Gastón Cha and Gabriel Rachiatti, of *América TV*, reportedly were hit by rubber bullets;<sup>82</sup> and two members of the *Red Nacional de Medios Alternativos (RNMA)*, photographer Esteban Ruffa, of the *Agencia de Noticias Redacción (ANRed)*, and a media worker from the DTL communication group reportedly were injured by individuals presumed to be officers of the metropolitan police.<sup>83</sup> According to the information received, individuals presumed to be members of the Salta provincial police reportedly struck journalist Javier Corbalán of the newspaper *El Tribuno* in the legs with their shields; clubbed *Nuevo Diario* photographer Rolando Díaz with a truncheon and tried to take away his cell phone while he was broadcasting live to anchor Daniel Tapia of *FM Capital*; and attacked journalist Darío Illanes.<sup>84</sup> Individuals presumed to be members of the police reportedly attacked Luis García and Leonardo Petricio of the newspaper *Río Negro*,<sup>85</sup> and alleged members of the National Gendarmerie reportedly raided the offices of cooperative magazine *La Garganta Poderosa* without showing a warrant.<sup>86</sup>

27. In a clash between the Metropolitan Police and employees of a mental health hospital (Hospital Interdisciplinario Psicoasistencial José Tiburcio Borda) in Buenos Aires,<sup>87</sup> a number of members of the press were reportedly attacked with rubber bullets, pepper spray, and/or tear gas. They included: cameramen Mario Ricci, Mario Gavilán, Mario Otero, and Rubén Santos, of *C5N*;<sup>88</sup> cameraman Fabián Alasi, of *Crónica TV*;<sup>89</sup> photographers José (Pepe) Mateos, of *Clarín*, Ricardo Pristupluk, of *La Nación*, and

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

<sup>83</sup> The incidents reportedly occurred during a demonstration to protest the closure of a hall in a cultural center in the city of Buenos Aires. Agencia de Noticias Redacción (ANRed). March 13, 2013. [Integrantes de la RNMA heridos de balas de plomo en la represión en Sala Alberdi](#); Foro de Periodismo Argentino (FOPEA). March 13, 2013. [La policía porteña agredió a periodistas y artistas](#); UnderGround. May 5, 2013. [DTL! Comunicación Popular, desde la tierra hasta los aires](#).

<sup>84</sup> The incidents reportedly occurred during the eviction of members of the Tupac Amaru Salta group, who apparently had been occupying the facilities of the Provincial Housing Institute (IPV) in the province of Salta. *El Tribuno*. [Periodistas fueron agredidos en el desalojo de manifestantes](#) (VIDEO); IFEX/Foro de Periodismo Argentino (FOPEA). August 1, 2013. [Agresión a periodistas durante desalojo policial en Argentina](#); Movileros Salta. July 25, 2013. [Violencia en el IPV durante el desalojo de militantes de Tupac Amaru](#) (VIDEO).

<sup>85</sup> The incidents reportedly occurred during demonstration in front of the legislature of Neuquén province. *Diario Río Negro*. August 29, 2013. [Un saldo de al menos 28 heridos, uno de ellos de bala metálica](#); IFEX/Foro de Periodismo Argentino (FOPEA). September 3, 2013. [Atacan a dos fotógrafos durante represión policial en Argentina](#); Federación Argentina de Trabajadores de Prensa (FATPREN). August 29, 2013. [Neuquén: Estado de alerta por ataques a Trabajadores de Prensa](#).

<sup>86</sup> Reporters Without Borders. September 18, 2013. [Community magazine raided by National Border Guards](#); *Diario Uno*. September 19, 2013. [Gendarmería allanó la redacción de la revista La Garganta Poderosa](#); *Los Andes*. September 19, 2013. [La revista La Garganta Poderosa denunció que Gendarmería allanó su redacción](#).

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

<sup>88</sup> Centro de Estudios Legales y Sociales (CELS). [Informe sobre la actuación de la Policía Metropolitana en situaciones de protesta y/o conflicto social](#). October 2013.

<sup>89</sup> Reporters Without Borders. April 30, 2013. [Buenos Aires police fire on journalists, city official plays down incident](#); Centro de Estudios Legales y Sociales (CELS). [Informe sobre la actuación de la Policía Metropolitana en situaciones de protesta y/o conflicto social](#). October 2013.

Pablo Villán, of *Crónica*;<sup>90</sup> cameraman Leonardo Piccone;<sup>91</sup> journalist Gabriel Eiriz and photographer Daniel Dabove, of *Télam*;<sup>92</sup> cameraman Alberto Samudio and camera assistant Sebastián Vásquez, of *Telefé*;<sup>93</sup> journalist Patricio Tejedor, of *FM La Tribu*;<sup>94</sup> journalist Soledad Larghi, of the channel A24;<sup>95</sup> cameraman Carlos Torres, of *Todo Noticias* and CN23 journalist Paula Avellaneda;<sup>96</sup> documentary filmmaker Nicolás Bartolucci, of the film and photography group *Ojo Obrero*;<sup>97</sup> freelance photographer Pablo Di Maggio;<sup>98</sup> and photographer Gonzalo Pardo, of the Movimiento Argentino de Fotógrafxs Independientes Autoconvocadxs.<sup>99</sup> In addition, photographer José (Pepe) Mateos of *Clarín*; and camerawoman Belén Revollo, from *En Movimiento TV*, reportedly were detained by individuals presumed to be police officers;<sup>100</sup> and journalist Rodrigo Frasinelli and cameraman Pablo Albornoz, of CN23, alleged that individuals presumed to be police officers had threatened to cut the cable they were using to transmit the TV signal.<sup>101</sup>

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<sup>90</sup> Reporters Without Borders. April 30, 2013. [Buenos Aires police fire on journalists, city official plays down incident](#); Centro de Estudios Legales y Sociales (CELS). [Informe sobre la actuación de la Policía Metropolitana en situaciones de protesta y/o conflicto social](#). October 2013.; Foro de Periodismo Argentino (FOPEA). April 26, 2013. [Trabajadores de prensa de varios medios agredidos por la Policía Metropolitana](#).

<sup>91</sup> Reporters Without Borders. April 30, 2013. [Buenos Aires police fire on journalists, city official plays down incident](#); Centro de Estudios Legales y Sociales (CELS). [Informe sobre la actuación de la Policía Metropolitana en situaciones de protesta y/o conflicto social](#). October 2013.

<sup>92</sup> *Télam*. April 26, 2013. [El Directorio de Télam repudió la represión y expresó su respaldo a los periodistas agredidos](#); Centro de Estudios Legales y Sociales (CELS). [Informe sobre la actuación de la Policía Metropolitana en situaciones de protesta y/o conflicto social](#). October 2013.

<sup>93</sup> Reporters Without Borders. April 30, 2013. [Buenos Aires police fire on journalists, city official plays down incident](#); Centro de Estudios Legales y Sociales (CELS). [Informe sobre la actuación de la Policía Metropolitana en situaciones de protesta y/o conflicto social](#). October 2013.

<sup>94</sup> Foro de Periodismo Argentino (FOPEA). April 26, 2013. [Trabajadores de prensa de varios medios agredidos por la Policía Metropolitana](#); Centro de Estudios Legales y Sociales (CELS). [Informe sobre la actuación de la Policía Metropolitana en situaciones de protesta y/o conflicto social](#). October 2013.

<sup>95</sup> Foro de Periodismo Argentino (FOPEA). April 26, 2013. [Trabajadores de prensa de varios medios agredidos por la Policía Metropolitana](#); Centro de Estudios Legales y Sociales (CELS). [Informe sobre la actuación de la Policía Metropolitana en situaciones de protesta y/o conflicto social](#). October 2013.

<sup>96</sup> Reporters Without Borders. April 30, 2013. [Buenos Aires police fire on journalists, city official plays down incident](#); Centro de Estudios Legales y Sociales (CELS). [Informe sobre la actuación de la Policía Metropolitana en situaciones de protesta y/o conflicto social](#). October 2013.

<sup>97</sup> Centro de Estudios Legales y Sociales (CELS). [Informe sobre la actuación de la Policía Metropolitana en situaciones de protesta y/o conflicto social](#). October 2013.

<sup>98</sup> Centro de Estudios Legales y Sociales (CELS). [Informe sobre la actuación de la Policía Metropolitana en situaciones de protesta y/o conflicto social](#). October 2013.

<sup>99</sup> Centro de Estudios Legales y Sociales (CELS). [Informe sobre la actuación de la Policía Metropolitana en situaciones de protesta y/o conflicto social](#). October 2013; Tiempo Argentino. April 27, 2013. [La puntería policial no discriminó a periodistas, médicos ni pacientes](#)

<sup>100</sup> Centro de Estudios Legales y Sociales (CELS). [Informe sobre la actuación de la Policía Metropolitana en situaciones de protesta y/o conflicto social](#). October 2013.; Tiempo Argentino. April 27, 2013. [La puntería policial no discriminó a periodistas, médicos ni pacientes](#)

<sup>101</sup> Foro de Periodismo Argentino (FOPEA). April 26, 2013. [Trabajadores de prensa de varios medios agredidos por la Policía Metropolitana](#); Centro de Estudios Legales y Sociales (CELS). [Informe sobre la actuación de la Policía Metropolitana en situaciones de protesta y/o conflicto social](#). October 2013; Tiempo Argentino. April 27, 2013. [La puntería policial no discriminó a periodistas, médicos ni pacientes](#).

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

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

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

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

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

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

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<sup>102</sup> Infojus Noticias. September 20, 2013. [Borda: citan a indagatoria al ministro Chaín y al jefe de la Metropolitana](#); Centro de Estudios Legales y Sociales (CELS); [Informe sobre la actuación de la Policía Metropolitana en situaciones de protesta y/o conflicto social](#). October 2013; Pagina 12. September 20, 2013. [Citados por reprimir en un hospital](#).

<sup>103</sup> Infojus - Sistema Argentino de Informática Jurídica Ministerio de Justicia. Jefatura de Ministros. [Resolución Nacional 538/13](#). July 18, 2013.

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

<sup>105</sup> Infojus - Sistema Argentino de Informática Jurídica Ministerio de Justicia. Jefatura de Ministros. [Resolución Nacional 538/13](#). Article 4. July 18, 2013.

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

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

#### E. Subsequent liabilities

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

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

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

<sup>106</sup> Cámara de Apelaciones en lo Contencioso Administrativo de La Plata. Causa N° 13892 CCALP. [“Asociación por los Derechos Civiles c/ Jefatura de Gabinete de Ministros-Gobierno de la Pcia. de Bs.As. S/Amparo”](#). February 28, 2013; Asociación por los Derechos Civiles (ADC). March 11, 2013. [La publicidad oficial de Scioli, secreto de Estado](#); La Nación. March 8, 2013. [Rechazan el pedido de una ONG para conocer la pauta oficial de Scioli](#).

<sup>107</sup> Primera Edición. May 2, 2013. [Insólito: imputan a periodistas que cubrían el violento desalojo de colonos en Puente Alto](#); Clarín. May 2, 2013. [Tres periodistas fueron a cubrir un desalojo y terminaron imputados](#); Foro de Periodismo Argentino (FOPEA). May 6, 2013. [FOPEA rechaza imputación judicial a tres periodistas](#); Agencia Paco Urondo. May 9, 2013. [Misiones: procesan a periodista que cubrió represión](#).

<sup>108</sup> Rioja Política/Noanoticias. July 8, 2013. [El país sorprendido por el fallo que no permite criticar a un ministro](#); Data Rioja. July 10, 2013. [Un polémico fallo que vulnera la libertad de prensa](#); Foro de Periodismo Argentino (FOPEA). July 9, 2013. [Por pedido de un funcionario la Justicia silencia a Radio Rioja](#); Recurso de Reposición. Bosetti Nestor Gabriel c/ Miguel Galeano y Otra – Medida Cautelar. Available for consultation at: <http://www.slideshare.net/EduardoNelsonGerman/recurso-de-reposicin-medios-rioja>

Sergio Acevedo, in favor of a federal judge, Rodolfo Arístides Canicoba Corral.<sup>109</sup> The ruling refers to a statement Acevedo made in 2004, when he was governor, in a story published by the newspaper *Página 12*: “Look how the judiciary reacts to any whiff of reform. We all know what the Urso, the Oyarbides are [...] detestable beings [...] Bonadío, Canicoba Corra [...]. They are the judges on the napkin”—and which the plaintiff believed offended his personal dignity and professional honor. The Supreme Court stated that “while criticisms of the exercise of a public function may not be punished, even when they are couched in excessively harsh or irritating terms... that should not lead to impunity for those who, based on their profession and experience, have gone beyond the bounds of the regular exercise of the rights of petition and criticism [...]. In other words, there is no right to insult, to gratuitous and unjustified humiliation [...]. The presence of a bad intention or unworthy motives is not a determining factor; on the contrary, this is about the use of words or expressions that are clearly denigrating and out of line.” In this regard, he stated that the use of the word “detestable” exceeds the limits of the right of criticism and freedom of expression, and offends the dignity and decorum of Judge Canicoba, who he said cannot be required to endure “any affront to his honor without reparation for the harm he has unjustly suffered.”<sup>110</sup>

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

38. The Inter-American Court has addressed the issue of civil liability and wrote that civil penalties in matters involving freedom of expression must be proportional so that they do not have a chilling effect on that freedom, since “the fear of a civil penalty, considering the claim [...] for a steep civil reparation, may be, in any case, equally or more intimidating and inhibiting for the exercise of freedom of expression than a criminal punishment, since it has the potential to affect the personal and family life of an individual who accuses a public official, with the evident and very negative result of self-censorship both in the affected party and in other potential critics of the actions taken by a public official.”<sup>111</sup>

## F. Stigmatizing statements

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

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<sup>109</sup> Corte Suprema de Justicia de la Nación. [Causa C. 1079. XLV. Canicoba Corral, Rodolfo Arístides c/ Acevedo, Sergio Edgardo y otros s/ daños y perjuicios](#). August 14, 2013. See also, Infobae. September 6, 2013. [La Corte Suprema falla \(“prohibido opinar”\) y no pasa nada](#); A&B Consultora. [El honor de los jueces impone límites](#); Tiempo Argentino. August 16, 2013. [La Corte Suprema condenó a Acevedo por criticar a un juez](#).

<sup>110</sup> Corte Suprema de Justicia de la Nación. [Causa C. 1079. XLV. Canicoba Corral, Rodolfo Arístides c/ Acevedo, Sergio Edgardo y otros s/ daños y perjuicios](#). August 14, 2013.

<sup>111</sup> 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.



13 by the Office of the President of Argentina, signed by the secretary general of the Office of the President, reportedly criticized the work of the newspaper *Clarín* and specifically of journalist Silvina Heguy, after an article was published concerning a trip the president made.<sup>112</sup> “Once again, the scribes of Héctor Magnetto use the pages of the newspaper *Clarín* to construct a reality that only benefits their dark interests,”<sup>113</sup> the press release stated.

40. The Secretary General of the Office of the President, Oscar Parrilli, issued a press release on August 18 in which he stated: “[t]he media hitman of Magneto [*sic*] and *Clarín*, Mr. Jorge Lanata, in his open-TV channel 13, has been promoting for this Sunday a news and media show on the alleged ‘route of the K money’, with information, images and circumstances that are totally false, distorted, and in bad faith.”<sup>114</sup> The same official reportedly referred to journalist Lanata, on several radio stations, as “a little crazy guy” and “nervous.”<sup>115</sup>

41. At a public hearing on the Situation of the Right to Freedom of Expression in Argentina held on November 1, at the IACHR, the petitioners stated that journalists who take a critical stance toward the administration are exposed to systematic reprisals by State employees or individuals identified with the administration. As reported, these reprisals are expressed through constant “discrediting” and “stigmatization.” The petitioners stated during the hearing and in additional information they provided to the IACHR that through formal press releases issued by the General Secretary of the Presidency of the Nation, using the government’s official Twitter account (@CasaRosadaAr), or using personal accounts of the highest public officials, independent journalists are branded as “hired assassins,” “hate mongers” and “makers of coup d’états,” among other descriptive terms.<sup>116</sup> They affirmed that, as a practical result of such accusations, certain journalists have had their access to public information restricted, because state agencies and officials would not receive them or give them interviews. At the same time, they indicated that these actions have led to the affected journalists receiving constant insults in the street, with such epithets as “murderer,” “coup maker,” “traitor” or “hired assassin” by groups identified as partisans of the governing party. They affirmed that the insults and discrediting have in some cases been followed by physical attacks on the physical integrity of the journalists.<sup>117</sup> In the opinion of the petitioners, “defamation [*injuria*] and imputation of crimes expressed by the highest authority of a country against several journalists, broadcast by means of official communications, evidently affects the freedom required for the exercise of journalistic work”. Those state actions are far from being able to be viewed as “necessary” restrictions on freedom of expression to avoid certain and provable damage or threat. They state that, on the contrary, the State is

<sup>112</sup> Télam. January 13, 2013. [Cristina, sobre su estadía Abu Dhabi en: “Una mentira más de Clarín”](#); Foro de Periodismo Argentino (FOPEA). January 14, 2013. [Hostiagan a periodista mediante comunicado de la Secretaría General de Presidencia](#); Info News. January 14, 2013. [La estadía de Cristina a Abu Dhabi es pagada por Emiratos Árabes](#).

<sup>113</sup> Presidencia de la Nación Argentina. January 13, 2013. [Comunicado de Prensa sobre la visita oficial a Emiratos Árabes Unidos](#).

<sup>114</sup> Presidencia de la Nación Argentina. August 18, 2013. [Comunicado de prensa](#).

<sup>115</sup> La Voz. August 20, 2013. [Para el Gobierno, no hay que creerle al Boletín Oficial](#); La Nación. August 20, 2013. [El Gobierno agitó la idea de un “ataque contra la democracia”](#); Inter American Press Association (IAPA). August 20, 2013. [La SIP lamenta agravios de gobierno argentino contra periodista](#).

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

<sup>117</sup> IACHR. 149 Period of Sessions. Hearing Situation of the Right to Freedom of Expression in Argentina. November 1, 2013. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=En&Session=132&page=2>

“in optimum conditions to make use of alternative channels to counteract whatever information it considers erroneous, disseminate the figures that it believes to be correct or question the credibility of the reporters, without the need to resort to the different measures mentioned above.”<sup>118</sup>

42. The State indicated at the above-mentioned hearing that it would not make “observations about the alleged individual situations because doing so during a public hearing of a general nature would be legally inappropriate.” Nonetheless, it said that in accordance with a report produced by the Office of Attorney-General the Treasury [*Procuración del Tesoro*], “there is no record of cases in which the National State or its agencies are a party of, there is no proceeding whatsoever promoted by the petitioners associated with such possible restrictions on the exercise of the right to freedom of expression.” It also indicated that “in the study made by the Office of the Attorney General of the Nation, the Office of the Public Prosecutor in criminal law, no cases were initiated by the petitioners herein based on the reported restrictions to the exercise of freedom of expression [...]”<sup>119</sup>

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

44. The Office of the Special Rapporteur additionally recalls that public servants have the duty to ensure that their statements do not infringe upon the rights of those who contribute to the public discourse through the expression and dissemination of their thoughts, such as journalists, media outlets, and human rights organizations. They must bear in mind the context in which they express themselves, in order to ensure that their expressions are not, in the words of the Court, “forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute [to] public deliberation through the expression and [dissemination] of their thoughts.”<sup>120</sup>

## **G. Government advertising**

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

<sup>119</sup> IACHR. 149 Period of Sessions. Hearing Situation of the Right to Freedom of Expression in Argentina. November 1, 2013. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=En&Session=132&page=2>

<sup>120</sup> 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.

45. In the framework of the hearing on the “Situation of the Right to Freedom of Expression in Argentina” held on November 1, at the IACHR, the petitioners affirmed that the government was seeking the “economic suffocation” of independent news media through public advertisement. In this regard, they indicated that “the policy of punishments and rewards is carried out by means of dramatic reductions or substantial increases in government advertising contracts, in accordance with whether the media outlet is perceived as hostile or friendly to the government.”<sup>121</sup> As an example, they stated that the printed media with the largest print runs and broadest distribution in the entire country had seen their contracts for advertising by the Executive Branch decrease by more than 90% between 2007 and 2012 and were outdone in gross numbers by newspapers with close ties to the government.<sup>122</sup> In the opinion of the petitioners, these actions do not fulfill “the clear criteria established by the Supreme Court of Justice of the Nation, [...] which has issued pronouncements in categorical terms on the matter, openly objecting to those practices as being in violation of basic constitutional rights.” The petitioners also expressed concern over “partisan political use of government advertising,” not only at the national level but also in the provinces and municipalities. In this regard, they indicated that the data from the General Auditing Office of the Nation suggests that government advertising substantially increases during electoral periods.<sup>123</sup>

46. The petitioners declared that, except for the province of Tierra del Fuego, which has a law on the matter, the National and Provincial Executive Branch does not have the necessary regulations to guarantee that government advertising will be distributed without discretion or arbitrariness and that “public funds will not be used without norms that regulate it [...] or without objective and reasonable criteria.” According to the petitioners, this matter is of the greatest concern because of the large increase in public funds that have been allocated to government advertising between 2003 and 2013, according to data from the General Auditing Office of the Nation.<sup>124</sup>

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

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

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

<sup>123</sup> IACHR. 149 Period of Sessions. Hearing Situation of the Right to Freedom of Expression in Argentina. November 1, 2013. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=En&Session=132&page=2>

<sup>124</sup> IACHR. 149 Period of Sessions. Hearing Situation of the Right to Freedom of Expression in Argentina. November 1, 2013. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=En&Session=132&page=2>

2003, the private advertising budget reached 2.2 billion Argentinean pesos (some US\$ 327,000,000) and in 2012 22 billion Argentinean pesos (some US\$ 3,281,000,000)<sup>125</sup>.

48. In March 2013, the national government reportedly stated in court that it had complied with the ruling ordering it to redistribute government advertising.<sup>126</sup> On August 14, 2012, the Federal Contentious Administrative Chamber ordered the National State to comply with the ruling of the Supreme Court of Justice requiring the State to place advertising in the publications of Editorial Perfil S.A. in keeping with the criteria of maintaining a “reasonable balance.” Editorial Perfil had filed a complaint to the effect that the State had failed to comply with the aforementioned ruling, and in March of 2012, the lower court fined the State for its failure to comply.<sup>127</sup> The Chamber revoked the fine and gave the State 15 days to present an outline for how it would distribute government advertising in a way that would include *Perfil* and another two magazines and “that faithfully follows the guidelines of proportionality and equity established by this Chamber and by the Supreme Court of the Nation [...] such that the judge can irrefutably determine whether an ‘equitable balance’ has been reached among them and those classified as having ‘analogous characteristics’”.<sup>128</sup> As the media have reported, since May 2013 the government has been required to turn in, every two weeks, “the detailed advertising plan it has issued—and the amounts involved—and, where appropriate, the totals that correspond to the exchange established in Decree 1145/08.”<sup>129</sup>

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

50. The IACHR notes that Article 13.3 of the American Convention on Human Rights states that “The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.” And principle 13 of the Declaration of Principles stipulates: “[t]he exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans, the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish

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<sup>125</sup> IACHR. 149 Period of Sessions. Hearing Situation of the Right to Freedom of Expression in Argentina. November 1, 2013. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=En&Session=132&page=2>

<sup>126</sup> Perfil. March 2, 2013. [El Gobierno aceptó cumplir el fallo por la pauta oficial en Perfil](#); El Siglo. March 3, 2013. [El kirchnerismo acepta cumplir el fallo para disponer de publicidad oficial en Perfil](#); Compacto Político. March 3, 2013. [El Gobierno aceptó cumplir el fallo por la pauta oficial en Perfil](#).

<sup>127</sup> Cámara Nacional en lo Contencioso Administrativo Federal, Sala IV. Causa No. 18.639/2006. Editorial Perfil S.A. y otro c/ EN –Jefatura Gabinete de Ministros – SMC s/ Amparo Ley 16.986. August 14, 2012. Available for consultation 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](#); La Nación. March 7, 2012. [Multa al Estado por no asignar publicidad a Perfil](#).

<sup>128</sup> Cámara Nacional en lo Contencioso Administrativo Federal, Sala IV. Causa No. 18.639/2006. Editorial Perfil S.A. y otro c/ EN–Jefatura Gabinete de Ministros – SMC s/ Amparo Ley 16.986. August 14, 2012. Available for consultation 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>; Página 12. August 15, 2012. [La publicidad oficial](#); La Nación. August 14, 2012. [Intiman al Estado a cumplir el fallo de la Corte sobre publicidad para Perfil](#).

<sup>129</sup> Perfil. April 28, 2013. [La Justicia quiere saber si se cumple el fallo Perfil](#); Foro de Periodismo Argentino (FOPEA). April 28, 2013. [El Gobierno deberá informar si cumple con la distribución de la pauta oficial](#).

or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law.”

## H. Newsprint

51. In the framework of the hearing on the Situation of the Right to Freedom of Expression in Argentina held on November 1, at the IACHR, the petitioners affirmed that the company Papel Prensa –the only paper factory in Argentina and the majority of whose shares are held by the daily newspapers *Clarín* and *La Nación* – is being “besieged” by State authorities. According to the petitioners, a complaint was filed over alleged crimes against humanity against the current owners of the company, and there are constant threats of intervention or expropriation of the company “voiced by government officials and national legislators.” The petitioners affirmed that “if the government were to take control of Papel Prensa, it would hold a monopoly on the supply of paper for newspapers in Argentina because it would control [both] national production [as well as its] importation.”<sup>130</sup>

52. Regarding this matter, the State indicated during the hearing that in 2011, law 26,736 was enacted, which declares that the “manufacture, sale and distribution of cellulose pulp and paper for newspapers is of public interest.” It affirmed that the law is framed in the “context of legislative work, undertaken to guarantee plurality and democratic access, both regarding information as well as its production,” in that it aims to ensure for “the national industry, regular and reliable manufacture, commercialization and distribution of cellulose pulp for newsprint and paper for newspapers and to guarantee equality of opportunities and access without discrimination to paper supply.”<sup>131</sup>

53. As the Office of the Special Rapporteur has indicated on other occasions, issues related to newsprint are of such importance for the inter-American system that Article 13 itself of the American Convention establishes that, “[t]he right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions. In this sense, it is important that existing anti-monopoly rules be applied to newsprint production in such a way as to foment its free production. This regimen must be defined by the legislative branch, with special attention given to the obligation to prevent the existence of abusive government or private sector controls. In particular, it is important to take into account that the pretext of regulating monopolies cannot end up creating a form of intervention that allows the State to affect this sector in any way other than to prevent the concentration of property and control of production and distribution of this input and to facilitate free and competitive paper production.” The Office of the Special Rapporteur recalls that the law previously mentioned, given its notable importance for the exercise of freedom of expression, must be enforced in keeping with the international standards on the subject.<sup>132</sup>

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<sup>130</sup> IACHR. 149 Period of Sessions. Hearing Situation of the Right to Freedom of Expression in Argentina. November 1, 2013. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=En&Session=132&page=2>

<sup>131</sup> IACHR. 149 Period of Sessions. Hearing Situation of the Right to Freedom of Expression in Argentina. November 1, 2013. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=En&Session=132&page=2>

<sup>132</sup> IACHR. [Annual Report 2012. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. Para. 33; IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 26.

## I. Other relevant situations

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

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

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

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

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<sup>133</sup> Foro de Periodismo Argentino (FOPEA). May 5, 2013. [La Agencia de noticias Rodolfo Walsh denuncia espionaje ilegal](#); Página 12. May 5, 2013. [Un agente acusado de espionaje ilegal](#); Infojus Noticias. May 8, 2013. [Policía se infiltró diez años en una agencia de noticias](#); United Press International (UPI). May 7, 2013. [Gobierno argentino reconoce espionaje policial a medio de comunicación](#).

<sup>134</sup> Foro de Periodismo Argentino (FOPEA). July 30, 2013. [Trabajadores de la TV Pública denuncian hostigamiento y persecución política](#); Perfil. July 30, 2013. [Miceli y los trabajadores de TV Pública, contra el "hostigamiento" de La Cámpora](#).

<sup>135</sup> Perfil. February 7, 2013. [Moreno ordenó a los "súper" no publicitar en diarios y TV](#); Todo Noticias. February 9, 2013. [Denuncian "presión" oficial a supermercados para prohibir publicidad en diarios](#); Foro de Periodismo Argentino (FOPEA). February 13, 2013. [Fueron prohibidos avisos publicitarios en medios gráficos y televisivos porteños](#); Fundación LED. February 7, 2013. [Restricciones a la publicidad privada](#); Inter American Press Association (IAPA). February 9, 2013. [Nuevas medidas del gobierno argentino para atacar a la prensa; ahora va por el ahogo económico](#); Ad Age. March 11, 2013. [Independent Media Hit Back During Ad Ban in Argentina](#).

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

<sup>137</sup> IACHR. 149 Period of Sessions. Hearing Situation of the Right to Freedom of Expression in Argentina. November 1, 2013. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=En&Session=132&page=2>

the same time, it implies an evident curtailment of the rights of freedom of thought, information and expression.”<sup>138</sup>

58. The IACHR notes that Article 13.3 of the American Convention on Human Rights states that “The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions”. And principle 13 of the Declaration of Principles stipulates: “[t]he exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans, the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law”.

### **3. Bolivia**

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

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

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

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

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

<sup>139</sup> Asociación Nacional de Periodistas (ANP). January 18, 2013. [Radialista es agredido en Beni](#); La palabra del Beni. January 11, 2013. [Atacan a propietario de radio El Tiluchi](#). P. 6; Centro de Educación y Comunicación para comunidades y pueblos indígenas/ANP. January 19, 2013. [Radialista es agredido en Huacaraje](#); Defensoría del Pueblo. [El ejercicio de los Derechos Humanos en el Estado Plurinacional de Bolivia](#). December 10, 2013. P. 46.

<sup>140</sup> Asociación Nacional de Periodistas (ANP). February 1, 2013. [Choferes lanzan ataque verbal contra periodistas](#); Eju.tv/El Diario. January 31, 2013. [Choferes insultan, ofenden e impiden trabajo de la prensa](#).

<sup>141</sup> La Razón. February 22, 2013. [Chóferes se enfrentan por dirigir Federación de La Paz](#); Correo del Sur. March 4, 2013. [Camarógrafo de Cadena A perdió el habla en La Paz](#); Opinión/Erbol. March 4, 2013. [Camarógrafo pierde el habla tras recibir una piedra en una marcha](#).

being in a state of inebriation at the offices of the company. In that context, the director had struck journalist Colque, who with other colleagues was covering the incident.<sup>142</sup>

62. On April 7, two television teams were assaulted during peasant demonstrations that had blocked the road connecting La Paz to Copacabana. The journalists were covering the police efforts to clear the protestors, when some of the apparent demonstrators, using rocks and explosives, assaulted the mobile unit of *Cadena A* as well as that of television station *PAT*, inside of which were a journalist, a cameraman and a child. The windows of both mobile units were damaged and the cameraman from *PAT* suffered a leg wound. The Ministry of Government condemned the attacks in a communiqué and announced that it would request an investigation to punish those responsible.<sup>143</sup>

63. On May 8, journalist Rolando Alarcón was assaulted while covering protests led by the Central Obrera Boliviana (COB) in the city of Oruro, department of Oruro. Some persons, presumed to be protestors, struck Alarcón even though he had identified himself as a journalist. His equipment was also damaged and his credentials stolen.<sup>144</sup>

64. On May 21, community radio station *La Voz de las Mayorías* 1080 AM, which belongs to the National System of Original People's Radio Stations [*Sistema Nacional de Radios de los Pueblos Originarios*] (RPO), was attacked by supposed opponents of the city government of Caranavi, department of La Paz. In the midst of a conflict between two opposing groups, demonstrators invaded the radio station, destroyed, set fire to and stole part of its equipment and threatened journalist Franz Loza, who was at the station at the time of the attack. Journalist Juan Carlos Mazarro, of *Radio Televisión* of Caranavi, was also attacked, and had his video camera taken away.<sup>145</sup> The Ministry of Communications issued a press release condemning the attack against the radio station.<sup>146</sup>

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<sup>142</sup> Correo del Sur. April 3, 2013. [Director de Vías Bolivia detenido por escándalo](#); La Estrella del Oriente. April 3, 2013. [Farra en Vías Bolivia termina con detención de su director](#). P. 15; El Nacional. April 2, 2013. [Detienen en estado de ebriedad al Director Nacional de Vías Bolivia](#).

<sup>143</sup> El Deber. April 8, 2013. [Los campesinos resisten el desbloqueo de Copacabana](#); Agencia de Noticias de Bolivia (ANB)/Erbol. April 8, 2013. [Gobierno confirma la agresión de campesinos a equipos de prensa](#); Radio Iyambae/El Deber. [Los campesinos resisten el desbloqueo de Copacabana](#); Asociación Nacional de la Prensa (ANP). April 8, 2013. [Equipos de Tv sufren ataque con dinamita y piedras](#); Defensoría del Pueblo. [El ejercicio de los Derechos Humanos en el Estado Plurinacional de Bolivia](#). December 10, 2013. P. 46.

<sup>144</sup> Asociación Nacional de la Prensa (ANP). May 13, 2013. [Mineros atacan a periodista](#); La Patria. May 9, 2013. [Mineros agredieron a periodistas que cubrían vigilia](#); El Día/ANF. May 14, 2013. [Mineros atacan a un periodista en Oruro](#); ANF. May 13, 2013. [Mineros atacan a periodista en Oruro](#).

<sup>145</sup> Asociación Nacional de la Prensa (ANP). May 22, 2013. [Silencian una radio y amenazan a periodistas](#); Bolivia TV. May 21, 2013. [Colonizadores atacan sede de la Fapcca y destruye la radio "La voz de las mayorías"](#); Jornadanet/EFE. May 22, 2013. [30 heridos en batalla campal por controlar la Alcaldía de Caranavi](#); Reporters Without Borders. May 24, 2013. [Community radio destroyed in clashes between rival peasant groups](#); Committee to Protect Journalists (CPJ). May 28, 2013. [CPJ condemns ransacking of radio station in Bolivia](#).

<sup>146</sup> Agencia de Noticias de Bolivia (ANB)/Agencia Boliviana de Información (ABI). May 23, 2013. [Ministerio de Comunicación condena atentado contra la libertad de expresión en Caranavi](#); Cambio. May 24, 2013. [Gobierno convoca al diálogo para solucionar el conflicto en Caranavi](#); El Deber. May 23, 2013. [Ministerio de Comunicación condena ataque a radio de Caranavi](#).



65. On June 1, unknown individuals burglarized and set fire to the home of journalist Humberto Apaza Orozco, correspondent for the newspaper *El Diario* and Executive Secretary of the Oruro Press Union, in the city of Oruro.<sup>147</sup>

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

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

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

69. Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR, adopted in 2000, establishes that: "[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and

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<sup>147</sup> Centro de Documentación e Información (Cedib)/El Diario. June 3, 2013. [Ejecutivo de la prensa sufre atentado criminal en Oruro \(El Diario, 02.06.13\)](#); CedLa/El Diario. June 4, 2013. [COD y Parlamentarios condenan atentado contra periodista en Oruro](#); El Deber. June 5, 2013. [Queman la casa de un periodista orureño; acusan a los loteadores](#); Asociación Nacional de la Prensa (ANP). June 5, 2013. [Desconocidos queman casa de periodista](#).

<sup>148</sup> The media outlet where the journalist works stated that due to concerns over her safety, her name would not be disclosed. Eju.tv/El Diario. June 27, 2013. [Periodista de EL DIARIO sufre intento de secuestro en pleno centro paceño](#).

<sup>149</sup> Eju.tv/El Diario. June 27, 2013. [Periodista de EL DIARIO sufre intento de secuestro en pleno centro paceño](#); La Razón/ANF. June 26, 2013. [Periodista de El Diario sufre intento de secuestro](#); Asociación Nacional de la Prensa (ANP). July 5, 2013. [Periodista sufre intento de secuestro](#).

<sup>150</sup> Los Tiempos. August 16, 2013. [Declaraciones del periodista Wálter Gonzales- Denuncia agresión del alcalde Charles Becerra \(16/VIII/13\)](#); Eju.tv/Red Uno. August 17, 2013. [Piden procesar al Alcalde Charles Becerra de Quillacollo por haber golpeado a un periodista](#); La Razón/ANF. August 16, 2013. [Asambleístas piden procesar a alcalde Becerra por golpear a un periodista durante la entrada de la Virgen de Urkupiña](#); Asociación Nacional de la Prensa (ANP). August 18, 2013. [Periodista es agredido por alcalde](#).

<sup>151</sup> El Tribuno. September 17, 2013. [Un periodista de Tartagal fue detenido en Bolivia por orden de dos punteras de Carlos Villalba](#); FM Alba. September 18, 2013. [Periodista detenido en Bolivia: "ya inicié todos los trámites para aclarar mi situación"](#).

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

## B. Subsequent liabilities

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

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

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

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

<sup>153</sup> Jornadanet/Agencia Boliviana de Información (ABI). January 31, 2013. [INE anuncia procesos penales contra quienes critican sin justificación datos del Censo](#); Asociación Nacional de la Prensa (ANP). February 1, 2013. [Gobierno amenaza con juicio por críticas a censo](#); Los Tiempos. January 31, 2013. [INE anuncia juicios contra quienes critiquen el Censo](#); Agencia Boliviana de Información (ABI). January 30, 2013. [INE anuncia procesos penales contra algunos medios que critican sin justificación datos del Censo](#).

<sup>154</sup> Asociación Nacional de la Prensa (ANP). August 30, 2013. [Diputado abre proceso contra cinco periodistas](#); FM Bolivia/El Diario. August 30, 2013. [Diputado Elio presenta querrela contra cinco periodistas de Oruro](#); Opinión/ANP. September 1, 2013. [Diputado presenta demanda penal contra 5 periodistas de Oruro](#).

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

### C. Stigmatizing declarations

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

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

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

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<sup>155</sup> UPI. August 6, 2013. [Evo Morales acusa a medios de chilenos de perjudicar demanda en La Haya](#); Univision San Diego/EFE. August 6, 2013. [Morales dice que en Bolivia hay medios chilenos que perjudican demanda de mar](#).

<sup>156</sup> La Razón. August 12, 2013. [Vuelve la polémica Gobierno-Página Siete](#); Presidencia de Bolivia. Comunicación/Agencia Boliviana de Información (ABI). August 11, 2013. [Quintana: Página 7 es portavoz de fuerza política chilena que devalúa demanda marítima boliviana](#).

<sup>157</sup> El Día. August 12, 2013. [Gobierno sigue acusando a Página 7 de ser medio pro chileno](#); El Deber. August 12, 2013. [Diario paceño responde al Gobierno tras acusaciones de Quintana](#).

<sup>158</sup> Agencia Boliviana de Información (ABI). August 15, 2013. [Viceministra denuncia existencia de prensa antinacional](#); Eju.tv/ El Diario. August 18, 2013. [Medios de comunicación en la mira del Gobierno](#).

<sup>159</sup> Presidencia de Bolivia. Comunicación/Prensa Palacio de Gobierno. August 22, 2013. [Gobierno muestra las “mentiras” de Página Siete y su papel “indecoroso” en el periodismo](#); Agencia Boliviana de Información (ABI). August 20, 2013. [Página Siete reconoce que se equivocó en noticia de excomunión de ministros](#).

“clarify its role, that it tell the Bolivian people if it is truly going to carry out independent and national work, or that it is going to continue to answer to Chilean interests, from the Chilean ultra-right, and Chilean ultraconservatives [...]” The official added that the “unseemly, malicious, bad faith and lying role of *Página Siete* can no longer be forgiven because it is already too much, too many lies, too much slander [*calumnia*], too much defamation flagrantly violating constituent mandates.”<sup>160</sup>

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

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

78. The Office of the Special Rapporteur reiterates the importance of creating a climate of respect and tolerance for all ideas and opinions. The Office of the Special Rapporteur recalls that diversity, pluralism, and respect for the dissemination of all ideas and opinions are essential conditions for the proper functioning of any democratic society. Accordingly, the authorities must contribute decisively to the building of a climate of tolerance and respect in which all people can express their thoughts and opinions without fear of being attacked, punished, or stigmatized for doing so. In addition, the State’s duty to create the conditions for all ideas and opinions to be freely disseminated includes the obligation to properly investigate and punish those who use violence to silence journalists or the media.<sup>164</sup> 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.<sup>165</sup>

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<sup>160</sup> Eju.tv/Agencia Boliviana de Información (ABI). August 22, 2013. [Ministro Quintana, otra vez, arremete contra Página Siete y le pide convertirse en un partido político](#); FM Bolivia/Página Siete. August 22, 2013. [Ministro Quintana califica nuevamente a Página Siete de ser medio pro-chileno](#); Opinión. August 23, 2013. [Quintana endurece posición con Página Siete y director renuncia](#).

<sup>161</sup> Asociación Nacional de la Prensa (ANP). August 27, 2013. [Renuncia director de periódico independiente](#); La razón. August 22, 2013. [Renuncia el director de Página Siete](#); Página Siete. August 23, 2013. [Peñaranda presentó su renuncia para evitar ataques del Gobierno](#). Pag.4.

<sup>162</sup> Terra/EFE. August 23, 2013. [Choque entre diario boliviano y Gobierno se salda con renuncia de su director](#); Séptimo Día. August 25, 2013. [Raúl Peñaranda “Mi renuncia ayuda a que no se ataque a otros periodistas”](#); El Heraldo. August 24, 2013. [Renuncia director de diario boliviano Página Siete](#).

<sup>163</sup> Asociación Nacional de la Prensa (ANP). August 30, 2013. [Presidente critica a periodistas](#); FM Bolivia/El Diario. August 29, 2013. [Dos periodistas fueron catalogados como “instrumentos del Imperio”](#).

<sup>164</sup> IACHR. [Annual Report 2010. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 206-207; IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 156 and 206.

<sup>165</sup> IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#).

79. The Office of the Special Rapporteur additionally recalls that public servants have the duty to ensure that their statements do not infringe upon the rights of those who contribute to the public discourse through the expression and dissemination of their thoughts, such as journalists, media outlets, and human rights organizations. They must bear in mind the context in which they express themselves, in order to ensure that their expressions are not, in the words of the Court, “forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute [to] public deliberation through the expression and [dissemination] of their thoughts.”<sup>166</sup>

#### **D. Access to public information**

80. The Constitution Commission of the Chamber of Deputies is analyzing a draft version of the Transparency and Access to Public Information Bill<sup>167</sup>, proposed by the Executive Branch. Journalists and press organizations have criticized certain aspects of the bill, particularly article 42<sup>168</sup>, which establishes exceptions for access to public information. In particular, there is concern over the ambiguity of the clauses that enshrine certain exceptions, such as that which refers to information that “endangers the security or defense of the State,” or information whose dissemination “implies imminent risk for the stability of the country, its economy, its resources or the public interest,” or information on “environmental impact studies”, and other information “determined by Law or Supreme Decree.” They have also questioned article 43<sup>169</sup>, which gives the top authorities of the four state organs, the Office of

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Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 32.

<sup>166</sup> 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.

<sup>167</sup> Ministerio de Transparencia Institucional y Lucha contra la Corrupción. [Proyecto de Ley de Transparencia y Acceso a la Información Pública](#).

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

<sup>169</sup> Ministerio de Transparencia Institucional y Lucha contra la Corrupción. [Proyecto de Ley de Transparencia y Acceso](#)

the Attorney General, the Armed Forces and the Police, the power to classify another type of information – in addition to what is included in article 42 – as reserved.<sup>170</sup> The Commission of the Chamber of Deputies invited press workers and journalistic organizations to participate in the discussion, and the authorities have publicly declared that the bill will be “enriched” by the contributions of the organizations.<sup>171</sup> Thus, on August, the above-mentioned commission held a public hearing in which various journalistic organizations took part.<sup>172</sup> On October 3, the anticorruption minister announced that the bill would be adjusted at the Third Summit of Transparency Units, a venue that brings together officials from various state agencies to address topics associated with access to information.<sup>173</sup>

81. Principle 4 of the IACHR’s Declaration of Principles of Freedom of Expression provides that “[a]ccess to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.” Bearing in mind the principle of maximum disclosure, the law must guarantee the effective and broadest possible access to public information, and any exceptions must not become the general rule in practice. Also, the exceptions regime should be interpreted restrictively and all doubts should be resolved in favor of transparency and access.

## E. Internet and freedom of expression

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[a la Información Pública](#). “Article 43.- (Procedure for Classification of information as reserved).- In accordance with paragraph I of numeral 2) of article 237 of the Political Constitution of the State, the four Organs of the Plurinational State, the Office of the Attorney General, the Armed Forces and the Bolivian Police, shall be able to classify information as reserved, in accordance with the following procedure: I. The person responsible for classification is the Maximum Authority of the Agency. II. The classification shall be carried out by means of the legal instrument of greatest hierarchy issued by each of the State Organs indicated in this article. III. The legal instrument for classification shall at a minimum contain the following: date, mention of the document or information to be classified, the reason and legal basis. IV. The time limit for restriction shall be set in the same legal instrument, and cannot be greater than five years. Upon expiration of this time period, the document or information shall automatically be declassified and shall be accessible to the public. The classification shall be made prior to the request for information. V. If the authority considers that five years will not be sufficient to safeguard the information classified as reserved, they shall seek a Supreme Decree or a Law that safeguards it over time. VI. The head of each office or agency shall adopt the necessary means for proper custody and preservation of documents classified as reserved. VII. If prior to expiration of the five-year time limit, the reason that gave rise to classification of the information as reserved disappears, the reserve may be lifted through the issuance of another instrument similar to that which was used to classify it.

<sup>170</sup> Terra/AFP. July 30, 2013. [Bolivia: en debate ley de acceso informativo, en medio de críticas](#); FM Bolivia/El Diario. August 14, 2013. [Siete entidades observaron artículo 42 en Ley de Acceso a la Información Pública](#); Observatorio Nacional de Medios. August 7, 2013. [A propósito del Proyecto de Ley de Transparencia y Acceso a la Información Pública](#); Asociación Nacional de la Prensa (ANP). August 8, 2013. [ANP aboga por transparencia en Ley de Acceso a Información](#).

<sup>171</sup> Comunidad de Derechos Humanos/El Diario. July 31, 2013. [Gobierno accede a debatir proyecto de ley y promete a periodistas “enriquecerlo”](#); La Prensa/AFP. July 30, 2013. [Bolivia: En debate Ley de Acceso a la Información](#).

<sup>172</sup> Asamblea Legislativa Plurinacional. Cámara de Diputados. August 15, 2013. [Diputados reciben propuestas para Ley de Transparencia y Acceso a la Información](#); Radio FM Bolivia. [Audiencia pública para analizar el proyecto de Ley de Transparencia y Acceso a la Información Pública](#); FM Bolivia/El Diario. August 14, 2013. [Siete entidades observaron artículo 42 en Ley de Acceso a la Información Pública](#).

<sup>173</sup> Página Siete. October 4, 2013. [Suxo prevé ajustar ley de acceso a la información oficial](#); La Patria. October 4, 2013. [Ley de Acceso a la Información definirá lo que es “reservada”](#); Ministerio de Transparencia Institucional y Lucha contra la Corrupción. October 4, 2013. [III Cumbre Plurinacional de Unidades de Transparencia, aborda la temática de acceso a la información](#).

82. On August 13, the website of *Página Siete* was the target of a cyber attack that led to its crash of its website.<sup>174</sup>

#### F. Other relevant situations

83. The Office of the Special Rapporteur was informed that on February 6, decree 1486 was promulgated, which regulates law N° 263, the Integral Act against Human Smuggling and Trafficking [*Ley Integral Contra la Trata y Tráfico de Personas*].<sup>175</sup> That act, approved on July 31, 2012, establishes in its article 23 that “[t]he media must contribute in the fight against Human Smuggling and Trafficking, and related crimes,” by means of, among other mechanisms, “[c]ampaigns for prevention against Human Smuggling and Trafficking and related crimes.”<sup>176</sup> At the same time, the decree that regulates the law in its article 9 establishes the obligation of all the media, regardless of their format and scope, to disseminate messages with “educational content with an emphasis on means of prevention against human trafficking and smuggling and related crimes.”<sup>177</sup> In this regard, the decree provides that the written media outlets that are published daily shall disseminate information of an educational content against human smuggling and trafficking “using half of the back page of section A, once a week”. The radio stations shall disseminate “publicity and messages with educational content with an emphasis on means of prevention, against human smuggling and trafficking and related crimes, twenty (20) minutes per month in the 7:30 to 9:30 time space, and twenty (20) minutes per month in the 20:00 to 22:00 time space”; audiovisual media shall disseminate this type of messages “ten (10) minutes per month in the 7:30 to 9:30 time space, and ten (10) minutes per month in the 20:00 to 22:00 time space;” and audiovisual, written and radio communication media that have a digital version on the Internet (webpage) shall disseminate “permanently and exclusively, using a sector or section on their digital version on the Internet.”

84. In its Article 11, the decree indicates that the content of the preventive material to be disseminated by the media “shall be related to the principles, values and/or contents of Law N° 263”. At the same time, it establishes that the Ministry of Communications shall be able to forward to the media “publicity campaigns and messages with educational content with an emphasis on means of prevention” to be disseminated by them. Article 12 establishes that the Ministry of Communications shall be able to require the media, for whatever purposes it deems convenient, to produce audio or video recordings or a written copy of the publicity messages issued that it considers relevant. At the same time, Article 14 of the decree establishes that media that fail to comply with the obligations established in the law and in the decree shall incur in administrative infractions, which shall be punished with fines of between 5,000 UFVs (Housing Development Units, some US\$ 1,360) and 15,000 UFVs, (some US\$ 4,000), which are increased if the media continue to commit infractions.

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<sup>174</sup> Eju.tv. August 15, 2013. [Página Siete en la mira del gobierno; ahora sufre ataque informático](#); Committee to Protect Journalists (CPJ). September 11, 2013. [Bolivian government gangs up on Página Siete](#).

<sup>175</sup> Gaceta Oficial del Estado Plurinacional de Bolivia. [Decreto Supremo N° 1486, que reglamenta la Ley N° 263, Integral Contra la Trata y Tráfico de Personas](#).

<sup>176</sup> Gaceta Oficial del Estado Plurinacional de Bolivia. [Ley N° 263, Integral contra la Trata y Tráfico de personas](#). July 31, 2012. Art. 23.

<sup>177</sup> Gaceta Oficial del Estado Plurinacional de Bolivia. [Decreto Supremo N° 1486, que reglamenta la Ley N° 263, Integral Contra la Trata y Tráfico de Personas](#). February 6, 2013. Art. 9. *See also*, Asociación Nacional de Periodistas (ANP). February 25, 2013. [Gobierno obliga a publicar avisos a medios independientes](#); La Razón. February 14, 2013. [Medios se exponen a multas de hasta Bs 45 mil si no difunden mensajes contra trata y tráfico de personas](#); El Potosí. February 26, 2013. [Ley Integral contra Trata y Tráfico obliga a los medios a emitir avisos](#).

85. This is the second obligation recently applied to all media outlets.<sup>178</sup> In January of 2011, the Law Against Racism and All Forms of Discrimination was regulated with decree 0762, which establishes in article 13 the obligation of all the media to adapt their rules to the “recognition, respect for differences and the promotion of principles, values and rules to eradicate racist concepts and all forms of discrimination.”<sup>179</sup>

86. The Office of the Special Rapporteur considers it a matter of the greatest importance to adopt measures to fight human smuggling and trafficking and all forms of discrimination. In this sense, as this office stated in a letter sent in 2010 to the State of Bolivia, the role of the media, as conduits for information, ideas and opinions, is fundamental in developing narratives that value diversity and reject arbitrary discriminations and racism.<sup>180</sup> At the same time, in previous reports, the Office of the Special Rapporteur has expressed its concern over the spread of racist speech through some media outlets and has condemned messages with racist content that could incite discrimination or violence. Likewise, it valued several dissemination and training measures adopted by the Bolivian authorities aimed at refuting prejudicial speech that stigmatized indigenous communities and their justice systems, recognized by the Constitution of the Plurinational State of Bolivia.<sup>181</sup>

87. Any restriction on freedom of expression in the name of the important objectives mentioned above must meet a series of requirements in the terms of article 13.2 of the American Convention. Effectively, as has been interpreted in inter-American system case law, Article 13.2 of the Convention requires that the following three conditions be met in order for a limitation to freedom of expression to be admissible: (1) the limitation must have been defined in a precise and clear manner by a law, in the formal and material sense; (2) the limitation must serve compelling objectives authorized by the Convention; and (3) the limitation must be necessary in a democratic society to serve the compelling objectives pursued, strictly proportionate to the objective pursued, and appropriate to serve said compelling objective.<sup>182</sup> To determine the strict proportionality of the limitation, it must be determined whether the sacrifice to the right to freedom of expression leads to the satisfaction of the objectives that it seeks.<sup>183</sup>

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<sup>178</sup> IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 46-47.

<sup>179</sup> Article 13(2) provides that the media are required to “promote acts of prevention and education meant to safeguard respect for the dignity and equality of all persons, through the production of their own communications products, in official and alternative languages according to the region and audience” and requires that they be disseminated, at preferential times: 1) at least 20 minutes per month on television channels; 2) at least 40 minutes per month on radio stations; 3) at least one page per month in newspapers and at least half a page per month in magazines; and 4) at least one ‘space’ per month in digital newspapers on the Internet.” Official Gazette of the Plurinational State of Bolivia. [Supreme Decree 0762 regulating the Law against Racism and All Forms of Discrimination](#). January 5, 2011.

<sup>180</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. November 11, 2010. Letter to the Plurinational State of Bolivia: Request for Information on the legal system of Bolivia and Bill Against Racism and All Forms of Discrimination.

<sup>181</sup> IACHR. [Annual Report 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). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 60.

<sup>182</sup> IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 66 *et seq.*

<sup>183</sup> I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008 Series C No.



88. At the same time, in order for a legal regulation that could affect the media to be adequate, it must address the nature of those media. In that sense, some of the requirements that the law could impose, for example, on media who use electromagnetic frequencies are assigned by the State, could nonetheless turn out to be disproportionate if they are applied to the written press, which does not use the radio electric spectrum. Additionally, the means must take into consideration that the written media have very diverse characteristics, for example in terms of their circulation, print runs and commercial, social or community model.

#### 4. Brazil

##### A. Progress

89. The Office of the Special Rapporteur takes note of the progress made in the investigation into the murder of journalist Valério Luiz de Oliveira. On February 27, the Office of the Public Prosecutor of Goiás filed a criminal complaint against five suspects for having participated in the journalist's murder; they included two police officers and a former sports manager.<sup>184</sup> Several hearings were subsequently held in the case at the 2<sup>nd</sup> Criminal Court [2<sup>a</sup> Vara dos Crimes Dolosos] of Goiânia.<sup>185</sup> As of the closing of this report, the case was at the evidentiary stage [fase de instrucción].<sup>186</sup> The journalist worked at *Radio Jornal 820 AM* and the *PUC-TV* channel in the city of Goiânia, and was murdered on July 5, 2012. Because of his commentary, he had reportedly received death threats and was banned from entering the facilities of a soccer team from the State of Goiás.<sup>187</sup>

90. On August 6, João Francisco dos Santos, accused of the October 18, 2010 murder of journalist Francisco Gomes de Medeiros in the city of Caicó, in Rio Grande do Norte, was sentenced to 27 years in prison. He was also reportedly ordered to pay R\$ 300,000 (some US\$ 125,000) to the journalist's family. The criminal case is still pending against five other individuals, including a lieutenant colonel and a military police officer.<sup>188</sup> Gomes de Medeiros was the news director of *Radio Caicó*, he

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177. Para. 83.

<sup>184</sup> Ministério Público do Estado de Goiás. 24<sup>a</sup> Promotoria de Justiça da Comarca de Goiânia. Processo No. 273311-41.2012.8.09.0051. [Denúncia](#). February 27, 2013; Ministério Público do Estado de Goiás. February 27, 2013. [MP denuncia cinco por morte do radialista Valério Luiz](#); Knight Center for Journalism in the Americas. March 4, 2013. [Attorney General of Goiás accuses five of murder of sports commentator](#); Folha de S. Paulo. February 27, 2013. [Ex-diretor de clube de futebol e PMs são denunciados por morte de jornalista](#).

<sup>185</sup> Tribunal de Justiça do Estado de Goiás. 2<sup>a</sup> Vara dos Crimes Dolosos. Processo Nº 273311-41.2012.8.09.0051. Available for consultation at: <http://www.tjgo.ius.br/index.php/consulta-processual>; Tribunal de Justiça do Estado de Goiás. May 28, 2013. [Caso Valério Luiz: 11 testemunhas são ouvidas no segundo dia de audiência](#); O Hoje. May 29, 2013. [Audiência do caso Valério Luiz é adiada](#); Globoesporte.com. August 2, 2013. [Audiência da morte de Valério Luiz é suspensa em Goiânia](#); Jornal Opção. September 2, 2013. [2ª Vara Criminal realiza nova audiência do Caso Valério Luiz](#); Jornal Opção. October 1, 2013. [Audiência com Marquinhos encerra instruções do Caso Valério Luiz](#).

<sup>186</sup> Tribunal de Justiça do Estado de Goiás. 2<sup>a</sup> Vara dos Crimes Dolosos. Processo Nº 273311-41.2012.8.09.0051. Available for consultation at: <http://www.tjgo.ius.br/index.php/consulta-processual>

<sup>187</sup> IACHR. [Annual Report 2012. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. Para. 74; IACHR. Office of the Special Rapporteur for Freedom of Expression. July 11, 2012. [Press Release R 86/12. Office of the Special Rapporteur Condemns Killing of Sports Commentator in Brazil](#); Reporters Without Borders. July 9, 2012. [Sports Reporter Gunned Down in Goiânia, Police Investigating Link to Work](#).

<sup>188</sup> Committee to Protect Journalists (CPJ). August 9, 2013. [Gunman sentenced in murder of Brazilian journalist](#); Abrajji.

worked for the newspaper *Tribuna do Norte*, and he wrote a personal blog in which he published exposés and his own investigations. Prior to his death, Gomes exposed an alleged vote-buying scheme involving the exchange of drugs for votes, perpetrated by politicians in the community of Caicó during the first round of the general elections in Brazil. Gomes received death threats as a result of that publication.<sup>189</sup>

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

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

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August 14, 2013. [Acusado de assassinar jornalista no RN é condenado a 27 anos de prisão](#); G1. August 6, 2013. [Assassino do radialista F. Gomes é condenado a 27 anos de prisão no RN](#); Gazeta do Oeste. August 6, 2013. [Assassino de F. Gomes é condenado a 27 anos de prisão](#).

<sup>189</sup> IACHR. [Annual Report 2010. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 69; IACHR. Office of the Special Rapporteur for Freedom of Expression. November 3, 2010. [Press Release R 108/10. Office of the Special Rapporteur Condemns Murder of Two Journalists in Brazil](#); *Tribuna do Norte*. October 21, 2010. [Promotor oferece delação premiada](#).

<sup>190</sup> G1. October 24, 2013. [Arcanjo é condenado a 19 anos pela morte de empresário em Cuiabá](#); Associação Brasileira de Imprensa (ABI). October 25, 2013. [Mandante do assassinato de jornalista é condenado a 19 anos de prisão](#); Mato Grosso Notícias. October 24, 2013. [Arcanjo é condenado a 19 anos de prisão pelo assassinato de Sávio Brandão](#); Notícias Terra. October 24, 2013. [MT: bicheiro é condenado a 19 anos de prisão por mandar matar dono de jornal](#); IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during the 1995-2005 Period for Reasons that may be Related to their Work in Journalism](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. P. 74.

<sup>191</sup> Communication from the State of Brazil to the IACHR Executive Secretariat and to the Office the Special Rapporteur for Freedom of Expression. No. 129. May 29, 2013.

<sup>192</sup> Communication from the State of Brazil to the Inter-American Commission on Human Rights. No. 301. November 11, 2013. Annex XIV. Grupo de Trabalho "Direitos Humanos dos Profissionais de Comunicação no Brasil" criado pela Resolução nº 07/2012 – Relatório Parcial.

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

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

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

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<sup>193</sup> O Globo. December 24, 2012. [Governo planeja proteção a jornalistas](#); G1. April 18, 2013. [Secretaria de Direitos Humanos avalia riscos para jornalistas de MG](#); BBC Brasil. December 20, 2012. [Governo estuda criar programa de proteção a jornalistas](#); Jornal Opção. December 20, 2012. [Jornalistas brasileiros podem ter programa exclusivo de proteção](#).

<sup>194</sup> Secretaria de Direitos Humanos da Presidência da República. October 16, 2013. [País precisa garantir atuação dos profissionais de comunicação, diz ministra](#); ONU BR. October 16, 2013. [Brasil mapeia violência contra jornalistas e deve adotar plano de proteção da ONU, afirma ministra](#); Nova Brasil FM. October 17, 2013. [Grupo deve sugerir os indicadores de segurança de jornalistas da Unesco](#); Jus Brasil. October 16, 2013. [País precisa garantir atuação dos profissionais de comunicação, diz ministra Maria do Rosário](#).

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

<sup>196</sup> IACHR. 149 Period of Sessions. Hearing on the Situation of Human Rights Defenders in Brazil. October 29, 2013. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=en&session=132>

<sup>197</sup> Communication from the State of Brazil to the IACHR Executive Secretariat and to the Office the Special Rapporteur for Freedom of Expression. No. 129. May 29, 2013; Câmara dos Deputados. April 13, 2011. [Projecto de ley 1078/11](#).

<sup>198</sup> Estadão. April 2, 2013. [Conselho de Comunicação Social pede federalização de crime contra jornalista](#); Associação Brasileira de Emissoras de Rádio e Televisão (Abert). April 1, 2013. [Conselho de Comunicação pede que radialistas sejam](#)

explicitly include crimes against all persons who practice journalism, including radio broadcasters. The Council's motion also requests that the bill be treated with priority and celerity in the legislative process.<sup>199</sup>

96. On August 6, the Second Chamber of the Federal Supreme Court [*Supremo Tribunal Federal*] (STF) unanimously ruled that the operation of a community radio station without a license did not constitute the offense of “clandestine engagement in telecommunications activity”<sup>200</sup> and that the case must be decided at the administrative level. The case involved a writ of *habeas corpus* brought by the operator of a community radio station in Santo Antônio do Matupi, in the municipality of Manicoré, state of Amazonas. In its decision, the Supreme Court found that the unlicensed use of the radio spectrum by the community radio station would not have harmed or threatened the security of the media, and therefore should not be sanctioned under criminal law. The Court held, *inter alia*, that the community nature of the radio station demonstrated the reduced degree of culpability [*reprochabilidad*] in the conduct, as well as the absence of danger to society in the radio operator's actions. The Court thus concluded that criminal law was not the appropriate means to handle the case, and reversed the decision of the lower court that initiated the criminal lawsuit against the operator.<sup>201</sup> The Second Chamber of the Federal Supreme Court handed down a similar decision in a case decided on December 18, 2012.<sup>202</sup>

97. On January 22, the judge of the 25<sup>th</sup> Civil Court of the São Paulo District [*25ª Vara Cível da Comarca de São Paulo*] ruled in favor of Google in an action filed by the União Nacional de Entidades Islâmicas do Brasil (UNI), seeking non-pecuniary damages and the removal from YouTube of all of the videos of the film “The Innocence of Muslims”.<sup>203</sup> Judge Paulo César Batista dos Santos held that “the content of the video, although of quite dubious taste, and in spite of having been made as a criticism of the Islamic religion, is covered by the right to the free expression of artistic thought and the free flow of ideas.”<sup>204</sup> On September 19, the Court of Justice [*Tribunal de Justiça*] upheld the lower court's decision, and added that intermediaries cannot be required to exercise “prior control over the material added by users.”<sup>205</sup>

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[contemplados em PL que federaliza crimes contra jornalistas.](#)

<sup>199</sup> Senado Federal. April 1, 2013. [Conselho de Comunicação formaliza apoio à federalização dos crimes contra jornalistas.](#)

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

<sup>201</sup> Supremo Tribunal Federal. Segunda Turma. [Recurso Ordinário em Habeas Corpus No. 118.014 – AM](#). Judgment of August 6, 2013.

<sup>202</sup> Supremo Tribunal Federal. Segunda Turma. [Habeas Corpus No. 115.729 – BA](#). Judgment of December 18, 2012.

<sup>203</sup> Consultor Jurídico. January 24, 2013. [YouTube pode manter no ar vídeo criticado por islâmicos](#); Olhar Digital. January 31, 2013. [YouTube Brasil pode manter 'Inocência dos Muçulmanos' no ar.](#)

<sup>204</sup> Tribunal de Justiça do Estado de São Paulo. 25ª Vara Cível da Comarca de São Paulo. [Processo Nº 0192984-85.2012.8.26.0100](#). January 22, 2013.

<sup>205</sup> Tribunal de Justiça do Estado de São Paulo. 4ª Câmara de Direito Privado. September 19, 2013. [Processo Nº 0192984-85.2012.8.26.0100](#).

98. On April 2, the Constitution and Justice Committee (CCJ) of the House of Representatives passed a bill that allows for the publication of unauthorized biographies.<sup>206</sup> The bill, which must be approved by the Plenary Session of the House of Representatives and then by the Senate, establishes that the “mere absence of authorization does not prevent the disclosure of images, writings, and information for the biography of persons whose personal, artistic, or professional career has a public dimension or is relevant to events that are in the public interest.”<sup>207</sup> As of the closing of this report, the final wording had not yet been approved by the House of Representatives.<sup>208</sup>

## B. The Civil Rights Framework for the Internet

99. During 2013 the Office of the Special Rapporteur followed with interest the discussions in Brazil on Legislative Bill No. 2126/2011, also known as “the Civil Rights Framework for the Internet,” under debate in the National Congress.<sup>209</sup> The bill is the product of an initiative led by the Brazilian Ministry of Justice and the Center for Technology and Society at the Getulio Vargas Foundation that entailed broad public consultation with Brazilian society.<sup>210</sup> The original bill introduced establishes freedom of expression as one of the principles of Internet regulation and contains provisions related, among other things, to the safeguards for intermediaries, net neutrality, and the promotion of Internet access.<sup>211</sup> The Office of the Special Rapporteur considers this initiative significant, since the adoption of a regulatory framework that is clear and respectful of freedom of expression allows for this right to be exercised under conditions of greater transparency, legal certainty, and guarantees of protection. As of the closing of this report, the bill was still being debated in the House of Representatives.<sup>212</sup>

## C. Murders

100. On February 22, journalist Mafaldo Bezerra Goes, the host of a radio program on *FM Rio Jaguaribe*, was murdered in the city of Jaguaribe, in the state of Ceará. According to the information received, on the morning of Friday the 22<sup>nd</sup>, as he left his house on his way to the radio station, Bezerra was attacked by two unknown individuals who shot him at least five times. According to reports, the journalist had received several telephone threats in connection with his reporting on crimes in the region.<sup>213</sup>

<sup>206</sup> Câmara dos Deputados. April 2, 2013. [Câmara aprova publicação de biografias não autorizadas](#); O Globo. April 2, 2013. [Câmara aprova publicação de biografias não autorizadas](#).

<sup>207</sup> The original text indicates: “A mera ausência de autorização não impede a divulgação de imagens, escritos e informações com finalidade biográfica de pessoa cuja trajetória pessoal, artística ou profissional tenha dimensão pública ou esteja inserida em acontecimentos de interesse da coletividade”. Câmara dos Deputados. February 15, 2011. [Bill 393/2011](#).

<sup>208</sup> Câmara dos Deputados. October 23, 2013. [Votação do projeto que libera biografias não autorizadas deve ficar para novembro](#); Câmara dos Deputados. [Bill 393/2011](#).

<sup>209</sup> Câmara dos Deputados. Bill No. 2126/2011. Available for consultation at: <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=517255>

<sup>210</sup> Fundação Getulio Vargas. September 27, 2011. [Civil Rights Framework for Internet in Brazil](#); IFEX/Article 19. September 20, 2013. [Internet bill in Brazil would guarantee network neutrality](#); Knight Center for Journalism in the Americas. October 7, 2013. [New Internet bill in Brazil could present both privacy protections and risks for users](#).

<sup>211</sup> Câmara dos Deputados. Bill No. 2126/2011. Available for consultation at: <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=517255>

<sup>212</sup> Câmara dos Deputados. Bill No. 2126/2011. Available for consultation at: <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=517255>

<sup>213</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. February 28, 2013. [Press Release R 12/13](#).

101. On May 29, the State of Brazil sent a letter to the Inter-American Commission on Human Rights and to the Office of the Special Rapporteur to provide information on Bezerra's murder. The State reported that the Office of the National Human Rights Ombudsman [*Ouvidoria Nacional de Direitos Humanos*] filed a complaint regarding the case with the Special Task Force Group against Organized Crime [*Grupo de Atuação Especial de Combate ao Crime Organizado*] (GAECO-CE) and the Operational Support Center for the Offices of the Prosecutors for the Citizenry [*Centro de Apoio Operacional da Promotorias de Defesa dos Direitos da Cidadania*] (CAOP) of the State of Ceará. In addition, as previously mentioned, the State reported on the creation of the "Working Group on the Human Rights of Media Professionals in Brazil" and on the draft bill under debate in the National Congress that grants the Federal Police the authority to investigate crimes committed "against journalistic activity."<sup>214</sup>

102. On March 8 journalist Rodrigo Neto de Faria, host of the radio program 'Plantão Policial' on *Rádio Vanguarda*, and police reporter for the newspaper *Vale do Aço*, was murdered in the city of Ipatinga, Minas Gerais. According to the information received, the journalist was attacked by two unknown persons who shot him at least twice. Neto was taken to a hospital, where he died shortly thereafter. According to reports, the journalist had received several threats in connection with his reports on police corruption and crimes committed in the region.<sup>215</sup> In August, the Office of the Public Prosecutor filed a criminal complaint in the Ipatinga Court against two men suspected of taking part in the murder, one of whom was a police officer.<sup>216</sup> The initial hearing in the case was scheduled for December 9, 2013.<sup>217</sup>

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

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[Office of the Special Rapporteur Condemns Murder of Journalist in Brazil](#); Knight Center for Journalism in the Americas. February 26, 2013. [Radio host known for speaking out against crime shot dead in Brazil](#); Estadão. February 22, 2013. [Radialista é morto no interior do CE](#); Committee to Protect Journalists (CPJ). February 25, 2013. [Local radio journalist shot dead in Brazil](#); G1. February 22, 2013. [Radialista é assassinado a tiros em Jaguaribe, no Ceará](#); Reporters Without Borders. February 26, 2013. [Radio Host Gunned Down in Northeast, Drug Trafficker Suspected](#).

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

<sup>215</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. March 12, 2013. [Press Release R 18/13. Office of the Special Rapporteur Condemns Murder of Journalist in Brazil](#); International Press Institute (IPI). March 11, 2013. [Brazilian journalist gunned down in front of his home](#); Knight Center for Journalism in the Americas. March 11, 2013. [Brazilian crime reporter shot dead, becoming the third killed in 2013](#); Committee to Protect Journalists (CPJ). March 8, 2013. [Journalist shot dead in Brazil, second in two weeks](#).

<sup>216</sup> Abraji. August 23, 2013. [Suspeitos de envolvimento na morte de jornalista respondem na justiça](#); Jornal Vale do Aço. August 24, 2013. [MP denuncia acusados de matar Rodrigo Neto](#).

<sup>217</sup> Associação Brasileira de Emissoras de Rádio e Televisão (Abert). October 15, 2013. [Tribunal de Justiça de MG marca data da primeira audiência do caso Rodrigo Neto](#); G1. October 14, 2013. [Marcada primeira audiência sobre a morte do jornalista Rodrigo Neto](#).

concluded that Carvalho was murdered for having knowledge about events related to Neto de Faria's murder.<sup>218</sup>

104. On June 11, José Roberto Ornelas de Lemos, the administrative director of the newspaper *Hora H* and son of the newspaper's owner José Lemos, was murdered in the city of Nova Iguaçu, in the state of Rio de Janeiro. According to the information received, on the night of Tuesday, June 11, Ornelas de Lemos was at a bakery when four unknown subjects shot him at least 40 times from a vehicle. According to press reports, the victim had received prior threats that could be related to publications in the newspaper *Hora H*, which circulates in the Baixada Fluminense region and specializes in covering police topics. Ornelas de Lemos was also shot at a prior attack in 2005. Shortly after his murder, the authorities in charge of investigating the case reportedly stated to the press that police were investigating the theory that it could have been related to the activities of the newspaper managed by the victim.<sup>219</sup>

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

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

106. The Office of the Special Rapporteur received information about journalists being attacked and arrested while covering the protests taking place in several cities around the country since June.<sup>220</sup>

107. According to the information received by the Office of the Special Rapporteur, law enforcement officers allegedly assaulted several journalists during such protests: reporters Félix Lima, Rodrigo Machado, Leandro Machado, Ana Krepp, and photographer Marlene Bergamo, all of the newspaper *Folha de São Paulo*;<sup>221</sup> reporter Fernando Mellis of the *R7* website;<sup>222</sup> photographer Filipe

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<sup>218</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. April 17, 2013. [Press Release R 26/13. Office of the Special Rapporteur Condemns Murder of Journalist in Brazil](#); Committee to Protect Journalists (CPJ). [Walqney Assis Carvalho](#); *Jornal Vale do Aço*. September 10, 2013. [MP denuncia “Pitote” pela execução de fotógrafo](#); G1. July 23, 2013. [Polícia apresenta provas que apontam executores de jornalistas](#); *Diário Popular*. August 14, 2013. [Inquiridos são concluídos e suspeitos têm prisão preventiva decretada pela Justiça](#); *Jornal Vale do Aço*. June 24, 2013. [“Pitote” também matou Carvalho, conclui PC](#).

<sup>219</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. June 17, 2013. [Press Release R 43/13. Office of the Special Rapporteur Condemns Murder of Media Executive in Brazil](#); G1/Agencia EFE. June 12, 2012. [Diretor do jornal 'Hora H' é assassinado a tiros em Nova Iguaçu](#); *Folha de S. Paulo*. June 12, 2013. [Diretor de jornal é morto com 44 tiros no Rio](#); Committee to Protect Journalists (CPJ). June 13, 2013. [Media executive gunned down in Brazil](#); *O Globo*. June 12, 2013. [Diretor de jornal assassinado na Baixada já havia sofrido atentado em 2005](#).

<sup>220</sup> IACHR. June 20, 2013. [Press Release 44/13. IACHR Expresses Concern over Arrests and Attacks on Demonstrators and Journalists During Protests in Brazil](#).

<sup>221</sup> The journalists were injured by rubber bullets or pepper spray. *Folha de S. Paulo*. June 13, 2013. [Em protesto, sete repórteres da Folha são atingidos; 2 levam tiro no rosto](#); *Abraji*. October 28, 2013. [Chega a 102 o número de casos de agressões a jornalistas em protestos](#).

<sup>222</sup> The journalist was attacked with a police baton despite showing his press credentials. *R7 Notícias*. June 11, 2013. [Repórter do R7 é agredido por policial durante manifestação em SP](#); Reporters Without Borders. June 21, 2013. [“Brazilian Spring” Criticism of Media Ok, but Not Violence against Journalists](#); *Sindicato dos Jornalistas Profissionais no Estado de São*

Araújo, of the newspaper *O Estado de São Paulo*;<sup>223</sup> journalist Gisele Brito, of *Rede Brasil Atual*;<sup>224</sup> journalist Vagner Magalhães, of the *Terra* website;<sup>225</sup> journalists Henrique Beirangê<sup>226</sup> and André Américo,<sup>227</sup> both of the newspaper *Metro*; Bruno Ribeiro and Renato Vieira, both of the newspaper *O Estado de São Paulo*;<sup>228</sup> journalist Igor Resende, of *ESPN.com.br*;<sup>229</sup> journalist Vladimir Platonow, of *Agência Brasil*;<sup>230</sup> cameraman Murilo Azevedo, of the *Empresa Brasil de Comunicação* group;<sup>231</sup> photographer Almiro Lopes, of *Correio*;<sup>232</sup> journalist Luiz Paulo Montes, of *UOL*;<sup>233</sup> photographer Yasuyoshi Chiba, of *Agence France-Presse (AFP)*;<sup>234</sup> cameraman Paulo Rubert, of *Rede Record*;<sup>235</sup>

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Paulo. July 10, 2013. [SJSP realiza ato de desagravo aos jornalistas agredidos nas manifestações.](#)

<sup>223</sup> The journalist was struck by an official vehicle while photographing the protests. IACHR. June 20, 2013. [Press Release 44/13. IACHR Expresses Concern over Arrests and Attacks on Demonstrators and Journalists During Protests in Brazil](#); Abraji. June 14, 2013. [Polícia Militar fere pelo menos 15 jornalistas em manifestação; fotógrafo corre risco de ficar cego](#); Estadão. June 14, 2013. [Fotógrafo do 'Estado' foi atropelado pela polícia.](#)

<sup>224</sup> The journalist was struck with a police baton on the back of her neck, on her face and on other parts of her body. Rede Brasil Atual. June 14, 2013. [Podia ser você!;](#) Abraji. June 14, 2013. [Polícia Militar fere pelo menos 15 jornalistas em manifestação; fotógrafo corre risco de ficar cego](#); Reporters Without Borders. June 21, 2013. ["Brazilian Spring" Criticism of Media Ok, but Not Violence against Journalists.](#)

<sup>225</sup> The journalist was struck with a police baton. Terra. June 13, 2013. [Repórter do Terra é agredido pela PM em protesto em SP](#); Abraji. June 14, 2013. [Polícia Militar fere pelo menos 15 jornalistas em manifestação; fotógrafo corre risco de ficar cego](#); Reporters Without Borders. June 21, 2013. ["Brazilian Spring" Criticism of Media Ok, but Not Violence against Journalists.](#)

<sup>226</sup> The journalist had his face injured by pepper spray. Abraji. June 14, 2013. [Polícia Militar fere pelo menos 15 jornalistas em manifestação; fotógrafo corre risco de ficar cego](#); Reporters Without Borders. June 21, 2013. ["Brazilian Spring" Criticism of Media Ok, but Not Violence against Journalists](#); IstoÉ. June 13, 2013. [Polícia prende 40 antes de manifestação contra aumento da passagem.](#)

<sup>227</sup> The journalist was injured by rubber bullets. Abraji. June 14, 2013. [Polícia Militar fere pelo menos 15 jornalistas em manifestação; fotógrafo corre risco de ficar cego](#); Reporters Without Borders. June 21, 2013. ["Brazilian Spring" Criticism of Media Ok, but Not Violence against Journalists.](#)

<sup>228</sup> The journalists were struck by tear gas. Abraji. June 14, 2013. [Polícia Militar fere pelo menos 15 jornalistas em manifestação; fotógrafo corre risco de ficar cego](#); Estadão. June 14, 2013. [Ação deixa 105 feridos; repórter é atingida no olho.](#)

<sup>229</sup> The journalist was injured by a rubber bullet. ESPN.com.br. June 17, 2013. [Repórter do ESPN.com.br toma tiro de bala de borracha da polícia e relata caos em Belo Horizonte](#); Natelinha. June 18, 2013. [Repórter da ESPN Brasil leva tiro de bala de borracha em Belo Horizonte](#); Blog SBT HD Notícias. June 18, 2013. [Repórter de canal esportivo ESPN Brasil leva tiro de borracha da polícia durante protestos em BH.](#)

<sup>230</sup> The journalist was attacked by the security officers of a bus station. Agência Brasil. June 19, 2013. [Repórter da Agência Brasil é agredido em protesto em Niterói](#); Terra. June 20, 2013. [Repórter da 'Agência Brasil' é agredido em protesto em Niterói.](#)

<sup>231</sup> The journalist was injured by a tear gas grenade. Reporters Without Borders. June 21, 2013. ["Brazilian Spring" Criticism of Media Ok, but Not Violence against Journalists](#); Sindicato dos Jornalistas Profissionais do Município do Rio de Janeiro. June 20, 2013. [Jornalista é agredido por segurança em Niterói.](#)

<sup>232</sup> The journalist was injured by a rubber bullet. Correio 24 horas. June 23, 2013. [Repórter do CORREIO recebe tiro de bala de borracha durante manifestação](#); Correio Feirense. June 28, 2013. [Jornalistas e fotógrafos farão documento para enviar ao Ministério Público.](#)

<sup>233</sup> The journalist was injured by a rubber bullet. UOL Notícias. June 19, 2013. [Repórter do UOL apanha da polícia e relata armadilha contra manifestantes](#); Reporters Without Borders. June 21, 2013. ["Brazilian Spring" Criticism of Media Ok, but Not Violence against Journalists.](#)

<sup>234</sup> The journalist was attacked with a police baton. Joao Manuel/YouTube. July 27, 2013. [Fotógrafo japonês agredido pela PM durante cobertura de manifestação](#); G1. July 23, 2013. [Fotógrafo da AFP ferido no Rio diz que foi atingido por policial](#); Terra. July 23, 2013. [Fotógrafo é agredido por PM durante cobertura de protesto no Rio.](#)



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

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

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<sup>235</sup> The journalist was struck, kicked, and pepper sprayed. R7 Notícias. August 19, 2013. [Protesto na Alerj acaba em confusão e jornalistas são agredidos por PMs](#); O Dia. August 20, 2013. [Jornalistas e advogados registram queixa contra PMs do Choque por agressão](#); Maranhão News. August 21, 2013. [PM do Choque é autuado por agressão contra cinegrafista e abuso de poder durante protesto no Rio](#).

<sup>236</sup> The journalist passed out after being pepper sprayed on his face. Abraji. September 9, 2013. [Policiais e manifestantes agridem 20 jornalistas em protestos do 7 de Setembro](#); Associação Brasileira de Emissoras de Rádio e Televisão (Abert). September 13, 2013. [Abert manifestou repúdio à violência cometida contra profissionais da imprensa no feriado de 7 de setembro](#).

<sup>237</sup> Monique Renne and Arthur Paganini were pepper sprayed, and both Paganini and Breno Fortes were pushed. Viomundo. September 17, 2013. [Repórteres, fotógrafos e cinegrafistas viram alvo da PM em Brasília](#); Correio Braziliense. September 7, 2013. [Jornalistas do Correio sofrem agressões da PM durante manifestações](#); Abraji. September 9, 2013. [Policiais e manifestantes agridem 20 jornalistas em protestos do 7 de Setembro](#).

<sup>238</sup> The journalist had his back injured by a rubber bullet. Correio Braziliense. September 9, 2013. [Após truculência em protesto, ato público vai pedir afastamento de capitão](#); O Globo. September 7, 2013. [Em Brasília, PM e manifestantes em confronto na Esplanada e perto de estádio](#).

<sup>239</sup> The journalists were injured after being chased by Military Police dogs. Viomundo. September 17, 2013. [Repórteres, fotógrafos e cinegrafistas viram alvo da PM em Brasília](#); G1. September 7, 2013. [Fotógrafos ficam feridos após PM soltar cachorros durante protesto](#); Abraji. September 9, 2013. [Policiais e manifestantes agridem 20 jornalistas em protestos do 7 de Setembro](#).

<sup>240</sup> The journalist was injured by pepper spray. Abraji. September 9, 2013. [Policiais e manifestantes agridem 20 jornalistas em protestos do 7 de Setembro](#); GloboNews. September 7, 2013. [Repórter da GloboNews é atingido por gás de pimenta no RJ](#).

<sup>241</sup> IACHR. June 20, 2013. [Press Release 44/13. IACHR Expresses Concern over Arrests and Attacks on Demonstrators and Journalists During Protests in Brazil](#); UOL Notícias. June 13, 2013. [Repórter da TV Folha é atingida no olho por bala de borracha durante protesto em SP](#); Folha de S. Paulo. June 13, 2013. [Em protesto, sete repórteres da Folha são atingidos; 2 levam tiro no rosto](#).

<sup>242</sup> RD1. June 20, 2013. [Imprensa é agredida e hostilizada durante manifestações; repórter é atingido por bala de borracha na testa](#); Committee to Protect Journalists (CPJ). June 21, 2013. [Pedro Vedova](#); GloboNews. June 20, 2013. [Repórter da GloboNews é ferido em protestos no Rio](#).

<sup>243</sup> IACHR. June 20, 2013. [Press Release 44/13. IACHR Expresses Concern over Arrests and Attacks on Demonstrators and Journalists During Protests in Brazil](#); Pragmatismo Político. October 4, 2013. [Fotógrafo que perdeu a visão: "lembro da violência policial todos os dias"](#); Revista Fórum. July 12, 2013. [Sérgio Silva: "Essas armas não vão trazer nenhum bem para a sociedade"](#); G1. October 2, 2013. [Vítimas da violência fazem ato em SP pela desmilitarização da polícia](#); Abraji. October 30, 2013. [Abraji participa de ato contra agressões a jornalistas](#).

<sup>244</sup> Brasil de Fato. September 9, 2013. [Polícia atira com arma letal, atropela e deixa um cego nos atos de 7 de Setembro](#); Veja São Paulo. September 7, 2013. [Manifestante fica cego de um olho após protestos](#); Basta TV/YouTube. September 13, 2013. [\[Basta TV\] - Bate papo entre Vitor Araújo e Sérgio Silva](#).

109. According to reports, several journalists were arrested while providing news coverage of the demonstrations: journalist Pedro Ribeiro Nogueira, of *Portal Aprendiz*;<sup>245</sup> reporter Leandro Machado, of *Folha de São Paulo*;<sup>246</sup> photographer Leandro Morais, of *UOL*;<sup>247</sup> journalist Piero Locatelli, of *Carta Capital*;<sup>248</sup> photographer Fernando Borges, of the *Terra* website;<sup>249</sup> journalist Francis Juliano, of *Bahia Notícias*;<sup>250</sup> and journalists Felipe Garcia Peçanha and Felipe Golçalves, of *Mídia Ninja*.<sup>251</sup>

110. According to the information received, numerous journalists were also attacked by individuals presumed to be protesters or unidentified persons: journalist André Naddeo, of the *Terra* website;<sup>252</sup> journalist Rita Lisauskas, of *TV Bandeirantes*;<sup>253</sup> journalist Vinicius Segalla, of *UOL*;<sup>254</sup> photojournalist Tancredo Furtado, of *Rondonotícias*;<sup>255</sup> journalist Richard, of *Rádio Globo AM*;<sup>256</sup>

<sup>245</sup> The journalist was arrested and struck by several police officers on June 11. Nogueira was released on June 14. IACHR. June 20, 2013. [Press Release 44/13. IACHR Expresses Concern over Arrests and Attacks on Demonstrators and Journalists During Protests in Brazil](#); Portal Aprendiz. June 12, 2013. [Vídeo mostra agressão a jornalista do Aprendiz](#); Committee to Protect Journalists (CPJ). June 13, 2013. [Brazilian journalists detained while covering protest](#); Abraj. June 12, 2013. [Abraj condena prisão e agressão de repórteres pela Polícia Militar de São Paulo](#); Portal Aprendiz. June 14, 2013. [Repórter do Portal Aprendiz é solto após ficar preso por mais de dois dias](#); Revista Fórum. June 14, 2013. [Repórter do Portal Aprendiz é solto](#); G1. June 14, 2013. [Jornalista preso durante terceiro dia de protesto em SP é solto](#).

<sup>246</sup> Committee to Protect Journalists (CPJ). June 13, 2013. [Brazilian journalists detained while covering protest](#); Reporters Without Borders. June 13, 2013. [Journalist slain near Rio, others mistreated by police in São Paulo](#); Abraj. June 12, 2013. [Abraj condena prisão e agressão de repórteres pela Polícia Militar de São Paulo](#).

<sup>247</sup> Committee to Protect Journalists (CPJ). June 13, 2013. [Brazilian journalists detained while covering protest](#); Reporters Without Borders. June 13, 2013. [Journalist slain near Rio, others mistreated by police in São Paulo](#); Abraj. June 12, 2013. [Abraj condena prisão e agressão de repórteres pela Polícia Militar de São Paulo](#).

<sup>248</sup> Abraj. June 13, 2013. [Jornalista da Carta Capital é preso em São Paulo por carregar vinagre na mochila](#); Carta Capital. June 14, 2013. [Em São Paulo, vinagre dá cadeia](#); TV Carta/YouTube. June 13, 2013. [Repórter de CartaCapital é detido por portar vinagre](#).

<sup>249</sup> Abraj. June 14, 2013. [Polícia Militar fere pelo menos 15 jornalistas em manifestação; fotógrafo corre risco de ficar cego](#); Terra. June 13, 2013. [SP: fotógrafo do Terra é preso durante cobertura de protesto](#).

<sup>250</sup> The journalist was arrested for the crime of *desacato*. Bahia Notícias. June 23, 2013. [Polícia para quem precisa; breve relato sobre minha detenção](#); Correio 24 horas. June 24, 2013. [PMs sem identificação reprimem e até prendem manifestantes; saiba como proceder](#); iBahia. June 22, 2013. [Em protesto no Iguatemi, repórter é detido pela polícia](#).

<sup>251</sup> The journalists were arrested for “incitement to violence”, allegedly for broadcasting the protests live. “Foram presos por incitar violência dois manifestantes que transmitiam ao vivo as manifestações”. Twitter account of the Polícia Militar do Estado do Rio de Janeiro (@PMERJ). [July 22, 2013-4:59 PM](#); “Felipe Garcia - preso por incitar violência”. Twitter account of the Polícia Militar do Estado do Rio de Janeiro (@PMERJ). [July 22, 2013-5:46PM](#); “Felipe Gonçalves de Assis - preso por incitar violência”. Twitter account of the Polícia Militar do Estado do Rio de Janeiro (@PMERJ). [July 22, 2013-5:45 PM](#); Associação Brasileira de Imprensa (ABI). July 23, 2013. [Repórteres de mídia alternativa acusados de incitação à violência](#); Terra. July 22, 2013. [Rio: 2 integrantes do grupo Mídia Ninja são presos na cobertura de protesto](#).

<sup>252</sup> Terra. June 17, 2013. [Repórter do Terra é agredido durante protesto no Rio](#); Associação Brasileira de Imprensa (ABI). June 18, 2013. [Profissionais de imprensa são feridos durante protesto no Rio](#).

<sup>253</sup> Associação Brasileira de Emissoras de Rádio e Televisão (Abert)/Portal Imprensa Últimas Notícias. June 18, 2013. [Rita Lisauskas, da Band, é agredida por manifestantes durante protesto em SP](#); Terra. June 18, 2013. [SP: repórter da TV Bandeirantes é agredida em cobertura de protesto](#).

<sup>254</sup> UOL Notícias. June 18, 2013. [Manifestação em BH acaba em violência e grupo punk tenta invadir prefeitura; repórter do UOL é agredido](#); O Globo. [Agressões a jornalistas no Brasil de 11 de junho a 26 de junho](#).

<sup>255</sup> The journalist was chased and threatened by alleged protesters. Portal Imprensa. June 21, 2013. [Fotógrafo é perseguido por manifestantes em RO; repórter da rádio Globo AM é agredido](#); O Globo. [Agressões a jornalistas no Brasil de 11 de junho a 26 de junho](#); Reporters Without Borders. June 21, 2013. [“Brazilian Spring” Criticism of Media Ok, but Not Violence against Journalists](#).

journalist Flávio Botelho, of *Rádio CBN*;<sup>257</sup> Marcelo Carnaval, of the newspaper *O Globo*;<sup>258</sup> journalists Júlio Molica and Antonia Martinho, of *GloboNews*;<sup>259</sup> journalist Cirilo Júnior of the *Terra* website, and *Band* cameraman Sergio Colonesi;<sup>260</sup> and journalists Izinha Toscano, of *Portal Amazônia*, and Camila Henriques, of *G1 Amazonas*.<sup>261</sup> Individuals presumed to be protesters also were said to have harassed journalist Caco Barcellos, of *TV Globo*;<sup>262</sup> journalist Camila Pereira, of *Portal D24AM*;<sup>263</sup> and Marcela Lemos, of *CBN*.<sup>264</sup> In addition, according to reports, protesters attacked media vehicles and headquarters.<sup>265</sup>

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

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<sup>256</sup> Portal Imprensa. June 21, 2013. [Fotógrafo é perseguido por manifestantes em RO; repórter da rádio Globo AM é agredido](#); *O Globo*. [Agressões a jornalistas no Brasil de 11 de junho a 26 de junho](#); Reporters Without Borders. June 21, 2013. [“Brazilian Spring” Criticism of Media Ok, but Not Violence against Journalists](#).

<sup>257</sup> Portal Imprensa. June 21, 2013. [“Foi uma violência gratuita”, diz jornalista agredido em protesto em Campinas \(SP\)](#); *O Globo*. [Agressões a jornalistas no Brasil de 11 de junho a 26 de junho](#); Reporters Without Borders. June 21, 2013. [“Brazilian Spring” Criticism of Media Ok, but Not Violence against Journalists](#).

<sup>258</sup> The journalist was injured by a stone. Folha de S. Paulo. July 23, 2013. [Fotógrafos ficam feridos e jornalistas acabam detidos](#); Terra. July 22, 2013. [Rio: feridos em confronto com a PM são atendidos em hospital](#).

<sup>259</sup> *GloboNews*. August 22, 2013. [Equipe da GloboNews é agredida na Câmara de Vereadores do Rio](#); Abraj. August 22, 2013. [Jornalistas são agredidos e expulsos da Câmara Municipal do Rio de Janeiro](#); Knight Center for Journalism in the Americas. August 26, 2013. [Journalists assaulted while covering City Council in Rio de Janeiro](#).

<sup>260</sup> UOL Notícias. August 22, 2013. [Jornalistas são agredidos em confronto durante a CPI dos Ônibus do Rio](#); Abraj. August 22, 2013. [Jornalistas são agredidos e expulsos da Câmara Municipal do Rio de Janeiro](#); Agência Brasil. August 22, 2013. [Jornalistas são agredidos durante sessão da CPI dos Ônibus na Câmara do Rio](#).

<sup>261</sup> Abraj. September 9, 2013. [Policiais e manifestantes agredem 20 jornalistas em protestos do 7 de Setembro](#); Portal Amazônia. September 7, 2013. [Repórteres da Rede Amazônia são agredidas durante manifestação, em Manaus](#).

<sup>262</sup> Reporters Without Borders. June 21, 2013. [“Brazilian Spring” Criticism of Media Ok, but Not Violence against Journalists](#); Último Segundo. June 17, 2013. [Caco Barcellos é hostilizado por manifestantes em São Paulo](#); Terra. June 17, 2013. [Manifestantes hostilizam Caco Barcellos e equipe da Globo de protesto em SP](#); *O Globo*. [Agressões a jornalistas no Brasil de 11 de junho a 26 de junho](#).

<sup>263</sup> D24AM. June 20, 2013. [Repórter do Portal D24AM é xingada por manifestantes](#); Portal Imprensa. June 21, 2013. [Jornalista é xingada durante protestos no AM](#).

<sup>264</sup> Associação Nacional de Jornais (ANJ). [Entidades nacionais rechaçam hostilidade contra repórter da CBN no Rio](#); Associação Brasileira de Emissoras de Rádio e Televisão (Abert). October 2, 2013. [Repórter da CBN é hostilizada durante cobertura sobre greve dos professores no Rio de Janeiro](#); *O Globo*. October 1, 2013. [ANJ e Abert repudiam agressão a jornalista que cobria protesto dos professores](#).

<sup>265</sup> The vehicles of *TV Record*, *Grupo RBS*, *Rede Globo*, *Rede Bandeirantes* and *SBT* were attacked. The headquarters of *Rede Globo* were also attacked. R7 Notícias. June 18, 2013. [Criminosos colocam fogo em carro de reportagem da Rede Record no centro de São Paulo](#); em. June 18, 2013. [Manifestantes colocam fogo em carro de emissora de TV durante protesto em São Paulo](#); Associação Nacional de Jornais (ANJ). July 18, 2013. [ANJ condena ataques à Globo e ao SBT](#); Coletiva.net. June 17, 2013. [Ataque a veículo do Grupo RBS é destaque em boletim da ARI](#); Zero Hora. June 15, 2013. [Grupo RBS registra ocorrência por ameaça e veículo depredado](#); Portal Comuniquese. July 18, 2013. [Sede administrativa da Globo é depredada durante manifestação](#); Adnews. June 18, 2013. [Globo do Rio tem sede depredada](#); R7 Notícias. June 23, 2013. [Carro de emissora de TV é atingido por outro veículo durante reportagem](#); Associação Brasileira de Emissoras de Rádio e Televisão (Abert). June 24, 2013. [Abert repudia ataques a equipes de reportagem de emissoras](#); Terra. October 19, 2013. [Em protesto contra testes em cães, Black Blocs queimam carros da PM e da Globo](#); Jornal Cotidiano. October 21, 2013. [Carros da Rede Globo e PM são incendiados em protesto](#).

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

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

113. The Joint Declaration on violence against journalists and media workers in the context of protests, adopted in 2013, indicates that during demonstrations and situations of social unrest, the work of journalists and media workers, as well as the free flow of information, “is essential to keeping the public informed of the events. At the same time, it plays an important role in reporting on the conduct of the State [...] preventing the disproportionate use of force and the abuse of authority.”<sup>268</sup> Accordingly, the authorities must provide journalists with the maximum guarantees in order for them to perform their functions. In this respect, they must ensure that journalists are not arrested, threatened, assaulted, or limited in any manner in their rights as a result of practicing their profession in the context of a public demonstration. The State must not prohibit or criminalize live broadcasts of events, and must abstain from imposing measures that regulate or limit the free circulation of information.<sup>269</sup> Journalists must not be called as witnesses before the courts, and the authorities must respect the right to the confidentiality of sources of information. In addition, their work materials and tools must not be destroyed or confiscated.<sup>270</sup> The authorities must adopt a public discourse that helps prevent violence against journalists, vigorously condemning assaults, investigating the facts, and punishing the perpetrators, as established in Principle 9 of the IACHR’s Declaration of Principles.<sup>271</sup> It is also especially important in these contexts that the authorities have special protocols for protecting the press in

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<sup>266</sup> Presidência da República. Secretaria de Direitos Humanos. Conselho de Defesa dos Direitos da Pessoa Humana. [Resolução No. 6 de 18 de junho de 2013](#).

<sup>267</sup> Abraji. October 28, 2013. [Chega a 102 o número de casos de agressões a jornalistas em protestos](#).

<sup>268</sup> United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. [Joint Declaration on Violence against Journalists and Media Workers in the Context of Protests](#).

<sup>269</sup> United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. [Joint Declaration on Violence against Journalists and Media Workers in the Context of Protests](#).

<sup>270</sup> United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. [Joint Declaration on Violence against Journalists and Media Workers in the Context of Protests](#).

<sup>271</sup> [Principle 9 of the IACHR Declaration of Principles](#): “[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation”.

situations of social unrest and educate State security forces on the role of the press in a democratic society.<sup>272</sup>

### E. Other attacks and threats against journalists and the media

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

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

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<sup>272</sup> United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. [Joint Declaration on Violence against Journalists and Media Workers in the Context of Protests](#).

<sup>273</sup> The journalist was attacked by the alleged Chief of the Casa Militar of the State of Roraima, who violently threw him out of a governmental event. Knight Center for Journalism in the Americas. January 3, 2013. [Police throw photographer out of government event in Brazil](#); *Folha de Boa Vista*. December 24, 2012. [Chefe da Casa Militar expulsa fotógrafo da Folha durante entrega de brinquedos](#); Cyneida Correia/YouTube. December 23, 2012. [Expulsão de repórter fotográfico da Folha de Boa Vista na entrega de brinquedos](#).

<sup>274</sup> The journalist was beaten while covering a meeting of road workers Porto Alegre (Rio Grande do Sul). *Zero Hora*. January 24, 2013. [Após tumulto em assembleia, rodoviários fazem novo protesto na Capital](#); ZH TV. January 23, 2013. [Vídeo mostra agressão sofrida por fotógrafo de ZH](#); Knight Center for Journalism in the Americas. January 31, 2013. [Photographer beaten while covering public meeting in Brazil](#).

<sup>275</sup> The journalist was attacked as he left the offices of the newspaper in the municipality of Itacoatiara, state of Amazonas. Due to his injuries, the journalist had to be admitted to a hospital. The attack was reported to have happened in retaliation for the daily's publications, which frequently denounced alleged cases of corruption and irregularities in the local administration. The mayor of the municipality Itacoatiara asked that the investigations carried out to identify those responsible be prioritized. *Rede Tiradentes*. April 22, 2013. [Após denunciar irregularidades na prefeitura de Itacoatiara, jornalista é agredido no Centro do município](#); *Correio da Amazônia*. April 22, 2013. [Jornalista Ruy Chaves\(Candiru\) espancado em Itacoatiara](#); D24AM. April 22, 2013. [Jornalista é agredido quando fechava redação em Itacoatiara](#); *Amazônia na Rede*. April 28, 2013. [Mamoud pede investigação rigorosa da agressão contra jornalista](#); *Rede Tiradentes*. April 23, 2013. [Itacoatiara: prefeito nega envolvimento em agressão contra jornalista](#).

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

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

<sup>278</sup> The journalist was threatened by the former mayor of the municipality of Brejo do Cruz, State of Paraíba. According to the information received, the former official was upset over the criticism on the journalist's blog of his wife's administration, the mayor of the municipality of Pombal. Alcântara was in a restaurant when the former official approached him and warned him to stop writing about him or his wife. *Radio Opção 104 FM*. April 18, 2013. [Ex-prefeito de Brejo do Cruz e atual esposo da prefeita Pollyana ameaça bloqueio em restaurante na capital](#); *Radar Sertanejo*. April 19, 2013. [Jornalista da PB](#)

116. According to the information received, several media outlets and journalists were the victims of property damage. On different occasions, unknown persons attacked several properties: shots were fired at the residence of the parents of reporter André Almenara, a journalist for the police program ‘Maringá Urgente,’ on *Rede Massa*;<sup>279</sup> the main offices of the community newspaper *Voz da Comunidade* and one of the facilities of the *AfroReggae* group were set on fire;<sup>280</sup> and shots were fired at blogger Angelo Rigon’s house.<sup>281</sup>

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

#### F. Subsequent liability

118. Journalist Daniel José de Lima, publisher of the *Capital Social* web portal, was ordered by the 4<sup>th</sup> Criminal Court of Santo André [*4ª. Vara Criminal – Foro de Santo André*] in the state of São Paulo to serve two months and 15 days in prison for the offense of criminal defamation against a well-known businessman. The Court was of the opinion that the journalist’s articles about the businessman’s actions offended his honor, and that this type of defamatory offense [*injuria*] was not subject to the defense of *exceptio veritatis*. The Court also found that the prison sentence was appropriate because the articles were published on the Internet. The penalty of imprisonment was substituted with a fine equivalent to five times the monthly minimum wage.<sup>282</sup> The decision was appealed.<sup>283</sup> For its part, the

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

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

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

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

<sup>282</sup> Tribunal de Justiça de São Paulo. 4ª Vara Criminal – Foro de Santo André. [Processo No. 0024348-59.2011.8.26.0564](#); 4ª Vara Criminal da Comarca de Santo André. Processo No. 21/2013-JE. Judgment of April 5, 2013. Available for consultation at: <http://s.conjur.com.br/dl/mandado-intimacao.pdf>; Consultor Jurídico. June 12, 2013. [Jornalista é condenado à prisão por causa de notícias](#).

<sup>283</sup> Tribunal de Justiça de São Paulo. Colegio Recursal de Santo André. 2ª Turma Recursal Criminal. [Processo No. 0024348-59.2011.8.26.0564](#).

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

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

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

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<sup>284</sup> Tribunal de Justiça de São Paulo. 4ª Vara Cível – Foro de São Bernardo do Campo. [Processo No. 0029905-27.2011.8.26.0564](#). Judgment of April 23, 2013; Consultor Jurídico. June 12, 2013. [Jornalista é condenado à prisão por causa de notícias](#).

<sup>285</sup> Tribunal de Justiça de São Paulo. 4ª Câmara de Direito Privado. [Processo No. 0029905-27.2011.8.26.0564](#). Judgment of October 31, 2013.

<sup>286</sup> 2ª Zona Eleitoral – Macapá. Tribunal Regional Eleitoral do Amapá. [Processo No. 12277 - EXECUÇÃO FISCAL](#); Estadão. May 18, 2013. [Repórter condenada a pagar Sarney tem conta bloqueada](#); Folha de São Paulo. May 26, 2013. [Sarney diz que não tem ligação com processo contra bloqueira no Amapá](#); Knight Center for Journalists in the Americas. May 20, 2013. [Court blocks Brazilian blogger’s bank account, orders her to pay damages to former president](#).

<sup>287</sup> 2ª Zona Eleitoral – Macapá. Tribunal Regional Eleitoral do Amapá. [Processo No. 12277 - EXECUÇÃO FISCAL](#). Order of September 16, 2013.

<sup>288</sup> Supremo Tribunal Federal. Inquérito 3228 – Rio de Janeiro. [Decision of May 9, 2013](#); G1. May 9, 2013. [Garotinho](#)

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

122. The Office of the Special Rapporteur was informed that on July 4 the Special Criminal Court for the District of Aracaju, state of Sergipe [Juizado Especial Criminal da Comarca de Aracaju/SE] had sentenced journalist José Cristian Góes, the author of a blog on the *Infonet* web portal, to 7 months and 16 days in prison for the offense of criminal defamation [*injúria*] against Judge Edson Ulisses de Melo, the deputy chief justice of the Court of Justice for the state of Sergipe.<sup>293</sup> The criminal complaint was filed on January 23, 2013 by the Office of the Public Prosecutor for the state of Sergipe<sup>294</sup> based on a fiction piece published by the journalist on his blog in May 2012. According to the information received, Góes's article, entitled "I, the colonel in me"<sup>295</sup> [*"Eu, o coronel em mim"*], and narrated in the first person, was a work of fiction and did not name any names. The Office of the Public Prosecutor alleged that the journalist wrote the piece as a criticism of the governor of the state of Sergipe, who is Judge Melo's brother-in-law. According to this interpretation, the article makes reference to the judge and offended his honor by calling him a "legal hitman" [*"jagunço da lei"*].<sup>296</sup> In his July 4 decision, the judge found that "[a] reading of the story '*Eu, o coronel em mim*' makes it possible to draw the association between the Governor of the state of Sergipe and his brother-in-law, Judge Edson Ulisses,

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[vira réu em ação penal no STF por calúnia e difamação](#); Migalhas. May 10, 2013. [STF autoriza ação penal contra Garotinho por calúnia e difamação](#); Blog do Garotinho. June 1, 2010. [Mais uma negociata na CEDAE](#).

<sup>289</sup> Tribunal de Justiça do Estado de Goiás. 7<sup>a</sup> Vara Cível da Comarca de Goiânia. Case No. 204511-58.2012.8.09.0051. Judgment of May 28, 2013. Available for consultation at: <http://www.tjgo.ius.br/index.php/consulta-processual>.

<sup>290</sup> Tribunal de Justiça do Estado de Goiás. May 28, 2013. [Jornalista terá de pagar R\\$ 200 mil ao governador Marconi Perillo](#).

<sup>291</sup> Tribunal de Justiça do Estado de Goiás. 7<sup>a</sup> Vara Cível da Comarca de Goiânia. Case No. 204511-58.2012.8.09.0051. Judgment of May 28, 2013. Available for consultation at: <http://www.tjgo.ius.br/index.php/consulta-processual>

<sup>292</sup> Terra. May 28, 2013. [GO: Justiça condena jornalista a indenizar Perillo em R\\$ 200 mil](#); UOL Notícias. May 28, 2013. [Jornalista que acusou Perillo é condenado a pagar R\\$ 200 mil de indenização](#).

<sup>293</sup> Tribunal de Justiça do Estado de Sergipe. Juizado Especial Criminal da Comarca de Aracaju. [Processo Nº 201245102580. Judgment of July 4, 2013](#); Infonet. July 7, 2013. [Justiça condena o jornalista Cristian Góes](#); Consultor Jurídico. July 8, 2013. [Sem citar nome, jornalista é condenado por injúria](#).

<sup>294</sup> Poder Judiciário do Estado de Sergipe. Juizado Especial Criminal da Comarca de Aracaju. [Processo Nº 201245102580](#).

<sup>295</sup> Portal Infonet. May 29, 2012. [Eu, o coronel em mim](#).

<sup>296</sup> Tribunal de Justiça do Estado de Sergipe. Juizado Especial Criminal da Comarca de Aracaju. [Case No. 201245102580. Judgment of July 4, 2013](#); Brasil de Fato. January 28, 2013. [Ministério Público denuncia jornalista por texto ficcional](#); Knight Center for Journalism in the Americas. February 15, 2013. [Brazilian prosecutor files criminal charges against journalist for writing fictional blog post](#).



who is portrayed as a ‘legal hitman.’ Even though there was no express reference to the names of the characters, within the social context and the sphere of activity of the parties, especially in the legal community, it is perfectly clear that the text is aimed at the victim.”<sup>297</sup> The judge added that the case would not amount to a violation of the right to freedom of expression, especially because “it jeopardizes the honor and the image of a public servant in the performance of his duties.”<sup>298</sup> In determining the sentence, the judge increased the penalty by one-third because the defamation was committed against a public servant in the performance of his duties, and he also found the fact that the expression had been disseminated on the Internet to be an aggravating circumstance. Finally, he substituted the prison sentence with community service, to be completed during the time period of the sentence.<sup>299</sup> On October 22, 2013, in a 2-to-1 decision, the Sergipe Court of Justice upheld the lower court’s decision. In the sole dissenting opinion, the reporting judge argued that the sanctioning of opinions through the crime of defamation was incompatible with the Brazilian Constitution and violated the criminal law principle of *ultima ratio*.<sup>300</sup> Judge Ulisses de Melo also brought a civil action against the journalist for defamation, which is pending.<sup>301</sup>

123. During its 149 Period of Sessions, the Inter-American Commission on Human Rights held a hearing on “Freedom of Expression, Disrespect for Authority, and Crimes against Honor in Brazil,” in which it received updated information about Brazil’s legal framework with respect to crimes against honor and *desacato* provisions. The petitioners provided information on criminal cases reportedly brought against journalists for expressions concerning matters of public interest, and the sentences imposed. For example, information was provided on the case of journalist José Cristian Góes, mentioned in this report (*supra*), who was prosecuted at the request of a judge for criminal defamation [*injúria*] and sentenced to 7 months and 16 days in prison for having published a fictional story. They also reported that the Office of the Public Defender for the state of São Paulo had approved a recommendation for public defense attorneys to argue the incompatibility of *desacato* offenses with the American Convention before the national courts. For its part, the State indicated that crimes against honor have less offensive potential [*menor potencial ofensivo*] in the current legal framework, and provided information on the process for the amendment of the Brazilian Criminal Code. In this regard, the State asserted that the reform bill would abolish the criminal offense currently defined under the concept of *desacato*, but would nevertheless increase by up to twofold the penalties for crimes against honor committed against public servants in the performance of their duties. The State also reported that it had asked the Office of the Special Rapporteur for Freedom of Expression of the OAS and the United Nations (UN) Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression for a technical note on the norms concerning crimes against honor in the Criminal Code reform bill.<sup>302</sup>

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<sup>297</sup> Tribunal de Justiça do Estado de Sergipe. Juizado Especial Criminal da Comarca de Aracaju. [Proceso No. 201245102580. Judgment of July 4, 2013.](#)

<sup>298</sup> Tribunal de Justiça do Estado de Sergipe. Juizado Especial Criminal da Comarca de Aracaju. [Proceso No. 201245102580. Judgment of July 4, 2013.](#)

<sup>299</sup> Tribunal de Justiça do Estado de Sergipe. Juizado Especial Criminal da Comarca de Aracaju. [Proceso No. 201245102580. Judgment of July 4, 2013.](#)

<sup>300</sup> Tribunal de Justiça do Estado de Sergipe. Turma Recursal do Estado de Sergipe. [Processo Nº 201301008618. Acórdão No. 5450](#) of October 22, 2013.

<sup>301</sup> Tribunal de Justiça do Estado de Sergipe. 7ª Vara Cível da Comarca de Aracaju. [Proceso No. 201210701342.](#)

<sup>302</sup> IACHR. 149 Period of Sessions. Hearing on Freedom of Expression, Disrespect for Authority, and Crimes against Honor in Brazil. October 29, 2013. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=en&session=132&page=1>; Communication of the State of Brazil to

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

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

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

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the IACHR Executive Secretariat and to the Office of the Special Rapporteur for Freedom of Expression. No. 271. October 18, 2013.

<sup>303</sup> Communication of the State of Brazil to the IACHR Executive Secretariat and to the Office of the Special Rapporteur for Freedom of Expression. No. 291. November 4, 2013.

<sup>304</sup> Supremo Tribunal Federal. Tribunal Pleno. [Arguição de Descumprimento de Preceito Fundamental 130 Distrito Federal](#). Judgment of April 30, 2009.

<sup>305</sup> Supremo Tribunal Federal. Tribunal Pleno. [Inquérito 2154-7 Distrito Federal](#). Judgment of December 17, 2004.

<sup>306</sup> Supremo Tribunal Federal. Segunda Turma. [AG.Reg. no agravo de instrumento 705.630 Santa Catarina](#). Judgment of March 22, 2011.

<sup>307</sup> Office of the Special Rapporteur for Freedom of Expression of the Organization of American States (OAS) and United Nations (UN) Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression. [Nota técnica sobre los parámetros internacionales respecto a la libertad de expresión y los crímenes contra el honor y la adecuación de los dispositivos respecto a los crímenes contra el honor presentes en el proyecto de reforma del Código Penal brasileño](#). November 4, 2013.

that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.” Additionally, principle 11 establishes that, “[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as ‘desacato laws,’ restrict freedom of expression and the right to information.”

127. Regarding the possible imposition of civil liability, the Inter-American Court has established that civil sanctions must be strictly proportionate in cases involving freedom of expression, so that they do not have an inhibiting effect over the exercise of this freedom, since, “the fear of a civil penalty, considering the claim [...] for a very steep civil reparation, may be, in any case, equally or more intimidating and inhibiting for the exercise of freedom of expression than a criminal punishment, since it has the potential to attain the personal and family life of an individual who accuses a public official, with the evident and very negative result of self-censorship both in the affected party and in other potential critics of the actions taken by a public official”.<sup>308</sup>

### **G. Community radio stations**

128. At a hearing on the situation of community radio stations in Brazil, held during the 147 Period of Sessions of the Inter-American Commission on Human Rights (IACHR), the Office of the Special Rapporteur received updated information about the difficulties faced by community broadcasters in the country. The organizations that had requested the hearing provided information about existing restrictions within the legal framework that regulates community radio stations in Brazil, the obstacles faced by the operators of such stations in obtaining licenses under nondiscriminatory conditions, and the use of the criminal law to impose liability on persons who operate unlicensed community radio stations. The State indicated that there are several legislative bills on the issue currently making their way through the National Congress that seek to change some of the restrictions in the current legal framework, including the decriminalization of the unlicensed use of the radio spectrum by community radio stations.<sup>309</sup> On November 21, 2013, the State forwarded additional information regarding the criminal provisions applied to the unlicensed operation of community radio stations, the process for the concession of licenses, and the measures taken to strengthen pluralism and small radio operators in the country. The State also reported, among other things, that the National License Issuance Plan for Community Radio Broadcasting Service for 2012 and 2013 would expedite the license-granting processes, and would cover all 1,425 municipalities in the country that still do not have a community radio station. In addition, the State provided information on training events on the operation of community radio broadcasting service and the licensing rules.<sup>310</sup>

129. As indicated on prior occasions, the use of criminal law to punish violations of broadcasting regulations may be problematic in light of the American Convention on Human Rights. In this respect, the Office of the Special Rapporteur reiterates that the establishment of criminal penalties

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<sup>308</sup> 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.

<sup>309</sup> IACHR. 147 Period of Sessions. Hearing on the Situation of Community Radios in Brazil. March 11, 2013. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=en&session=131>

<sup>310</sup> Communication from the State of Brazil to the IACHR Executive Secretariat and to the Office of the Special Rapporteur for Freedom of Expression. No. 316. November 21, 2013.

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

#### H. Other relevant situations

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

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

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<sup>311</sup> IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 467.

<sup>312</sup> Tribunal de Justiça de Goiás. 15ª Vara Cível e Ambiental da Comarca de Goiânia. Case No. 9838-31.2013.8.09.0051. Available for consultation at: <http://www.tjgo.jus.br/index.php/consulta-processual>; Tribunal de Justiça de Goiás. 15ª Vara Cível e Ambiental da Comarca de Goiânia. Case No. 9838-31.2013.8.09.0051. Judgment of January 25, 2013. Available for consultation at: <http://www.abraji.org.br/midia/arquivos/file1363180386.png>; Knight Center for Journalism in the Americas. March 14, 2013. [Orden judicial prohíbe a bloquera mencionar nombre de gobernador de estado brasileño en periódico y blog](#); Brasil Diário. March 13, 2013. [Marconi Perillo impede jornalista de citar seu Nome](#); Estadão. March 12, 2013. [Governador de Goiás obtém liminar que proíbe jornalista de citar seu nome](#).

<sup>313</sup> Tribunal de Justiça do Distrito Federal e Territórios. 5ª Turma Cível. Processo No. [0010738-66.2009.807.0000 \(Res.65 - CNJ\)](#). [Acórdão 680.569](#) of May 22, 2013; Estadão. May 22, 2013. [TJ-DF mantém censura ao 'Estado'](#); Article 19. May 23, 2013. [Artigo 19 se posiciona contra censura ao Estadão](#); Knight Center for Journalism in the Americas. May 24, 2013. [Courts uphold prior censorship of Brazilian newspaper, which cannot report on political controversy since 2009](#).

<sup>314</sup> Tribunal de Justiça do Distrito Federal e Territórios. 5ª Turma Cível. Processo No. [0010738-66.2009.807.0000 \(Res.65 - CNJ\)](#). [Acórdão 680.569](#) of May 22, 2013.

<sup>315</sup> Supremo Tribunal Federal. December 10, 2009. [Medida Cautelar em Reclamação 9.428 Distrito Federal](#). Supremo Tribunal Federal. Notícias STF. December 10, 2009. [Arquivada ação do jornal O Estado de S. Paulo contra proibição de veicular matérias sobre Fernando Sarney](#).

the onjunction was on appeal in the Superior Court of Justice [*Superior Tribunal de Justiça*] and the Federal Supreme Court.<sup>316</sup>

132. On March 6, the 34<sup>th</sup> Civil Court for the District of São Paulo [*34ª Vara Cível da Comarca de São Paulo*] issued a provisional remedy prohibiting Ricardo Fraga de Oliveira from speaking out against a real estate project or participating in any other activity near the building construction site, under penalty of a fine of R\$ 10,000 (some US\$ 4,500) per infraction. He was further prohibited from publishing anything about the matter on the Internet or creating new initiatives via the Internet with the same purpose as his initiative “The Other Side of the Wall – A Group Intervention” [*O Outro Lado do Muro – Intervenção Coletiva*], which he was using to protest the construction of the real estate development.<sup>317</sup> On May 15, the 5<sup>th</sup> Private Law Chamber [*5ª Câmara de Direito Privado*] of the São Paulo Court of Justice extended the initial remedy and ordered Fraga de Oliveira to remove all content referring to the project from his Facebook page, under penalty of a daily fine of R\$ 1,000 (some US\$ 450).<sup>318</sup>

133. On March 27, during a session of the Human Rights and Minorities Committee of the House of Representatives, Congressman and Evangelical pastor Marco Feliciano, who was also the Chairman of the Committee, ordered Congressional security personnel to detain human rights defender Marcelo Régis, who was attending the session. According to reports, the Committee chairman claimed that Régis had called him a racist, and for that reason he had ordered the police to detain him. The congressman also stated<sup>319</sup> that Régis had committed a crime under the Brazilian Criminal Code—he expressly cited the articles that define criminal defamation [*calúnia* and *difamação*]<sup>320</sup> and that he would have to prove his statements. Régis was then taken to give a statement to the Legislative Police. The detention took place in the context of opposition to the appointment of Congressman Feliciano as Chairman of the Human Rights and Minorities Committee of the House of Representatives because of his alleged negative speech with respect to LGBTI persons and persons of African descent.<sup>321</sup> According

<sup>316</sup> Tribunal de Justiça do Distrito Federal e Territórios. 5ª Turma Cível. Processo No. [0010738-66.2009.807.0000 \(Res.65 - CNJ\)](#) and [AGD 2009 00 2 010738-6](#).

<sup>317</sup> Tribunal de Justiça do Estado de São Paulo. 34ª Vara Cível da Comarca de São Paulo. [Processo No. 1008543-15.2013.8.26.0100](#). Judgment of March 6, 2013.

<sup>318</sup> Tribunal de Justiça de São Paulo. 5ª Câmara de Direito Privado. [Processo No. 0051583-73.2013.8.26.0000](#). Judgment of May 15, 2013.

<sup>319</sup> The original áudio states: “Eu vou pedir para que a polícia da casa... Aquele senhor de barba me chamou de racista. Isso é crime pelo código penal. Eu quero que a polícia faça alguma coisa acerca desse desrespeito. Porque ele vai sair preso daqui porque ele me chamou de racista e tem que provar que eu sou racista. Isso é crime, artigo 138, 139 do Código Penal. Se você não contornar você vai sair preso daqui.” TVHDBrazil/YouTube. March 27, 2013. [Confusão, Marco Feliciano Decreta Prisão de Manifestante na Câmara](#). [01:24].

<sup>320</sup> Presidência da República. Código Penal de Brasil. [Decreto 2848 de 1940](#). December 7, 1940. “Art. 138. – To defame someone, falsely attributing them a fact defined as a crime. Sentence – six months to two years of imprisonment and a fine”. “Art. 139. – To defame someone, attributing them a fact that is offensive to their reputation. Sentence – three months to one year of imprisonment and a fine”. The Criminal Code also establishes in article 141 that the sentences for the crimes of defamation [*calúnia*, *difamação*, and *injúria*] will be increased by a third when the crime is committed “against a public official, in relation to their duties”, among others.

<sup>321</sup> Câmara dos Deputados. Câmara Notícias. March 27, 2013. [Polícia Legislativa intervém para conter protestos contra Feliciano](#); Estadão. March 27, 2013. [‘Democracia é isso’, diz Feliciano após expulsar manifestantes da sessão](#); UOL Notícias. March 27, 2013. [Feliciano pede prisão de manifestante que o chamou de racista](#); Folha de S. Paulo. March 27, 2013. [Câmara restringe acesso a comissão presidida por Feliciano](#); G1. March 7, 2013. [Deputado Marco Feliciano responde por homofobia e estelionato no STF](#); R7 Notícias. April 6, 2013. [Acusado de homofobia e racismo, Feliciano semeia polêmicas no Congresso](#); UOL Notícias. March 31, 2011 (updated March 1, 2013). [Deputado federal diz no Twitter que "africanos descendem de ancestral](#)

to reports on the House of Representatives website, the office of the Chairman of the Committee would be informed by the police if it was determined that Régis had committed a crime, and that the congressman would have six months to bring a criminal action against him.<sup>322</sup>

134. Principle 5 of the of the IACHR's Declaration of Principles establishes that, "[r]estrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression."

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

## 5. Canada

### A. Progress

136. The Office of the Special Rapporteur takes note of the communication issued on March 27 by the Office of the Information Commissioner of Canada to conduct an investigation into the practices of restricting the opportunity for government scientists to talk to the media about their work.<sup>323</sup> The decision stems from a joint request made by the University of Victoria Environmental Law Centre and the organization Democracy Watch, who asked the office to investigate six government departments regarding their policies with respect to scientists' communications with the press. The Office of the Information Commissioner granted the request to investigate six agencies, and additionally decided to include the Treasury Board Secretariat among the bodies to be investigated, "because of its role in relation to the development and implementation of government policies."<sup>324</sup> According to reports, on February 17, 2012, Canadian Journalists for Free Expression (CJFE) and five other journalistic and scientific organizations sent an open letter to the Canadian Prime Minister requesting the government federal to implement a policy of transparent and timely communication that allows government scientists to speak freely to the media.<sup>325</sup>

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[amaldiçado](#)".

<sup>322</sup> Câmara dos Deputados. Câmara Notícias. March 27, 2013. [Polícia Legislativa intervém para conter protestos contra Feliciano](#).

<sup>323</sup> IFEX/Canadian Journalists for Free Expression (CJFE). April 2, 2013. [Investigation launched into muzzling of Canadian government scientists](#); CBC News. April 1, 2013. [Alleged scientist muzzling probed by information commissioner](#); The Globe and Mail. April 1, 2013. [Watchdog to probe alleged 'muzzling' of scientists](#); The Star. April 1, 2013. [Muzzling of scientists subject of 'unique' probe by Canada's information watchdog](#).

<sup>324</sup> IFEX/Canadian Journalists for Free Expression (CJFE). April 2, 2013. [Investigation launched into muzzling of Canadian government scientists](#).

<sup>325</sup> IACHR. [Annual Report 2012. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013.

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

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

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

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

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

141. Principle 9 of the Declaration of Principles on Freedom of Expression establishes that: “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict

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Para. 101; Canadian Journalists for Free Expression (CJFE). February 17, 2012. [Prime Minister: Please stop muzzling scientists and researchers](#); IFEX. February 22, 2012. [Gobierno amordaza a sus científicos, dice Periodistas Canadienses por la Libertad de Expresión](#); BBC. February 17, 2012. [Canadian government is ‘muzzling its scientists’](#).

<sup>326</sup> *La Presse*. February 27, 2013. [Des journalistes de La Presse bousculés par le SPVM](#); Fédération Professionnelle des Journalistes du Québec (FPJQ). February 27, 2013. [FPJQ dénonce la brutalité d’un agent du SPVM contre un caméraman](#).

<sup>327</sup> *The Star*. June 3, 2013. [Toronto Star reporter arrested, ticketed after taking photos of injured GO transit officer](#); Reporters Without Borders. June 6, 2013. [Police use force to arrest news photographer at Toronto station](#); Canadian Journalist for Freedom of Expression (CJFE). June 3, 2013. [CJFE disturbed by arrest of Toronto Star reporter](#).

<sup>328</sup> Fédération Professionnelle des Journalistes du Québec (FPJQ). June 6, 2013. [Bousculer un journaliste est inacceptable](#); TVA CIMT. June 6, 2013. [Journaliste de CIMT bousculé, la FPJQ prend position](#); ICI Radio-Canada. June 6, 2013. [Saint-Jean-de-Dieu blâmée par la FPJQ](#).

<sup>329</sup> CBC News. July 4, 2013. [Shale gas tensions flare with another arrest in Kent County](#); Canadian Journalists for Free Expression (CJFE). July 11, 2013. [CJFE concerned by arrest of New Brunswick journalist](#); The Media Co-op. July 4, 2013. [RCMP arrest Media Co-op Journalist in New Brunswick](#).

freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

### C. Freedom of expression and hate speech

142. The Office of the Special Rapporteur takes note of the decision of the Supreme Court of Canada in *Saskatchewan (Human Rights Commission) v. Whatcott*, which struck down elements of a definition of hate speech that was deemed incompatible with the exercise of the right to freedom of expression.<sup>330</sup> The Court also established clearer guidelines for lower courts to follow when determining whether the speech is protected by the right.<sup>331</sup> The decision examined a provision of the Saskatchewan Human Rights Code which prohibited the publication or display of any representation “that exposes or tends to expose to hatred, ridicules, belittles or otherwise affronts the dignity of any person or class of persons on the basis of a prohibited ground.”<sup>332</sup> Analyzing whether the restriction on freedom of expression was compatible with the Canadian Charter of Rights and Freedoms and taking into account Canada’s international treaty obligations, the Court concluded that the prohibition of speech that “ridicules, belittles or otherwise affronts the dignity” was not rationally connected to the legislative objective of eliminating discrimination.<sup>333</sup> It also clarified the definition of hate speech by instructing courts to evaluate “whether a reasonable person, aware of the context and circumstances, would view the expression as likely to expose a person or persons to detestation and vilification on the basis of a prohibited ground of discrimination.”<sup>334</sup> According to the Court, “[r]epresentations vilifying a person or group will seek to abuse, denigrate or delegitimize them, to render them lawless, dangerous, unworthy or unacceptable in the eyes of the audience. Expression exposing vulnerable groups to detestation and vilification goes far beyond merely discrediting, humiliating or offending the victims.”<sup>335</sup>

143. The Office of the Special Rapporteur notes that the Canadian Human Rights Act was enacted on June 26, 2013, repealing Section 13,<sup>336</sup> which had banned telephone or the Internet messages likely to expose a person or a group to hatred based on a prohibited ground of discrimination.<sup>337</sup> The amendment will take effect on June 26, 2014,<sup>338</sup> leaving this type of expression

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<sup>330</sup> Supreme Court of Canada. [Saskatchewan \(Human Rights Commission\) v. Whatcott](#). 2013 SCC 11, [2013] 1 S.C.R. 497. File 33676. February 27, 2013.

<sup>331</sup> Supreme Court of Canada. [Saskatchewan \(Human Rights Commission\) v. Whatcott](#). 2013 SCC 11, [2013] 1 S.C.R. 497. File 33676. February 27, 2013. Para. 55-59.

<sup>332</sup> Saskatchewan Human Rights Commission. [The Saskatchewan Human Rights Code](#). Chapter S-24.1 of the Statutes of Saskatchewan, 1979 (effective August 7, 1979) as amended by the Statutes of Saskatchewan, 1980-81, c.41 and 81; 1989-90, c.23; 1993, c.55 and 61; 2000, c.26; 2007, c.39; and 2011, c.17. Available for consultation at: [http://www.shrc.gov.sk.ca/human\\_rights\\_code.html](http://www.shrc.gov.sk.ca/human_rights_code.html)

<sup>333</sup> Supreme Court of Canada. [Saskatchewan \(Human Rights Commission\) v. Whatcott](#). 2013 SCC 11, [2013] 1 S.C.R. 497. File 33676. February 27, 2013. Para. 64 *et seq.*

<sup>334</sup> Supreme Court of Canada. [Saskatchewan \(Human Rights Commission\) v. Whatcott](#). 2013 SCC 11, [2013] 1 S.C.R. 497. File 33676. February 27, 2013. Para. 59.

<sup>335</sup> Supreme Court of Canada. [Saskatchewan \(Human Rights Commission\) v. Whatcott](#). 2013 SCC 11, [2013] 1 S.C.R. 497. File 33676. February 27, 2013. Para. 41.

<sup>336</sup> Parliament of Canada. Statutes of Canada 2013. Chapter 37. [Bill C-304](#). June 26, 2013 (First Session, Forty-first Parliament, 60-61-62 Elizabeth II, 2011-2012-2013). Art. 2. Available for consultation at: <http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=6249906&File=9>

<sup>337</sup> Section 13 of the law states: “(1) It is a discriminatory practice for a person or a group of persons acting in concert to communicate telephonically or to cause to be so communicated, repeatedly, in whole or in part by means of the facilities of



punishable under the Canadian Criminal Code's provisions on the incitement of violence.<sup>339</sup> The repealed Section 13 had been called into question on the basis that it imposed a disproportionate restriction on individual freedom of expression. According to its critics, criminal law should be the only basis for prosecuting hate speech.<sup>340</sup>

#### D. Other relevant situations

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

145. Principle 5 of the IACHR's Declaration of Principles establishes that, "Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression."

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

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

<sup>338</sup> Parliament of Canada. Statutes of Canada 2013. Chapter 37. [Bill C-304](#). June 26, 2013 (First Session, Forty-first Parliament, 60-61-62 Elizabeth II, 2011-2012-2013). Art. 6. Available for consultation at: <http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=6249906&File=9>

<sup>339</sup> Parliament of Canada. [Debates of the Senate \(Hansard\)](#). June 26, 2013. (1st Session, 41st Parliament, Volume 149, Issue 181); Government of Canada. [Criminal Code](#). (R.S.C., 1985, c. C-46). Hate Propaganda. Art. 318-319.

<sup>340</sup> Canadian Journalists for Free Expression (CJFE). July 3, 2013. [CJFE Welcomes Repeal of Hate Speech Law](#); Canadian Journalists for Free Expression (CJFE). [Review of Free Expression in Canada \(2012-2013\)](#). Pp. 21-23; Richard Moon. University of Windsor - Faculty of Law. October 2008. [Report to the Canadian Human Rights Commission Concerning Section 13 of the Canadian Human Rights Act and the Regulation of Hate Speech on the Internet](#); The Star. June 10, 2013. [Canada's Parliament is right to repeal Section 13 of human rights act](#).

<sup>341</sup> Fédération Professionnelle des Journalistes du Québec (FPJQ). February 25, 2013. [Saint-Julien doit renoncer à exiger une copie du matériel journalistique](#); Municipality of Saint-Julien. [Regulation # 342](#). February 4, 2013. Art. 3; Municipality of Saint-Julien. [Regulation # 344](#). November 5, 2012. Art. 3, 3.2.6, 3.5, 3.7 and 4.

<sup>342</sup> IFEX/Canadian Journalists for Free Expression (CJFE). January 17, 2013. [Canadian whistleblower suspended without pay](#); Slaw. January 23, 2013. [Documents in the Edgar Schmidt Whistleblower Case](#); Federal Court. Edgar Schmidt and the Attorney-General of Canada. [Statement of Claim](#). December 13, 2012. Court File No. T-2225-12.

arguments of both parties, Federal Court Judge Simon Noël was reportedly very critical of the Department of Justice. According to reports, the judge stated: “The day after the filing of this statement [by Mr. Schmidt], bang: ‘You’re suspended,’ [...] The court doesn’t like that [...]. We see that in different countries and we don’t like it [...]. Canada is still a democracy.”<sup>343</sup> In March 2013, the Federal Court ordered the Department of Justice to pay for Edgar Schmidt legal expenses on the grounds that the case involved issues of significant public interest.<sup>344</sup>

147. The Office of the Special Rapporteur was informed that in May a fraud investigator from the federal department Service Canada was suspended without pay after it was discovered that she had leaked information to the press revealing that the federal government was requiring fraud investigators of Service Canada to collect fees of up to 485,000 Canadian dollars per year for fraud in the Employment Insurance service. The government reportedly opened an internal investigation to determine who had leaked the information. The employee admitted her responsibility, and was therefore suspended without pay.<sup>345</sup>

148. The Office of the Special Rapporteur references its Joint Statement issued in 2010 with the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, according to which “government ‘whistleblowers’ releasing information on violations of the law, on wrongdoing by public bodies, on a serious threat to health, safety or the environment, or on a breach of human rights or humanitarian law should be protected against legal, administrative or employment-related sanctions if they act in good faith. Any attempt to impose subsequent liability on those who disseminate classified information should be grounded in previously established laws enforced by impartial and independent legal systems with full respect for due process guarantees, including the right to appeal.”<sup>346</sup>

## 6. Chile

### A. Progress

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

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<sup>343</sup> The Globe and Mail. January 16, 2013. [Judge raps Justice officials for treatment of whistle-blower](#); The Star. January 19, 2013. [Government lawyer Edgar Schmidt courageously blows the whistle: Editorial](#).

<sup>344</sup> Canadian Journalists for Free Expression (CJFE). May 15, 2013. [Update on Canadian Whistleblower Edgar Schmidt](#); The Lawyers Weekly. March 22, 2013. [State must pay costs for Schmidt case](#).

<sup>345</sup> CBC News. July 20, 2013. [EI whistleblower suspended without pay](#); The Star. July 22, 2013. [Suspension of EI whistleblower sets dangerous precedent, critics say](#); Canadian Journalist for Free Expression (CJFE). July 24, 2013. [Whistleblower Sylvie Therrien suspended without pay](#); Digital Journal. July 21, 2013. [EI whistleblower suspended without pay](#); Le Devoir. February 25, 2013. [Assurance-emploi - Quotas : Finley a menti](#); CBC News. March 1, 2013. [EI audit manual outlines tips to root out fraud](#).

<sup>346</sup> UN Special Rapporteur on the Promotion and Protection the Right to Freedom of Opinion and Expression and Inter-American Commission on Human Rights Special Rapporteur for Freedom of Expression. December 21, 2010. [Joint Statement on Wikileaks](#).

and reactivated the investigation. Judge Llanos characterized the case as a crime against humanity and accused the former agents of being the perpetrators of the murder of Carmona. The journalist had worked at the television channel *Canal 9* of the Universidad de Chile and for the magazine *Punto Final*. He was also a militant of the Revolutionary Left Movement (MIR).<sup>347</sup>

150. On April 19, the 7th Guarantee Court of Santiago dismissed a complaint filed against attorney Rodrigo Ferrari for the crime of identity theft. The suit was brought by an entrepreneur who accused Ferrari of creating accounts on the Twitter social network using the entrepreneur's name. In February, the Office of the Attorney General of Chile filed charges against Ferrari for that crime, but the court dismissed the case, in accordance with the thesis put forth by the defense that the Twitter account was not created for the purpose of usurpation but instead involved a satire.<sup>348</sup>

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

151. On December 19, 2012, the Office of the Special Rapporteur requested information from the State of Chile regarding attacks suffered by various journalists who had reported on the conduct of the State security forces during the military dictatorship. Specifically, the letter requested information on thefts of the vehicle and contents of the home of journalist Mauricio Weibel Barahona, which took place on December 14 and 16; various unusual phone calls received by Carlos Dorat Guerra on December 15; the illegal entry into the home of Javier Rebolledo between December 14 and 16, the robbery of the home of Cristóbal Peña on December 16, and the robbery of journalist Pascale Bonnefoy, which occurred in September of 2012.<sup>349</sup> In the response received on January 25, the Chilean State informed the Office of the Special Rapporteur that it had adopted measures regarding the denounced events. In that sense, it indicated that the corresponding investigations with regard to the thefts committed against journalist Mauricio Weibel Barahona had immediately been opened. The letter stressed that the local prosecutor's office had verbally ordered a protective measure on behalf of journalist Weibel for a period of 30 days. Finally, the State made a commitment to make every effort to clarify the facts and punish those responsible.<sup>350</sup>

152. Principle 9 of the IACHR's Declaration of Principles on Freedom of Expression, approved in 2000, establishes that "[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental

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<sup>347</sup> Portal del Sur. May 16, 2013. [Caso Carmona: después de 35 años, procesan a los asesinos](#); Público/EFE. May 15, 2013. [Un juez chileno procesa a ocho exagentes de Pinochet por el asesinato de un periodista](#); Resumen. May 15, 2013. [Atisbos de justicia en un delito de lesa humanidad: el homicidio del periodista Augusto Carmona](#); Nación. May 15, 2013. [Procesan a 8 ex CNI por el asesinato del periodista Augusto Carmona](#); El Universo. May 15, 2013. [Ocho exagentes de Pinochet irán a juicio por presunto asesinato de periodista](#).

<sup>348</sup> IFEX/PEN American Center. February 25, 2013. [Chilean Twitter user faces jail after US officials disclose his identity](#); La Tercera. February 19, 2013. [Formalizan a abogado por usurpación de identidad de Andrónico Luksic en Twitter](#); El Boyaldía. February 25, 2013. [Denuncia de Andrónico Luksic reabre debate por legislación e Internet](#); BioBioChile. April 19, 2013. [Rechazan querrela de Andrónico Luksic contra usuario acusado de usurpar su identidad en Twitter](#); El Dínamo. April 19, 2013. [Tribunal sobree querrela de Andrónico Luksic en contra de acusado de usurpar su identidad](#).

<sup>349</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. December 19, 2012. Letter to the State of Chile. Information request regarding the situation of journalists Mauricio Weibel Barahona, Carlos Dorat Guerra, Javier Rebolledo, Cristóbal Peña and Pascale Bonnefoy.

<sup>350</sup> Communication of the Permanent Mission of Chile to the OAS. Letter No. 16 dated January 25, 2013, which submits the communication of January 15, 2013 from the Foreign Affairs Ministry to the Office of the Special Rapporteur for Freedom of Expression.

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

### C. Subsequent liabilities

153. The Office of the Special Rapporteur notes with satisfaction that on January 23, 2013, the Supreme Court of Chile took up a motion for appeal of a ruling that sentenced the director of the magazine *El Periodista*, Francisco Martorell Cammarella, for the crime of defamation [*injurias graves*] in writing and advertising.<sup>351</sup> The ruling arose from a suit filed in 2003 by an entrepreneur against Humberto Contreras Anguita, who was cited in an article linking the entrepreneur with individuals involved in criminal activities,<sup>352</sup> and against Francisco Martorell Cammarella, director of the media outlet that published the information. During nine years of criminal proceedings against him, Martorell Cammarella was prohibited from leaving the country and made to post bail. He was also sentenced in the first and second instance to 61 days of prison, with the benefit of nighttime detention, payment of a fine of 11 monthly tax units and court costs, along with payment of a civil indemnity as compensation for moral damages.<sup>353</sup> In its ruling, the Supreme Court established that article 39 of Law 19,733<sup>354</sup> punishes as ‘perpetrators’ media directors who have been negligent regarding the “publication or dissemination” of defamatory expressions by a media outlet. In the opinion of the Court, the sentence imposed constituted a “miscarriage of justice” because it applied a criminal classification without establishing the events that could be classified as negligent, an element that would “justify criminal responsibility.” In that sense, the Court upheld the appeal “for having considered as a crime conduct that is not classified as negligent in the contested sentence as required by law,” annulled the sentence and ordered that a substitute sentence be handed down.<sup>355</sup>

154. Principle 10 of the IACHR’s Declaration of Principles establishes that, “[p]rivacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in

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<sup>351</sup> República de Chile. Corte Suprema. Segunda Sala. [Rol N° 4394-2012](#) January 23, 2013; Poder Judicial República de Chile. January 24, 2013. [Corte Suprema acoge recurso de casación de director de periódico en juicio por injurias](#); *El Periodista*. January 24, 2013. [Corte Suprema hace justicia en causa contra director de revista El Periodista](#).

<sup>352</sup> *El Periodista*. November 23, 2003. [Jorge Rabié El amigo poderoso de Spiniak](#); República de Chile. Corte Suprema. Segunda Sala. [Rol N° 4394-2012](#). January 23, 2013; Emol. October 6, 2003. [Spiniak procesado por estupro reiterado en contra de tres menores de edad](#); Cooperativa. November 15, 2004. [Caso Spiniak: director de El Periodista fue encausado por injurias](#).

<sup>353</sup> República de Chile. Corte Suprema. Segunda Sala. [Rol N° 4394-2012](#). January 23, 2013; Poder Judicial República de Chile. January 24, 2013. [Corte Suprema acoge recurso de casación de director de periódico en juicio por injurias](#); *El Periodista*. January 24, 2013. [Corte Suprema hace justicia en causa contra director de revista El Periodista](#); Knight Center for Journalism in the Americas. January 25, 2013. [After nine-year legal battle, Chile’s Supreme Court absolves media director accused of slander](#); Cooperativa.cl. January 24, 2013. [Suprema absolvió a director de El Periodista por causa de injurias](#).

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

<sup>355</sup> República de Chile. Corte Suprema. Segunda Sala. [Rol N° 4394-2012](#). January 23, 2013.

disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.”

#### D. Legal Reforms

155. On June 18, the Government submitted a Bill to the Chamber of Deputies that “increases legal protections and benefits applicable to members of the Forces of Order and Security.”<sup>356</sup> The bill proposes, among others, modification of article 417 of the Military Code of Justice, to establish that “gravely insulting a determined member of the Chilean Police (Carabineros) when carrying out their duties, in the awareness of their status, or mistreating or striking them without causing injuries, shall be punished by prison terms in any of the degrees or fines of 4 to 8 monthly tax units.”<sup>357</sup> The presidential message accompanying submission of the bill, when referring to the proposed modification of the above-mentioned article of the Military Code of Justice, states that “while it is true that the laws cannot place a priori restrictions on freedom of expression merely by establishing crimes of contempt, it is also evident that the exercise of said freedom has a democratic basis that depends on the expression of ideas, judgments and opinions about leaders and public institutions; criticisms or speeches that promote social development and improvement of public service. That is different from the mere expression of insults clearly aimed at provoking or offending certain government officials in the performance of their duties, whether due to resistance, disagreement regarding their conduct or mere disdain.”<sup>358</sup>

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

#### E. Impact on the media and seizure of equipment

157. On May 7, the community radio station *Emoción* was shut down for alleged violation of article 36 B letter a) of the General Telecommunications Law, which sanctions the operation of broadcasting services “without authorization from the corresponding authority.”<sup>359</sup> The director of the

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<sup>356</sup> Cámara de Diputados de Chile. Proyecto de Ley que aumenta las protecciones legales y beneficios aplicables a los miembros de las Fuerzas de Orden y Seguridad. June 18, 2013. Available for consultation at: [http://camara.cl/pley/pley\\_detalle.aspx?prmID=9403&prmBL=8995-07](http://camara.cl/pley/pley_detalle.aspx?prmID=9403&prmBL=8995-07); CIPER. June 20, 2013. [No me peque tan fuerte, mi cabo](#); La Tercera. March 18, 2013. [Interior detalla proyecto que criminaliza insultos a carabineros](#).

<sup>357</sup> Cámara de Diputados de Chile. Proyecto de Ley que aumenta las protecciones legales y beneficios aplicables a los miembros de las Fuerzas de Orden y Seguridad. June 18, 2013. Available for consultation at: [http://camara.cl/pley/pley\\_detalle.aspx?prmID=9403&prmBL=8995-07](http://camara.cl/pley/pley_detalle.aspx?prmID=9403&prmBL=8995-07) “ARTICLE ONE.- Introduce the following modifications to the Military Code of Justice: [...] 5) Introduce the following new Article 417 ter: “Article 417 ter: Whoever gravely insults a determined member of the Chilean Police when carrying out their duties, in the awareness of their status, or mistreats or strikes them without causing injuries, shall be punished by prison terms in any of the degrees or fines of 4 to 8 monthly tax units.”. See also, Gobierno de Chile. May 21, 2013. [Presidente Piñera entregó su cuarta Cuenta Pública a la Nación: “Chile Avanza con Todos al Desarrollo”](#).

<sup>358</sup> Cámara de Diputados de Chile. Proyecto de Ley que aumenta las protecciones legales y beneficios aplicables a los miembros de las Fuerzas de Orden y Seguridad. June 18, 2013. Available for consultation at: [http://camara.cl/pley/pley\\_detalle.aspx?prmID=9403&prmBL=8995-07](http://camara.cl/pley/pley_detalle.aspx?prmID=9403&prmBL=8995-07)

<sup>359</sup> Congreso Nacional de Chile. Ley 18.168. [Ley General de Telecomunicaciones](#). October 2, 1982. “Article 36 B.- The following commit crimes of public action: a) Whoever operates or exploits freely-received or broadcasting telecommunications services or installations without authorization from the corresponding authority, and whoever in their domicile, home, dwelling

station, José Castillo, denounced that he had been detained overnight and that the station's equipment had been confiscated.<sup>360</sup>

158. The Office of the Special Rapporteur views with concern the fact that article 36 B a) of the General Telecommunications Law No. 18,168<sup>361</sup>, which punishes with prison terms the operation or exploitation of freely-received or broadcast telecommunications services without authorization from the corresponding party, continues to be in effect in the Chilean legal system. According to available information, the bill<sup>362</sup> that proposes abolishing the above mentioned article was approved by the Chamber of Deputies on June 4<sup>363</sup> and is currently in its second constitutional process in the Senate.<sup>364</sup> The bill, which creates the Superintendence of Telecommunications, suspends jail terms for broadcasting without a license, eliminates the character of public action of the crime and maintains the imposition of fines.<sup>365</sup>

159. As indicated on prior occasions, the use of criminal law to punish violations of broadcasting regulations may be problematic in light of the American Convention on Human Rights. In this respect, the Office of the Special Rapporteur reiterates that the establishment of criminal penalties applicable to commercial or community broadcasters—which may face an infraction for the lack or misuse of a license—is a disproportionate reaction. In addition, as indicated in the 2012 Annual Report, “the State has the obligation to establish a regulatory framework that encourages free, open, plural, and uninhibited speech. Private media must be able to rely on guarantees that allow them to operate sufficiently and not to be treated in a discriminatory manner. In this sense, the State must protect

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

<sup>360</sup> Agencia de Noticias – Medio a Medio. May 14, 2013. [Radio Emoción de Paine es cerrada por artículo 36 B de Ley General de Telecomunicaciones \(audio\)](#); Radio Konciencia. May 14, 2013. [Radio Emoción de Paine es cerrada por presiones políticas \(audio\)](#); Radio Popular Enrique Torres 100.6 FM. [Radio Emoción allanada y silenciada en Buin](#).

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

<sup>362</sup> Senado de la República de Chile. Proyecto de Ley que crea la Superintendencia de Telecomunicaciones Oficio de ley a Cámara Revisora. June 5, 2013. Article 48.1. Available for consultation at: [http://www.senado.cl/appsenado/templates/tramitacion/index.php?boletin\\_ini=8034-15](http://www.senado.cl/appsenado/templates/tramitacion/index.php?boletin_ini=8034-15)

<sup>363</sup> Senado de la República de Chile. Proyecto de Ley que crea la Superintendencia de Telecomunicaciones Discusión general. Aprobado en general y particular a la vez. June 4, 2013. Available for consultation at: [http://www.senado.cl/appsenado/templates/tramitacion/index.php?boletin\\_ini=8034-15](http://www.senado.cl/appsenado/templates/tramitacion/index.php?boletin_ini=8034-15); El Dínamo. June 4, 2013. [Proyecto que crea Superintendencia de Telecomunicaciones pasa al Senado](#); Pulso Social. June 5, 2013. [Chile: Diputados aprueban creación de Superintendencia de Telecomunicaciones](#).

<sup>364</sup> Senado de la República de Chile. September 4, 2013. [Superintendencia de Telecomunicaciones: discuten aspectos relativos a la carrera funcionaria](#).

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

community media, as they are outlets for the excluded social groups and communities that are often absent from public debate and whose inclusion is imperative in every democratic state.”<sup>366</sup>

## 7. Colombia

### A. Progress

160. On March 12, 2013, a prosecutor from the National Unit of Human Rights and International Humanitarian Law [*Unidad Nacional de Derechos Humanos y Derecho Internacional Humanitario*] of Colombia issued a detention order against seven former employees of the Administrative Security Department [*Departamento Administrativo de Seguridad*] (DAS) as co-perpetrators of aggravated torture in the case of journalist Claudia Julieta Duque. For the first time, the Office of the Public Prosecutor resorted to international protocols to classify the crime as “aggravated torture in the psychological modality”. In 2003 and 2004, the journalist filed a complaint against former employees of the then Administrative Security Department –abolished in 2011– in the belief that she was the victim of persecutions and threats due to her journalistic work. The Office of the Public Prosecutor concluded that the journalist was the victim of permanent harassment by employees of the DAS, as a result of a journalistic investigation that she carried out into the murder of Colombian journalist Jaime Garzón and in which she had found indications linking State agents to the murder.<sup>367</sup> As has been reported in previous reports by this office, Claudia Julieta Duque has been systematically attacked, intimidated, threatened and terrorized due to her journalistic investigative work.<sup>368</sup> According to information provided by the State in a letter of February 22, 2013, journalist Claudia Julieta Duque is under protection measures.<sup>369</sup> Following the decision by the Office of the Public Prosecutor, the journalist denounced that she continued to be the victim of pressures and suspicious attitudes around her home and family by unknown individuals.<sup>370</sup>

<sup>366</sup> IACHR. [Annual Report 2012. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the Situation of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. Para. 280; IACHR. [Annual Report 2011. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the Situation of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 467.

<sup>367</sup> Fiscalía General de la Nación. March 12, 2013. [Asegurados funcionarios del DAS por tortura contra periodista](#); El Tiempo. March 12, 2013. [Exfuncionarios del Das, asegurados por tortura psicológica a periodista](#); Caracol Radio. March 12, 2013. [Medida de aseguramiento contra exfuncionarios del Das por tortura psicológica a periodista](#); Knight Center for Journalism in the Americas. March 14, 2013. [Former Colombian intelligence officers go to prison for “psychological torture” of journalist](#); El Espectador. March 12, 2013. [‘Lo de Claudia Julieta Duque fue tortura síquica’: Fiscalía](#).

<sup>368</sup> IACHR. [Annual Report 2012. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. Para. 134; IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 113 and 116-118; IACHR. [Annual Report 2010. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 149, 152, 162 and 164; IACHR. [Annual Report 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). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 139 and 144.

<sup>369</sup> Communication from the State of Colombia to the IACHR. Official Letter MPC/OEA No.: 256/2013, dated February 22, 2013, that refers Note DIDHD/GAPDH No. 0234/0208, dated February 22, 2013. Para. 13 (v).

<sup>370</sup> El Tiempo. April 12, 2013. [Periodista Claudia Julieta Duque denunció nuevos seguimientos](#); Email sent by Claudia Julieta Duque to the Office of the Special Rapporteur for Freedom of Expression. March 22, 2013. Ref: Nuevos incidentes de seguridad - periodista Claudia Julieta Duque. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

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

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

<sup>371</sup> El Tiempo. March 11, 2013. [Crimen de periodista Eustorgio Colmenares, delito de lesa humanidad](#); Knight Center for Journalism in the Americas. March 11, 2013. [Fiscalía de Colombia declara asesinato de periodista como delito de lesa humanidad](#); Terra/Agencia EFE. March 11, 2013. [Fiscalía colombiana dice asesinato periodista es crimen de lesa humanidad](#).

<sup>372</sup> Corte Suprema de Justicia. Sala de Casación Penal. July 10, 2013. Casación sistema acusatorio N°.38.909. Available for consultation: <http://190.24.134.69/busquedadoc/>; See also, Corte Suprema de Justicia. Casación sistema acusatorio N°.38.909. Available for consultation at: <http://flip.org.co/resources/documents/c4ab6f8aa7b923cc81bf7d99e4da4e93.pdf>; Fundación para la Libertad de Prensa (FLIP). July 16, 2013. [Corte Suprema de Justicia absuelve al periodista Luis Agustín González por el delito de injuria](#); El Universal. July 16, 2013. [Corte Suprema absuelve al periodista Luis Agustín González por delito de injuria](#); El Colombiano. July 15, 2013. ["Uno no puede autocensurarse por intimidaciones": Luis Agustín González](#).

<sup>373</sup> Cundinamarca Democrática/Fundación para la Libertad de Prensa (FLIP). 2008. [Editorial ¡No más!](#). Edition 44.

IACHR. [Annual Report 2012. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. Para. 150; Tribunal Superior del Distrito de Cundinamarca. Sala de Decisión Penal. Judgment of February 29, 2012. [Radicado 25290-60-00-652-2009-80062-01. Acta No 038](#).

<sup>375</sup> Corte Suprema de Justicia. Sala de Casación Penal. July 10, 2013. Casación sistema acusatorio N°.38.909. Available for consultation: <http://190.24.134.69/busquedadoc/>. See also, Fundación para la Libertad de Prensa (FLIP). Sentencia Corte Suprema de Justicia. [Casación sistema acusatorio N°.38.909](#).



163. On February 7, 2013, in the city of Bogotá, the event titled “Journalism: Damage, Memory and Reparation” [*Periodismo: Daño, Memoria y Reparación*], organized by the Center for Historical Memory and the Unit for Integral Attention and Reparation for Victims [*Centro de Memoria Histórica y la Unidad para la Atención y Reparación Integral a las Víctimas*], was held in the context of the collective reparations program created by Decree 4800 of 2011<sup>376</sup>, which is implemented by the Unit for Integral Attention and Reparation for Victims [*Unidad para la Atención y Reparación Integral de las Víctimas*]. The event was attended by the President of the Republic, Juan Manuel Santos. According to the Unit, the symbolic act “seeks to publicly recognize journalists who have been victims of the armed conflict”.<sup>377</sup>

164. As stated in the past the “Programme for Prevention and Protection of the rights to life, liberty, integrity and security of individuals, groups and communities” [*Programa de Prevención y Protección de los derechos a la vida, la libertad, la integridad y la seguridad de personas, grupos y comunidades*] unified the former specific protection programs for persons at extraordinary or extreme risk, including journalists. In its communication of February 22, 2013, the Colombian State indicated that, “the National Protection Unit [*Unidad Nacional de Protección*] attached to the Ministry of Interior was created in 2012, unifying the State’s protection schemes under the responsibility of a single institution. The protection schemes for judges and prosecutors, witnesses, human rights defenders, displaced persons, journalists, trade union members, and other vulnerable populations are thus integrated into a single program. With this new entity, the National Government seeks to offer more professional protection that makes it possible to provide security to those who really need it. It bears noting that the protection program is unique in the world”.<sup>378</sup>

165. In a communication dated October 22, 2013, the State informed that as of September 2013, the National Protection Unit [*Unidad Nacional de Protección*] (UNP) provided protection to 93 journalists in 20 departments. Among the beneficiaries, the implemented protective measures included 104 bodyguards; 28 motor vehicles; 19 armored vehicles; 2 motorcycles; 37 bullet-proof vests; 22 mobile communications devices; 14 Avantel communication devices; and approximately 30 million pesos per month in support of relocation and transportation aid. Additionally, the State informed that the National Protection Unit has invested a total sum of 7,750 million Colombian pesos (some US\$ 4,100,000) in the protection of journalists and media workers. Finally, the State informed that it “keeps direct contact with civil associations such as the [Fundación] para la Libertad de Prensa (FLIP), on threats under their attention, and that it is a responsibility of the UNP to be in contact with the victims of such threats, and to provide them with a protection road-map.”<sup>379</sup>

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<sup>376</sup> Presidencia de la República. [Decreto 4800 de 2011](#). December 20, 2011.

<sup>377</sup> Unidad para Atención y Reparación Integral de las Víctimas. February 8, 2013. [Este 8 de febrero, homenaje a los y las periodistas en su día](#).

<sup>378</sup> Communication from the State of Colombia to the IACHR. Official Letter MPC/OEA No.: 256/2013, dated February 22, 2013, that refers Note DIDHD/GAPDH No. 0234/0208, dated February 22, 2013. Para. 5

<sup>379</sup> In Communication from the State of Colombia to the IACHR. Official Letter MPC/OEA No.: 1423/2013, dated October 22, 2013, that refers Note S-GAPDH-13-042535, dated October 18, 2013.

## B. Murders

166. On September 11, attorney and journalist Édison Alberto Molina was murdered in the municipality of Puerto Berrío, department of Antioquia. According to the information received, after finishing his radio program, Molina was riding a motorcycle to his home along with his wife when they were intercepted by unknown individuals, who shot him. Molina died on the way to the hospital. His wife was slightly injured. Molina was an attorney and politician, and hosted a program called 'Consultorio Jurídico' on the community radio station *Puerto Berrío Stereo*. On the radio program, Molina received consultations from listeners on legal matters and frequently exposed cases of corruption in the local government. According to reports, on various occasions he had received threats allegedly related to his reporting. The Office of the Attorney General began an investigation into the matter. At the same time, the authorities offered a reward of 20 million Colombian pesos (some US\$ 10,400) to anyone providing information contributing towards the arrest of those responsible.<sup>380</sup>

167. On September 28, José Darío Arenas, vendor and collaborator of the daily newspaper *Extra Quindío*, was murdered in the municipality of Caicedonia, department of Valle del Cauca. According to the information received, on the morning of September 28, Arenas was selling copies of the newspaper and announcing its headlines, when he was attacked by unknown individuals, who shot him several times. That day, one of the main stories in *Extra Quindío* reported on alleged irregularities and mistreatments in a local jail, which involved officials from the National Penitentiary and Prison Institute [*Instituto Nacional Penitenciario y Carcelario*]. According to the reports, Arenas collaborated with the journalist who wrote the article, had helped to obtain the testimonies and had taken photographs for the article. After the murder, one of the sources who had provided information for the article received a threatening phone call, in which he was warned that "the first one had [already] fallen".<sup>381</sup>

168. One of the most worrisome effects of inaction and prolonged delay in investigations into many cases in Colombia is the expiration of the statute of limitations for criminal prosecution.<sup>382</sup> According to the information received by the Office of the Special Rapporteur, in the last two years, the

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<sup>380</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. September 20, 2013. [Press Release R69/13 Office of the Special Rapporteur Condemns Murder of Lawyer and Radio Host in Colombia](#); El Espectador. September 17, 2013. [SIP condena el asesinato del periodista colombiano Édison Alberto Molina](#).

<sup>381</sup> Committee to Protect Journalists (CPJ). October 1, 2013. [Gunmen kill Colombian vendor who collaborated on story](#); El Espectador/AFP. October 1, 2013. [SIP condena asesinato de 'voceador' de diario en Colombia](#); Fundación para la Libertad de Prensa (FLIP). September 29, 2013. [Asesinan a José Darío Arenas, voceador de prensa del diario "EXTRA del Quindío" en Caicedonia –Valle del Cauca](#).

<sup>382</sup> In 2011, the statute of limitations expired in at least seven cases of the murder of journalists: Arsenio Hoyos, murdered on September 13, 1991, in Granada, Meta; Carlos Julio Rodríguez and José Libardo Méndez, murdered on May 20, 1991, in Florencia, Caquetá; and Julio Daniel Chaparro and Jorge Enrique Torres murdered on April 24, 1991, in Segovia, Antioquia; Rafael Solano Rochero, who died on October 30, 1991, in Fundación, Magdalena and Néstor Henry Rojas Monje, who died on December 28, 1991, in Arauca. IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 101. See also, Fundación para la Libertad de Prensa (FLIP). September 14, 2011. [Prescribe caso del periodista Arsenio Hoyos, asesinado hace 20 años en Granada, Meta](#); Fundación para la Libertad de Prensa (FLIP). May 21, 2011. [Homicidios de los periodistas Carlos Julio Rodríguez y José Libardo Méndez prescriben a pesar de los llamados a la Fiscalía](#); Fundación para la Libertad de Prensa (FLIP). April 25, 2011. [Homicidios de los periodistas Chaparro y Torres prescriben a pesar de los llamados de sociedad civil a la Fiscalía](#); El Planeta. April 25, 2011. [Prescripción de asesinatos de periodistas causa indignación](#); Terra Noticias/EFE. April 18, 2011. [La SIP preocupada por prescripción de delitos contra periodistas en Colombia](#); El Tiempo. April 17, 2011. [A punto de prescribir proceso por asesinato de Daniel Chaparro](#).

statute of limitations for criminal prosecution expired with respect to the murders of the following journalists: John Félix Tirado Castañeda, murdered in the municipality of Cartago, department of Valle del Cauca on August 5, 1992;<sup>383</sup> José Domingo Cortés Soto, murdered in the city of Valencia on November 15, 1992; Gerardo Didier Gómez, murdered near the city of Cali on February 11, 1993, Carlos Lajud Catalán, murdered in the city of Barranquilla on March 19, 1993;<sup>384</sup> Nelson de la Rosa Toscazo, murdered in Cartagena on August 3, 1993<sup>385</sup> and Manuel José Martínez Espinosa, murdered on September 28, 1993.<sup>386</sup> The statute of limitations in the case of Danilo Alfonso Baquero Sarmiento, murdered on December 26, 1993, is at risk of expiring.<sup>387</sup>

169. In Colombia, in 1999 a Subunit for the Investigation of the Murder of Journalists [*Sub-Unidad de investigación de Asesinatos de Periodistas*] was established under the Human Rights Unit of the Office of the Public Prosecutor.<sup>388</sup> At the time, the Office of the Special Rapporteur recognized the efforts of the Colombian authorities in the creation of the subunit as a specific mechanism provide effective protection of the personal integrity of a significant number of Colombian journalists.<sup>389</sup> Later, in its 2005 report *Impunity, Self-censorship and Armed Internal Conflict: an Analysis of the State of Freedom of Expression in Colombia*, the Office of the Special Rapporteur observed that the subunit lacked prosecutors specifically assigned to the issue of freedom of expression and expressed its concern at the high number of cases of murders and attacks against journalists still pending in the country. However, the Office of the Special Rapporteur reiterated that it “considers the employment of personnel assigned to this area to be of fundamental importance” and urged the State “to provide the Office of the Public Prosecutor with the budgetary resources necessary to investigate crimes of freedom of expression.”<sup>390</sup>

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

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<sup>383</sup> Fundación para la Libertad de Prensa (FLIP). 2013. [De las balas a los expedientes: Informe sobre el estado de la libertad de prensa en Colombia, 2012](#). Pp. 58-59.

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

<sup>385</sup> Fundación para la Libertad de Prensa (FLIP). August 3, 2013. [Sin reportes del proceso, prescribe el asesinato del periodista Nelson de la Rosa Toscazo](#); Reporters Without Borders. July 25, 2013. [“Statutes of limitations are a tragic guarantee of eternal impunity”](#).

<sup>386</sup> Fundación para la Libertad de Prensa (FLIP). September 28, 2013. [Prescribe el asesinato del periodista Manuel José Martínez Espinosa](#).

<sup>387</sup> Fundación para la Libertad de Prensa (FLIP). 2013. [De las balas a los expedientes: Informe sobre el estado de la libertad de prensa en Colombia, 2012](#). Pp. 60-62; Fundación para la Libertad de Prensa (FLIP). April 19, 2013. [Asamblea de la FLIP exige respuesta de la Fiscalía frente a la prescripción de casos de asesinatos a periodistas](#); Reporters Without Borders. July 25, 2013. [“Statutes of limitations are a tragic guarantee of eternal impunity”](#).

<sup>388</sup> Fundación para la Libertad de Prensa (FLIP). [Informe sobre Libertad de Prensa en Colombia en 1999](#).

<sup>389</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. December 13, 2001. [Press Release 49/01 Concern on the part of the IACHR Rapporteur for Freedom of Expression over the assassinations of journalists in Colombia](#).

<sup>390</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Impunity, self-censorship and armed internal conflict: an analysis of the state of freedom of expression in Colombia](#). OEA/Ser.L/V/II. Doc. 51. August 31, 2005. Para 67.

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

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

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

173. The Office of the Special Rapporteur was informed that on February 12, 2013, a trial against four persons for the murder of the assistant director of the daily newspaper *La Patria*, José Orlando Sierra (which took place in 2002, in Manizales) was concluded before the Single Specialized

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<sup>391</sup> Communication from the State of Colombia to the IACHR. Official Letter MPC/OEA No.: 1423/2013 to the IACHR, dated February 22, 2013, that refers Note S-GAPDH-13-042535, dated October 18, 2013.

<sup>392</sup> 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](#); Reporters Without Borders. December 3, 2012. [COLOMBIA | Muere en extrañas circunstancias el periodista Guillermo Quiroz Delgado](#).

<sup>393</sup> According to information received, on February 4, 2013, the Internal Control Office of the National Police of Colombia [*Oficina de Control Interno de la Policía de Colombia*] accused a police sub-lieutenant of the crime of manslaughter [*homicidio culposo*] for his alleged responsibility in the death of journalist Guillermo Quiroz Delgado. Federación Colombiana de Periodistas (FECOLPER). February 5, 2013. [Homicidio culposo para suboficial por caso del periodista Guillermo Quiroz](#); El Universal. February 5, 2013. [Homicidio culposo para suboficial por caso del periodista Guillermo Quiroz](#); Knight Center for Journalism in the Americas. February 6, 2013. [Colombian police officer to be tried for manslaughter in the death of arrested reporter](#); 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](#); Reporters Without Borders. December 3, 2012. [COLOMBIA | Muere en extrañas circunstancias el periodista Guillermo Quiroz Delgado](#).

<sup>394</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Official Letter S-GAID-13-048140, dated December 2, 2013.

Criminal Court of the Circuit of Pereira [*Juzgado Único Penal del Circuito Especializado de Pereira*]. Among them was Ferney Tapasco González, accused to be the mastermind behind the murder.<sup>395</sup> The trial began on September 17, 2012.<sup>396</sup> According to available information, in its final arguments, the Prosecutor requested a “conviction” against the defendants and “that copies be forwarded” to the office of the Attorney General to enable it to continue investigating the participation of other persons also identified by witnesses at the trial as co-perpetrators in the murder of journalist Sierra.<sup>397</sup> As of the closing of this report no mastermind has been condemned.<sup>398</sup>

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

### C. Attacks, detentions and threats against media outlets and journalists

175. The Office of the Special Rapporteur received information on threats made against journalist Jineth Bedoya<sup>399</sup>, with the Colombian daily newspaper *El Tiempo*, who in the past was the victim of torture and grave abuses by individuals presumed to be paramilitaries when reporting on arms trafficking in the Modelo Prison in Bogotá. On January 11, one of the journalist’s sources received a message that said: “[t]ell Jineth Bedoya to stop publishing and exposing those things because she knows what can happen to her.”<sup>400</sup> Bedoya has been the beneficiary of precautionary measures by the Inter-American Commission on Human Rights (IACHR) since 2000. On February 9, 2012, the Office of the Attorney General announced the entailment of three paramilitaries to the case.<sup>401</sup> On September 20,

<sup>395</sup> La Patria. February 11, 2013. [Defensores de Tapasco y de tres acusados concluyen sus alegatos](#); La Patria. February 8, 2013. [Procuraduría pide condena por crimen de Orlando Sierra](#); El Espectador. February 8, 2013. [Piden condena contra procesados por asesinato de Orlando Sierra](#); La Patria. February 13, 2013. [“Van 11 años de una injusticia con Tapasco”: la defensa](#).

<sup>396</sup> Fiscalía General de la Nación. September 18, 2012. [Avanza juicio por homicidio del periodista Orlando Sierra](#); Fundación para la Libertad de Prensa (FLIP). 2013. [De las balas a los expedientes: Informe sobre el estado de la libertad de prensa en Colombia, 2012](#). P. 61.

<sup>397</sup> La Patria. 11 de February de 2013. [Defensores de Tapasco y de tres acusados concluyen sus alegatos](#); La Patria. 8 de February de 2013. [Procuraduría pide condena por crimen de Orlando Sierra](#); El Espectador. 8 de February de 2013. [Piden condena contra procesados por asesinato de Orlando Sierra](#).

<sup>398</sup> After the closing of this report, the Special Rapporteur received information indicating that on December 24 the Single Specialized Criminal Judge of Pereira [*Juez Único Penal especializado de Pereira*] acquitted Ferney Tapasco and the other three people who were being investigated for the murder of Jose Orlando Sierra. As reported, the Office of the Public Prosecutor appealed the ruling. Fundación para la Libertad de Prensa (FLIP). December 24, 2013. [Juez de Pereira absuelve a Ferney Tapasco por el asesinato del periodista Orlando Sierra](#); La Patria. December 25, 2013. [¿Ganará la impunidad?](#); Semana. December 24, 2013. [Ferney Tapasco inocente por homicidio de Orlando Sierra](#); El Tiempo. December 24, 2013. [Juez absuelve a Ferney Tapasco por crimen de Orlando Sierra](#); El Universal. December 27, 2013. [Fiscalía apeló la absolución a Ferney Tapasco](#); El Tiempo. December 26, 2013. [Fiscalía apelará absolución de Tapasco por muerte de Orlando Sierra](#).

<sup>399</sup> Fundación para la Libertad de Prensa (FLIP). January 17, 2013. [Nuevas amenazas contra la periodista Jineth Bedoya](#); El Tiempo. January 17, 2013. [Denuncian nuevas amenazas contra la periodista Jineth Bedoya](#).

<sup>400</sup> Fundación para la Libertad de Prensa (FLIP). January 17, 2013. [Nuevas amenazas contra la periodista Jineth Bedoya](#); El Tiempo. January 17, 2013. [Denuncian nuevas amenazas contra la periodista Jineth Bedoya](#); Knight Center for Journalism in the Americas. January 18, 2013. [Award-winning Colombian journalist and kidnapping victim receives new threat](#).

2012, the Office of the Attorney General declared that the statute of limitations will not apply to the case because it characterized the events as a crime against humanity, in view of the fact that they took place within a systematic and generalized context of violence against journalists.<sup>402</sup> The journalist is under a protection scheme.

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

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

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

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

<sup>401</sup> Fiscalía General de la Nación. February 9, 2012. [Casos relevantes por delitos cometidos en contra de periodistas](#); El Espectador. February 10, 2012. [La mano oculta del bloque Capital](#); El Universal. February 10, 2012. [Exparamilitar confiesa en caso de agresión a periodista colombiana](#). See also, IACHR. [Annual Report 2000](#). Chapter III (The Petitions System and Individual Cases). Precautionary measures granted or extended by the Commission during 2000. Colombia. OEA/Ser./L/V/II.111 Doc. 20 Rev. April 16, 2001. Para. 20.

<sup>402</sup> Fiscalía General de la Nación. October 11, 2012. [Declaración del Fiscal General de la Nación, Eduardo Montealegre Lynett, sobre el caso de la periodista Jineth Bedoya, Neiva \(Huila\), 29 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](#); El Espectador. September 13, 2012. [Justicia en caso Jineth Bedoya](#).

<sup>403</sup> Federación Colombiana de Periodistas (FECOLPER). January 30, 2013. [APA rechaza intimidaciones de grupos ilegales a periodistas de Medellín y pide garantías a las autoridades locales](#); Caracol Radio. January 30, 2013. [Periodistas denuncian que han recibido amenazas de combos delincuenciales en Medellín](#).

<sup>404</sup> Caracol Radio. January 30, 2013. [Periodistas denuncian que han recibido amenazas de combos delincuenciales en Medellín](#); Federación Colombiana de Periodistas (FECOLPER). January 30, 2013. [APA rechaza intimidaciones de grupos ilegales a periodistas de Medellín y pide garantías a las autoridades locales](#).

<sup>405</sup> Federación Colombiana de Periodistas (FECOLPER). February 21, 2013. [Amenazan a reportero gráfico y dos periodistas en Barrancabermeja durante cubrimiento de explosión](#); Vanguardia. February 21, 2013. [Explosión de carrotaque generó pánico en barrio de Barrancabermeja](#).

<sup>406</sup> Federación Colombiana de Periodistas (FECOLPER). March 1, 2013. [Una semana en alerta naranja para el periodismo colombiano por agresiones durante el paro cafetero](#); IFEX/Reporters Without Borders. March 12, 2013. [Police violence against journalists during Colombian coffee worker strike](#).

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

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

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

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

183. On May 1, two persons fired at the vehicle of the head of investigations of the magazine *Semana*, Ricardo Calderón, on the road from Ibagué to Bogotá.<sup>411</sup> Calderón had looked into alleged irregularities at a Military Detention Center in Tolemaida, where members of the military sentenced for human rights violations enjoyed diverse privileges. *Semana* has published various articles denouncing these irregularities; the most recent, titled "Tolemaida Tours", was published on April 13, two weeks prior to the attack on Calderón.<sup>412</sup> The attack was denounced by President Santos and other senior government officials, and protective measures have been provided for the journalist while the corresponding investigation is carried out.<sup>413</sup> In a communication sent to the IACHR and dated July 10,

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<sup>407</sup> *Semana*. March 1, 2013. [Ataque contra columnista de Semana.com](#); Knight Center for Journalism in the Americas. March 18, 2013. [Tras ser secuestrado y golpeado, columnista colombiano deja de escribir](#); Reporters Without Borders. March 18, 2013. [A journalist and writer, victim of a violent assault, suspends his writing activities](#); Federación Colombiana de Periodistas (FECOLPER). March 4, 2013. [Atacado columnista de Semana](#).

<sup>408</sup> Knight Center for Journalism in the Americas. March 25, 2013. [Head of local trafficking gang threatens to "play soccer" with the head of Colombian journalist](#); El Espectador. March 22, 2013. [Denuncian amenaza a periodista en Ibagué](#); Federación Colombiana de Periodistas (FECOLPER). March 21, 2013. [Amenazan a corresponsal del Canal El Tiempo, en Ibagué-Tolima-](#).

<sup>409</sup> Committee to Protect Journalist (CPJ). March 11, 2013. [Letter bomb sent to home of Colombian journalist](#); El Mundo. March 8, 2013. [Con carta bomba intentaron atentar contra periodista antioqueño](#); Knight Center for Journalism in the Americas. March 10, 2013. [Journalist receives letter bomb in Colombia](#); Caracol Radio. March 8, 2013. [Atentado con carta bomba contra un periodista en Antioquia](#).

<sup>410</sup> Fundación para la Libertad de Prensa (FLIP). April 16, 2013. [Periodista caleño sale de la ciudad por amenazas](#); Q'Hubo. April 17, 2013. [Amenazan a Periodista de Q'Hubo](#). P. 10.

<sup>411</sup> *Semana*. May 2, 2013. ["El atentado contra Ricardo Calderón es repudiable"](#); RCN La Radio. May 2, 2013. [Preguntaron por Ricardo y dispararon: Director de Semana](#); El País. May 2, 2013. [Presidente Santos calificó de "repudiable" atentado contra el periodista Ricardo Calderón](#).

<sup>412</sup> *Semana*. April 13, 2013. [Exclusivo de SEMANA: Tolemaida Tours](#).

<sup>413</sup> *Semana*. May 2, 2013. ["El atentado contra Ricardo Calderón es repudiable"](#); RCN La Radio. May 2, 2013. [Preguntaron por Ricardo y dispararon: Director de Semana](#); El País. May 2, 2013. [Presidente Santos calificó de "repudiable"](#)

2013, the State of Colombia provided information on the measures adopted. The State reported that the National Protection Unit had provided urgent protection measures for the journalist, including “a strict protection scheme”. The State also declared that an investigation into the events was initiated by the 51<sup>st</sup> Specialized Human Rights Unit of the Office of the Public Prosecutor.<sup>414</sup>

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

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

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

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[atentado contra el periodista Ricardo Calderón.](#)

<sup>414</sup> Communication from the State of Colombia to the IACHR. Official Letter MPC/OEA No.: 945/2013 to the IACHR, dated July 10, 2013, that refers Note S-GAPDH-13-025460, dated July 2, 2013 “Nota a Relatora Especial para la Libertad de Expresión, periodista Ricardo Calderón”.

<sup>415</sup> Reporters Without Borders. May 10, 2013. [Death threats against eight journalists over land restitution](#) (ATTACHED LEAFLET).

<sup>416</sup> Fundación para la Libertad de Prensa (FLIP). May 7, 2013. [Aparece panfleto contra ocho periodistas en Valledupar](#); Federación Colombiana de Periodistas (FECOLPER). May 8, 2013. [FECOLPER condena amenazas al periodismo y exige medidas de protección a comunicadores](#); El Tiempo/AFP. May 7, 2013. [Policía dice que garantiza seguridad a periodistas amenazados en Cesar](#); Reporters Without Borders. May 10, 2013. [Death threats against eight journalists over land restitution](#).

<sup>417</sup> La Patria/Colprensa. May 7, 2013. [Garantizan seguridad a periodistas amenazados en Valledupar](#); El País/Colprensa. May 7, 2013. [Anuncian protección para periodistas amenazados en Valledupar](#); El Colombiano. May 7, 2013. [Ocho periodistas fueron amenazados en Valledupar por grupo antirrestitución](#).

<sup>418</sup> RCN Televisión/La FM. May 10, 2013. [Manifestantes agredieron a equipo de Noticias RCN en el sur de Bogotá](#); La FM. May 9, 2013. [Equipo periodístico de Noticias RCN fue agredido en el sur de Bogotá](#); Semana. May 10, 2013. [La agresión a un equipo de 'Noticias RCN'](#); Federación Colombiana de Periodistas (FECOLPER). May 10, 2013. [Agreden equipo periodístico en Bogotá y Cali. En los mismos hechos queman y atacan los vehículos de prensa](#).

<sup>419</sup> Federación Colombiana de Periodistas (FECOLPER). May 10, 2013. [Agreden equipo periodístico en Bogotá y Cali. En los mismos hechos queman y atacan los vehículos de prensa](#); El País. May 9, 2013. [Hieren a periodista del diario Q'hubo en el barrio Mojica del oriente de Cali](#).



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

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

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

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

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

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<sup>420</sup> Crónica del Quindío. August 17, 2013. [Policía anunció investigación por hechos en los que resultó lesionado periodista](#); HSB Noticias. August 16, 2013. [Sargento de la Policía agradece a periodista en Quindío](#); Vea Pues Quindío. [Policía agredió a periodista](#); Federación Colombiana de Periodistas (FECOLPER). September 2, 2013. [ALERTA. Denuncian nuevo abuso de autoridad y agresión a equipo periodístico por parte de la Policía Nacional](#).

<sup>421</sup> Opa Noticias. August 26, 2013. [EN VIDEO: Soldados borrachos agreden camarógrafo y periodista en Neiva](#); Federación Colombiana de Periodistas (FECOLPER). September 2, 2013. [ALERTA. Denuncian nuevo abuso de autoridad y agresión a equipo periodístico por parte de la Policía Nacional](#).

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

<sup>423</sup> Fundación para la Libertad de Prensa (FLIP). October 28, 2013. [Panfleto del ELN intimida a periodistas en Arauca](#); Federación Colombiana de Periodistas (FECOLPER). October 28, 2013. [ALERTA- Panfletos amenazantes contra periodistas y medios de comunicación, circulan en Arauca y Chiquinquirá](#).

<sup>424</sup> RCN La Radio. May 14, 2013. [Estructuras mafiosas no van a amedrentar al periodismo y sus líderes: Gobierno](#); Fundación para la Libertad de Prensa (FLIP). May 16, 2013. [Plan para atentar contra el periodista Gonzalo Guillen y los investigadores León Valencia y Ariel Ávila](#); Reuters. May 14, 2013. [Colombia descubre plan para asesinar un periodista y dos investigadores](#); Fundación para la Libertad de Prensa (FLIP). October 16, 2013. [Periodistas, columnistas e investigadores salen de Colombia por amenazas de muerte](#).

<sup>425</sup> Reporters Without Borders. June 12, 2013. [Exile of journalists named in murder plot shows need for plan to combat impunity](#); Reporters Without Borders. October 16, 2013. [Governor's arrest does not resolve threats to four journalists](#); Knight Center for Journalism in the Americas. October 2, 2013. [Colombian journalist and analyst flees the country amid death threats](#); Caracol Radio. October 2, 2013. [Policía ni Fiscalía han asumido investigación por amenazas: Claudia López](#); Fundación para la Libertad de Prensa (FLIP). October 16, 2013. [Periodistas, columnistas e investigadores salen de Colombia por amenazas de muerte](#); AFP. October 10, 2013. [Periodistas amenazados de muerte abandonaron Colombia](#).

regarding alleged links between the governor of La Guajira, Juan Francisco Gómez, and a criminal gang led by drug traffickers and smugglers. On October 12, the governor was arrested in the context of an investigation into his alleged involvement in various homicides.<sup>426</sup>

191. In a communication of October 22, 2013, the State of Colombia informed the Office of the Special Rapporteur that Guillén, Ávila and Valencia were part of a protection program by the National Protection Unit (UNP) that provided them with bodyguards, drivers and armored vehicles.<sup>427</sup>

192. In a communication dated December 2, 2013, the State reported that “it has publicly acknowledged and regrets the cases in which the assailants [of the journalists] were members of the National Police.” It indicated, for example, in the case of photographer Ana María García<sup>428</sup> the police commander of the Metropolitan Police of Bogotá, General Luis Eduardo Martínez, publicly apologized to the journalist on behalf of the institution. General Martínez reportedly stated on that occasion, “[t]his act is not only an affront to all of the country’s women but it is also an affront to the Police as an institution [...] It is a discredit to the work of the National Police.”<sup>429</sup>

193. The State also recalled that journalists are part of the institutional strategy for the Protection of Vulnerable Populations.<sup>430</sup>

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

#### **D. Attacks on journalists and media workers in the context of demonstrations**

195. On June 20, in Tibú, department of Norte de Santander, a journalistic team from the press office of the Marcha Patriótica movement and a team from *Prensa Rural* were attacked by individuals in dressed as civilians, who according to the reports carried police identification shields, with the aim of not letting themselves be filmed.<sup>431</sup> Also on June 20 in Tibú, journalist Milton Henao with the Venezuelan channel *Telesur* was attacked by individuals presumed to be agents of the Mobile Anti-

<sup>426</sup> Semana. October 12, 2013. [Capturado Francisco 'Kiko' Gómez gobernador de La Guajira.](#)

<sup>427</sup> Communication from the State of Colombia to the IACHR. Official Letter MPC/OEA No.: 1423/2013 to the IACHR, dated October 22, 2013, that refers Note -SGAPDH-13-042535, dated October 18, 2013. Para. 15, 16 and 17.

<sup>428</sup> IACHR. [Annual Report 2012. Annual Report of the Office of the Special Rapporteur for Freedom of Expression.](#) Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. Para. 143.

<sup>429</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Official Letter S-GAIIID-13-048140, dated December 2, 2013.

<sup>430</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Official Letter S-GAIIID-13-048140, dated December 2, 2013.

<sup>431</sup> Marcha Patriótica. June 21, 2013. [Catatumbo Resiste / Intimidación a periodistas](#); Las 2 Orillas. July 27, 2013. [Agresión a periodistas en el Catatumbo](#); Fundación para la Libertad de Prensa (FLIP). June 24, 2013. [Obstrucciones al trabajo periodístico y agresiones a la prensa durante las protestas en el Catatumbo.](#)

disturbances Squadron [*Escuadrón Móvil Antidisturbios*] (ESMAD), who tried to prevent him from filming what was happening during the demonstrations.<sup>432</sup>

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

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

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

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

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

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<sup>432</sup> Fundación para la Libertad de Prensa (FLIP). June 24, 2013. [Obstrucciones al trabajo periodístico y agresiones a la prensa durante las protestas en el Catatumbo](#); Tele Sur. June 21, 2013. [Conflicto agrario en el norte colombiano sigue sin resolverse](#); Marcha Patriótica. June 21, 2013. [Catatumbo Resiste l Intimidación a periodistas](#).

<sup>433</sup> Fundación para la Libertad de Prensa (FLIP). June 24, 2013. [Obstrucciones al trabajo periodístico y agresiones a la prensa durante las protestas en el Catatumbo](#).

<sup>434</sup> Fundación para la Libertad de Prensa (FLIP). July 17, 2013. [Camarógrafo herido durante las protestas en el Catatumbo](#); Committee to Protect Journalists (CPJ). July 22, 2013. [Protests in Catatumbo add to risk in Colombia](#); RCN La Radio. July 16, 2013. [Un camarógrafo resultó herido durante disturbios en Tibú](#).

<sup>435</sup> Agencia Prensa Rural. July 18, 2013. [ESMAD agrede al equipo de Prensa Rural](#); Tele Sur. July 18, 2013. [Fuerza pública de Colombia ataca a periodista en protestas del Catatumbo](#); RT. July 19, 2013. [Colombia: Agentes de seguridad agreden a periodista que cubría protestas campesinas](#).

<sup>436</sup> Eder Narváz/YouTube. July 21, 2013. [Declaraciones sobre las agresiones del ESMAD](#); Coll Bray/YouTube. July 21, 2013. [ESMAD agrede brutalmente a periodista - Caucasia hoy](#); Agencia de Noticias Nova Colombia. July 26, 2013. [ESMAD agredió a periodista durante paro minero](#); Federación Colombiana de Periodistas (FECOLPER). July 22, 2013. [APA rechaza agresión a periodista Éder Narváz durante el paro minero](#).

<sup>437</sup> Agencia Prensa Rural. July 27, 2013. [Herido gravemente Fred Núñez, comunicador alternativo del Colectivo Brecha durante enfrentamientos entre ESMAD y campesinos en Tibú](#); La Pluma. July 31, 2013. [Agresión a los medios que cubren el conflicto campesino en El Catatumbo: El periodista Fred Núñez es herido de gravedad por el escuadrón antidisturbios \(ESMAD\) + Video](#); Noticias Uno. July 27, 2013. [Periodista denuncia agresión por parte del ESMAD en Tibú](#) (VIDEO).

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

202. On August 19, in the Bajo Cauca region of the department of Antioquia, seven journalists from the radio station *Caucasia Estéreo* were threatened by means of text messages, allegedly for not supporting the miners' strike.<sup>439</sup>

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

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

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

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

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<sup>438</sup> El Colombiano. August 12, 2013. [Periodistas del Bajo Cauca denuncian agresiones en cubrimiento del paro minero](#); Fundación para la Libertad de Prensa (FLIP). August 27, 2013. [Prensa sin garantías para el cubrimiento de la protesta social](#); Semana. September 4, 2013. [Ya no hay noticias en el bajo Cauca antioqueño](#).

<sup>439</sup> Radio Caracol. August 19, 2013. [Amenazados siete periodistas del Bajo Cauca antioqueño por no apoyar paro minero](#); Oficina del Alto Comisionado de Derechos Humanos de Naciones Unidas/ El Espectador. August 20, 2013. [Amenazan a periodistas por no apoyar el paro](#); Reporters Without Borders. August 21, 2013. [Carta enviada a la Relatoría para la libertad de expresión de la CIDH por la organización Reporteros Sin Fronteras](#).

<sup>440</sup> Red de Medios Alternativos y Populares (REMAP). August 19, 2013. [Seis periodistas de REMAP detenidos por cubrir el Paro Agrario y Popular](#); Red de Medios Alternativos y Populares (REMAP)/YouTube. August 20, 2013. [Periodistas de REMAP detenidos por cubrir el Paro Agrario](#); Fundación para la Libertad de Prensa (FLIP). August 27, 2013. [Prensa sin garantías para el cubrimiento de la protesta social](#); Reporters Without Borders. August 21, 2013. [Carta enviada a la Relatoría para la libertad de expresión de la CIDH por la organización Reporteros Sin Fronteras](#).

<sup>441</sup> Comisión Intereclesial de Justicia y Paz. August 20, 2013. [Situación de DDHH transcurridas 12 horas de su inicio, en la jornada del Paro Nacional Agrario](#); Reporters Without Borders. August 21, 2013. [Carta enviada a la Relatoría para la libertad de expresión de la CIDH por la organización Reporteros Sin Fronteras](#).

<sup>442</sup> Red de Medios Alternativos – Agencia Colombiana de Prensa Popular (REMA-ACPP). August 19, 2013. [3000 campesinos del oriente colombiano retenidos en la entrada a Villavicencio](#).

officers also forced journalist Manuel Jiménez, of *Proyecto Medios Libres*, who was with Vera in his vehicle, to erase his camera's memory.<sup>443</sup>

207. On August 20, in the municipality of Cajibío, department of Cauca, *Noticias RCN* correspondent Carlos Andrés Gómez was attacked by individuals presumed to be protesters, who seized his equipment.<sup>444</sup>

208. On August 29, during protests in the city of Medellín, journalists from the media outlets *Blu Radio*, *EFE*, *Hora 13*, *El Colombiano* and *ADN* were attacked by individuals presumed to be agents of the ESMAD and the police. Journalist Byron García, of *Blu Radio*, was injured by a stun bomb allegedly thrown by agents of the ESMAD.<sup>445</sup> *EFE* news agency photographer Luis Eduardo Noriega was struck in the face by an individual presumed to be member of the police in civilian clothes.<sup>446</sup> Journalist Oscar Montoya, of the news program *Hora 13*, received a head injury as a result of attacks by alleged members of the police.<sup>447</sup> Photojournalist Esteban Vanegas, of the daily newspaper *El Colombiano*, denounced that he had been assaulted by individuals presumed to be members of the Security Forces who had pushed him and thrown rocks at him and tried to take away his camera.<sup>448</sup> Journalist Víctor Vargas of the daily newspaper *ADN* was also assaulted<sup>449</sup>.

209. The Ombudsman's Office of Medellín [*Personería de Medellín*] issued a press release expressing its "rejection of the acts of violence that occurred in the city" during the August 29 national strike. In the press release, the Ombudsman "called upon the security forces to respect the right to life, integrity, freedoms and the work of journalists and human rights defenders, in particular the representatives of this agency who carry out monitoring and communication on the ground; and who were seriously affected by certain members of the National Police and the Mobile Anti-Disturbances Squadron (ESMAD)", and requested that the events be investigated and that relevant disciplinary actions be carried out by the competent authorities.<sup>450</sup>

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<sup>443</sup> Reporters Without Borders. August 21, 2013. [Carta enviada a la Relatoría para la libertad de expresión de la CIDH por la organización Reporteros Sin Fronteras.](#)

<sup>444</sup> El Nuevo Liberal. August 21, 2013. [Agresión y retención de periodista corresponsal de Noticias RCN](#); Agenda Propia. 20 de August de 2013. [Corresponsal de noticias RCN en el Cauca fue agredido por presuntos manifestantes](#); Periódico Virtual. August 20, 2013. [Manifestantes retienen y roban equipos de periodista en el Cauca.](#)

<sup>445</sup> Blu Radio. August 29, 2013. [Miembros del Esmad atacan a la prensa en el centro de Medellín: periodistas](#); El Espectador/ EFE. August 30, 2013. [Policía agredió Periodistas durante protestas en Medellín](#); RCN La Radio. August 30, 2013. [Policía investigará a los oficiales que agredieron a cuatro periodistas en Medellín](#); Espectador/ EFE. August 30, 2013. [Policías agreden a periodistas.](#)

<sup>446</sup> El Espectador/EFE. August 30, 2013. [Policía agredió Periodistas durante protestas en Medellín](#); El Mundo. August 31, 2013. [En dos semanas, 20 periodistas agredidos](#); Minuto 30. August 29, 2013. [APA rechaza agresión contra periodistas durante protestas en Medellín.](#)

<sup>447</sup> Minuto 30. August 30, 2013. [Momento exacto de agresión a periodista Óscar Montoya](#) (VIDEO); El Espectador/EFE. August 30, 2013. [Policía agredió Periodistas durante protestas en Medellín](#); RCN La Radio. August 30, 2013. [Policía investigará a los oficiales que agredieron a cuatro periodistas en Medellín](#); Minuto 30/Asociación de Periodismo de Antioquia (APA). August 29, 2013. [APA rechaza agresión contra periodistas durante protestas en Medellín.](#)

<sup>448</sup> El Colombiano. August 29, 2013. [Periodistas denuncian agresiones del Esmad en manifestaciones](#); El Espectador/EFE. August 30, 2013. [Policía agredió Periodistas durante protestas en Medellín.](#)

<sup>449</sup> Minuto 30/Asociación de Periodismo de Antioquia (APA). August 29, 2013. [APA rechaza agresión contra periodistas durante protestas en Medellín](#); El Colombiano. August 29, 2013. [Periodistas denuncian agresiones del Esmad en manifestaciones.](#)

<sup>450</sup> Personería de Medellín. August 30, 2013. [Pronunciamento oficial sobre manifestaciones del paro nacional.](#)

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

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

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

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

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<sup>451</sup> Agencia Prensa Rural/Contagio Radio. August 30, 2013. [Agresión de la fuerza pública contra periodista de Contagio Radio en Bogotá](#) (VIDEO); ContagioRadio/YouTube. August 29, 2013. [Agresión de la Fuerza pública a periodista y Camarógrafo de Contagio Radio](#).

<sup>452</sup> Reporters Without Borders. October 22, 2013. [Nationwide indigenous protests threatened by violence, censorship](#); Consejo Regional Indígena del Cauca. October 19, 2013. [Grupo Paramilitar de los Rastrojos amenazan Minga](#).

<sup>453</sup> Consejo Regional Indígena del Cauca. October 18, 2013. [ESMAD agreden a comunicadores indígenas en el Cauca](#); Reporters Without Borders. October 22, 2013. [Agresiones y tentativas de censura afectan la movilización nacional indígena](#).

<sup>454</sup> Reporters Without Borders. October 22, 2013. [Nationwide indigenous protests threatened by violence, censorship](#); Red de Iniciativas y Comunidades de Paz desde la base. [El régimen o sus cómplices siguen bloqueando la comunicación comunitaria de la minga](#).

<sup>455</sup> Communication from the State of Colombia to the IACHR. Official Letter MPC/OEA No.: 1423/2013, dated October 22, 2013, that refers Note S-GAPDH-13-042535, dated October 18, 2013.

<sup>456</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Official Letter S-GAIIID-13-048140, dated December 2, 2013.

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

215. The Joint Declaration on violence against journalists and media workers in the context of protests, adopted in 2013, indicates that during demonstrations and situations of social unrest, the work of journalists and media workers, as well as the free flow of information, “is essential to keeping the public informed of the events. At the same time, it plays an important role in reporting on the conduct of the State [...] preventing the disproportionate use of force and the abuse of authority.”<sup>457</sup> Accordingly, the authorities must provide journalists with the maximum guarantees in order for them to perform their functions. In this respect, they must ensure that journalists are not arrested, threatened, assaulted, or limited in any manner in their rights as a result of practicing their profession in the context of a public demonstration. The State must not prohibit or criminalize live broadcasts of events, and must abstain from imposing measures that regulate or limit the free circulation of information.<sup>458</sup> Journalists must not be called as witnesses before the courts, and the authorities must respect the right to the confidentiality of sources of information. In addition, their work materials and tools must not be destroyed or confiscated.<sup>459</sup> The authorities must adopt a public discourse that helps prevent violence against journalists, vigorously condemning assaults, investigating the facts, and punishing the perpetrators, as established in Principle 9 of the IACHR’s Declaration of Principles.<sup>460</sup> It is also especially important in these contexts that the authorities have special protocols for protecting the press in situations of social unrest and educate State security forces on the role of the press in a democratic society.<sup>461</sup>

#### **E. Other relevant situations**

216. On January 28, customary circulation of the Colombian daily newspaper *El Meridiano* of Sucre was impeded in the municipality of Majagual, department of Sucre, allegedly because the manager of the state agency that provides health services in the municipality had purchased all of the copies, to then burn them and in this way avoid their dissemination.<sup>462</sup> That day, *El Meridiano* reported

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<sup>457</sup> United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. [Joint Declaration on Violence against Journalists and Media Workers in the Context of Protests](#).

<sup>458</sup> United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. [Joint Declaration on Violence against Journalists and Media Workers in the Context of Protests](#).

<sup>459</sup> United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. [Joint Declaration on Violence against Journalists and Media Workers in the Context of Protests](#).

<sup>460</sup> [Principle 9 of the IACHR Declaration of Principles](#): “[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation”.

<sup>461</sup> United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. [Joint Declaration on Violence against Journalists and Media Workers in the Context of Protests](#).

<sup>462</sup> *El Meridiano*. January 29, 2013. [Impiden circulación de EL MERIDIANO](#); Knight Center for Journalism in the

on the alleged improper use of an ambulance belonging to that agency and included photographs showing how the ambulance driver unloaded construction materials from it.<sup>463</sup>

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

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

#### F. Confidentiality of sources, wiretapping and espionage

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

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

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Americas. January 30, 2013. [Colombian official accused of burning newspaper copies alleging misuse of public resources](#); Federación Colombiana de Periodistas (FECOLPER). January 29, 2013. [Impiden circulación del periódico Meridiano de Sucre, en el municipio de Majaqual. Todos los ejemplares fueron comprados por una persona.](#)

<sup>463</sup> El Meridiano. January 28, 2013. [¿Ambulancia para trasteo de tejas?](#).

<sup>464</sup> Agenda Propia. September 15, 2013. [agendapropia.com rechaza hurto de equipos periodísticos de Editor General de este medio informativo](#); Fundación para la Libertad de Prensa (FLIP). September 16, 2013. [Hurtan material periodístico al medio Agenda Propia en Popayán.](#)

<sup>465</sup> El Tiempo. May 4, 2013. [Hasta con un micrófono han espionado a la revista Semana.](#)

<sup>466</sup> El Tiempo. June 28, 2013. [Consejo de redacción de Teleantioquia Noticias estaba 'chuzado'](#); El Espectador. June 28, 2013. [Exdirector de Teleantioquia denunció 'chuzadas'](#); RCN La Radio. June 28, 2013. [Denuncian 'chuzadas' a consejo de redacción de Teleantioquia Noticias.](#)



been intercepted and that the recording had been obtained “illegally”.<sup>467</sup> The management of *Teleantioquia* issued a press release on June 28 stating that it considered it a matter “of utmost seriousness to carry out clandestine recordings in the journalists’ workplace” and characterized the event “as a violation of freedom of the press”.<sup>468</sup> Subsequently, the assembly member stated that he had received the recording from an anonymous source and announced that he would criminally sue the journalist for defamation [*injurias* and *calumnias*], for having accused him of intercepting the newscast’s editing councils.<sup>469</sup> The governor of Antioquia reported that the case would be presented to the Office of the Public Prosecutor to determine who had “illegally” recorded the editing council.<sup>470</sup>

221. On September 11, the Office of the Attorney General reported by means of a press release that it was carrying out investigations stemming from a denunciation by journalists Ramiro Bejarano Guzmán, columnist of the daily newspaper *El Espectador*, and Cecilia Orozco Tascón, director of the television news program *Noticias Uno* and a columnist for *El Espectador*, relating to supposed illegal monitoring and wiretapping, presumably ordered by the Office of the Comptroller General of the Republic.<sup>471</sup> On March 21, both journalists sent a letter to the president of Colombia, Juan Manuel Santos, and the Attorney General, (a copy of which was also sent to the Office of the Special Rapporteur), in which they expressed their “enormous concern” regarding information received according to which intelligence officers of the National Police seconded to the Office of the Comptroller General of the Republic had received the order to illegally wiretap their telephone communications, investigate bank accounts under their names and compile data on their private lives. The journalists requested that the authorities investigate to determine if the alleged events were real, and if so, to take the necessary measures to reestablish their rights.<sup>472</sup>

222. On October 8, the Criminal Cassation Chamber of the Supreme Court [*Sala de Casación Penal de la Corte Suprema*] ruled that the statute of limitations had expired with respect to three of the crimes for which the former director of the then Administrative Security Department (DAS), Jorge Noguera Cotes, was to be tried in the context of investigations into telephone wiretapping carried out by the DAS against several journalists, among others. According to information received, the former official will not be tried for the offences of “illegal violation of communications” [*violación ilícita de comunicaciones*], “illegal use of receiving and transmitting equipment” [*utilización ilícita de equipos receptores y transmisores*], nor for the offense of “abuse of authority due to arbitrary and unjust actions, regarding acts committed in the national territory” [*abuso de autoridad por acto arbitrario e*

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<sup>467</sup> Juan Pablo Barrientos. June 28, 2013. [Mi salida de Teleantioquia noticias](#); El Colombiano/YouTube. July 3, 2013. [Entrevista con Juan Pablo Barrientos, exdirector de Teleantioquia Noticias](#).

<sup>468</sup> Gobernación de Antioquia. June 28, 2013. [Comunicado a la opinión pública](#).

<sup>469</sup> El Colombiano. July 2, 2013. [Diputado Adolfo León Palacio respondió a acusaciones de Juan Pablo Barrientos](#); El Espectador. July 3, 2013. [Diputado Palacio denunciará al exdirector de Noticias de Teleantioquia](#); RCN La Radio. July 2, 2013. [Diputado dice que denunciará a periodista de Teleantioquia en caso de ‘chuzadas’](#).

<sup>470</sup> RCN La Radio. June 29, 2013. [Caso de ‘chuzadas’ a Teleantioquia Noticias irá a la Fiscalía: Sergio Fajardo](#); El Tiempo. July 2, 2013. [Jefe de Teleantioquia Noticias renunció porque estaba agotado: Fajardo](#).

<sup>471</sup> Fiscalía General de la Nación. September 11, 2013. [Comunicado de prensa 023](#); El Nuevo Siglo. September 11, 2013. [Fiscalía puso los ojos sobre la Contraloría General](#); Radio Red. September 11, 2013. [Fiscalía realizó inspección en la Contraloría General de la República](#); RCN La Radio. September 13, 2013. [Nueva inspección en la Contraloría por parte de la Fiscalía](#); Semana. 12 de September de 2013. [¿La Contraloría está ‘chuzando’ periodistas?](#).

<sup>472</sup> Letter sent by journalists Ramiro Bejarano Guzman and Cecilia Orozco Tascón to the President of Colombia Juan Manuel Santos. March 21, 2013. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression. See also, Canal Capital. May 15, 2013. [Nuevas denuncias de periodistas interceptados](#) (VIDEO).

*injusto, respecto de los hechos cometidos en el territorio nacional*”), because the statute of limitations on these crimes expired on June 25, 2012, before the Office of the Public Prosecutor had presented the indictment. He will be tried for the alleged offences of aggravated criminal conspiracy and abuse of authority due to arbitrary and unjust actions regarding acts committed outside the national territory.<sup>473</sup> Jorge Noguera Cotes is currently serving a 25-year prison term after having been sentenced in September 14, 2011 by the Supreme Court of Justice for “homicide”, “aggravated criminal conspiracy” [*concierto para delinquir agravado*], “destruction, removal or concealment of public document” [*destrucción, supresión u ocultamiento de documento público*] and “revelation of secret matter” [*revelación de asunto sometido a secreto*].<sup>474</sup>

## 8. Costa Rica

223. The Office of the Special Rapporteur takes note of amendments in 2013 to the Computer Crimes Law<sup>475</sup>. The Law, which amended the Criminal Code, was approved on July 10, 2012<sup>476</sup>, and some of its articles have generated controversy among journalistic organizations that questioned the norm because of the increase in sanctions stemming from access to secret information and the ambiguity of the redaction of Article 288 on espionage;<sup>477</sup> and for enshrining the crime of dissemination of private information without authorization from the owner of the information and without consideration of its public relevance or of the fact that it may have been acquired through an illegal act.<sup>478</sup> The amendment approved in April, 2013 modifies, among other aspects, the criminal definition of espionage, in which it replaces the term “secret policy information” with the term “duly enacted State secrets, related to the internal or external security of the nation, the defense of national sovereignty and foreign relations of Costa Rica.”<sup>479</sup>

<sup>473</sup> Corte Suprema de Justicia. Sala de Casación Penal. Radicado No. 39931. Acta No. 333. October 8, 2013. Available for consultation at: <http://190.24.134.69/busquedadoc/FULLTEXT.ASPX>. See also, Fundación para la Libertad de Prensa (FLIP). October 8, 2013. [Prescriben algunos delitos por los que Jorge Noguera había sido llamado a juicio en caso ‘chuzadas’](#).

<sup>474</sup> Corte Suprema de Justicia. Sala de Casación Penal. Proceso No. 32000. Acta No. 331. September 14, 2011. Available for consultation at: <http://190.24.134.69/busquedadoc/FULLTEXT.ASPX>. See also, Semana. September 14, 2011. [Jorge Noguera, condenado a 25 años de prisión](#); El Tiempo. September 14, 2011. [Condena a Jorge Noguera, la más alta contra un ex funcionario de Uribe](#); El Espectador. September 14, 2011. [Exdirector del Das Jorge Noguera, condenado a 25 años de prisión](#).

<sup>475</sup> The reform was enacted by the Executive on April 24, 2013 and entered into force after its publication on April 26, 2013. Asamblea Legislativa de la República de Costa Rica. [Reforma de los artículos 196, 196 bis, 230, 293 y 295 y adición del artículo 167 bis al Código Penal. Ley N° 9135](#). April 24, 2013.

<sup>476</sup> Asamblea Legislativa de la República de Costa Rica. [Ley 9048. Reforma de Varios Artículos y Modificación de la Sección VIII, Denominada Delitos Informáticos y Conexos, Del Título VII del Código Penal](#). June 7, 2012; Presidencia de la República. July 10, 2012. [Presidenta firmó Ley de Delitos Informáticos](#).

<sup>477</sup> “Article 288. – Espionage: The person who procures or improperly obtains secret information of a political nature or from the national police force, or involving security issues related to the defense or the international relations of the nation, or that affects the fight against drug trafficking or organized crime, will be reprimanded with four to eight years of prison. The sentence will be five to ten years of prison when the conduct is performed by manipulating technology, by malicious computer software or by the use of information or communications technology.” Asamblea Legislativa de la República de Costa Rica. [Reforma de Varios Artículos y Modificación de la Sección VIII, Denominada Delitos Informáticos y Conexos, Del Título VII del Código Penal. Ley N° 9048](#). June 7, 2012.

<sup>478</sup> IACHR. [Annual Report 2012. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. Para. 160; La Nación. July 18, 2012. [Secretos de Estado](#); Universidad de Costa Rica (UCR). August 21, 2012. [Expertos creen que Ley de Delitos Informáticos debe ser equilibrada en aspectos jurídicos y técnicos](#); El País. November 8, 2012. [Presidencia publicó ley mordaza contra periodistas y medios de comunicación](#).

<sup>479</sup> “Article 295.- Espionage. The person who procures or improperly obtains duly enacted State secrets, related to the

224. In January of 2013, the Trial Court of Goicoechea dismissed a lawsuit for defamation [*injurias*] against *La Nación* journalist Vanessa Loaiza, filed by Adrián Chinchilla, brother of the president of Costa Rica, and by entrepreneur Carlos Espinach. The complaint was submitted based on an article published in *La Nación* on August 15, 2012, in which the journalist reported on alleged declarations by a former minister of Public Works and Transport in relation to the alleged participation of a government advisory group –of which the plaintiffs were members- in the construction of a road<sup>480</sup>. On August 17, 2012, the journalist rectified the article and clarified that the former minister had not said what had been reported<sup>481</sup>. The judges of the court ruled to dismiss the suit based on Article 386 of the Code of Criminal Procedure, arguing that “the retraction was made even before the proceedings were initiated, because the journalist concerned, only two days after having published the supposedly defamatory [*injuriosa*] article, retracted it.”<sup>482</sup>

## 9. Cuba<sup>483</sup>

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

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internal or external security of the nation, the defense of national sovereignty and foreign relations of Costa Rica, will be reprimanded with one to six years of prison. The sentence will be two to eight years of prison when the conduct is performed by manipulating technology, by malicious computer software or by the use of information or communications technology.” Asamblea Legislativa de la República de Costa Rica. [Reforma de los artículos 196, 196 bis, 230, 293 y 295 y adición del artículo 167 bis al Código Penal. Ley N° 9135](#). April 24, 2013. See also, Asamblea Legislativa de la República de Costa Rica. April 22, 2013. [Aprueban reforma a ley de delitos informáticos](#); Reporters Without Borders. April 23, 2013. [National assembly passes amendment to computer crimes law](#); Prensa Libre. April 22, 2013. [Aprueban reformas a ley “mordaza” que afectaba a prensa en Costa Rica](#).

<sup>480</sup> La Nación. August 15, 2012. [Exministro dice que grupo asesor de Chinchilla decidió sobre trocha](#). P. 8A.

<sup>481</sup> La Nación. August 17, 2012. [Asesores cercanos a presidenta no decidieron sobre trocha](#). P. 8A.

<sup>482</sup> La Nación. January 28, 2013. [Tribunal vio innecesario juicio contra periodista](#); El Periódico. January 29, 2013. [Periodista de La Nación se retracta de acusación contra hermano de Presidenta para evitar juicio](#); Knight Center for Journalism in the Americas. January 30, 2013. [Costa Rican journalist avoids libel suit after retracting accusation against president's brother](#).

<sup>483</sup> This section corresponds to the section on freedom of expression in Cuba in Chapter IV, Volume I, of the IACHR 2013 Annual Report, assigned to the Office of the Special Rapporteur for Freedom of Expression.

political prisoners in the country, at least half of whom are awaiting trial. Their situation is made all the worse by the terrible prison conditions, the lack of food and the alleged torture of detainees.<sup>484</sup>

226. According to the information provided, the existence of a legal framework that runs contrary to international standards on freedom of expression,<sup>485</sup> the concentration of media outlets in the hands of the State, and the constant restriction, suppression, and criminalization of critical speech have perpetuated a climate of intimidation that makes it impossible to freely exercise freedom of expression, and have led to significant self-censorship among dissidents voices. The petitioners pointed out that under Law 88 of 1999, at least twenty-five journalists have been sentenced to prison, some for as long as 20 years. They also observed that the Government heavily polices demonstrations, which are always under surveillance and are allowed according to the impact that might have.<sup>486</sup>

227. For the petitioner organizations, the small changes that Cuban society has experienced with respect to freedom of expression are due to developments on communications technologies. However, there are significant barriers to internet access, which is not readily available; connection speeds are slow and rates high for the average salary in Cuba. On this last point, they explained that one hour of internet access costs one third the salary of a professional in Cuba, which induces the creation of a parallel market for the internet. They emphasized the fact that Cuba has no privately owned internet service for citizens, who are able to access the internet only at public places, state offices, embassies, foreign or mixed companies, or some local companies, some academic centers or cybercafés, and that such access is off limits to dissidents. According to what was reported, the majority of the media outlets in Cuba are State owned and the few private media outlets that do exist have limited circulations. Most are owned by the Catholic Church or are internet-based media dedicated to discussion outside the island, but not on the island.<sup>487</sup>

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<sup>484</sup> IACHR. 147 Period of Sessions. March 11, 2013. Hearing on the Situation of Freedom of Expression in Cuba. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=en&Session=131>; IACHR. April 5, 2013. *Press Release 23/13. IACHR Wraps Up Its 147th Session*; and *Annex to the Press Release Issued at the Close of the 147th Session*.

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

<sup>486</sup> IACHR. 147 Period of Sessions. March 11, 2013. Hearing on the Situation of Freedom of Expression in Cuba. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=en&Session=131>; IACHR. April 5, 2013. *Press Release 23/13. IACHR Wraps Up Its 147th Session*; and *Annex to the Press Release Issued at the Close of the 147th Session*.

<sup>487</sup> IACHR. 147 Period of Sessions. March 11, 2013. Hearing on the Situation of Freedom of Expression in Cuba. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=en&Session=131>; IACHR. April 5, 2013. *Press Release 23/13. IACHR Wraps Up Its 147th Session*; and *Annex to the Press Release Issued at the Close of the 147th Session*.

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

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

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

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<sup>488</sup> IACHR. 147 Period of Sessions. March 11, 2013. Hearing on the Situation of Freedom of Expression in Cuba. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=en&Session=131>; IACHR. April 5, 2013. [Press Release 23/13. IACHR Wraps Up Its 147th Session](#); and [Annex to the Press Release Issued at the Close of the 147th Session](#).

<sup>489</sup> Martí Noticias. April 10, 2013. [Liberan en Cuba a Calixto Ramón Martínez Arias](#) [Calixto Ramón Martínez Arias released in Cuba]; Directorio Democrático Cubano. April 10, 2013. [Victoria de la Resistencia Cubana: liberan a Calixto Ramón Martínez](#) [A Victory for the Cuban Resistance: Calixto Ramón Martínez is released]; El Nuevo Herald. April 11, 2013. [Liberan a periodista disidente cubano Calixto R. Martínez](#) [They release Cuban dissident journalist Calixto R. Martínez]; Committee to Protect Journalists (CPJ). April 10, 2013. [CPJ welcomes release of Cuban journalist](#); PEN International. February 22, 2013. [News: CUBA: Two journalists jailed, one writer sentenced to five years in prison](#); Martí Noticias. January 30, 2013. [Amnistía Internacional pide libertad de periodista cubano](#) [Amnesty International Asks for Cuban Journalist's Release]; *eEconomista*.es. December 7, 2012. [La SIP exige a Cuba liberación de periodista en huelga de hambre](#) [The IAPA demands that Cuba release journalist on hunger strike].

<sup>490</sup> IACHR. 149 Period of Sessions. October 29, 2013. Hearing on the Human Rights Situation of the "Ladies in White" in Cuba. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=en&Session=132>

<sup>491</sup> IACHR. 149 Period of Sessions. October 29, 2013. Hearing on the Human Rights Situation of the "Ladies in White" in Cuba. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=en&Session=132>;

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

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

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

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

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

234. The IACHR received information concerning various acts of harassment and detention of members of the Ladies in White group. According to the information available, the Ladies in White had complained that on Sunday, January 6, 14 of their members had reportedly been detained in various

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ProCubaLibre/Cubonet. August 13, 2013. [Golpean a Sonia Garro en prisión](#); Centro de Información Hablemos Press. August 8, 2013. [Sonia Garro es golpeada por carceleras](#); Cárceles en Cuba/Cuba Noticias. August 26, 2013. [Golpeada brutalmente Sonia Garro](#).

<sup>492</sup> IACHR. 149 Period of Sessions. October 29, 2013. Hearing on the Human Rights Situation of the "Ladies in White" in Cuba. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=en&Session=132>

<sup>493</sup> Diario de Cuba. October 31, 2012. [El régimen suspende el juicio contra Sonia Garro](#) [Regime postpones Sonia Garro's trial]; Martí Noticias. October 31, 2013. [Suspenden juicio a Sonia Garro](#) [Sonia Garro's trial postponed]; El Nuevo Herald. November 1, 2013. [Suspenden juicio a activistas cubanos y aumentan arrestos de disidentes](#) [Trial of Cuban dissidents postponed and more dissidents arrested]; Cubanet. September 16, 2013. [Sonia Garro y Ramón Muñoz serán llevados a juicio](#) [Sonia Garro and Ramón Muñoz will stand trial].

<sup>494</sup> Centro de Información Hablemos Press. November 1, 2013. [Detienen a Damas de Blanco que intentaban recibir a su líder](#) [Ladies in White waiting to welcome leader are detained]; Martí Noticias. October 31, 2013. [Suspenden juicio a Sonia Garro](#) [Sonia Garro's trial postponed].

provinces across the country to prevent them from attending mass.<sup>495</sup> They also reported that on January 18, three Ladies in White had been stopped and assailed by State security agents as they were on their way to church.<sup>496</sup> On January 21, nine members of the Ladies in White movement were reportedly detained by agents of State Security as they were on their way to attend a literary tea at the organization's headquarters in Havana.<sup>497</sup> They also reported that on January 27, 36 women who are members of the Ladies in White movement were arrested in various parts of the country, in many instances to prevent them from attending religious services.<sup>498</sup> According to reports, on February 13 and 14 some 30 Ladies in White were detained and some were beaten as an event to mark the birthday of a deceased activist and founder of the movement, Laura Pollán, was wrapping up.<sup>499</sup> On February 24, at least 54 members of the Ladies in White were detained as they were leaving a mass held in Havana to commemorate the anniversary of the death of Orlando Zapata Tamayo and four members of the Brothers to the Rescue.<sup>500</sup> On March 18, members of the movement were reportedly beaten in the municipality of Palma Soriano, province of Santiago de Cuba, after participating in a literary tea held to mark the anniversary of the events of March 2003, known as the "Black Spring".<sup>501</sup> On March 27, 16 Ladies in White were detained, forced to board a bus and taken to two isolated places, where they were held for some five hours.<sup>502</sup> Similarly, on April 7, supposed police agents had detained at least 58 members of the Ladies in White as they were on their way to church in the province of Santiago de Cuba and held them for some three hours. Five Ladies in White were reportedly detained in the Province of

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<sup>495</sup> ACI Prensa. January 8, 2013. [Cuba: Detienen catorce Damas de Blanco en primer domingo de 2013](#) [14 Ladies in White detained on first Sunday of 2013]; CatInfor. January 9, 2013. [Cuba: Detienen catorce Damas de Blanco en primer domingo de 2013](#) [Cuba: 14 Ladies in White detained on first Sunday in 2013].

<sup>496</sup> Centro de Información Hablemos Press. January 22, 2013. [Damas de Blanco golpeadas cuando se dirigían a santuario](#) [Ladies in White beaten on the way to church]; Misceláneas de Cuba. January 24, 2013. [Damas de Blanco golpeadas cuando se dirigían a santuario](#) [Ladies in White beaten as they head for church].

<sup>497</sup> Centro de Información Hablemos Press. January 22, 2013. [Damas de Blanco golpeadas cuando se dirigían a santuario](#) [Ladies in White beaten on the way to church]; Ladies in White Association. January 22, 2013. [Arrestan a Damas de blanco](#) [Ladies in White arrested]; Martí Noticias. January 21, 2013. [Arrestan a Damas de blanco](#) [Ladies in White arrested].

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

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

<sup>500</sup> Cuba Democracia y Vida. February 24, 2013. [CUBA AUDIO: Arrestan violentamente a más de 50 Damas de blanco](#) [CUBA AUDIO: More than 50 Ladies in White brutally arrested]; Martí Noticias. February 24, 2013. [Arrestan a más de 50 Damas de blanco](#) [More than 50 Ladies in White Arrested]; Asociación Damas de Blanco. February 24, 2013. [Asamblea Nacional se estrena con arrestos y represión en las calles](#) [National Assembly begins with arrests and repression on the streets].

<sup>501</sup> Centro de Información Hablemos Press. March 20, 2013. [Golpean y arrestan a Damas de Blanco en Santiago de Cuba](#) [Ladies in White Beaten and Arrested in Santiago de Cuba]; Pedazos de la Isla. March 19, 2013. [Pedradas contra Damas de Blanco en Palma Soriano, vecinos salen para defenderlas](#) [Rocks thrown against Ladies in White in Palma Soriano, neighbours go to their aid].

<sup>502</sup> Centro de Información Hablemos Press. March 27, 2013. [Ómnibus del terror y la vileza](#) [An Omnibus of Terror and Villainy]; Voz desde el destierro. March 27, 2013. [Cuba: Ómnibus del terror y la vileza contra las Damas de Blanco](#) [Cuba: An Omnibus of Terror and Villainy against the Ladies in White].

Santa Clara, and another five in Holguín.<sup>503</sup> The available information indicates that on April 13, three activists in the group were reportedly detained in the province of Santiago de Cuba by supposed officers with the Revolutionary National Police (PNR) and the State Security Department (DSE), to prevent them from attending mass the following day.<sup>504</sup> On April 28, a number of Ladies in White were reportedly beaten and insulted outside and inside a church, as they were attending mass, by persons presumably connected to the government.<sup>505</sup> On Sunday, July 14, some twelve Ladies in White were reportedly assailed by alleged security forces after attending mass in the province of Matanzas.<sup>506</sup> According to reports from members of the Ladies in White movement and the Cuban Patriotic Union [*Unión Patriótica de Cuba*] (UNPACU), on August 17 and 18, 2013, there were some 20 episodes in which members were detained, and multiple acts of harassment committed against them in Santiago de Cuba, Holguín, Havana, Matanzas and Pinar del Río. The available information indicates that nationwide, some 17 Ladies in White were detained on August 18.<sup>507</sup> On September 8, during the celebration of the feast of the Virgen de la Caridad del Cobre, multiple members of the Ladies in White were detained and beaten nationwide, as were other activists and opponents of the government as they returned from Sunday mass. According to what was reported, similar incidents of violence and detentions of members of the movement occurred on Sunday, September 22.<sup>508</sup> On Sunday, October 20, several activists were detained in a police operation staged at the end of a religious service at the Church of Santa Rita de Casia in Havana. Among those detained were members of the Ladies in White. That same day, more

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<sup>503</sup> Centro de Información Hablemos Press. April 8, 2013. [Detienen a cincuenta Damas de Blanco en Santiago de Cuba](#) [Fifty Ladies in White Detained in Santiago de Cuba]; Martí Noticias. April 7, 2013. [Detienen a Damas de Blanco](#) [Ladies in White Detained].

<sup>504</sup> Centro de Información Hablemos Press. April 17, 2013. [Arrestan a Dama de Blanco en Santiago de Cuba](#) [Ladies in White Arrested in Santiago de Cuba]; Misceláneas de Cuba. April 18, 2013. [Arrestan a Dama de Blanco en Santiago de Cuba](#) [They Arrest Ladies in White in Santiago de Cuba].

<sup>505</sup> Unión Patriótica de Cuba (UNPACU)/YouTube. 28 de abril de 2013. Publicado por Ana Belkis Ferrer Garcia. [Damas de Blanco en la Iglesia Nuestra Señora del Rosario 284-13](#) [Ladies in White in the Church of Nuestra Señora del Rosario]; ACI Prensa. April 29, 2013. [VIDEO: Damas de Blanco: Agentes del gobierno cubano las golpean dentro de una iglesia](#) [VIDEO: Ladies in White: Agents of the Cuban Government Beat Them Inside a Church].

<sup>506</sup> Martí Noticias. July 14, 2013. [Agreden a Damas de Blanco](#) [Ladies in White Assailed]; Observatorio Cubano de Derechos Humanos. July 15, 2013. [Acción Urgente contra represión de activistas de UNPACU y Damas de Blanco](#) [Urgent Action against repression of activists from UNPACU and Ladies in White]; Asociación Damas de Blanco. July 15, 2013. [Detenidos y golpeados activistas y Damas de Blanco en Matanzas](#) [In Matanzas, activists and Ladies in White detained and beaten].

<sup>507</sup> ABC.es/EFE. August 19, 2013. [Nueva oleada represiva contra la disidencia en Cuba](#) [New wave of repression against dissent in Cuba]; Martí Noticias/EFE. August 19, 2013. [Disidentes denuncian detenciones en Cuba](#) [Dissidents denounce detentions in Cuba]; Asociación Damas de Blanco. August 18, 2013. [Represión contra Damas de Blanco en Cuba](#). [Repression against Ladies in White in Cuba].

<sup>508</sup> Centro de Información Hablemos Press. September 9, 2013. [Damas de Blanco y opositores acompañaron a la Virgen en La Habana](#) [Ladies in White and opposition members accompanied the Virgin in Havana]; Instituto Cubano por la Libertad de Expresión y Prensa (ICLEP). September 8, 2013. [Prosiguió este 8 de septiembre el hostigamiento contra las damas de blanco y sus acompañantes](#) [This September 8 the harassment of Ladies in White and those with them continued]; Red Latinoamericana y del Caribe para la Democracia (RedLad). September 2013. [Agresión contra Guillermo Fariñas y Damas de Blanco en Cuba](#) [Assault on Guillermo Fariñas and Ladies in White in Cuba]; Pro Cuba Libre. September 23, 2013. [Matanzas: Damas de Blanco denuncian otro domingo de arrestos, golpes y 'actos de repudio'](#) [Matanzas: Ladies in White denounce another Sunday of arrests, beatings and "acts of repudiation"]; Asociación Damas de Blanco. September 9, 2013. [Cientos de activistas y Damas de Blanco acuden a las iglesias en el día de la Caridad](#) [Hundreds of activists and Ladies in White go to Church during the day of the Caridad]; Asociación Damas de Blanco. September 23, 2013. [Matanzas: Damas de Blanco denuncian otro domingo de arrestos, golpes y 'actos de repudio'](#) [Killings: Ladies in White denounce another Sunday of arrests, beatings and acts of repudiation].



than 30 members of the group were said to have been detained in various provinces across the country.<sup>509</sup>

235. On January 30, police agents reportedly detained journalists Yusmila Reyna Ferrera and Hergues Frandín, and searched their residences in La Maya, province of Santiago de Cuba.<sup>510</sup>

236. On February 5, independent journalist Héctor Julio Cedeño Negrín was allegedly beaten and arrested as he was taking pictures of inspectors said to have been committing acts of violence. The journalist was accused of an alleged “assault” against the police officer who detained him and reportedly spent 12 days in custody, during which time he went on a hunger strike.<sup>511</sup> Following his release, the journalist said that he was informed that he was still under investigation, under house arrest and had to check in with a police station periodically.<sup>512</sup>

237. On February 11, 2013, supposed agents of the National Police searched the homes of Pedro Luis González Díaz and Bernardo León Martínez in Pinar del Río. The two were activists and members of the political opposition. The police were looking for copies of the document “The Citizen Demand for Another Cuba” [*“Demanda Ciudadana por otra Cuba”*]. Both activists were held for several hours.<sup>513</sup>

238. Ángel Santiesteban Prats, a writer and author of a blog critical of the government called “Los hijos que nadie quiso” has reportedly been imprisoned since February 28, 2013, after a Havana provincial court sentenced him in early 2012 to five years in prison for the supposed crimes of “trespassing and battery.”<sup>514</sup> On January 28, 2013, the People’s Supreme Court reportedly denied his

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

<sup>510</sup> Centro de Información Hablemos Press. January 31, 2013. [Sigue detenido el periodista independiente Héctor Julio Cedeño \(audio\)](#) [The leader and general coordinator of the Oasis program detained]; Martí Noticias. January 31, 2013. [Detienen a periodistas independientes en Santiago de Cuba \(audio\)](#) [Independent journalists detained in Santiago de Cuba].

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

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

<sup>513</sup> Centro de Información Hablemos Press. February 14, 2013. [Registros y detenciones en Pinar del Río en busca de Demanda ciudadana](#) [Search for ‘Citizen Demand’ lead to household searches and detentions in Pinar del Río]; Comisión de Derechos Humanos y Reconciliación Nacional. March 4, 2013. [Cuba: Algunos actos de represión política en el mes de febrero de 2013](#) [Cuba: some acts of political repression in February 2013].

<sup>514</sup> Havana Times. December 10, 2012. [Cuban Writer Angel Santiesteban Gets 5-Year Prison Sentence](#); Cubaencuentro. December 8, 2012. [Escritor cubano, condenado a cinco años de prisión](#) [Cuban writer sentenced to five years in prison];

appeal and confirmed his conviction. Santiesteban maintained that the charges against him had been trumped up and were politically motivated.<sup>515</sup>

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

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

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

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

Committee to Protect Journalists (CPJ). February 28, 2013. [Authorities must explain conviction of Cuban writer](#); Reporters Without Borders. April 29, 2013. [Call for release of blogger held for past two months](#).

<sup>515</sup> Cubaencuentro. December 30, 2012. [Escritor cubano apela su sentencia en la Isla](#) [Cuban writer appeals his sentence on the island]; Café Fuerte. January 31, 2013. [Tribunal Supremo ratifica sentencia contra el escritor Angel Santiesteban](#) [Supreme Court confirms sentence of writer Angel Santiesteban]; El Nuevo Herald. February 13, 2013. [Supremo ratifica sentencia contra escritor cubano y disidente Santiesteban](#) [Supreme Court confirms sentence of Cuban writer and dissident Santiesteban]; Havana Times. February 5, 2013. [Cuba Supreme Court Reaffirms Ruling Against Opposition Writer](#); Committee to Protect Journalists (CPJ). [Authorities must explain conviction of Cuban writer](#); Reporters Without Borders. April 29, 2013. [Call for release of blogger held for past two months](#).

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

<sup>517</sup> Centro de Información Hablemos Press. March 15, 2013. [Agreden a periodista en San Miguel del Padrón](#) [Journalist in San Miguel del Padrón assailed]; Uncommon Sense. March 16, 2013. [Cuban secret police threaten to kill independent journalist Alberto Gil Triai Casales](#).

<sup>518</sup> Centro de Información Hablemos Press. March 19, 2013. [Violenta represión policial para impedir reunión](#) [Violent police repression to stop meeting]; Blogs de Cuba. March 19, 2013. [Violenta represión policial para impedir reunión](#) [Brutal police repression to stop meeting].

<sup>519</sup> M.A.R. por Cuba. March 28, 2013. [Martha Beatriz Roque acosada](#) [Martha Beatriz Roque accused]; Martí Noticias. March 29, 2013. [Golpeada, atropellada y lesionada Marta Beatriz Roque](#) [Marta Beatriz Roque beaten, trampled and injured]; Comisión Cubana de Derechos Humanos y Reconciliación Nacional. April 2, 2013. [Cuba: algunos actos de represión política en el mes de marzo de 2013](#) [Cuba: some acts of political repression in March 2013].

243. On March 26, journalists, human rights defenders and members of the political opposition were reportedly detained by police to stop them from attending a meeting of an independent civil society group attended by various opposition militants and activists.<sup>520</sup>

244. On April 10, two young members of the Republican Party of Cuba, which opposes the government, were reportedly detained by National Police on accusations of *desacato* and resistance.<sup>521</sup>

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

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

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

248. On May 22, *Centro de Información Hablemos Press* journalist Gerardo Younel Ávila Perdomo was reportedly detained and questioned. According to the photo journalist, he was subjected to pressure and threats, but remained silent. He was reportedly released after 10 hours.<sup>525</sup>

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

<sup>521</sup> Centro de Información Hablemos Press. April 17, 2013. [Dos jóvenes Republicanos acusados de Desacato y Resistencia](#) [Two Republican youths accused of contempt and resistance]; CubaNet. April 12, 2013. [Arrestan a dos jóvenes del Partido Republicano](#) [Two Republican Party youth arrested].

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

<sup>523</sup> Centro de Información Hablemos Press. April 16, 2013. [Declaraciones DD HH: Propaganda enemiga en Cuba](#) [Human Rights Declarations: Enemy propaganda in Cuba]; Misceláneas de Cuba. April 17, 2013. [Declaraciones DD HH: Propaganda enemiga en Cuba](#) [Human Rights Declarations: enemy propaganda in Cuba].

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

<sup>525</sup> Cuba Libre Digital. May 26, 2013. [La dictadura castrista detiene a periodista independiente para chantajearlo](#) [The Castro Dictatorship detains independent journalist for blackmailing it]; Centro de Información Hablemos Press. May 25, 2013. [Detienen a un foto-reportero de Hablemos Press por 10 horas](#) [Photo-journalist from Hablemos Press detained for 10 hours].

249. On May 30, independent journalist Manuel Guerra Pérez was allegedly detained. According to what the journalist reported, officials interrogated him and threatened him in connection with his journalism, and expressed a particular interest in articles published by *Cubanet* in which the journalist had criticized the government.<sup>526</sup>

250. The IACHR received information indicating that on June 1 in the city of Bayamo, members of the group called Pastors for Change had been beaten and detained as they were preaching in a market. According to what was reported, the assailants were in civilian dress. However, they used government vehicles in the operation. Similarly, on August 30, 14 members of the group had been violently repressed to prevent them from participating in a vigil in the city of Bayamo. On September 7, group member Felipe Yulier Espinosa Rodríguez had reportedly denounced that police agents had opened a case file on him for the alleged crime of “pre-criminal social threat”.<sup>527</sup>

251. On Sunday, September 1, over 70 persons in different provinces across the country were reportedly detained. According to what was reported, during the Sunday activities of the Ladies in White movement, a number of members of the group, together with other members of the opposition, were reportedly arrested by agents of the State.<sup>528</sup>

252. On September 10, journalist Guillermo Fariñas was detained by individuals presumed to be State agents after participating in a peaceful demonstration of over 200 drivers of horse-drawn carriages protesting a tax hike. According to what was reported, during his detention Fariñas was beaten and mistreated. Some hours later the journalist was set free, but no reason for his detention was given.<sup>529</sup>

253. Similarly, on September 26 members of the Opposition Movement for a New Republic were detained in Santiago de las Vegas, municipality of Rancho Boyeros, as they were circulating copies of the so-called “Citizen Demand for Another Cuba” [*“Demanda Ciudadana por otra Cuba”*], an initiative whose objective is to get the State to ratify international human rights covenants.<sup>530</sup>

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<sup>526</sup> Cubanet. May 31, 2013. [Manuel Guerra Pérez, periodista independiente, arrestado, interrogado y amenazado](#) [Manuel Guerra Pérez, independent journalist, arrested, interrogated and threatened]; Desde Cuba Hector Julio Cedeño. [Detienen al periodista Manuel Guerra Pérez](#) [Journalist Manuel Guerra Pérez detained].

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

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

<sup>529</sup> El País. September 11, 2013. [Detenido en Cuba el disidente Guillermo Fariñas](#) [Dissident Guillermo Fariñas detained]; Red Latinoamericana y del Caribe para la Democracia (RedLad). September 2013. [Agresión contra Guillermo Fariñas y Damas de Blanco en Cuba](#) [Assault on Guillermo Fariñas and Ladies in White in Cuba]; Martí Noticias. September 11, 2013. [Fariñas presentará denuncia ante fiscalía militar en Cuba](#) [Fariñas will file complaint with the office of the military prosecutor in Cuba].

<sup>530</sup> Centro de Información Hablemos Press. September 26, 2013. [Arrestan a activistas del Movimiento Nueva República](#) [Activists with the New Republic Movement arrested]; Voz desde el destierro. September 27, 2013. [Represión en](#)

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

255. On October 10, 2013, State agents reportedly arrested *Misceláneas de Cuba* correspondent Mario Echevarría Driggs, as he was covering a demonstration in front of the National Capitol. Similarly, on October 11, journalists David Águila Montero –director of the *Agencia Social de Periodistas Independientes* (ASPI)- and William Cácer Díaz -a correspondent for *Centro de Información Hablemos Press*- were reportedly detained. According to what was reported, the journalists were allegedly released on October 14, together with two other correspondents from *Centro de Información Hablemos Press*, Denis Noa Martínez and Pablo Morales Marchán, who had been detained on October 13.<sup>532</sup>

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

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

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*Cuba: Arrestan a activistas del Movimiento Nueva República* [Repression in Cuba: Activists with the New Republic Movement arrested]; CaféFuerte. June 12, 2012. [Documento: Demanda ciudadana por otra Cuba](#) [Document: Citizen Demand for Another Cuba].

<sup>531</sup> ABC.es. October 3, 2013. [Más de 700 detenciones en Cuba por motivos políticos solo en septiembre](#) [In September alone, more than 700 detentions in Cuba for political reasons]; El Nuevo Herald. October 3, 2013. [Aumentan las detenciones y golpizas a los disidentes cubanos](#) [Detentions and beatings of Cuban dissidents on the rise]; Centro de Información Hablemos Press. *Informe de Septiembre del 2013* [September 2013 Report]. Available for consultation at: <http://www.cubanet.org/wp-content/uploads/2013/10/I-Informe-de-Hablemos-Press-en-Septiembre-del-2013.pdf>; Comisión Cubana de Derechos Humanos y Reconciliación Nacional. October 2, 2013. [Cuba: Algunos actos de represión política en el mes de septiembre 2013](#) [Cuba: Some acts of political repression in September 2013].

<sup>532</sup> Reporters Without Borders. October 15, 2013. [Five Dissident Journalists Freed after Short Detention](#); Inter-American Press Association (IAPA). [2013 General Assembly – Denver, United States](#); Centro de Información Hablemos Press. October 12, 2013. [Comunicado de Prensa: Tres periodistas detenidos en La Habana](#) [Press release: three journalists detained in Havana released]; Knight Center for Journalism in the Americas. October 18, 2013. [Cuban authorities release five dissident journalists after brief detention](#).

<sup>533</sup> United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. [Joint Declaration on Violence against Journalists and Media Workers in the Context of Protests](#).

258. The IACHR is also reminded that “[t]he rights of freedom of assembly and freedom of expression, guaranteed by the American Convention on Human Rights and the International Covenant on Civil and Political Rights, are fundamental, and guaranteeing them is a vital condition to the existence and proper functioning of a democratic society. A State may impose reasonable limitations on demonstrations for purposes of ensuring that they are conducted peacefully, or to disperse those that turn violent, provided that such limits are governed by the principles of legality, necessity, and proportionality. In addition, the breaking-up of a demonstration must be warranted by the duty to protect individuals, and authorities must use the measures that are safest and least harmful to the demonstrators. The use of force at public demonstrations must be an exception, used under strictly necessary circumstances consistent with internationally recognized principles.”<sup>534</sup>

### **B. Censorship or confiscation of journalistic materials**

259. In December 2012, Cuban customs reportedly confiscated a package sent to the organization Taller Libertario Alfredo López [Alfredo López Libertarian Workshop], which contained copies of the Venezuelan newspaper *El Libertario*. According to what the organization reported, in January Cuban authorities informed it of the Retention and Modification Act and the Confiscation Resolution, documents that allegedly made a record of the censorship measure. They also indicated that the authority’s account of the events, as it appeared in the documents, claimed that in the package “were found 17 newspapers whose content is inimical to the general interests of the nation, whereupon they were confiscated.”<sup>535</sup>

### **C. Other relevant situations**

260. On Monday, April 22, journalist Eliocer Cutiño Rodríguez, a correspondent with the *Centro de Información Hablemos Press*, was reportedly fired from his job with a State-owned company. On April 19 and 22, journalist José Leonel Silva Guerrero, also a correspondent for *Centro de Información Hablemos Press*, was summoned to appear before the chief of State Security in Holguín and was threatened with jail. According to the news agency, these were acts of government repression targeting its members.<sup>536</sup>

261. Members of religious organizations complained of having been intimidated by State officials, accused of belonging to “counterrevolutionary” churches and warned of possible reprisals for their religious affiliations.<sup>537</sup>

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<sup>534</sup> United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. [Joint Declaration on Violence against Journalists and Media Workers in the Context of Protests](#).

<sup>535</sup> Havana Times. January 14, 2013. [Confiscan periódicos a anarquistas cubanos](#) [Newspapers sent to Cuban anarchists confiscated]; Knight Center for Journalism in the Americas. January 15, 2013. [Cuban customs agents seize Venezuelan newspaper critical of Chávez and Castro](#).

<sup>536</sup> Centro de Información Hablemos Press. April 23, 2013. [Represión contra corresponsales de Hablemos Press](#) [Repression against *Hablemos Press* correspondents]; Misceláneas de Cuba. April 25, 2013. [Represión contra corresponsales de Hablemos Press](#) [Repression against *Hablemos Press* correspondents].

<sup>537</sup> Centro de Información Hablemos Press. March 18, 2013. [Incremento de la represión contra religiosos](#) [Repression against clergy on the rise]; Blogs de Cuba. March 18, 2013. [Incremento de la represión contra religiosos](#) [Anti-clerical repression increasing].

262. The IACHR is concerned by the Cuban State's September 19 response to the recommendations made by the United Nations Human Rights Council as a result of the Universal Periodic Review. In the official document that the Cuban State presented to the Council, it rejected a group of suggested recommendations on the grounds that they were "politically biased and are built on false premises put forward in an attempt to discredit Cuba." Most of those recommendations had to do with exercise of the right to freedom of expression and the right of association. Among the recommendations that Cuba did not support are the following: "[r]emove restrictions on freedom of expression notably concerning the connection to the Internet"; "[r]econsider all the laws that criminalize or restrict the right to freedom of expression and the right of internet freedom"; and "[l]ift the restrictions that hinder free expression and ensure that human rights defenders and independent journalists are not victims of intimidations or arbitrary prosecutions and detentions", and others.<sup>538</sup>

263. The Inter-American Commission would again point out that Principle 1 of the IACHR's Declaration of Principles provides that "[f]reedom of expression in all its forms and manifestations is a fundamental and inalienable right of all individuals. Additionally, it is an indispensable requirement for the very existence of a democratic society," while Principle 5 states that "[r]estrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression." Principle 13, for its part, affirms that "[t]he means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression." Similarly, the State has a duty to adopt the legislative and other measures necessary to ensure a pluralist and diverse media, including laws that prevent public or private monopolies.

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

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

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<sup>538</sup> United Nations General Assembly. September 19, 2013. A/HRC/24/16/Add.1. Human Rights Council. 24th session. Universal Periodic Review. Report of the Working Group on the Universal Periodic Review. Cuba. Annex 1: [Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review](#); United Nations General Assembly. July 8, 2013. A/HRC/24/16. Human Rights Council. 24th session. Universal Periodic Review. [Report of the Working Group on the Universal Periodic Review](#); Diario de Cuba. September 20, 2013. [La Habana rechaza las recomendaciones de la ONU sobre libertad de expresión](#) [Havana rejects UN recommendations on freedom of expression]; Knight Center for Journalism in the Americas. September 30, 2013. [Cuba rejects UN recommendations on freedom of expression](#); Cuba en Miami. September 20, 2013. [Cuba rechaza recomendaciones de la ONU en materia de libertad de expresión](#) [Cuba rejects UN recommendations on freedom of expression]; Martí Noticias. September 21, 2013. [¿Qué recomendaciones del EPU rechazó Cuba en Ginebra?](#) [Which UPR recommendations did Cuba reject in Geneva?]

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

## 10. Ecuador

266. On May 6 and 10<sup>539</sup>, and June 3<sup>540</sup> the IACHR received communications in which the illustrious State of Ecuador made several objections, remarks and requests regarding the annual report of the Office of the Special Rapporteur for Freedom of Expression of 2012. The Office of the Special Rapporteur transmitted to the State the information requested on May 17<sup>541</sup> and December 2<sup>542</sup>.

### A. Progress

267. Journalist Juan Alcívar, a reporter from the *El Nuevo Sol* radio station and correspondent for the newspaper *La Hora*, was not declared guilty of the offense of “Terrorism Against Public Servants” [*Agresión Terrorista a Funcionarios Públicos*].<sup>543</sup> The accusation originated from the fact that the

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<sup>539</sup> Republic of Ecuador. Permanent Mission of Ecuador to the OAS. Nota 4-2-146/2013. May 3, 2013. Received May 6, 2013. Available for consultation at: [http://www.oas.org/es/cidh/expresion/docs/otros/Carta\\_Estado\\_de\\_Ecuador\\_Nota\\_4\\_2\\_146\\_2013.pdf](http://www.oas.org/es/cidh/expresion/docs/otros/Carta_Estado_de_Ecuador_Nota_4_2_146_2013.pdf); Republic of Ecuador. Permanent Mission of Ecuador to the OAS. Nota 4-2-159/2013. May 8, 2013. Received May 10, 2013. Available for consultation at: [http://www.oas.org/es/cidh/expresion/docs/otros/Carta\\_Estado\\_de\\_Ecuador\\_Nota\\_4\\_2\\_159\\_2013.pdf](http://www.oas.org/es/cidh/expresion/docs/otros/Carta_Estado_de_Ecuador_Nota_4_2_159_2013.pdf)

<sup>540</sup> Republic of Ecuador. Permanent Mission of Ecuador to the OAS. Nota 4-2-195/2013. June 3, 2013. Received June 3, 2013. *Respuesta del Estado ecuatoriano al Informe Anual de la Comisión Interamericana de Derechos Humanos 2012, volumen II: Informe de la Relatoría Especial para la Libertad de Expresión*. Available for consultation at: [http://www.oas.org/es/cidh/expresion/docs/otros/Carta\\_Estado\\_de\\_Ecuador\\_Nota\\_No\\_4\\_2\\_195\\_2013\\_e\\_Informe.pdf](http://www.oas.org/es/cidh/expresion/docs/otros/Carta_Estado_de_Ecuador_Nota_No_4_2_195_2013_e_Informe.pdf)

<sup>541</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. Communication to the State of Ecuador. May 17, 2013. Available for consultation at: [http://www.oas.org/es/cidh/expresion/docs/otros/2013\\_05\\_17\\_Carta\\_a\\_Estado\\_de\\_Ecuador.pdf](http://www.oas.org/es/cidh/expresion/docs/otros/2013_05_17_Carta_a_Estado_de_Ecuador.pdf)

<sup>542</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. Communication to the State of Ecuador. December 2, 2013. Available for consultation at: [http://www.oas.org/es/cidh/expresion/docs/otros/2013\\_12\\_02\\_Carta\\_a\\_Estado\\_de\\_Ecuador\\_ENG.pdf](http://www.oas.org/es/cidh/expresion/docs/otros/2013_12_02_Carta_a_Estado_de_Ecuador_ENG.pdf)

<sup>543</sup> Tribunal Primero de Garantías Penales de Esmeraldas. Causa 08241-2012-0026. Available for consultation at: <http://www.funcionjudicial-esmeraldas.gob.ec/index.php/nombre>; Fundamedios. August 30, 2013. *Periodista acusado de “agresión terrorista” es declarado inocente*; El Universo. September 1, 2013. *Juan Alcívar Rivas: ‘Siento que se hizo justicia, pero*



journalist was present during a visit by President Rafael Correa to the community of La Concordia, on July 19, 2010. During the visit, a tear gas bomb was thrown, in the midst of a confusing incident. Several sources have argued that the journalist was part of the demonstration in order to carry out his professional duties and that the order for arrest is retaliation for reports he has done that are critical of the local public authorities<sup>544</sup>. The Office of the Special Rapporteur notes that the Court convicted other persons of terrorism and sabotage for said events.<sup>545</sup>

268. The National Assembly approved the new Organic Comprehensive Criminal Code<sup>546</sup> [*Código Orgánico Integral Penal*] which abolished the crime known as *desacato*<sup>547</sup> and decriminalized defamation that does not constitute the imputation of criminal conduct [*injuria no calumniosa*], which represents an important progress.<sup>548</sup> Nonetheless, a special concern for the Office of the Rapporteur is the broad and ambiguous wording of some of the crimes that could affect freedom of expression, as well as the increase in some sanctions of the norm that unifies into one single text the Criminal Code, the Criminal Procedures Code, and the Code of Execution of Penalties and Social Rehabilitation, and that could result in restrictions to the freedom of expression, as shall be seen in a subsequent part of the report.

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

269. On April 18, a prosecutor in the Province of Esmeraldas reportedly confiscated a cell phone that journalist Christian Zurita had used to photograph the detainee at a court hearing. Security personnel then reportedly shoved the journalist out of the courtroom.<sup>549</sup> On May 4, cameraman Jhonson Villao of *Ecuavisa* and his assistant Fernando Delgado were reportedly detained while filming outside the La Roca Prison in the city of Guayaquil. The reporters were in custody for some three hours before being released by order of the prosecutor on duty.<sup>550</sup>

270. On May 12, journalist Diego Cornejo, director of the Ecuadorian Association of Newspaper Publishers, was threatened by an unknown person while walking through a park in the city of Quito. The assailant reportedly warned him: “The public has you in our sights.”<sup>551</sup>

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[estamos muy afectados’.](#)

<sup>544</sup> Committee to Protect Journalists (CPJ). August 27, 2010. [Periodista ecuatoriano crítico acusado de terrorismo](#); El Universo. September 15, 2010. [Juan Alcívar. Cambiaron el parte, no lancé la bomba, vi los gases](#); El Comercio. August 29, 2010. [El periodista Juan Alcívar en el centro de la acusación policial](#).

<sup>545</sup> El Telégrafo. August 28, 2013. [Tribunal declaró culpable de terrorismo a exconcejal](#).

<sup>546</sup> El Ciudadano. December 17, 2013. [El nuevo Código Penal mejorará la seguridad ciudadana](#); El Ciudadano. December 19, 2013. [El Ejecutivo analizará minuciosamente el proyecto de Código Integral Penal \(AUDIO\)](#).

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

<sup>548</sup> Código Orgánico Integral Penal approved by the National Assembly on December 17, 2013. Available for consultation at: <http://www.asambleanacional.gov.ec/>.

<sup>549</sup> El Universo. April 21, 2013. [Periodista agredido al cubrir audiencia](#); Fundamedios. April 25, 2013. [Periodista es agredido por fiscal](#).

<sup>550</sup> El Comercio. May 4, 2013. [Fiscal resolvió que equipo periodístico de ECUAVISIA no siga retenido](#); Fundamedios. May 4, 2013. [Equipo periodístico es detenido temporalmente](#); Ecuavisa. May 4, 2013. [Equipo de Ecuavisa es retenido por realizar tomas en los exteriores de la cárcel La Roca](#).

<sup>551</sup> La Hora. May 13, 2013. [Periodista y director de AEDEP, Diego Cornejo, fue amenazado en Quito](#); El Diario. May 13,

271. On May 19, cameraman Diego Orellana of *Megavisión* was reportedly detained by individuals presumed to be police while covering disturbances caused by soccer fans at the end of a game. The officers reportedly failed to return the tape containing the journalistic material he had filmed.<sup>552</sup> On May 20, a team of reporters from the *Ecuavisa* television station was reportedly assaulted while covering the situation of patients of the Carlos Andrade Marín public hospital in Quito who were waiting to receive medications. While they were filming the events, a group of hospital security guards removed them from the scene violently. In addition, the channel's reporter, Alex Cevallos, was reportedly struck in the head. A team of journalists from the newspaper *La Hora* also experienced difficulty in covering the events.<sup>553</sup>

272. On June 6, four journalists were reported to have been detained for some 11 hours at the El Rodeo jail in the city of Portoviejo, where they had been invited to cover a control operation that was scheduled to be carried out at the jail that night. Journalist Dayse Pico and cameraman Roberto Reyes, of *Gama TV*, reporter Iván Maestre of *Ecuavisa*, and journalist Rafaela Zambrano, a Police communications advisor, were reportedly detained on the orders of the jail's warden. The prosecutor on duty ordered that the journalists be held in pretrial detention for having endangered security at the jail. Finally, according to the explanation provided by the Ministry of Justice, Human Rights, and Religion, the Inspector General of the Manabí Police found that there was no basis for the journalists' detention, and they were released.<sup>554</sup>

273. On July 19, journalist Rafael Cuesta Caputi of the *Canal Uno* news program reported on his personal Twitter account that he had received a death threat from an unknown person, in the form of a message written on a piece of paper that read: "Keep it up, and you die too."<sup>555</sup>

274. On August 12, the public newspaper *El Telégrafo* reported that it had been the victim of persecution by alleged representatives and former representatives of banking institutions, through letters, text and voice messages, and threats of lawsuits, among others. The public paper ran an editorial entitled "Bankers, stop persecuting El Telégrafo!" indicating that the threats "have not stopped ever since—unlike other media that silence the past—El Telégrafo has published reports and investigative pieces on cases involving bank officers, owners, or shareholders."<sup>556</sup>

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2013. [Periodista Diego Cornejo fue amenazado en Quito](#); El Universo. May 13, 2013. [Una nueva amenaza a un periodista](#).

<sup>552</sup> El Telégrafo. May 20, 2013. [Incidente entre emelecistas y barcelonistas en Quindé](#); La Hora. May 21, 2013. [Clásico dejó heridos y seis detenidos](#); IFEX/Fundamedios. May 30, 2013. [Policía en Ecuador detiene a camarógrafo y le arrebató su material](#).

<sup>553</sup> La Hora. May 20, 2013. [Equipo de Ecuavisa agredido por realizar reporte sobre escasez de medicinas en el IESS \(video\)](#); Ecuador Inmediato. May 20, 2013. [Equipo de Ecuavisa es agredido por hacer reporte sobre falta de medicinas en IESS](#); El Diario. May 20, 2013. [Reporteros de Ecuavisa son expulsados del hospital del IESS Quito](#).

<sup>554</sup> Ministerio de Justicia, Derechos Humanos y Cultos. June 7, 2013. [Aclaración sobre detención de periodistas](#); Ecuavisa. June 7, 2013. [Cuatro comunicadores fueron detenidos durante operativo en una cárcel de Portoviejo](#); El Diario. June 7, 2013. [Detienen a periodistas durante cobertura en cárcel El Rodeo](#); El Universo. June 7, 2013. [Detienen a periodistas que realizaban cobertura en cárcel de Portoviejo](#); Fundamedios. June 7, 2013. [Detienen a cuatro periodistas en cobertura en centro carcelario](#).

<sup>555</sup> "Ayer recibí esta amenaza de muerte. Algo de mi trabajo periodístico debe estar molestando a alguien". Rafael Cuesta Caputi's Twitter account @ricuesta. [19 de julio de 2013 - 10:07 AM](#). See also, Ecuador Inmediato. July 19, 2013. [Periodista Rafael Cuesta denuncia amenazas de muerte](#); Ecuador en Vivo. July 19, 2013. [Rafael Cuesta denuncia, vía twitter, amenaza de muerte en su contra](#); La República. July 19, 2013. [Rafael Cuesta denuncia amenazas de muerte](#).

<sup>556</sup> El Telégrafo. August 12, 2013. [Señores banqueros, ¡paren la persecución contra El Telégrafo!](#).

275. Others have reportedly received death threats, including: cartoonist Xavier Bonilla,<sup>557</sup> the organization Fundamedios,<sup>558</sup> journalist Martín Pallares,<sup>559</sup> journalist Juan Carlos Calderón,<sup>560</sup> and singer-songwriter Jaime Guevara.<sup>561</sup>

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

### C. Presidential broadcasts, government interruption of news programs

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

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

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<sup>557</sup> Fundamedios. March 14, 2013. [Caricaturista denuncia amenazas a través de Facebook](#); La República. March 10, 2013. [Caricaturista Bonil reporta amenazas](#); Knight Center for Journalism in the Americas. March 18, 2013. [Ecuadorian cartoonist receives threats on Facebook after imbroglio with government](#).

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

<sup>559</sup> IFEX/Fundamedios. May 9, 2013. [Periodista ecuatoriano recibe amenazas por Twitter](#); El Universo. May 10, 2013. [Tuitero amenaza de muerte a periodista Martín Pallares](#); El Comercio. May 10, 2013. [Martín Pallares recibe amenazas en su cuenta de Twitter](#); Hoy. May 10, 2013. [Amenazan por Twitter al periodista Martín Pallares](#).

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

<sup>561</sup> The hashtag #UnPuñeteParaGuevara was created on Twitter and used to convey insults and criticism of the singer-songwriter. La República. September 7, 2013. [Promueven en Twitter golpear a Jaime Guevara](#); Twitter. [Results for #UnPuñeteParaGuevara](#); Hoy. September 9, 2013. [Un polémico hashtag contra Jaime Guevara](#); “Ecuatorianos como Jaime Guevara dan pena, y si mi presi @MashiRafael, yo también le metería una patada a este patán #UnPuñeteParaGuevara”. Martha Lucía Armijos’ Twitter account @martha\_luci. [September 7, 2013 - 11:01 AM](#); “http://youtu.be/MkA\_pB3b0\_Y #UnPuñeteParaGuevara @MashiRafael @FAlvaradoE yo le caigo a palo y machete a #JaimeGuevara, se lo merece”. Marisol Abad’s Twitter account @MarisolAbadd. [September 7, 2013 - 10:59 AM](#); “Ven a Guayaquil Jaime Guevara, insignificante patán, para que veas como responde un guayaquileño a una seña así, #UnPuñeteParaGuevara”. Javier López Harb’s Twitter account @JLopezGye. [September 7, 2013 - 10:59 AM](#); “#UnPuñeteParaGuevara mejor dicho le rompería los dientes si me viene a hacer lo mismo... el respeto dónde queda? @Correistas”. Oscar Rubio’s Twitter account @OscarRubio84. [September 7, 2013 - 1:34 PM](#).

'Los Desayunos 24 Horas' on the *Teleamazonas* TV channel for eight minutes in order to refute a member of the National Assembly who had, a few days earlier on the program, alleged that the head of the National Finance Corporation [*Corporación Financiera Nacional*] had committed perjury upon taking office because he is a debtor of the State.<sup>562</sup> Additionally, on January 29 a mandatory television broadcast reportedly interrupted *Teleamazonas* news programs to defend the Minister of Non-Renewable Natural Resources and discredit the media outlets and their interviewees.<sup>563</sup> The mandatory government message broadcast on the *Teleamazonas* interview program "Los Desayunos 24 Horas" was dedicated to refuting information that had apparently been leaked to the media indicating that the minister did not have a professional degree, and about alleged conflicts of interest because members of his family were said to be working at private petroleum companies. The mandatory broadcast claimed that *Teleamazonas* "distorted the truth in order to do harm."<sup>564</sup>

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

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<sup>562</sup> Canal Teleamazonas. Programa 'Los Desayunos 24 Horas'. Aired on January 8, 2013. Secretaría Nacional de Comunicación. Published on January 8, 2013 by: Libertador Bolívar Televisión/YouTube. [Mentiras y calumnias del opositor Enrique Herrería](#); Fundamedios. January 9, 2013. [Cadena de gobierno interrumpe espacio de entrevistas para defender a funcionario](#).

<sup>563</sup> Fundamedios. January 31, 2013. [Cadenas interrumpen programas de noticias para descalificar a medio y a entrevistado](#); Canal Teleamazonas. Programa 'Los Desayunos 24 Horas'. Aired on January 29, 2013. Published on January 29, 2013 by: LaVerdad Ec/YouTube. [Mentiras y mala fe de Teleamazonas sobre Wilson Pastor, Ministro de Recursos No Renovables](#).

<sup>564</sup> Canal Teleamazonas. Programa 'Los Desayunos 24 Horas'. Aired on January 29, 2013. Published on January 29, 2013 by: LaVerdad Ec/YouTube. [Mentiras y mala fe de Teleamazonas sobre Wilson Pastor, Ministro de Recursos No Renovables](#).

<sup>565</sup> Canal Ecuavisa. Noticiero Ecuavisa. Aired on April 2, 2013. Published on April 2, 2013 by: Libertador Bolívar Televisión/YouTube. [Pinoargote vuelve a mentir con mala fe](#); Fundamedios. April 5, 2013. [Gobierno ordena tres "cadenas" más como réplica](#).

<sup>566</sup> Canal Teleamazonas. Programa 'Los Desayunos 24 Horas'. Aired on April 5, 2013. Published on April 10, 2013 by: Secretaría Nacional de Comunicación/Official YouTube channel. [Cadena Nacional - Las Cadenas de la Secom](#); Secretaría Nacional de Comunicación. April 5, 2013. [SECOM invita a Teleamazonas a evitar mentiras en sus espacios informativos](#).

<sup>567</sup> Canal Teleamazonas. Programa 'Los Desayunos 24 Horas'. Aired on April 5, 2013. Published on April 10, 2013 by: Secretaría Nacional de Comunicación/Official YouTube channel. [Cadena Nacional - Las Cadenas de la Secom](#).

<sup>568</sup> Secretaría Nacional de Comunicación. April 5, 2013. [SECOM invita a Teleamazonas a evitar las mentiras en sus espacios informativos](#).

280. On May 10, the National Secretariat of Communications (SECOM) reportedly aired a mandatory broadcast during a program on *Ecuavisa* in order to challenge information disseminated by the NGO Fundamedios to the effect that 172 assaults against journalists and the media were reported in Ecuador in 2012. The government message criticized the work of Fundamedios and accused the NGO of receiving funding from USAID, the United States government's international development agency. Days earlier, on May 8, Fundamedios representative César Ricaurte had taken part in an interview aired on *Ecuavisa*, in which he reported on the "hostile climate" faced by the country's journalists from "the government's highest authorities."<sup>569</sup>

281. A mandatory government message was aired during *Ecuavisa* news programming on June 12, on the orders of the Ministry of Communications (SECOM), to refute information reported by the channel regarding the Executive Branch's proposed amendments to the Labor Code. The message accused the channel of working "in bad faith" and "distorting" the information "on purpose."<sup>570</sup> This message had already been transmitted on the program *Enlace Ciudadano* on June 8.<sup>571</sup> Following its broadcast, the news program's host Alfonso Espinosa clarified that the government's message was not "accurate," and that part of the reporter's presentation that specified the information had been omitted.<sup>572</sup> The next day, the SECOM reportedly issued a new message to criticize the journalist's remarks.<sup>573</sup>

282. On July 1, a mandatory government broadcast over eight minutes long was aired during *Ecuavisa* news programming, in which the news host, journalist Alfredo Pinoargote, was accused of taking an official document out of context, altering "its original content according to his own interests," and putting together "paragraphs to distort its content and assemble the sentence he was looking for."<sup>574</sup> The message reminded the journalist that "the Communications Act [...] allows any citizen to reserve the right to bring legal actions for such false cases as this one," in reference to an interview Pinoargote had conducted days earlier of politician Luis Villacís, who had spoken of the alleged existence of a surveillance system in place to spy on citizens.<sup>575</sup> On August 7, *Ecuavisa* news was interrupted by a

<sup>569</sup> El Ciudadano. May 10, 2013. [SECOM refuta declaraciones erróneas de Fundamedios \(VIDEO\)](#); Fundamedios. May 10, 2013. [Cadena de gobierno acusa a Fundamedios de recibir millones](#).

<sup>570</sup> Canal Ecuavisa. Aired on June 12, 2013. Published on June 10, 2013 by: Libertador: Bolívar Televisión/YouTube. [Ecuavisa edita y deforma declaraciones del Presidente Correa](#); Fundamedios. June 18, 2013. [Dos cadenas interrumpen noticiero de TV para aclarar "informaciones inexactas"](#).

<sup>571</sup> Presidencia de la República del Ecuador/Official YouTube channel. June 8, 2013. [Enlace Ciudadano Nro 325 desde Ibarra - Imbabura](#). [3:11:03].

<sup>572</sup> Canal Ecuavisa. Noticiero Ecuavisa. Aired on June 13, 2013. Secretaría Nacional de Comunicación. Published on June 13, 2013 by: El Ciudadano/Official YouTube channel. [Cadena Nacional, Ecuavisa 13 de Junio de 2013](#); Fundamedios. June 18, 2013. [Dos cadenas interrumpen noticiero de TV para aclarar "informaciones inexactas"](#).

<sup>573</sup> Canal Ecuavisa. Noticiero Ecuavisa. Aired on June 13, 2013. Secretaría Nacional de Comunicación. Published on June 13, 2013 by: El Ciudadano/Official YouTube channel. [Cadena Nacional, Ecuavisa 13 de Junio de 2013](#); Fundamedios. June 18, 2013. [Dos cadenas interrumpen noticiero de TV para aclarar "informaciones inexactas"](#).

<sup>574</sup> Canal Ecuavisa. Noticiero Ecuavisa. Aired on July 1, 2013. Published on July 1, 2013 by: Libertador Bolívar Televisión/YouTube. [Pinoargote desarma documentos oficiales a su conveniencia](#); Fundamedios. July 2, 2013. [Cadena advierte a presentador con aplicarle nueva Ley](#); Ecuavisa. Noticiero Ecuavisa. July 1, 2013. Available for consultation at: <http://www.ecuavisa.com/noticieros-antiores>.

<sup>575</sup> Canal Ecuavisa. Noticiero Ecuavisa. Aired on July 1, 2013. Published on July 1, 2013 by: Libertador Bolívar Televisión/YouTube. [Pinoargote desarma documentos oficiales a su conveniencia](#); Fundamedios. July 2, 2013. [Cadena advierte a presentador con aplicarle nueva Ley](#).

mandatory message to “explain” assertions “that are not consistent with reality” made by an opposition member of the National Assembly during an interview aired on the news program.<sup>576</sup> On August 1, the National Secretariat of Communications (SECOM) reportedly issued a four-minute mandatory message that aired during the ‘Contacto Directo’ interview program on *Ecuavisa*, for purposes of clarifying erroneous “remarks and statements” made on the program by an opposition member of the National Assembly.<sup>577</sup>

283. On September 5, 2013, a mandatory government broadcast interrupted ‘Los Desayunos 24 Horas’, an interview program on *Teleamazonas*, in order to reject the remarks of the program’s host, María Josefa Coronel, and of several other media outlets. The remarks had been related to an order issued by the Ministry of the Environment, which had reportedly imposed various requirements on the media to access the Yasuní National Park.<sup>578</sup>

284. At the hearing on the “Situation of the right to freedom of expression in Ecuador,” held on March 12 during the 147 Period of Sessions of the IACHR, the State maintained that the private media were not harassed in national mandatory government broadcasts, since those national broadcasts “are aired to clarify the distorted, malicious, and even one-sided versions of some media, and above all they are done to guarantee the veracity of information.”<sup>579</sup>

285. The Office of the Special Rapporteur has recognized the authority of the President of the Republic and high-ranking government officials to use the media for purposes of informing the public of prevailing matters of public interest; nevertheless, the exercise of this power is not absolute. The information that governments convey to the public through the presidential broadcasts must be strictly necessary to meet the urgent need for information on issues that are clearly and genuinely in the public interest, and for the length of time strictly necessary for the conveyance of that information. In this respect, both the IACHR and its Office of the Special Rapporteur,<sup>580</sup> 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.”<sup>581</sup> Additionally, the principle 5 of the IACHR’s Declaration of Principles states that: “[p]rior

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<sup>576</sup> Fundamedios. August 9, 2013. [Secom vuelve a imponer una réplica a canal de TV.](#)

<sup>577</sup> Canal Ecuavisa. Programa ‘Contacto Directo’. Aired on August 1, 2013. Published on August 6, 2013 by: Libertador Bolívar Televisión/YouTube. [Andrés Páez miente, nadie podrá portar un cargamento de droga](#); Fundamedios. August 2, 2013. [Secom viola Ley de Comunicación e impone cadenas](#); El Comercio. August 4, 2013. [Las lecciones de dos cadenas.](#)

<sup>578</sup> Canal Teleamazonas. Programa ‘Los Desayunos 24 Horas’. September 5, 2013. Published on September 5, 2013 by: Libertador Bolívar Televisión/YouTube. [M Josefa Coronel quiere hacer un reportaje del oso Yogui sin permisos](#); Fundamedios. September 6, 2013. [Cadena de gobierno cuestiona opinión de presentadora.](#)

<sup>579</sup> IACHR. 147 Period of Sessions. Hearing on the Situation of the Right to Freedom of Expression in Ecuador. March 12, 2013. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=131>

<sup>580</sup> IACHR. [Report on the Situation of Human Rights in Venezuela](#). Chapter VI (Right to Freedom of Expression and Thought). OEA/Ser.L/V/II.118. Doc. 4 rev. 1. October 24, 2003. Para. 487.

<sup>581</sup> IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 199; IACHR. [Annual Report 2010. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 226; IACHR. [Declaration of Principles on Freedom of Expression](#). Principle 5.

ensorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression”.

286. Public servants must also bear in mind that they have a position as guarantors of the fundamental rights of individuals; as such, their statements cannot deny those rights.<sup>582</sup> 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.<sup>583</sup> The Inter-American Court has also held that situations of risk can be exacerbated if they are “[the subject of government speeches] that may [provoke], suggest actions, or be interpreted by public officials or sectors of the society as instructions, instigations, or any form of authorization or support for the commission of acts that may put at risk or violate the life, personal safety, or other rights of people who exercise [...] freedom of expression.”<sup>584</sup>

#### D. Subsequent liability

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

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<sup>582</sup> 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.

<sup>583</sup> 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.

<sup>584</sup> 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.

<sup>585</sup> Corte Nacional de Justicia. Causa 17721-2012-0826. Available for consultation: <http://www.cortenacional.gob.ec/cnj/index.php/consulta-de-causas>; El Ciudadano. [Sentencia no. 826-2012-injurias](#).

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

<sup>587</sup> Corte Nacional de Justicia. Causa 17721-2012-0826. Available for consultation at: <http://www.cortenacional.gob.ec/cnj/index.php/consulta-de-causas>; El Ciudadano. [Sentencia no. 826-2012-injurias](#).

an excerpt of the judgment in four print media outlets. The defendants were further ordered “as financial compensation, to pay Rafael Vicente Correa Delgado a sum equal to his current monthly salary for each month from August 4, 2011, the date on which the malicious and reckless complaint was filed, to the date on which notice of this judgment is given.”<sup>588</sup> As of the closing date of this report, the motion [*recurso de casación*] presented by Jiménez, Villavicencio y Figueroa remained pending.

288. Two Indigenous leaders, Pepe Luis Acacho and Pedro Mashiant were declared guilty and sentenced to special imprisonment plus fine in a process for “organized terrorism”<sup>589</sup>, regarding the events in the context of the protests of Indigenous communities against a law propelled by the government of Rafael Correa in 2009.<sup>590</sup> The teacher Bosco Wisuma died while watching one of these protests.<sup>591</sup>

289. The legislator Pepe Luis Acacho, who at the time was director of the radio station *La Voz de Arutam*, was sentenced due to a number of expressions that, according to the government, led to the circumstances in which the death of teacher Wisuma occurred.<sup>592</sup> However, Acacho affirmed that the expressions matched the voices of different people from the indigenous community that called the radio station and that those who translated the radio recordings for the audience (from the Shuar language into Spanish) were not experts in Shuar accredited by the Judiciary Council and made a poor translation and interpretation of these expressions.<sup>593</sup> Similarly, he reportedly casted doubts on the independence of the Judiciary Branch, affirming that “the judges are alternate judges, are *ad hoc* judges, are deputy judges; they are not head judges, and they took office only three months ago, whereas this process dates back to four years ago, with over 3000 pages, and I don’t know if they have read it; they simply obeyed and did not reason about it in order to judge”.<sup>594</sup> The defenders of the accused are reported to have affirmed: “[the accusation] is totally illegal, one cannot accuse a person firstly of homicide, then of terrorism, then of sabotage, and at the end accuse him of sabotage, terrorism and homicide”. Regarding

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<sup>588</sup> Corte Nacional de Justicia. Causa 17721-2012-0826. Available for consultation at: <http://www.cortenacional.gob.ec/cnj/index.php/consulta-de-causas>

<sup>589</sup> Corte Provincial de Justicia de Morona Santiago, Sala Única. Causa No. 14111-2012-0278. July 19, 2013. Available for consultation at: [http://www.funcionjudicial-moronasantiago.gob.ec/mis\\_modulos/consulta\\_juicios/consulta.php](http://www.funcionjudicial-moronasantiago.gob.ec/mis_modulos/consulta_juicios/consulta.php); El Ciudadano/Official YouTube channel. August 17, 2013. [Enlace ciudadano No. 335 – desde Checa, Pichincha](#) [2:37:00]; El Telégrafo. August 12, 2013. [Acacho habría sido sentenciado a 12 años de prisión](#); Teleamazonas. August 13, 2013. [Pepe Acacho y Pedro Mashiant fueron sentenciados a 12 años de prisión](#); El Universo. August 20, 2013. [Indígenas van por amnistía a Acacho](#); Asamblea Nacional. July 19, 2013. [Asambleista Shuar Pepe Acacho Condenado por Terrorismo](#).

<sup>590</sup> Asamblea Nacional. July 19, 2013. [Asambleista Shuar Pepe Acacho Condenado por Terrorismo](#); La Hora. August 12, 2013. [Dictan 12 años de prisión para el asambleista Pepe Acacho](#); El Universo. August 12, 2013. [Legislador Pepe Acacho es sentenciado a 12 años de prisión](#); Fundamedios. August 12, 2013. [Líderes indígenas son condenados por terrorismo](#).

<sup>591</sup> El Telégrafo. August 12, 2013. [Acacho habría sido sentenciado a 12 años de prisión](#); Teleamazonas. August 13, 2013. [Pepe Acacho y Pedro Mashiant fueron sentenciados a 12 años de prisión](#); El Universo. August 20, 2013. [Indígenas van por amnistía a Acacho](#); Fundamedios. August 12, 2013. [Líderes indígenas son condenados por terrorismo](#).

<sup>592</sup> El Ciudadano/Official YouTube channel. July 20, 2013. [Enlace ciudadano No. 331 desde la parroquia Febres Cordero- Guayaquil](#). [2:56:20]; Presidencia de la República/Official YouTube channel. August 17, 2013. [Enlace ciudadano No. 335 – desde Checa, Pichincha](#). [2:37:00].

<sup>593</sup> Hoy. August 14, 2013. ['Los traductores no son peritos shuar'](#); Ecuadorinmediato. July 23, 2013. [Defensa de José Acacho rechaza sentencia y asegura que Bosco Wisuma murió por perdigones de la Policía \(Audio\)](#).

<sup>594</sup> Ecuadorinmediato. July 23, 2013. [Defensa de José Acacho rechaza sentencia y asegura que Bosco Wisuma murió por perdigones de la Policía \(Audio\)](#).



the presumed perpetrators, they indicated that it would be necessary to investigate the police officers who attempted to restrain the protest in which the teacher Wisuma took part.<sup>595</sup>

290. The President Correa, in Enlace Ciudadano 335, of August 17, stated that “due to his [Pepe Acacho’s] irresponsibility, violence was generated and Bosco Wisuma died. [...] Is the penalty excessive? I may agree with that, but could we talk about a pardon? Previous authorization by Bosco Wisuma’s family? Granted, let us talk about it, but do not be so coward as to flee your responsibility”.<sup>596</sup> On September 6, was granted the request for nullity and appeal presented by Pepe Luis Acacho and Pedro Mashiant to “appear before a High court in order to assert their rights”.<sup>597</sup>

291. It was reported that on March 3, while they were inside a private building in the Luluncoto sector of Quito, ten youths<sup>598</sup> were arrested and subsequently prosecuted and held in detention, accused of crimes against the domestic security of the State (acts of terrorism).<sup>599</sup> According to the information disclosed at the court hearings held during the criminal case, the ten detainees had allegedly gathered in order to discuss their participation in the public demonstrations that would take place in the month of March.<sup>600</sup> Human rights organizations like Amnesty International,<sup>601</sup> Ecumenical Human Rights Commission (CEDHU),<sup>602</sup> The Project for Social-Environmental Reparation Environmental Clinic,<sup>603</sup> and the Regional Institute of Human Rights (INREDH),<sup>604</sup> and high profile figures such as

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<sup>595</sup> Ecuadorinmediato. July 23, 2013. [Defensa de José Acacho rechaza sentencia y asegura que Bosco Wisuma murió por perdigones de la Policía \(Audio\)](#).

<sup>596</sup> El Ciudadano/Official YouTube channel. August 17, 2013. [Enlace ciudadano No. 335 – desde Checa, Pichincha](#) [2:42:10]; El Telégrafo. August 19, 2013. [Ecuarrunari no aceptaría un indulto para Pepe Acacho](#).

<sup>597</sup> Corte Provincial de Justicia de Morona Santiago, Sala Única. September 6, 2013. Causa No. 14111-2012-0278. Available for consultation at: [http://www.funcionjudicial-moronasantiago.gob.ec/mis\\_modulos/consulta\\_juicios/consulta.php](http://www.funcionjudicial-moronasantiago.gob.ec/mis_modulos/consulta_juicios/consulta.php)

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

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

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

<sup>601</sup> Amnesty International. Noviembre 27, 2012. *Carta al Fiscal General del Estado*. Available for consultation at: [http://cedhu.org/index.php?option=com\\_docman&task=doc\\_download&gid=243&Itemid=6](http://cedhu.org/index.php?option=com_docman&task=doc_download&gid=243&Itemid=6)

<sup>602</sup> Comisión Ecuménica de Derechos Humanos (CEDHU), Fundación Regional de Asesoría en Derechos Humanos (INREDH) y Proyecto de Reparación “Clínica Ambiental”. December 2012. *Ocaso de la Justicia El Caso Sol Rojo. Informe Psicosocial y de Derechos Humanos*. Available for consultation at: [http://cedhu.org/index.php?option=com\\_docman&task=doc\\_download&gid=241&Itemid=6](http://cedhu.org/index.php?option=com_docman&task=doc_download&gid=241&Itemid=6)

<sup>603</sup> Comisión Ecuménica de Derechos Humanos (CEDHU), Fundación Regional de Asesoría en Derechos Humanos (INREDH) y Proyecto de Reparación “Clínica Ambiental”. December 2012. *Ocaso de la Justicia El Caso Sol Rojo. Informe Psicosocial y de Derechos Humanos*. Available for consultation at: [http://cedhu.org/index.php?option=com\\_docman&task=doc\\_download&gid=241&Itemid=6](http://cedhu.org/index.php?option=com_docman&task=doc_download&gid=241&Itemid=6)

<sup>604</sup> Comisión Ecuménica de Derechos Humanos (CEDHU), Fundación Regional de Asesoría en Derechos Humanos (INREDH) y Proyecto de Reparación “Clínica Ambiental”. December 2012. *Ocaso de la Justicia El Caso Sol Rojo. Informe Psicosocial y de Derechos Humanos*. Available for consultation at: [http://cedhu.org/index.php?option=com\\_docman&task=doc\\_download&gid=241&Itemid=6](http://cedhu.org/index.php?option=com_docman&task=doc_download&gid=241&Itemid=6)

Baltazar Garzón<sup>605</sup> agreed that in this case the application of terrorism laws could be in violation of human rights.

292. Fadia Elizabeth Tapia Jarrin reportedly obtained an alternative measure instead of preventive arrest, consisting of personal visit after every eight days to the Court in charge of her case.<sup>606</sup> The defendants presented a habeas corpus appeal, and on December 20, 2012, the First Chamber for Labor Affairs, Childhood and Adolescence of the Provincial Court of Justice of Pichincha solved the petitions. The Chamber granted freedom to seven of the ten defendants and refused the appeal to Ana Cristina Campaña Sandoval, Fadia Elizabeth Tapia Jarrin (who enjoyed an alternative measure, instead of arrest) and Yesenia [o Jescenia] Abigail Heras Bermeo, “as the due motivation did not exist”.<sup>607</sup> Heras Bermeo and Campaña Sandoval presented an appeal to the National Court of Justice, which decided to reject it through a sentence dated January 7, 2013, as there already was a resolution on the same facts by the Chamber of Administrative Disputes of the National Court of Justice dated July 19, 2012.<sup>608</sup> The Third Supervisory Criminal Court of Pichincha handed sentenced the 10 individuals to one year in prison for the offense of “attempted terrorism.”<sup>609</sup> The defendants filed appeals and motions to vacate in June, 2013. Ana Cristina Campaña and Yesenia [o Jescenia] Abigail Heras Bermeo were freed after serving the full term of their sentences. However, the judge ordered them to appear before the Court weekly until the pending motions were resolved.<sup>610</sup>

293. According to information received, on January 4 the Supervisory Court for Criminal and Traffic Matters [*Juzgado de Garantías Penales de Tránsito*] of Joya de los Sachas, in the Province of Orellana, convicted the representative of the *Sacha Tv Canal 3* television channel, Juana Alexandra Heredia, for the defamation [*injuria*] of a public defender.<sup>611</sup> The legal action stemmed from a December 10, 2012 news broadcast reporting that the public official had been arrested for allegedly driving under the influence of alcohol. The public servant argued that the broadcast of the news “brought discredit” upon him, damaged his “good name and reputation” in relation to his position as a public defender, caused him “pain and suffering,” and harmed his “honor and prestige,” and that the statements went against his “moral and professional integrity.” As such, he requested compensation of at least US\$ 500,000. After setting a mediation hearing—which the defendant and her legal representative did not attend—the judge sentenced the journalist to fourteen months in prison and a fine of US\$ 10.00 (ten dollars). In response to the petition for review of a conviction presented by Mrs. Juana Alexandra Heredia Hidalgo, on August 14 the process was referred to the National Court of Justice of Ecuador.

<sup>605</sup> El Telégrafo. November 26, 2012. [Baltazar Garzón señala una tesis a favor de los jóvenes](#); Comisión Ecuémica de Derechos Humanos (CEDHU), Fundación Regional de Asesoría en Derechos Humanos (INREDH) y Proyecto de Reparación “Clínica Ambiental”. December 2012. *Ocaso de la Justicia El Caso Sol Rojo. Informe Psicosocial y de Derechos Humanos*. Available for consultation at: [http://cedhu.org/index.php?option=com\\_docman&task=doc\\_download&gid=241&Itemid=6](http://cedhu.org/index.php?option=com_docman&task=doc_download&gid=241&Itemid=6)

<sup>606</sup> Tercer Tribunal de Garantías Penales de Pichincha. Causa No. 2012-0124. Available for consultation at: <http://www.funcionjudicial-pichincha.gob.ec/index.php/consulta-de-procesos>

<sup>607</sup> Corte Nacional de Justicia. January 7, 2013. [Causa 438-2012](#).

<sup>608</sup> Corte Nacional de Justicia. January 7, 2013. [Causa 438-2012](#).

<sup>609</sup> Tercer Tribunal de Garantías Penales de Pichincha. Causa No. 2012-0124. Available for consultation at: <http://www.funcionjudicial-pichincha.gob.ec/index.php/consulta-de-procesos>; Agencia Pública de Noticias del Ecuador y Suramérica (Andes). March 5, 2013. [Sentenciadas por intento de sabotaje y terrorismo recuperan la libertad](#).

<sup>610</sup> Tercer Tribunal de Garantía Penales de Pichincha. Causa No. 2012-0124. Disponible para consulta en: <http://www.funcionjudicial-pichincha.gob.ec/index.php/consulta-de-procesos>

<sup>611</sup> Juzgado Primero de Garantías Penales. February 28, 2013. Causa N° 22252-2013-0014. Available for consultation at: <http://www.funcionjudicial-orellana.gob.ec/index.php/nombre>

294. On May 22, the Minister of the Interior filed a complaint before the acting Prosecutor General against former Army Intelligence chief Mario Pazmiño Silva, for “defamation” [*injuria*] and “several accusations that constitute other offenses,” as a result of statements made in an interview on *Radio Visión*, in which Pazmiño Silva had allegedly linked law enforcement authorities to drug trafficking. According to the Minister’s complaint, the former intelligence chief “made serious, unfounded accusations against the State,” and therefore must provide “evidence” to establish who exactly “has direct ties to drug trafficking.”<sup>612</sup> On May 10, on a *Radio Visión*’s interview Pazmiño claimed that “the corruption has reached immense levels and proportions, to the point where there are authorities within the Armed Forces, the National Police, and the Judiciary who are involved.”<sup>613</sup>

295. Acting National Communications Secretary Patricio Barriga reportedly sent a letter dated 23 January 23, 2013 to the newspaper *La Hora*, demanding the implementation of “effective mechanisms” to ensure that reader comments “do not violate rights through false accusations or defamatory statements.” The Secretary stated in his letter that “On multiple occasions we have been able to verify offensive publications disguised as ‘citizen’ opinions that have been given space in the print and virtual editions of your newspaper. Those articles and remarks violate the honor and the good names of people, including the Constitutional President of the Republic. [...] The ‘permissiveness’ of *La Hora* with regard to these types of accusations and repudiations comes with a systemic attitude of rejection toward the current government. This may constitute violations of Article 13(2) (a) and (b) of the American Convention on Human Rights because it fosters hatred. [...] The National Secretariat of Communications, based on subsequent liability, demands the implementation of effective mechanisms to ensure that these comments do not violate rights through false accusations or defamatory statements that contribute nothing to the genuine and free flow of ideas required in a democratic society.”<sup>614</sup>

296. During the March 16 airing of *Enlace Ciudadano 313*, President Rafael Correa reportedly asked the Minister of Defense to review “the court actions” that could be taken against the television station *Ecuavisa* after a March 11 news broadcast reported on alleged favoritism in the promotion of three colonels in the Ecuadorian Armed Forces. The president made reference to the “corrupt press,” and said: “They are doing all this to see whether we have a coup and they kill the president.” A video was also released to refute the news reported by *Ecuavisa*.<sup>615</sup> Later, on March 18, the station aired a public apology to the members of the Armed Forces and their families.<sup>616</sup> On March 30, during *Enlace Ciudadano 315*, the president reiterated the possibility of taking legal action against *Ecuavisa* if it did not

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<sup>612</sup> Ministerio del Interior. May 22, 2013. [Ministro Serrano presenta denuncia en la Fiscalía contra Mario Pazmiño](#); El Universo. May 23, 2013. [Gobierno denuncia, otra vez, a Mario Pazmiño en Fiscalía](#); Hoy. May 22, 2013. [Ministro Serrano denunció a Mario Pazmiño ante la Fiscalía](#).

<sup>613</sup> Ministerio del Interior. [Audio de la entrevista de Radio Visión](#).

<sup>614</sup> El Ciudadano. January 24, 2013. [Secom rechaza comentarios publicados en diario La Hora que incitan al odio \(carta\)](#); Secretaría Nacional de Comunicación. January 24, 2013. [Secom rechaza comentarios publicados en diario La Hora que incitan al odio \(carta\)](#).

<sup>615</sup> Presidencia de la República del Ecuador/Official YouTube channel. March 16, 2013. [Enlace Ciudadano 313 desde Sevilla de Oro, Azuay](#). [03:05:15].

<sup>616</sup> Ecuavisa. March 18, 2013. [Ecuavisa pide disculpas a FF.AA. por información sobre calificación de coroneles](#); Agencia Pública de Noticias del Ecuador y Suramérica (Andes). March 18, 2013. [Televisora Ecuavisa ofrece disculpas a las Fuerzas Armadas por difundir información errónea de un documento forjado](#); IFEX/Fundamedios. March 21, 2013. [Ecuadorian government targets TV station, journalist dismissed](#).

also apologize to the Minister of Defense.<sup>617</sup> On April 1, the channel issued a new apology, in which it expressed regret for the “inaccuracy committed independently and without consultation by the former director of *Televistazo de las 13:00* in Quito, Freddy Barros, and publicly apologizes to the Minister of Defense.”<sup>618</sup>

297. On April 4, the National Secretariat of Communications (SECOM) announced in a press release that the government would be taking legal action against *La Hora* for “inciting hatred,” based on the publication of photographs of the bodies of murdered Waorani indigenous people.<sup>619</sup> The newspaper had reportedly published the photographs as part of its follow-up coverage of a massacre and the risks faced by the indigenous people.<sup>620</sup> According to the statement released by the SECOM, the dissemination of the images “could have the effect of promoting hatred between two nations [Waorani and Taramenane] of the Ecuadorian State, with consequences that are difficult to predict [...] we will be going to the Office of the Prosecutor to file a complaint in this case and, within the framework of the rule of law and with full adherence to due process, we will demand punishment for those responsible for this crime, as well as justice and reparations for the victims of this cruel, inhuman, and degrading treatment” the Secretariat reported.<sup>621</sup> During *Enlace Ciudadano 316*, which aired on April 6, President Rafael Correa repeated his intent to bring legal action against the newspaper. Correa maintained that “This news has been handled badly. But it has reached intolerable [...] extremes. For example, the ineffable newspaper *La Hora*, of the unmentionable Francisco Vivanco [...], look at the pictures they publish to sell a few more newspapers. This is a shame [...] This shows an abundance of racism. These people do not care about showing these images because they are of indigenous people [...] We are going to do something about this. We are not going to allow some idiot, some rich guy—who thinks he’s above the State because he had the money for a printing press—to think he can just do whatever he wants, hypocritically invoking freedom of expression when it suits him [...]”<sup>622</sup>

298. On May 11, during *Enlace Ciudadano 321*, President Rafael Correa reportedly announced that he would ask for a meeting with the Prosecutor General to intensify investigations into the violent acts that took place on September 30, 2010, and suggested the investigation of the “parapsychologist” journalists of *Teleamazonas* who, according to the president, “knew what was going to happen.” “*Teleamazonas* knew what was going to happen on September 30 [...] It was the first to start broadcasting live. But for that, it must have positioned its microwaves in the early morning hours, before the September 30 uprising began,” stated President Correa.<sup>623</sup> During the presidential broadcast,

<sup>617</sup> Presidencia de la República del Ecuador/Official YouTube channel. March 30, 2013. [Enlace Ciudadano 315 desde Olmedo - Manabí](#). [03:14:00].

<sup>618</sup> El Ciudadano. April 1, 2013. [Ecuavisa ofrece disculpas a ministra de Defensa por difundir información errónea; Confirmado](#). April 3, 2013. [\(VIDEO\) Ministra de Defensa acepta disculpas de Ecuavisa y da vuelta a la página](#).

<sup>619</sup> Secretaría Nacional de Comunicación. April 5, 2013. [SECOM denunciará ante la Fiscalía fotos publicadas en La Hora sobre la comunidad Waorani \(DOCUMENTO\)](#).

<sup>620</sup> Hoy. April 4, 2013. [Más 18 muertos habría dejado el ataque huaorani](#); Hoy. April 4, 2013. [Edición Impresa – Matanzas: Estado Impotente](#).

<sup>621</sup> Secretaría Nacional de Comunicación. April 5, 2013. [SECOM denunciará ante la Fiscalía fotos publicadas en La Hora sobre la comunidad Waorani \(DOCUMENTO\)](#).

<sup>622</sup> Presidencia de la República del Ecuador/Official YouTube channel. April 6, 2013. [Enlace Ciudadano Nro. 316 desde Colimes – Guayas](#). [02:37:54].

<sup>623</sup> Presidencia de la República del Ecuador/ Official YouTube channel. May 11, 2013. [Enlace Ciudadano Nro. 321 desde Quito, Pichincha](#). [02:48:20]; El Ciudadano. May 11, 2013. [Gobierno Nacional solicitará una ampliación a las investigaciones sobre el 30S \(VIDEO\)](#).

a video containing part of *Teleamazonas*'s coverage of the conflict was shown, and the channel was accused of being complicit in the call for the Armed Forces to rise up. The video also showed a tweet posted the day before the events by the channel's news host, Milton Pérez, in which he said to a colleague: "Pay attention to what might happen in Ecuador, these will be crucial days and it could be very intense." The president maintained that the tweet proves that Pérez was "anticipating what was going to happen" on September 30.

299. On May 12, National Communications Secretary Fernando Alvarado posted on his personal blog that the agency he heads—the National Secretariat of Communications— "took follow-up actions" based on the "premonitory" message posted by journalist Milton Pérez, "revealing possible dangerous connections between this news medium and political and military factions prepared to carry out a planned coup d'état." He urged a "thorough investigation" of the media's role in the events of September 30.<sup>624</sup> On May 13, President Correa announced in *Enlace Ciudadano* 321 that he had met with the Prosecutor General to discuss the investigation of the *Teleamazonas* journalists in relation to these events.<sup>625</sup> After the meeting, the prosecutor reported that journalist Milton Pérez would be called to testify in the investigation into the events of September 30.<sup>626</sup>

300. On January 30, in place of the usual cartoon on its editorial page, the newspaper *El Universo* published a letter from President Rafael Correa and Vice President Jorge Glas, in which they demanded that the newspaper publicly apologize for a cartoon of Xavier Bonilla,<sup>627</sup> known as Bonil. The cartoon had been published on January 21, and in the opinion of the President and Vice President, was "a violation of the historical memory" of Ecuadorians and affected their image.<sup>628</sup> The letter was also sent to the chief justice of the National Electoral Court.<sup>629</sup>

301. 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

<sup>624</sup> Blog de Fernando Alvarado Espinel. May 12, 2013. [Redes sociales delatan complicidades mediáticas en el 30S](#); Presidencia de la República del Ecuador. May 13, 2013. ["Redes sociales delatan complicidades mediáticas en el 30S", un análisis de Fernando Alvarado](#).

<sup>625</sup> Presidencia de la República del Ecuador/Oficial YouTube channel. May 11, 2013. [Enlace Ciudadano Nro. 321 desde Quito, Pichincha](#). [02:55:10]; Hoy. May 13, 2013. [Chiriboga se reunirá con Correa tras vinculación de Teleamazonas en el 30S](#); Ciudadanía Informada. May 13, 2013. [Correa llama a Fiscal para solicitarle que investigue a periodistas por el caso 30-S](#). Available for consultation at: [http://www.ciudadaniainformada.com/noticias-politica-ecuador0/noticias-politica-ecuador/browse/16/ir\\_a/politica/article//correa-llama-a-fiscal-para-solicitarle-que-investigue-a-periodistas-por-el-caso-30-s/www.registrosocial.gov.ec.html](http://www.ciudadaniainformada.com/noticias-politica-ecuador0/noticias-politica-ecuador/browse/16/ir_a/politica/article//correa-llama-a-fiscal-para-solicitarle-que-investigue-a-periodistas-por-el-caso-30-s/www.registrosocial.gov.ec.html)

<sup>626</sup> *El Ciudadano*. May 13, 2013. [Periodista Milton Pérez será llamado a declarar en la Fiscalía para investigaciones del 30-S \(VIDEO\)](#); Ecuador en Vivo. May 14, 2013. [Fiscalía investigará a periodista por tuit del 30-S](#); *El Universo*. May 13, 2013. [Fiscal llamará a declarar a Milton Pérez por caso de la revuelta policial](#).

<sup>627</sup> *El Ciudadano*. February 23, 2013. [Gobierno Nacional rechaza versiones y caricaturas de El Universo \(Videos\)](#); *El Telégrafo*. January 30, 2013. [El Universo publica carta de Correa y Glas en lugar de caricatura](#).

<sup>628</sup> *El Telégrafo*. January 30, 2013. [El Universo publica carta de Correa y Glas en lugar de caricatura](#); IFEX/Fundamedios. February 1, 2013. [Presidente ecuatoriano obliga a diario a disculparse por caricatura](#); *El Diario*. January 30, 2013. [El Universo publica réplica de Correa y Glas por caricatura](#).

<sup>629</sup> AFP. January 30, 2013. [Presidente de Ecuador se queja ante corte electoral por caricatura](#); Knight Center for Journalism in the Americas. February 4, 2013. [President of Ecuador asks for apology and right of reply over newspaper cartoon](#).

disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.” Also, principle 11 of the Declaration establishes that, “[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as ‘desacato laws,’ restrict freedom of expression and the right to information”.

302. For its part, the Inter-American Court has addressed the issue of civil liability and wrote that civil penalties in matters involving freedom of expression must be proportional so that they do not have a chilling effect on that freedom, since “the fear of a civil penalty, considering the claim [...] for a steep civil reparation, may be, in any case, equally or more intimidating and inhibiting for the exercise of freedom of expression than a criminal punishment, since it has the potential to affect the personal and family life of an individual who accuses a public official, with the evident and very negative result of self-censorship both in the affected party and in other potential critics of the actions taken by a public official.”<sup>630</sup>

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

303. The Inter-American Commission and the Office of the Special Rapporteur received information indicating that after the hearing on the “Situation of the Right to Freedom of Expression in Ecuador,” held on March 12 during the 147 Period of Sessions of the IACHR, high-ranking Ecuadorian authorities used offensive terms in the March 16 episode of the program *Enlace Ciudadano* and in a mandatory government broadcast that aired on March 19 in reference to the individuals and organizations that presented information at the hearing.<sup>631</sup> The government broadcast disparaged the participation of the petitioners in the hearing.<sup>632</sup>

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

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<sup>630</sup> 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.

<sup>631</sup> *Fundamedios*. March 20, 2013. [Peticionarios ante la CIDH vuelven a ser represaliados](#); Hoy. March 28, 2013. [Fundamedios denuncia agresiones del régimen a quienes fueron a la CIDH](#); El Comercio. March 28, 2013. [Fundamedios denuncia nuevo 'acoso oficial'](#); Letter sent to the IACHR from *Fundamedios* on attacks and intimidations. March 26, 2013. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Presidencia de la República del Ecuador/Official YouTube channel. March 16, 2013. [Enlace Ciudadano Nro. 313 desde Sevilla de Oro, Azuay](#). [00:46:40].

<sup>632</sup> Canal Ecuavisa. *Noticiero Ecuavisa*. Aired on March 19, 2013. Published on March 19, 2013 by: Libertador Bolívar Televisión/YouTube. [En el Ecuador existe total libertad de expresión](#); Presidencia de la República del Ecuador. March 20, 2013. [Gobierno demuestra con pruebas que en Ecuador hay libertad de expresión](#).

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

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

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

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

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

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<sup>633</sup> Presidencia de la República del Ecuador/Official YouTube channel. March 16, 2013. [Enlace Ciudadano Nro. 313 desde Sevilla de Oro, Azuay](#). [00:46:40].

<sup>634</sup> El Ciudadano. March 17, 2013. [¿A quién representa Fundamedios?](#).

<sup>635</sup> Agencia Pública de Noticias del Ecuador y Suramérica (Andes). March 16, 2013. [EE.UU. financia a Fundamedios a través de una triangulación](#).

<sup>636</sup> IACHR. April 5, 2013. [Annex to the Press Release Issued at the Close of the 147th Session](#).

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

<sup>638</sup> Fernando Alvarado's official Twitter account @FAlvarado. [October 28, 2013 - 5:57 PM](#).

<sup>639</sup> Rafael Correa's official Twitter account @MashiRafael. [October 29, 2013 - 3:23 PM](#).

CORDES (O. Hurtado, funded by Konrad Adenauer)...<sup>640</sup> “...Fundamedios (newspaper owners as well as cheapskates, since they are funded by USAID). By the ‘left’: Ecuarinari (PK), UNE (MPD)...”<sup>641</sup> “...Retail merchants (MPD), etc. We are not going to play along with these antics.”<sup>642</sup>

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

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

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

## F. Stigmatizing statements

312. The Office of the Special Rapporteur has been aware of repeated stigmatizing statements made by President Rafael Correa to journalists and members of the media. For example, on

<sup>640</sup> Rafael Correa’s official Twitter account @MashiRafael. [October 29, 2013 - 3:24 PM](#).

<sup>641</sup> Rafael Correa’s official Twitter account @MashiRafael. [October 29, 2013 - 3:26 PM](#).

<sup>642</sup> “...Comerciantes minoristas (MPD), etc. No nos vamos a prestar a estas payasadas, más aún mientras CIDH continúe en Washington. Un abrazo.” Rafael Correa’s official Twitter account @MashiRafael. [October 29, 2013 - 3:28 PM](#).

<sup>643</sup> Luis Castillo P.’s Twitter account @LCPeurocentro. [October 29, 2013 - 4:43 PM](#); Unión Nacional de Educadores. November 4, 2013. [Gobierno hostiga a organizaciones denunciando ante la CIDH](#); Ciudadanía Informada. October 31, 2013. *Libertad de expresión, el eje de denuncias presentadas ante la CIDH esta semana*. Available for consultation at: [http://www.ciudadaniainformada.com/noticias-politica-ecuador0/noticias-politica-ecuador/ir\\_a/ciudadania-informada/article//libertad-de-expresion-el-eje-de-denuncias-presentadas-ante-la-cidh-esta-semana.html](http://www.ciudadaniainformada.com/noticias-politica-ecuador0/noticias-politica-ecuador/ir_a/ciudadania-informada/article//libertad-de-expresion-el-eje-de-denuncias-presentadas-ante-la-cidh-esta-semana.html)

<sup>644</sup> Presidencia de la República del Ecuador/Official YouTube channel. November 2, 2013. [Enlace Ciudadano Nro. 346 desde Chone, Manabí \(Con Jorge Glas, Vicepresidente de la República\)](#). [02:09:54].

<sup>645</sup> IACHR. November 8, 2013. [Annex to the Press Release Issued at the Close of the 149th Session](#).



February 23, during Enlace Ciudadano 310, President Rafael Correa called journalist Andrés Oppenheimer of the U.S. newspaper *El Nuevo Herald* “fascist,” “corrupt,” and “shameless.”<sup>646</sup> According to the information received, the statements against Oppenheimer were made following the journalist’s publication of an article entitled “Ecuador: 21<sup>st</sup> Century Dictatorship?”<sup>647</sup> On that same occasion, the President called into question *El Universo* cartoonist Xavier Bonilla, reportedly saying that there are “hit men armed with pens who disguise themselves as supposed humorists.”<sup>648</sup> Later, on March 11, Bonilla reported that he had received threats through his personal Facebook account.<sup>649</sup>

313. According to information received by the Office of the Special Rapporteur, on January former *El Universo* newspaper editorialist Emilio Palacio—who at the time was exiled in the United States—reported that he continued to be the victim of persecution by the Ecuadorian Government. Palacio maintained, among other things, that his YouTube account was blocked after he uploaded a documentary entitled “Rafael Correa: portrait of a father of the Homeland.”<sup>650</sup> Palacio also reported that the state-run media had accused him of having received a large sum of money after leaving *El Universo*. Headlines such as “Bonus to Emilio Palacio shows that he was a ‘puppet’ used to insult President Correa, says jurist,”<sup>651</sup> published on January 23 by the state-run *Andes* news agency, is one example. Additionally, on December 28, 2012, the newspaper *El Ciudadano* published an article entitled “Emilio’s Paranoia,” calling him a “[j]udicially tagged loose bird.”<sup>652</sup> Emilio Palacio has been a political asylee in United States since August 17, 2012, after having been sentenced, together with the directors of *El Universo*, to three years in prison and the payment of a US\$ 40 million fine, in a case brought by President Rafael Correa because of a column he found “defamatory” [*injuriosa*].<sup>653</sup> In Enlace Ciudadano 345, broadcast on October 26, President Correa reportedly referred to Palacio when he remarked on an article published in the *Bloomberg* magazine on October 22 about the Chevron case: “imagine the source they cite: ‘Ecuadorian journalist Emilio Palacio asked the obvious question’ [reading of a paragraph from the article] They must be the only people left in the world who pay attention to that

<sup>646</sup> El Ciudadano/Official YouTube channel. February 23, 2013. [Enlace Ciudadano Nro. 310 desde Naranjal 23/02/2013](#). [02:57:20].

<sup>647</sup> El Ciudadano/Official YouTube channel. February 23, 2013. [Enlace Ciudadano Nro. 310 desde Naranjal 23/02/2013](#). [02:58:31]; *El Nuevo Herald*. February 21, 2013. [OPPENHEIMER: Ecuador: ¿Dictadura del Siglo XXI?](#); Instituto Prensa y Sociedad (IPYS)/Fundamedios. February 28, 2013. [Presidente tilda de fascista a periodista de Nuevo Herald y descalifica a caricaturista de El Universo](#).

<sup>648</sup> El Ciudadano/Official YouTube channel. February 23, 2013. [Enlace Ciudadano Nro. 310 desde Naranjal 23/02/2013](#). [02:50:19].

<sup>649</sup> Fundamedios. March 14, 2013. [Caricaturista denuncia amenazas a través de Facebook](#); La República. March 10, 2013. [Caricaturista Bonil reporta amenazas](#); Knight Center for Journalism in the Americas. March 18, 2013. [Ecuadorian cartoonist receives threats on Facebook after imbroqlio with government](#).

<sup>650</sup> El Telégrafo. January 26, 2013. [Youtube.com cierra el canal de videos de Emilio Palacio](#); Fundamedios. January 29, 2013. [Exeditorialista de El Universo denuncia persecución por parte del gobierno ecuatoriano](#).

<sup>651</sup> Agencia Pública de Noticias del Ecuador y Suramérica (Andes). January 23, 2013. [Bonificación a Emilio Palacio demuestra que fue "un títere" usado para insultar al presidente Correa, dice jurista](#); Fundamedios. January 29, 2013. [Exeditorialista de El Universo denuncia persecución por parte del gobierno ecuatoriano](#).

<sup>652</sup> El Ciudadano. December 28, 2012. [La paranoia de Emilio](#); Fundamedios. January 29, 2013. [Exeditorialista de El Universo denuncia persecución por parte del gobierno ecuatoriano](#).

<sup>653</sup> La voz/EFE. July 21, 2011. [Ecuador: condenan a diario a pagar US\\$ 40 millones a Correa](#); Hoy. August 28, 2011. [Emilio Palacio se refugia en Miami](#); La Tribuna/EFE. February 23, 2012. [Diarios latinoamericanos lanzan una cruzada de apoyo a El Universo](#); *El Nuevo Herald*. August 31, 2012. [EEUU otorga asilo a periodista ecuatoriano Emilio Palacio](#); Univisión/EFE. August 30, 2012. [EEUU da asilo político al periodista Emilio Palacio](#).

psychopath [...] this is how a sick person like Emilio Palacio lies against his own homeland, and a press with no ethics.”<sup>654</sup>

314. On April 8, the Ministry of Interior issued a statement addressed to the newspaper *El Comercio* concerning an interview with Latin American School of Social Sciences Professor Freddy Rivera, which was published on March 31 and entitled “The country needs an evaluation of the investment made in security.”<sup>655</sup> According to the Ministry, “[t]he interview published by EL COMERCIO demonstrates, once again, the limitations, the ill intent, and the double standard that this mercantile medium has in its editorial production process.” The Ministry added, “[w]e are no longer surprised by the inadequacy and blindness of certain ‘journalists’ who are part of the network of cynicism and shamelessness we must face on a daily basis, in addition to street crime and organized crime. [...] The newspaper’s ill will and limitations are summed up in its use of misinformed sources, the failure to confirm information, the use of guided and poorly-formulated questions, a clear absence of training on the part of the journalists and editors on the issue, and the imposition of its very particular perspective and business interests.”<sup>656</sup>

315. President Rafael Correa has repeatedly discredited Martín Pallares, in charge of new digital developments at the newspaper *El Comercio*, calling him “sick,” “dumb,” a “hater,” “unethical,” and “a coward.”<sup>657</sup> For example, on March 2, during Enlace Ciudadano 311, Correa criticized an article published by Pallares, who he called “ineffable,” saying: “this guy is really sick.”<sup>658</sup> On March 9, in Enlace Ciudadano 312, the president referred to the journalist as “dumb,” “a hater,” and “a coward”: “This guy [Pallares] sees me and doesn’t dare say a word, because they’re also cowards. This most foolish of fools— with Emilio Palacio—they show their hatred. They are an extreme, but representative, example of many journalists who are more intelligent—or at least less stupid than these guys—but haters all the same, and they wage a campaign to destroy honor, morals, and the truth, day by day through the newspapers.”<sup>659</sup> During the presidential speech, a video was shown that criticized a tweet<sup>660</sup> posted by the journalist and accused him of having a “pathological disorder.”<sup>661</sup> On April 6, during Enlace Ciudadano 316, the president called the journalist “poor man” and “sick” for having made a remark on Twitter about a trip the president took to the Vatican. “Let’s look at these sick people who act as pseudo-journalists, who try to show how corrupt and evil I am so they can justify their hatred. [...] toward Correa because he has been corrupt, he has been a thief, he has been a torturer, he has been

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<sup>654</sup> Presidencia de la República del Ecuador/Official YouTube channel. October 26, 2013. [Enlace Ciudadano Nro. 345 desde Carcelén Bajo, Pichincha](#). [3:24:22].

<sup>655</sup> El Comercio. March 31, 2013. [‘El país necesita una evaluación de la inversión hecha en seguridad’](#).

<sup>656</sup> Ministerio del Interior. April 8, 2013. [Diario EL COMERCIO, una vez más, desinforma a la ciudadanía](#).

<sup>657</sup> Fundamedios. [Informe Especial:Caso Pallares o los estigmas de ser periodista](#); Hoy. April 18, 2013. [Correa y Pallares](#); El Comercio. [Desde la Tranquera](#).

<sup>658</sup> Presidencia de la República del Ecuador/Official YouTube channel. March 4, 2013. [Enlace Ciudadano Nro 311 desde Baba - Los Rios](#). [02:35:30].

<sup>659</sup> Presidencia de la República del Ecuador/Official YouTube channel. March 10, 2013. [ENLACE Nro 312 desde Piquiucho - Carchi](#). [03:11:24].

<sup>660</sup> “Que alguien le desasne a @MashiRafael [Rafael Correa’s Twitter account] sobre la CIDH y Guantánamo antes que tuiteé cualquier cosa. Secom atender”. Martín Pallares’s Twitter account @Martinminguchi. [4 de marzo de 2013 - 7:21 AM](#).

<sup>661</sup> El Ciudadano. March 9, 2013. [Odio y cobardía de Martín Pallares fueron fustigados por el Presidente Correa \(VIDEO\)](#); Presidencia de la República del Ecuador/Official YouTube channel. March 10, 2013. [ENLACE Nro 312 desde Piquiucho - Carchi](#). [03:09:24].

vulgar [...] This ineffable Mr. Pallares! Poor thing, right? How he hates people,” said Correa.<sup>662</sup> The president’s insults and disparaging remarks toward Pallares were repeated on several occasions during 2012 and 2011,<sup>663</sup> which has exposed the journalist to the risk of potential retaliation by the public. For example, on May 3 and 10, Pallares received threats from unknown persons via Twitter.<sup>664</sup> Minister of Interior José Serrano reportedly stated, also via Twitter, that he had ordered the appropriate investigation into the matter because “it is sufficient for a citizen to be the victim of an act like this, for us to condemn it.”<sup>665</sup> Subsequently, a person who posted a remark on Twitter reportedly apologized to Pallares “please, it was nothing serious, I’m terribly sorry for my stupid mistake, thank you.”<sup>666</sup>

316. On April 13, during Enlace Ciudadano 317, President Correa criticized the organization Fundamedios and its Executive Director, César Ricaurte, after the publication of a column by Ricaurte about the president’s repeated attacks against newspaper journalist Martín Pallares of *El Comercio*. Correa accused Fundamedios of being funded “to defend the abuses of the trade, of the bad journalists,” and questioned the column published, stating: “now it turns out that I have insulted poor Mr. Martín Pallares of *El Comercio* because I called him sick and stupid. Surely Mr. Pallares is a poor orphan of the mothers of charity, who has never done anything wrong, who gets an answer back because he is a poor little angel [...] This is a very serious problem, because it shows that these people, Fundamedios and Ricaurte, are paid not to defend freedom of expression, a right of all citizens, [but rather] to defend the abuses of the trade, of the bad journalists.”<sup>667</sup> A video was also released, asserting that: “[Martín Pallares] is the great victim of the virulent and inappropriate language of a president because César Ricaurte says so in his arrogance and in his vanity, because he thinks that because he is a journalist he is above good and evil.”<sup>668</sup>

317. In episode 320 of Enlace Ciudadano, which aired on May 4, President Correa criticized an event organized by the National Journalists’ Union (UNP) to commemorate World Press Freedom Day. Correa stated: “these clowns got together, the usual journalists, of the oligarchy, meddling

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<sup>662</sup> Presidencia de la República del Ecuador/Official YouTube channel. 6 de abril de 2013. [Enlace Ciudadano Nro. 316 desde Colimes - Guayas](#). [02:54:40].

<sup>663</sup> Fundamedios. [Informe Especial: Caso Pallares o los estigmas de ser periodista](#); *El Comercio*. March 5, 2013. [¿Qué sabe Correa de mi salud que ya me dice enfermo cuatro veces?](#).

<sup>664</sup> IFEX/Fundamedios. May 9, 2013. [Ecuadorian journalist gets threats via Twitter after writing report](#); *El Universo*. May 10, 2013. [Tuitero amenaza de muerte a periodista Martín Pallares](#); *El Comercio*. May 10, 2013. [Martín Pallares recibe amenazas en su cuenta de Twitter](#); *Hoy*. May 10, 2013. [Amenazan por Twitter al periodista Martín Pallares](#). For example, “@Martinminguchi @elcomercio Hacer patria es entrarle a puñets a Pallares y partirle la trompa. cuando lo vea eso le hare, ojala sepa pelear.” Jorge Mendoza’s Twitter account @jorgedavid2002. [May 3, 2013 - 10:31 PM](#); “@Martinminguchi cuando te vea hijo de puta te rompere la trompa, te entrare a puñete limpio...ojala sepa pelear, periodiquero.” Jorge Mendoza’s Twitter account @jorgedavid2002. [May 3, 2013 - 10:19 PM](#).

<sup>665</sup> “@Martinminguchi basta q un ciudadano sea victima d un acto como ste suceso para q lo deploramos, hemos dispuesto la investigacion respectiva”. José Serrano Salgado’s Twitter account @ppsesa. [May 10, 2013 - 6:13 AM](#); *Inmediato*. May 10, 2013. [Tuitero que amenazó de muerte a periodista ecuatoriano se retracta](#); *Hoy*. May 10, 2013. [Amenazan por Twitter al periodista Martín Pallares](#).

<sup>666</sup> “@MinInteriorEc @RHerdoiza @eluniversocom @Martinminguchi @ppsesa por favor nada de serio pido mil disculpas de mi estúpido error gracias”. Andrés’ Twitter account @Andres9ec. [May 10, 2013 - 10:44 AM](#).

<sup>667</sup> Presidencia de la República del Ecuador/Official YouTube channel. April 13, 2013. [Enlace Ciudadano Nro 317 desde Riobamba - Chimborazo](#). [02:50:39].

<sup>668</sup> Presidencia de la República del Ecuador/ Official YouTube channel. April 13, 2013. [Enlace Ciudadano Nro 317 desde Riobamba - Chimborazo](#). [02:52:00].

ambassadors, no doubt to complain in secret that there is no freedom of expression in this country [...] and if you see them all together, these clowns, other clowns that act as journalists, and even the ambassadors—because they are surely financing it, just like they finance Fundamedios [...].”<sup>669</sup> On May 6, the UNP issued a statement asking the president either to rectify the insinuation that the event had been funded by an embassy, or to prove that assertion with evidence.<sup>670</sup> In response, SECOM Chief Fernando Alvarado sent a letter to the UNP stating that “it would be interesting for the UNP to provide a transparent account of its finances,” and that he shares “President Correa’s suspicions about the backing of the U.S. Embassy and other powers that be against the Citizen Revolution, whose objective is to cause chaos and confusion among the people under a political scheme of blind and destructive opposition.”<sup>671</sup>

318. On June 1, in Enlace Ciudadano 324, President Correa reportedly warned the content editor of the newspaper *Hoy*, Roberto Aguilar, not to meddle in his “private life,” in relation to an article the journalist had published in April 2011 in the newspaper *Expreso*. In presenting the segment called “Bitterness of the Week”, the president stated: “let’s look at the article from the newspaper *Hoy*, which is owned by the president of the SIP, the Inter-American Press Society. The article by its journalist Roberto Aguilar, a bitter man, went into my kids’ school, and if he does it again—they can say whatever they want to me about freedom of expression—if he meddles in my private life, and this guy is going to have to deal with me.”<sup>672</sup>

319. On August 29, President Rafael Correa had an altercation with singer-songwriter and human rights activist Jaime Guevara, who allegedly made an obscene gesture at the presidential motorcade as it passed by. The president, as on other occasions,<sup>673</sup> ordered the vehicle to stop so he could confront the person who had made the gesture. After an altercation in the street, the president reportedly continued on his way and left the citizen the custody of a police officer, who left the scene some time later. Jaime Guevara alluded to the event on his personal Facebook page. In response, in Enlace Ciudadano 337, the president cited the report of presidential security chief Major Montenegro, stating in reference to Mr. Guevara: “I don’t know which is worse, his singing or his writing, [...] he’s a

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<sup>669</sup> Presidencia de la República del Ecuador/Official YouTube channel. May 4, 2013. [Enlace Ciudadano Nro. 320 desde Esmeraldas, Esmeraldas](#). [02:25:40].

<sup>670</sup> Unión Nacional de Periodistas. May 6, 2013. *UNP pide al Presidente Rafael Correa rectifique infundio*. Available for consultation at: [http://www.elcomercio.com/politica/UNP-Rafael\\_Correa\\_ECMFIL20130506\\_0001.pdf](http://www.elcomercio.com/politica/UNP-Rafael_Correa_ECMFIL20130506_0001.pdf); El Universo. May 6, 2013. *La Unión Nacional de Periodistas pide a Correa demostrar que EE.UU. financia al gremio*; La República. May 6, 2013. *UNP pide a Correa entregue pruebas de que EE.UU. la financia*; Hoy. May 7, 2013. *La UNP exige una rectificación a Correa*.

<sup>671</sup> Presidencia de la República del Ecuador. [Oficio Nro. PR-SECOM-2013-000102-O](#). May 9, 2013; Secretaría Nacional de Comunicación. May 10, 2013. [Secretaría Nacional de Comunicación responde a misiva de la UNP \(CARTA\)](#).

<sup>672</sup> Presidencia de la República del Ecuador/Official YouTube channel. June 1, 2013. [Enlace Ciudadano Nro. 324 desde San Antonio de Pichincha - 01/06/2013](#). [03:09:13]; Fundamedios. June 1, 2013. *Presidente amenaza a periodista de diario Hoy*.

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

horrible singer [...] Believe me, this poor man was staggering, he reeked of alcohol, and he had a whole pharmacy on him, because he's a drug addict [...]. If he has some kind of problem with me, we'll resolve it next time I see him. You'll see that if I touch him, it will be 'Correa assaulted defenseless popular artist.' That's it. Poor man, what he needs to do is go to a rehab clinic to detox."<sup>674</sup> The official report stated that Jaime Guevara "gave off a strong odor of alcohol and clearly showed signs of being in a highly intoxicated state, namely his empty gaze, his inability to speak, and difficulty in expressing himself and maintaining his balance."<sup>675</sup> Moments after the speech, individuals close to Jaime Guevara reportedly disclosed information according to which Guevara has a medical prescription that prevents him from consuming drugs or alcohol. When this information was made public, President Correa referred publicly to the information contained in a police report, saying: "This is a not false report, it is telling the truth; it draws the wrong conclusion."<sup>676</sup> Moreover, he stated that "it's not that we have lied, there is an erroneous report, but 'lie' means that the truth was deliberately misrepresented, and that is not the case. We thought the guy was intoxicated—he smelled of alcohol, he was incoherent, he was staggering— [...] He gave every indication of [being intoxicated]."<sup>677</sup>

320. On September 7, in Enlace Ciudadano No. 338, President Correa announced that he would correct the information, given that, according to the information received, Jaime Guevara had an illness that prevented him from consuming drugs or alcohol. In his presidential speech, after reading the comments made by a friend of Guevara's on Facebook, the president read the following statement: "While Mr. Jaime Guevara is rude and deceitful; while he might have erroneous, myopic, virulent, and dim-witted leftist political affiliations; while he is a virulent and aggressive anarchist; while he also has an irreversible illness, cysticercosis, which has caused him to have extreme virulence and epileptic attacks for decades, especially when he has outbursts of rage and indignation against people who don't think the way he does; while those attacks cause him to have an empty gaze, the inability to speak, difficulty expressing himself and maintaining his balance, all of which makes him seem drunk and under the influence of drugs, especially when he reeks of alcohol most likely from the medicines he takes— according to people who know him and according to his own statements, he is not a drunk or a drug addict."<sup>678</sup> After the correction, the president stated that: "as long as I am the president, I will not allow any ignoramus to infringe— any resentful, bitter person, to infringe upon the honor of the President of the Republic, and if you don't want that, comrades, let me react as a citizen [...] [if] some hater, some bitter person comes and makes an obscene gesture at you, who among you wouldn't take him down with a good punch? [...] If this guy had made an obscene gesture at me, in front of my mother and my

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<sup>674</sup> Presidencia de la República del Ecuador/Official YouTube channel. August 31, 2013. [Enlace Ciudadano Nro. 337 - 31/08/2013](#). [1:24:10]. See also, Presidencia de la República del Ecuador/ Official YouTube channel. September 7, 2013. [Enlace Ciudadano Nro. 338 desde Zumba - Zamora Chinchipe](#). [2:35:03]; La Hora. September 2, 2013. [Cantante popular Jaime Guevara responde al presidente Correa](#); El Comercio. September 4, 2013. [Frente a frente de las versiones de Rafael Correa y Jaime Guevara](#); Ecuador en Vivo/YouTube. September 3, 2013. Published by Jaime Terán. [ECUADORENVIVO-RAFAELCORRREA](#). [02:39].

<sup>675</sup> Presidencia de la República del Ecuador/ Official YouTube channel. September 7, 2013. [Enlace Ciudadano Nro. 338 desde Zumba - Zamora Chinchipe](#). [2:43:00].

<sup>676</sup> Presidencia de la República del Ecuador/ Official YouTube channel. September 7, 2013. [Enlace Ciudadano Nro. 338 desde Zumba - Zamora Chinchipe](#). [2:43:40].

<sup>677</sup> El Telégrafo. September 3, 2013. [Presidente rectificará datos sobre Guevara, pero no le pedirá disculpas](#); La República. September 3, 2013. [Correa dice que no ha mentado sobre Jaime Guevara](#); Ecuador en Vivo/YouTube. September 3, 2013. Published by Jaime Terán. [ECUADORENVIVO-RAFAELCORRREA](#). [02:39].

<sup>678</sup> Presidencia de la República del Ecuador. [Rectificación](#); Presidencia de la República del Ecuador/Official YouTube channel. September 7, 2013. [Enlace Ciudadano Nro. 338 desde Zumba - Zamora Chinchipe](#). [2:53:51].

wife, I would have given him such a kick in the pants, he would have been flat on his back for the rest of the year.”<sup>679</sup>

321. After the president’s speech, the hashtag *#UnPuñeteParaGuevara* was created on Twitter and used to convey insults and criticism of singer-songwriter Jaime Guevara.<sup>680</sup> For example: “Ecuadorians like Jaime Guevara are pitiful, and yes, my presi @MashiRafael, I would give that clown a kick too *#UnPuñeteParaGuevara*,”<sup>681</sup> “*#UnPuñeteParaGuevara* @MashiRafael @FAlvaradoE I’d set on *#JaimeGuevara* with a stick and a machete, he deserves it;”<sup>682</sup> “Come to Guayaquil Jaime Guevara, insignificant slob, so you can see how someone from Guayaquil responds to a gesture like that, *#UnPuñeteParaGuevara*,”<sup>683</sup> “*#UnPuñeteParaGuevara* I’d break his teeth if he did that to me... where is the respect? @Correistas.”<sup>684</sup>

322. On September 7, in that same episode No. 338 of *Enlace Ciudadano*, President Correa criticized an editorial published in the newspaper *Hoy*. The article was reportedly written by university student Miguel Molina about the social protests against oil drilling in the Yasuní ITT. A video was aired on the president’s program and information, photographs, and communications from the student’s personal Facebook account were shown in order to assert that he had not been present at the scene of the events he described.<sup>685</sup>

323. In *Enlace Ciudadano* No. 339, broadcast on September 14, President Correa made reference to an interview of indigenous leader Cecilia Velasque conducted by Diego Oquendo of *Radio Visión*, stating that: “when a radio broadcaster, or a journalist, knows that his interview subject is lying, he has the moral duty to clarify it and say that it is not true. Not here. Here they think that since the other one is the one lying, I’ll keep quiet and it’s no big deal. No—they are accomplices to that lie; they are also liars.”<sup>686</sup>

324. On September 21, during the broadcast of *Enlace Ciudadano* 340, President Rafael Correa ripped up copies of the newspapers *El Comercio*, *Hoy*, and *La Hora*. He ripped up the copy of *El Comercio* because of publications about the judgment from Permanent Court of Arbitration of The Hague in the Chevron case.<sup>687</sup> He also criticized articles about the Yasuní-ITT in *Hoy* and *La Hora*. Upon

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<sup>679</sup> Presidencia de la República del Ecuador/Official YouTube channel. September 7, 2013. [Enlace Ciudadano Nro. 338 desde Zumba - Zamora Chinchipe](#). [2:57:06].

<sup>680</sup> La República. September 7, 2013. [Promueven en Twitter golpear a Jaime Guevara](#); Twitter. [Results for #UnPuñeteParaGuevara](#); *Hoy*. September 9, 2013. [Un polémico hashtag contra Jaime Guevara](#).

<sup>681</sup> Martha Lucía Armijos’s Twitter account @martha\_luci. [September 7, 2013 - 11:01 AM](#).

<sup>682</sup> “[#UnPuñeteParaGuevara @MashiRafael @FAlvaradoE yo le caigo a palo y machete a #JaimeGuevara, se lo merece](http://youtu.be/MkA_pB3b0_Y)”. Marisol Abad’s Twitter account @MarisolAbadd. [September 7, 2013 - 10:59 AM](#).

<sup>683</sup> Javier López Harb’s Twitter account @JLopezGye. [September 7, 2013 - 10:59 AM](#).

<sup>684</sup> Oscar Rubio’s Twitter account @OscarRubio84. [September 7, 2013 - 1:34 PM](#).

<sup>685</sup> Presidencia de la República del Ecuador/Official YouTube channel. September 7, 2013. [Enlace Ciudadano Nro. 338 desde Zumba - Zamora Chinchipe](#). [3:19:50].

<sup>686</sup> Presidencia de la República del Ecuador/Official YouTube channel. September 14, 2013. [Enlace Ciudadano Nro.339 desde la Plaza Grande, Quito](#). [3:08:18].

<sup>687</sup> Presidencia de la República del Ecuador/Official YouTube channel. September 21, 2013. [Enlace Ciudadano Nro. 340 desde Nayón, Pichincha](#). [01:13:00].

tearing up the copy of *Hoy*, he stated, “This belongs to the president of the SIP, who doesn’t even comply with the labor laws,”<sup>688</sup> and before ripping up a copy of *La Hora*, he said, “this is worse than *El Universo*, which has calmed down quite a bit, especially with the new Communications Act and after I won the case against them two years ago, because they can complain all they want but they learned their lesson [...] the worst of them all is *La Hora*, this rag—to call it a newspaper is an insult to the real media—and the newspaper *Hoy*, well, this guy is just filled with hatred.”<sup>689</sup>

325. As in its prior annual reports, the Office of the Special Rapporteur reiterates the importance of creating a climate of respect and tolerance for all ideas and opinions. The Office of the Special Rapporteur recalls that diversity, pluralism, and respect for the dissemination of all ideas and opinions are essential conditions for the proper functioning of any democratic society. Accordingly, the authorities must contribute decisively to the building of a climate of tolerance and respect in which all people can express their thoughts and opinions without fear of being attacked, punished, or stigmatized for doing so. In addition, the State's duty to create the conditions for all ideas and opinions to be freely disseminated includes the obligation to properly investigate and punish those who use violence to silence journalists or the media.<sup>690</sup> 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.<sup>691</sup>

326. The Office of the Special Rapporteur additionally recalls that public servants have the duty to ensure that their statements do not infringe upon the rights of those who contribute to the public discourse through the expression and dissemination of their thoughts, such as journalists, media outlets, and human rights organizations. They must bear in mind the context in which they express themselves, in order to ensure that their expressions are not, in the words of the Court, “forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute [to] public deliberation through the expression and [dissemination] of their thoughts.”<sup>692</sup>

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<sup>688</sup> Presidencia de la República del Ecuador/Official YouTube channel. September 21, 2013. [Enlace Ciudadano Nro. 340 desde Nayón, Pichincha](#). [01:30:20].

<sup>689</sup> Presidencia de la República del Ecuador/Official YouTube channel. September 21, 2013. [Enlace Ciudadano Nro. 340 desde Nayón, Pichincha](#). [01:31:56].

<sup>690</sup> IACHR. [Annual Report 2010. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 206-207; IACHR. [Annual Report 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). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 156 and 206.

<sup>691</sup> IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 32.

<sup>692</sup> 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.

## G. The Communications Act and its enforcement

327. On June 22, the President of Ecuador signed into law the Communications Act that had been passed by the National Assembly of Ecuador on June 14.<sup>693</sup> In a June 28 press release, the Office of the Special Rapporteur for Freedom of Expression expressed its concern over the onerous restrictions established under that Law.<sup>694</sup> The articles of the Act establish some important principles regarding the exercise of the right to freedom of thought and expression. Nevertheless, in regulating those principles, the law establishes onerous restrictions that render them virtually ineffective. Such restrictions, examined in a letter<sup>695</sup> sent to the State by the Office of the Special Rapporteur, could severely hinder the exercise of the right of freedom of expression and have a serious chilling effect that is incompatible with a democratic society. The Office of the Special Rapporteur, in ten sections, discusses those restrictions: (i) Scope of application of the Act; (ii) Enforcement authority; (iii) Infractions and sanctions regime; (iv) Obligation of the media to have a “media watchdog” elected by the State; (v) Imposition of prior conditions; (vi) Requirement that certain positions be held exclusively by “professional journalists”; (vii) Self-censorship; (viii) Right of correction or reply; (ix) Duty to observe good journalistic practice; and (x) Penalties for the publication of confidential information and the authority to request information from individuals connected to the media.

328. With regard to the scope of application of the act the Office of the Special Rapporteur stated that the Act imposes a significant number of obligations on all media outlets, without regard to their format or size. Under this Act, all persons who avail themselves of any media to express their ideas or opinions are providing a public service.<sup>696</sup> In this sense, understood as a public service, the State assumes exorbitant powers to regulate the exercise of the fundamental right to express oneself freely through any medium that a person chooses. For the enforcement of sanctions and oversight of the obligations set forth in the Act, this measure creates three bodies.<sup>697</sup> For this Office, the lack of clarity regarding the competence of these different bodies could generate a significant level of uncertainty about the extent of their authorities. In particular, the Act creates an administrative entity called the “Office of the Superintendent of Information and Communications,” whose head will be appointed by a collegiate administrative body<sup>698</sup> from a slate of three candidates sent by the President of the Republic. This administrative official is not afforded the minimum institutional guarantees that would enable him or her to operate autonomously and independently of the government. Nevertheless, his or her authorities include oversight of all communication media. The Office of the Superintendent is the body with competence to impose sanctions on any media outlet committing any of the infractions established in the Act or omitting to comply with any of the numerous obligations it establishes. The infractions and

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<sup>693</sup> Asamblea Nacional. [Ley Orgánica de Comunicación](#). Registro Oficial No. 22, published on June 25, 2013.

<sup>694</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. June 28, 2013. [Press Release R47/13. Office of the Special Rapporteur for Freedom of Expression States Its Concern over the Enactment of the Communications Act in Ecuador.](#)

<sup>695</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Letter to the State of Ecuador](#). June 28, 2013.

<sup>696</sup> “Art. 71. Shared Responsibilities. Information is a constitutional right and a public good, and the social communications the media provide to society is a public service that must be provided with responsibility and quality, respecting the communication rights established in the Constitution and in international instruments, and contributing to human well-being [*buen vivir*] [...]”

<sup>697</sup> Article 47 creates the Council for the Regulation and Implementation of Information and Communications; Article 54 creates an “Advisory Council”; and Article 55 creates the Office of the Superintendent of Information and Communications.

<sup>698</sup> The Superintendent is elected by the Council of Citizen Participation and Societal Control from a slate of three candidates forwarded by the President of the Republic. Article 55 of the Act.



sanctions regime establishes potentially ambiguous and onerous obligations. For example, the Act creates an infraction called “media lynching,”<sup>699</sup> by which any sustained report of corruption that could lead to a loss of the “public credibility” of the public servant involved could be deemed by the competent administrative body to be “media lynching” and constitute grounds for the respective sanctions. The Act also creates the obligation of all media outlets, regardless of their form and content, to draft a code of ethics, the basic content of which is established in the text of the Act itself (Art. 9 and 10).<sup>700</sup> The Law also creates the obligation of all media outlets to “cover and disseminate matters of public interest” and stipulates that “the deliberate and repeated omission to disseminate matters of public interest is an act of prior censorship” (Art. 18) that will be subject to the corresponding sanctions.

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

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

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

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

<sup>700</sup> That text establishes dozens of obligations that are to be included as “minimum standards” in that code of ethics,” whose enforcement will be monitored by the administrative authorities established in the Act.

the State. This same contradiction arises in connection with the liability of the media for comments published by users.<sup>701</sup>

332. Regarding the right of correction or reply, the Act does not require that the information published be false. Also, it does establish that public affairs information and information of general interest or that “violates a person’s right to honor or other constitutionally established rights” is information “of public relevance” [that must be published]<sup>702</sup> (Art. 7). Under Article 24,<sup>703</sup> it is enough for a person to feel offended by any reference or editorial note for the medium to be required to publish, in the same space, his or her opinion with respect to the matter. The enforcing authority in charge of determining whether there has been a violation that requires the publication of a reply or correction is the Office of the Superintendent of Information and Communication.

333. For the Office of the Special Rapporteur, it is of particular concern that the Act extends the duty of confidentiality with regard to public information that the State has classified not only to private parties but also to the media (Art. 30). Furthermore, this Office is concerned by the overly broad and vague terms that describe the powers of the administrative authority which applies the aforementioned Act to access private information belonging to actors related to the media (Art. 56.3).<sup>704</sup>

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

335. On a related matter, the Office of the Special Rapporteur is concerned that while the Act establishes the aforementioned restrictions, it also confers on the Office of the Superintendent of Information and Communication the power to “require citizens, institutions and actors related to the communication to provide information about themselves that is necessary to comply with its functions” (Art. 56). The Act does not require judicial intervention or control of any type in relation to this clause. According to the text, those who do not comply with the obligation to send information “about themselves” when requested by the Office of the Superintendent will be subject to the sanctions applicable to the failure to comply with an order of this authority.

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<sup>701</sup> In fact, one section establishes the need to respect the freedom of opinion and expression of all persons and another establishes the administrative, civil, and criminal liability of media outlets for the publication of comments of third parties that violate rights enshrined in the Constitution and the law, when in the authorities’ view, the media have failed to adopt sufficient mechanisms to filter them (Article 20).

<sup>702</sup> “Article 18.- [...] The media have an obligation to cover and disseminate events of public interest. The deliberate and repeated omission to disseminate matters of public interest constitutes an act of prior censorship [...].”

<sup>703</sup> “Article 24.- Right of Reply.- Any person or group that has been directed referred to in the media in a way that harms his rights to dignity, honor, reputation has the right to have the medium disseminate his, her, or its reply free of charge, in the same space, on the same page, and in the same section of a print medium, or on the same radio or television program, within a period not to exceed 72 hours from the time the request is made [...].”

<sup>704</sup> “Article 56. Powers of the Superintendence of Information and Communications. [...] 3. To require citizens, institutions and actors involved in communications to provide information about themselves that is necessary to the exercise of its duties. [...]”.

336. This Office of the Special Rapporteur had the opportunity to raise the abovementioned issues with the State in several letters sent over the course of the past three years. The Office of the Special Rapporteur regrets that the competent authorities failed to take account of the international standards referred to in the letters and reports that were sent at the appropriate time. The Office of the Special Rapporteur believes it is of the utmost importance that the authorities review the newly enacted law in light of developments in international human rights law and amend the aspects that could seriously jeopardize the right to freedom of expression of all persons in Ecuador.

337. According to information received, on July 4, the Constitutional Court admitted for processing an unconstitutionality action [*demanda de inconstitucionalidad*] against the Communications Act, filed by legislator Luis Fernando Torres.<sup>705</sup> In addition, on September 3, 60 citizens filed another complaint against the Communications Act.<sup>706</sup> As of the close of this report, these proceedings had not been adjudicated.

338. One of the first reactions to the Communications Act came on June 28, when the magazine *Vanguardia*, which specializes in investigative journalism, ceased operations. As the company's executives indicated in an editorial, this decision resulted from the new restrictions imposed under the Communications Act signed into law in Ecuador on June 22.<sup>707</sup> In the editorial, *Vanguardia* indicated that "there is no public body that has not contributed" to the "persecution" of the media, which, in consequence, had endured "seizures, theft, disproportionate fines, and bureaucratic harassment in all its forms," and, on three occasions, loss of its equipment. "[...] We cannot silently accept the government's capacity to determine the subject matter or agendas we are to discuss; the appointment of a censorship official to work on our magazine; that, as an investigative medium, we may not publish judicial matters until a judgment so authorizing has been rendered by the court of last resort, --which is to say never--; that crime and corruption-related matters may not be published; that we are liable for the opinions of third parties; that we are told what headlines we are to print; that all information-related activity will be supervised and monitored; and that a Superintendent appointed by the President of the Republic has dictatorial authority to impose sanctions. We will never tolerate any of this and to do so would be degrading and contrary to the values we uphold. These are our reasons for ceasing to operate [...]"<sup>708</sup>

339. The general editor of *Vanguardia* and some of its team launched a new journalistic enterprise: the digital magazine *Plan V*.<sup>709</sup> According to information received, the new magazine was launched on September 20 and, on September 26, journalist of the new outlet, Juan Carlos Calderón, received death threats. These facts resulted from the publication of an investigative article that

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<sup>705</sup> El Telégrafo. July 13, 2013. [Tribunal admite a trámite demanda contra norma.](#)

<sup>706</sup> Agencia EFE. September 3, 2013. [Políticos y periodistas presentan una demanda contra la ley de Comunicación en Ecuador](#); El Comercio. September 4, 2013. [Periodistas presentan demanda contra la Ley de Comunicación](#); Inter American Press Association (IAPA). September 5, 2013. [La SIP avala recurso de inconstitucionalidad contra la Ley de Comunicación en Ecuador.](#)

<sup>707</sup> El Telégrafo. July 1, 2013. [La última edición de Revista Vanguardia circuló sólo en digital](#); Inter American Press Association (IAPA). June 29, 2013. [La "ley mordaza" en Ecuador cobra sus primeras víctimas](#); Committee to Protect Journalists (CPJ). July 8, 2013. [Ecuador loses investigative journal Vanguardia.](#)

<sup>708</sup> Vanguardia. July 1, 2013. [Las razones.](#) P. 17; Vanguardia. [La censura de Vanguardia.](#)

<sup>709</sup> Ecuador en vivo. October 21, 2013. [Juan Carlos Calderón: "Plan V es una nueva propuesta de periodismo investigativo"](#); Knight Center for Journalism in the Americas. October 15, 2013. [Six days after its launch, new investigative site in Ecuador receives its first death threats.](#)

denounced alleged mismanagement of the reinsurance of State enterprises.<sup>710</sup> The journalist filed a complaint with the Office of the Public Prosecutor and had received a call from the Minister of Interior offering him security and indicating his “repudiation of these types of situations.”<sup>711</sup>

340. According to information received, on August 9, the Council for the Regulation and Implementation of Information and Communications, created by the Communications Act, issued a press release addressed to “public opinion.” That press release indicated that “police blotter news, interview programs, and political debates in the media whose presenters and guests use abusive language, even when expressing their personal views, are negligent in their duty to respect and promote respect for human rights established in Article 71.1 of the Communications Act (LOC). This Council urges journalists, interviewers, public authorities, and public personalities to strive to elevate their tone when making statements in the media [...]; and calls for ethnical and responsible use of information which, in all cases, entails respect for citizens’ rights to personal and family image and privacy and to protection of personal information since, unfortunately, some journalistic practices are still at variance with the professional and legal standards applicable to the media. Therefore, we propose that these be reviewed and how they are addressed brought into line with the rule of the law.”<sup>712</sup>

341. On August 31, President Correa indicated in the Enlace Ciudadano 337 broadcast that “following the Yasuní decision, newspapers have become extremely ecological, and I repeat, we will conduct a popular consultation; let’s ask ourselves whether we want digital newspapers to prevent the felling so many trees. I have received irate complaints asking how we are going to ripen avocados. Not with the corrupt press—the avocados rot. And what are we going to use as placemats for the crab stew [*cangrejada*]? Not the corrupt press—it will harm the crabs, it will make them ill.”<sup>713</sup> On August 19, the newspaper *El Universo* published an article containing different tweets of citizen reactions to the Yasuní

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<sup>710</sup> Fundamedios. October 2, 2013. [Periodista es amenazado de muerte tras publicación de investigación](#); Knight Center for Journalism in the Americas. October 15, 2013. [Six days after its launch, new investigative site in Ecuador receives its first death threats](#); Plan V. September 2, 2013. [La guerra de los reaseguros](#).

<sup>711</sup> Terra/AFP. October 4, 2013. [Periodista ecuatoriano denuncia amenazas de muerte](#); El Comercio. October 4, 2013. [Periodista ecuatoriano denuncia amenazas de muerte](#).

<sup>712</sup> Consejo de Regulación y Desarrollo de la Información y Comunicación. August 9, 2013. *Comunicado CORDICOM (A la opinión pública)*. Available for consultation at: <http://issuu.com/mashiroberto/docs/exhorto>

<sup>713</sup> Presidencia de la República/Official YouTube channel. August 31, 2013. [Enlace ciudadano Nro. 337- 31/08/2013](#). [3:03:07].

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

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

On August 24, during the Enlace Ciudadano 336, President Correa repeated that if a referendum was held, it would include the question “Do you agree that all polluting publicity should be banned? [...] That is, all polluting goods in media banned?”. Presidencia de la República/Official YouTube channel. August 26, 2013 [Enlace Ciudadano Nro. 336 desde Sanqolquí, Pichincha](#). [02:41:49]; El Ciudadano. August 24, 2013. [Prohibir la publicidad de bienes que contaminan, la propuesta en una potencial consulta popular \(VIDEO\)](#).

ITT matter and statements about the possible popular consultation.<sup>714</sup> On August 21, the National Secretariat of Communications (SECOM) issued a press release that read: “The newspaper *El Universo*, with deliberate intent to harm the Ecuadorian President, is shielding itself behind tweets sent last August 19 that tarnish the honor and good name of President Correa [...] Moreover, the decontextualization and superficiality of the journalism practiced by the newspaper again violates the rights of citizens to receive precise information [...]. Under any code of ethics of Responsible Journalism, the information published in these tweets does not constitute information of public relevance. Quite the reverse—it constitutes infractions of provisions of Ecuadorian law, for example, Articles 7 and 23 of the Communications Act [...]. The National Secretariat of Communications, in connection with subsequent responsibility as established in Articles 7 and 23 of the Communications Act, demands that the media outlet make the corresponding correction and public apology to its readership within 72 hours.”<sup>715</sup> On August 24, the newspaper *El Universo* published a copy of the SECOM press release, corrected and offered apologies to its readers for publishing the above-mentioned information.<sup>716</sup>

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

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

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

<sup>715</sup> Secretaría Nacional de Comunicación. August 21, 2013. Oficio Nro. SNC-SECOM-2013-000067-O. Available for consultation at: <http://www.eluniverso.com/sites/default/files/archivos/2013/08/carta-secom.pdf>; Radio Equinoccio. August 24, 2013. [Diario El Universo pide disculpas a sus lectores](#).

<sup>716</sup> *El Universo*. August 24, 2013. [Secretaría de Comunicación considera que tuits incluidos en nota de este medio no son de 'relevancia pública'](#); Fundamedios. [Consejo de Regulación evade reclamo sobre arrogación de funciones de Secretaría de Comunicación](#).

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

<sup>718</sup> Consejo de Regulación y Desarrollo de la Información y Comunicación. September 2, 2013. [Precisiones sobre el 'Linchamiento Mediático'](#). Available for consultation at: <https://www.facebook.com/notes/consejo-de-regulacion-y-desarrollo-de-la-informacion-y-comunicacion/precisiones-sobre-el-linchamiento-mediatico/164886913704331>

or corrected this week. If it is not corrected, well, thank God we now have the Communications Act and we will act within the legal framework.”<sup>719</sup> During the Enlace Ciudadano 341 broadcast of September 28, Walter Spurrier’s correction, published on September 23, was shown.<sup>720</sup>

344. On September 21, during the Enlace Ciudadano 340 broadcast, President Correa referred to the press notes published in different media outlets on the judgment of the Permanent Court of Arbitration of The Hague in the Chevron case. In that regard, he indicated that “the Communications Act must be enforced so that that lie is corrected in those same [...] eight columns, page one, of the country’s corrupt press. It is not true that The Hague judgment exonerates Chevron.”<sup>721</sup>

345. The Office of the Special Rapporteur recalls that the right to correction or reply is simultaneously an important mechanism for the protection of certain right and a form of restriction to the exercise of the right to freedom of expression. Indeed, the right of correction or reply enshrined in Article 14 of the Convention<sup>722</sup> is an appropriate measure to redress the harm caused to very personal rights such as one’s honor or reputation, and is—in principle—one of the measures least restrictive to freedom of expression in comparison to civil or criminal penalties.<sup>723</sup> However, it is possible through this mechanism to force a medium to publish information it does not wish to publish, and if there is no appropriate and careful regulation, it can give rise to abuses that end up unnecessarily and disproportionately compromising freedom of expression. In this respect, it is necessary to mention that freedom of expression not only protects the right of the media to freely disseminate information and opinion but also the right not to have the content of others attributed to them. As such, the right to freedom of thought and expression must be compatible with the right of correction or reply, so that the latter may be exercised under fair conditions, when absolutely necessary to protect the fundamental rights of third parties under the terms set forth in Article 14 of the Convention.<sup>724</sup>

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<sup>719</sup> Presidencia de la República del Ecuador/Official YouTube channel. September 14, 2013. [Enlace Ciudadano Nro.339 desde la Plaza Grande, Quito](#). [3:18:37].

<sup>720</sup> Ecuador TV. September 28, 2013. *Enlace Ciudadano No. 341 desde Salitre, Guayas*. [202:40]. Available for consultation at: <http://www.ecuadortv.ec/internaprogramas.php?c=1314>

<sup>721</sup> Presidencia de la República del Ecuador/Official YouTube channel. September 21, 2013. [Enlace Ciudadano Nro. 340 desde Nayón, Pichincha](#). [01:05:07].

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

<sup>723</sup> IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 80.

<sup>724</sup> I/A Court H.R. *Enforceability of the Right to Reply or Correction (Arts. 14(1), 1(1) and 2 American Convention on Human Rights)*. Advisory Opinion OC-7/86 of August 29, 1986. Series A No. 7. Para. 25. Said advisory opinion establishes that: “[t]he fact that the right of reply or correction (Art. 14) follows immediately after the right to freedom of thought and expression (Art. 13) confirms this interpretation. The inescapable relationship between these articles can be deduced from the nature of the rights recognized therein since, in regulating the application of the right of reply or correction, the States Parties must respect the right of freedom of expression guaranteed by Article 13. They may not, however, interpret the right of freedom of expression so broadly as to negate the right of reply proclaimed by Article 14(1).”

346. At the public hearing “Right to Freedom of Expression and Association in Ecuador,” held on October 28, at the Inter-American Commission on Human Rights (IACHR), the petitioners referred to the enforcement of the Communications Act. Miguel Rivadeneira, Director of *Ecuadoradio* news and *El Comercio* newspaper columnist, indicated that the measure is “imprecise, restrictive, punitive, and anti-democratic, impedes the free flow of ideas and opinions [...], tends to create a State monopoly of information, establishes a prior censorship regime, imposes content on the media, establishes State entities with discretionary powers to create subsequent liabilities, effected by public officials not independent of the President [...], and establishes prior censorship utilizing the restrictive definition of “media lynching,” which is expressly intended to prevent investigative journalism into matters of public interest and prevent due press scrutiny of government.”<sup>725</sup> He also expressed his concern over the imposition in law of the “defender of audiences” and the possibility that its corresponding functions would be established in regulations.

347. Journalist Jean Cano indicated that the Communications Act directly jeopardized the free flow of information in cases of public relevance, especially reports of corruption, violations of rights and liberties, and criticism of the work of public authorities and officials. He alleged that the law restricted the right of social communicators and the media not to reveal their sources of information, and that it expressly prohibited the reporting of facts deemed confidential, while not providing clear and precise definitions of those facts. The Act authorized the State to impose content on the media, in violation of the principle of editorial independence, and stipulated that what constituted a matter of public interest was left to the discretion of the Office of the Superintendent. He indicated that “The effects of these restrictions are already being felt in the country. Journalists have been restricted in their daily activities and the Act has led to self-censorship by practicing journalists, especially investigative journalists [...] Less television time is allotted to public debate programs. Only one of six national channels still maintains a clearly free and critical editorial line that monitors the actions of the government of the day. The others have given in or silenced themselves in connection with sensitive matters.”<sup>726</sup>

348. As regards radio frequency allocations to indigenous communities, the representative of the Confederación de Pueblos de la Nacionalidad Kichua del Ecuador [Confederation of Peoples of Kichua Nationality of Ecuador], composed of 14 indigenous peoples and 18 provincial organizations, indicated that despite having formally requested a radio frequency allocation, none been made since the enactment of the new law. He further indicated that in any event, the award of a license did not guarantee them the right to express themselves freely, given the restrictions of the law: “in the event we were awarded a frequency allocation, we would have to align ourselves with government policy, and if we align ourselves, purely and simply, they will take as much as they give.”<sup>727</sup>

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

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<sup>725</sup> IACHR. 149 Period of Sessions. Hearing on the Right to Freedom of Expression and Association in Ecuador. October 28, 2013. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=en&session=132> (VIDEO). [18: 38].

<sup>726</sup> IACHR. 149 Period of Sessions. Hearing on the Right to Freedom of Expression and Association in Ecuador. October 28, 2013. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=en&session=132> (VIDEO). [22: 00].

<sup>727</sup> IACHR. 149 Period of Sessions. Hearing on the Right to Freedom of Expression and Association in Ecuador. October 28, 2013. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=en&session=132> (VIDEO). [48:04].

## H. Other legal reforms

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

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

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

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

354. The measure provides that “civil society organizations may be dissolved and liquidated ex officio or based on a report showing diversion from their purposes, or that any of the grounds for dissolution are present (Art. 28).”<sup>731</sup> The determination to dissolve legally recognized civil society

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<sup>728</sup> Gobierno Nacional de la República del Ecuador. Centro de Gestión Gubernamental. Decreto Ejecutivo No. 16. *Se expide reglamento para el funcionamiento del sistema unificado de información de las organizaciones sociales y ciudadanas*. June 4, 2013. Available for consultation at: <http://decretos.cege.gob.ec/decretos/>

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

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

<sup>731</sup> Executive Decree No. 16. “Article 28.- Civil society organizations may be dissolved and liquidated ex officio or



organizations shall be made by an administrative decision issued by the competent authority that “approved the statutes and awarded the recognition of legal status” (Art. 26). The Decree establishes broad grounds for dissolution of an organization, such as diversion from the purposes and mission for which it was established, repeated omission to comply with provisions issued by the authorities themselves, or carrying out activities that are “politically partisan, reserved to political parties and movements [...], interfere in public policies, jeopardize the internal or external security of the State, or that jeopardize public peace”, among others (Art. 26).<sup>732</sup> In that regard, the Decree also contains an entire section governing foreign NGOs (Arts. 31-38).

355. At the public hearing held on October 28, at IACHR, the representative of the Confederación de Pueblos de la Nacionalidad Kichua del Ecuador indicated that indigenous organizations and communities had been affected by the regulations contained in Decree No. 16. He indicated that under the decree, through the creation of systems and registrations, the government would have access to all personal information, ideological and political beliefs, and activities carried out, “legalizing governmental control and espionage.” He indicated that all expressions of protest or actions of social resistance that questioned public policy or state decisions would be grounds for dissolving an organization, as they would be deemed to jeopardize internal or external public security or public peace. He further indicated that most indigenous communities do not have legal status because, in their

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based on a report providing evidence of diversion from their purposes or if any of the grounds for dissolution are present. The State ministry charged with legal registration of the organization, in the resolution declaring the dissolution of the organization, and if the entity’s articles of incorporation do not provide otherwise, shall appoint a liquidation committee from among the members of the dissolved organization undergoing liquidation. That committee shall submit a report within 90 days.”

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

<sup>732</sup> Executive Decree No. 16. “Article 26.- Grounds for dissolution. The following are grounds for dissolution of civil society organizations established under this regime:

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

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

Civil society organizations may institute any administrative and judicial actions they consider necessary to assert their rights. Available for consultation at: <http://decretos.cege.gob.ec/decretos/>

cosmovision, this is unnecessary but after the passage of the Decree they could be declared illegal if they do not comply with the new regulation. The petitioners indicated that they had instituted three unconstitutionality actions against the Decree on behalf of different civil society sectors. One action had been filed by, among others, for violation, *inter alia*, of its right to prior consultation to indigenous communities.<sup>733</sup>

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

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

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

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<sup>733</sup> IACHR. 149 Period of Sessions. Hearing on the Right to Freedom of Expression and Association in Ecuador. October 28, 2013. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=en&session=132> (VIDEO). [13:25].

<sup>734</sup> Ministerio del Interior/Ministerio de Ambiente. [Acuerdo No. 125](#). December 4, 2013.

<sup>735</sup> Presidencia de la República/Official YouTube channel. November 30, 2013. [Enlace Ciudadano Nro. 350 desde Arenillas – El Oro](#). [3: 29:30].

<sup>736</sup> Ministerio del Interior/Ministerio de Ambiente. [Acuerdo No. 125](#). December 4, 2013.

<sup>737</sup> IACHR. [Annual Report 2008. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (A Hemispheric Agenda for the Defense of Freedom of Expression). OEA/Ser.L/V/II.134 Doc. 5 rev. 1. February 25, 2009. Para. 69.

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

359. On August 28, the legal secretary of the Office of the President of the Republic proposed to the National Assembly a special proceeding for the adjudication of any defamation perpetrated through social networks. The secretary indicated, with regard to the amendments to the Penal Code, that “I have proposed better regulation of all aspects of defamation perpetrated through social networks, because these networks cannot be instruments of impunity [...], that a special procedure be created for defamation made via Twitter or Facebook, because today, defamation via Twitter of an individual with 10,000 or 6,000 followers may be greater and done more swiftly than defamation through a communications medium.”<sup>738</sup>

360. As previously mentioned, the National Assembly approved the new Comprehensive Organic Criminal Code.<sup>739</sup> The Code abrogated the norms known as “*desacato*”<sup>740</sup> and decriminalized defamation that does not constitute the imputation of criminal conduct [*injuria no calumniosa*], thus representing an important progress. Nonetheless, a concern for the Office of the Rapporteur is the broad and ambiguous wording of some of the crimes that could affect freedom of expression. For instance, article 178 consecrates as a “violation of intimacy” the conduct of those “who, without the consent or due legal authorization, accesses, intercepts, examines, retains, records, reproduces, disseminates or publishes personal data, messages of data, voice, audio and video, postal objects, information contained in computer-related devices, private or secretive communications of another person by any medium will be punished with imprisonment of one to three years. These norms are neither applicable to the person who disseminates audio and video recordings in which he or she personally intervenes, nor when it deals with public information in accordance with the provisions established by the law”.<sup>741</sup> This norm establishes an exception to imprisonment when dealing with public information, but it does not establish any exception when dealing with information with a current and notorious public interest, when the person who disseminates it has not taken part in any illegal act in order to obtain it.

361. Similarly, the Office of the Rapporteur points with concern to the articles on the “disclosure of secrets” [*revelación de secreto*] and on “dissemination of information with a restricted circulation” of the Comprehensive Organic Criminal Code. Regarding article 179, it establishes that “The person who has knowledge as a result of his or her study or craft, employment, profession or art, or knows a secret which disclosure could cause damage to another person, and reveals it, will be punished with the penalty of imprisonment of six months to one year”, and article 180, “The person who disseminates information of restricted circulation will be punished with imprisonment of one to three years” [...].<sup>742</sup> Thereon, the Office of the Rapporteur recalls, as expressed by the joint statement on

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

<sup>739</sup> El Ciudadano. December 17, 2013. [El nuevo Código Penal mejorará la seguridad ciudadana](#); El Ciudadano. December 19, 2013. [El Ejecutivo analizará minuciosamente el proyecto de Código Integral Penal \(AUDIO\)](#).

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

<sup>741</sup> Código Orgánico Integral Penal approved by the National Assembly on December 17, 2013. Article 178. Available for consultation at: <http://www.asambleanacional.gov.ec/>

<sup>742</sup> Código Orgánico Integral Penal approved by the National Assembly on December 17, 2013. Document provided by

WikiLeaks (2010) and by the joint declaration on surveillance programs and their impact on freedom of expression (2013), that public authorities and their staff bear sole responsibility for protecting the confidentiality of legitimately classified information under their control. Other individuals, including journalists, media workers and civil society representatives, who receive and disseminate classified information because they believe it is in the public interest, should not be subject to liability unless they committed fraud or another crime to obtain the information. In addition, government “whistleblowers” releasing information on violations of the law, on wrongdoing by public bodies, on a serious threat to health, safety or the environment, or on a breach of human rights or humanitarian law should be protected against legal, administrative or employment-related sanctions if they act in good faith. Any attempt to impose subsequent liability on those who disseminate classified information should be grounded in previously established laws enforced by impartial and independent legal systems with full respect for due process guarantees, including the right to appeal.<sup>743</sup>

362. Moreover, the Comprehensive Organic Criminal Code sanctions with imprisonment from six months to two years those who practice a profession without a degree, in those cases that a degree is required by law. Also, the “professionals who favor the actions of another person in the illegal practice of the profession” will be sanctioned with imprisonment from three months to one year and barred from practicing the profession for six months (Art. 330).<sup>744</sup> It is important to recall that Article 42 of the Communications Act determines that only “professional” journalists may perform certain media roles<sup>745</sup>.

363. Regarding articles 176, “Discrimination”<sup>746</sup>, and 177, “Acts of hatred”<sup>747</sup> of the Comprehensive Organic Criminal Code, the Office of the Special Rapporteur considers it relevant to

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

<sup>743</sup> UN Special Rapporteur on the Promotion and Protection the Right to Freedom of Opinion and Expression and Inter-American Commission on Human Rights Special Rapporteur for Freedom of Expression. December 21, 2010. [Joint Statement On Wikileaks](#); United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. June 21, 2013. [Joint Declaration on surveillance programs and their impact on freedom of expression](#).

<sup>744</sup> Código Orgánico Integral Penal approved by the National Assembly on December 17, 2013. Article 330. Available for consultation at: <http://www.asambleanacional.gov.ec/>

<sup>745</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Letter to the State of Ecuador](#). June 28, 2013.

<sup>746</sup> Código Orgánico Integral Penal approved by the National Assembly on December 17, 2013. “Article 176. - Discrimination. The person who, except in cases provided as affirmative action policies, propagates, practices or spurs any distinction, restriction, exclusion or preference due to their nationality, ethnicity, place of birth, age, sex, gender identity or sexual orientation, cultural identity, marital status, language, religion, ideology, socio-economic condition, migratory condition, disability or health situation with the target to annul or undermine the acknowledgment, enjoyment or exercise of rights in conditions of equality will be punished with imprisonment of one to three years. If the violation punctuated in this article is ordered or if incurred by public servants, such act will be punished with imprisonment of three to five years. ” Available for consultation at: <http://www.asambleanacional.gov.ec/>

<sup>747</sup> Código Orgánico Integral Penal approved by the National Assembly on December 17, 2013. “Article 177. – Acts of hatred. The person who incurs in acts of physical or psychological violence by hate, despise or discrimination against one or more persons due to their nationality, ethnicity, place of birth, age, sex, gender identity or sexual orientation, cultural identity, marital status, language, religion, ideology, socio-economic condition, migratory condition, disability or health or carry HIV, situation will be punished with the penalty of deprivation of freedom from one to three years. If violent acts cause injuries to

mention that article 13.5 of the American Convention sets limits on the right to freedom of expression. In effect, to avoid the use of punitive law aimed at silencing uncomfortable or simply offensive ideas, it states that they must necessarily constitute “advocacy of hatred” aimed not simply at expressing an idea but rather to incite violence.<sup>748</sup> With this, the Convention proscribed the so-called “crime of opinion.” By virtue of this provision, the offensive character of speech, in and of itself, is not a sufficient reason to restrict it. Speech that offends due to the intrinsic falsity of racist and discriminatory conduct must be refuted: those who promote those views need to be persuaded of their error in public debate. In the face of unfairness of opinions, there is no better response than the justice of the arguments and that requires more and better speech. This is the logic of the American Convention that was expressed by the Inter-American Court in the case of *The Last Temptation of Christ*, which maintained that freedom of expression protects not only expressions that are “favorably received or considered as inoffensive or indifferent, but also those that clash, disturb or offend the State or any fraction of the population. Such are the demands of pluralism, tolerance and the spirit of openness, without which a ‘democratic society’ does not exist”<sup>749</sup>.

364. Finally, in regard to the above-mentioned norms, when limits on freedom of expression are established by criminal laws, the Court has established that they must satisfy the principle of strict legality: “should the restrictions or limitations be of a criminal nature, it is also necessary to strictly meet the requirements of the criminal definition in order to adhere to the *nullum crimen nulla poena sine lege praevia* principle”<sup>750</sup>. The latter is expressed in the need “to use strict and unequivocal terms, clearly restricting any punishable behaviors,”<sup>751</sup> which requires “a clear definition of the incriminated behavior, setting its elements and defining the behaviors that are not punishable or the illicit behaviors that can be punishable with non-criminal measures”<sup>752</sup>.

### I. Internet and freedom of expression

365. The Office of the Special Rapporteur has received information indicating that on February 20, the official Twitter account of the Ecuadorian NGO Fundamedios was suspended. Following the suspension, the NGO received an email that read: “Hello! Your account has been suspended for a violation of Twitter rules [...]” Subsequently, on February 26, at a press conference, in a press release, the organization denounced this act. According to the information received, a few minutes later, the account was reactivated.<sup>753</sup>

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the person, they will be punished in accordance with imprisonment provided for the crime of battery [*lesiones*], increased by one third. If acts of violence cause the death of a person, they will be punished with imprisonment of twenty-two to twenty-six years”. Available for consultation at: <http://www.asambleanacional.gov.ec/>

<sup>748</sup> IACHR. [Annual Report 2004. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter VII (Hate Speech and the American Convention on Human Rights). OEA/Ser.L/V/II.122. Doc. 5 rev. 1. February 23, 2005.

<sup>749</sup> I/A Court H.R. *Case of “The Last Temptation of Christ” (Olmedo-Bustos et al.) v. Chile. Merits, Reparations and Costs*. Judgment of February 5, 2001. Series C No. 73. Para. 69, quoting the European Court of Human Rights.

<sup>750</sup> I/A Court H.R. *Case of Usón Ramírez v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 55.

<sup>751</sup> I/A Court H.R. *Case of Usón Ramírez v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 55.

<sup>752</sup> I/A Court H.R. *Case of Usón Ramírez v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 55.

<sup>753</sup> IFEX/Fundamedios. February 26, 2013. [Twitter suspends account of Ecuadorian organisation](#); Instituto Prensa y Sociedad (IPYS). February 26, 2013. [Ecuador: ONG dedicada a proteger la libertad de expresión denuncia levantamiento](#)

366. On July 13, the news portal *Al Día*, of Los Ríos province, was the victim of a cyber attack which left it down for several days. The hacking of the news website caused all articles and journalistic materials published on the portal to be deleted and the site's programming damaged.<sup>754</sup>

367. On September 2, a YouTube video was withdrawn from the *EcuadorLibreRed* portal. If a viewer tries to load the video, the following message appears: "This video is no longer available due to a copyright claim by *Ares Rights*."<sup>755</sup> The video questions President Correa's statements about an incident with singer-songwriter Jaime Guevara and about social protests against oil exploration in the Yasuní ITT National Park.<sup>756</sup>

368. On October 9, a YouTube video by documentary film maker Pocho Álvarez was withdrawn. If a viewer tries to load the video, the following message appears: "This video is no longer available due to a copyright claim by *Ares Rights*."<sup>757</sup> The video, titled "Acoso a Intag [Harassment of the Intag]," documented problems of pollution and abuse suffered by an Intag commune as a result of its resistance to large-scale mining.<sup>758</sup> Guido Proaño, director of *EcuadorLibreRed*, said that the video was withdrawn because permission had not been obtained to use images from one of President Correa's Enlace Ciudadano broadcasts.<sup>759</sup> Jorge Luis Serrano, Deputy Minister of Culture and Heritage, also tweeted "[...] Pocho confirmed to me that he HAD NOT requested permission to use images of the Office of the President. As simple as that."<sup>760</sup> On October 16, in a public letter to the Deputy Minister, Pocho Álvarez said that those were not his words "[...] my dear Deputy Minister of Culture, what You put in Twitter as my words is not right [...]."<sup>761</sup>

## J. Other relevant situations

369. On April 12, President Rafael Correa, through his Twitter account, ordered the National Secretariat of Intelligence (SENAIN) to investigate a user of that social network who had published several comments criticizing the "dismay"<sup>762</sup> expressed by the President following the murder of

*arbitrario de su cuenta en Twitter*; Knight Center for Journalism in the Americas. February 26, 2013. [Ecuadorian NGO protests "arbitrary" closing of Twitter account.](#)

<sup>754</sup> *Al Día*. July 17, 2013. [Hackean portal de noticias y destruyen sus archivos](#); La Hora. July 16, 2013. [Hackean portal de noticias de Los Ríos](#); Fundamedios. July 19, 2013. [Portal de noticias vuelve al aire tras 'hackeo'](#).

<sup>755</sup> EcuadorLibreRed/YouTube. [Como miente el presidente Correa.](#)

<sup>756</sup> EcuadorLibreRed. September 2, 2013. [Censuran video que criticaba a Rafael Correa por sus declaraciones en el enlace ciudadano](#); Fundamedios. September 6, 2013. [Portal informativo denuncia censura a video.](#)

<sup>757</sup> Pocho Álvarez/YouTube. [Acoso a Intag.](#)

<sup>758</sup> PoliFiccion: Carlos Andrés Vera/Wordpress. October 11, 2013. [Censuran a Pocho Alvarez.](#)

<sup>759</sup> Fundamedios. September 6, 2013. [Portal informativo denuncia censura a video.](#)

<sup>760</sup> Jorge Luis Serrano's oficial Twitter account @JorgeLuisSerra. [October 15, 2013- 04:57 PM](#); PoliFiccion: Carlos Andrés Vera/wordpress. October 16, 2013. [Censuran a Pocho Alvarez.](#)

<sup>761</sup> Pocho Álvarez. *Practicar la Verdad*. Available for consultation at: [https://mbasic.facebook.com/notes/diana-amores-moreno/pocho-álvarez-responde-a-censura-y-a-viceministro-de-cultura-jorge-luis-serrano/10151896624600480/?\\_rdc](https://mbasic.facebook.com/notes/diana-amores-moreno/pocho-álvarez-responde-a-censura-y-a-viceministro-de-cultura-jorge-luis-serrano/10151896624600480/?_rdc); PoliFiccion: Carlos Andrés Vera/wordpress. October 16, 2013. [Censuran a Pocho Alvarez.](#)

<sup>762</sup> Hoy. April 12, 2013. [Rafael Correa está consternado por la muerte de Fausto Valdiviezo](#); La Hora. April 12, 2013. [Tuit de Rafael Correa sobre Fausto Valdiviezo causa polémica.](#)

journalist Fausto Valdiviezo. For example, one Tweet was: “@MashiRafael How hypocritical you are, Correa! You have no respect for anyone! Wretched man! You insult and abuse him and now you are «dismayed»? Have some dignity!”<sup>763</sup> The President tweeted to SENAIN to “take care of” the matter.<sup>764</sup> On April 13, during the Enlace Ciudadano 317 broadcast, Correa reported the order given to SENAIN: “[...] A Mrs. Soledispa, who they tell me is a journalist on the newspaper we know well in New York, so coarsely said: ‘talk, so-and-so, accomplice,’ and now, from embarrassment, she has deleted it, and a series of insults, not just once, but continually against the President of the Republic. So I sent SENAIN to investigate and immediately she throws up her hands in horror: Oh freedom of expression! What freedom of expression is it to insult the President of the Republic? [...] Anyone tweeting like that has some sort of mental disorder and is a danger to the community, etc. So you have to know these types of people, but they call those insults freedom of expression [...] They can say whatever they want. I will not allow the President of the Republic to be insulted.”<sup>765</sup>

370. On January 30, a printing company was raided and over 10,000 copies of the book “La Roca: Cemetery for Living Men” were seized, because it allegedly contained “defamatory expressions.” The raid was authorized by the judge of the Judicial Penal Guarantees Unit of Pichincha. The author of the book, Óscar Caranqui, was murdered on June 30, 2013, in the Men’s Social Rehabilitation Center No. 2 of Guayaquil, known as *La Roca*.<sup>766</sup> According to the information available, the book described conditions in that prison, such as overcrowding, corruption, and access to drugs and arms, among others.”<sup>767</sup>

371. On September 25, the judge of the Judicial Unit on Violence against Women and the Family of the Provincial Court of Justice of Pichincha banned the circulation and dissemination of the book “Una Tragedia Ocultada” [A Tragedy Concealed] by Miguel Ángel Cabodevilla, Milagros Aguirre, and Massimo de Marchi. The book, which was to be launched on September 25, was about a massacre that had taken place in March among the uncontacted Taromenane people, allegedly by members of the Waorani people, and about their conflicts and territorial and cultural policies. The ban was based on a precautionary measure requested by the national director for the defense of human rights and nature of the Office of the Ombudsman, among others, owing to a photograph of a girl that appeared on the book launch invitation but not reproduced in the book.<sup>768</sup> Following the seizure, the Government denounced “any form of censorship” and “officially” declared its “public solidarity with the authors,” considering the action “abusive, and a violation of their constitutional rights, resulting from illegitimate prior censorship of the book.”<sup>769</sup> On September 27, that Judicial Unit rescinded the precautionary

<sup>763</sup> Basol’s Twitter account @basoledispa. [April 12, 2013- 9:42 AM](#).

<sup>764</sup> “@basoledispa SENAIN: por favor atender”. Rafael Correa’s oficial Twitter account @MashiRafael. [April 12, 2013. 1:12 PM](#).

<sup>765</sup> Presidencia de la República/Official YouTube channel. April 13, 2013. [Enlace Ciudadano Nro. 317 desde Riobamba - Chimborazo](#). [02:28:00].

<sup>766</sup> Diariocrítico. July 1, 2013. [Matan a Caranqui en el 'Cementerio de hombres vivos'](#); El Comercio. July 4, 2013. [Sentencia en el caso Bruselas, tras el asesinato de Caranqui](#); Últimas Noticias. July 1, 2013. [Caranqui halló vida y muerte en la cárcel](#).

<sup>767</sup> Ecuador Inmediato. February 1, 2013. [Confiscan 10 mil libros que atentarian contra la seguridad interna del Estado](#); Fundamedios. March 8, 2013. [Se decomisa libro por “presunción de injurias”](#).

<sup>768</sup> Unidad Judicial de Violencia contra la Mujer y la Familia - 1. No. Causa: 2013-0802. Available for consultation at: <http://www.funcionjudicial-pichincha.gob.ec/index.php/consulta-de-procesos>

<sup>769</sup> Presidencia de la República del Ecuador. September 26, 2013. [Comunicado del Gobierno Nacional](#); El Telégrafo. September 26, 2013. [Gobierno rechaza decisión de jueza que prohíbe difusión de libro “Una tragedia ocultada”](#); Agencia Pública

measure because the authors had demonstrated that “the cover of the book did not include the photo used on the invitation to its launch and that the photos appearing in the book were designed to prevent physical identification of the girl, and that the authors had taken precautions to ensure that the faces of all other children appearing in photos in the book were blurred.”<sup>770</sup>

372. According to information received, on February 25, unidentified persons prevented the circulation of the newspaper *El Diario* in some areas of Manabí province through the compulsory purchase of copies. The measure was allegedly intended to prevent the dissemination of a news item regarding individuals implicated in a drug seizure case. According to reports in *El Diario*, the package containing the newspapers was seized by persons unknown upon its arrival at the Pedernales canton terminal and subsequently the party responsible for the newspaper’s circulation received payment for those copies.<sup>771</sup>

373. At the hearing “Situation of the Right to Freedom of Expression in Ecuador,” held on March 12 in the framework of the IACHR’s 147 Period of Sessions, the Office of the Special Rapporteur received information regarding alleged restrictions encountered by the media during Ecuador’s presidential election campaign. At that hearing, the petitioning organizations indicated that the amendments to the Electoral Law promoted by the executive branch that had entered into force “gravely affect the exercise of freedom of expression by imposing a ban on the press expressing views, criticizing, and engaging in discussion of electoral candidates and their political views, and imposing the applicable sanctions.” According to the organizations, as a result, during the electoral period, media self-censorship was mandatory, “reflected as the publication of fewer editorial opinions regarding the elections.” The petitioners reported that the backgrounds of the candidates were not investigated, and ultimately, the Electoral Council “imposed a ban on media publication of information and photographs at the end of the campaigns.”<sup>772</sup>

374. The State gave information about the importance of the universal right to receive truthful, verified, timely, pluralistic, and contextualized information, and of guaranteeing respect for other rights, such as the right to honor and the right of reply. The State pointed to the January 2013 rise in the minimum salary for journalists. Also, with regard to crimes against journalists, the State indicated that the three murders of journalists mentioned by the petitioners at the hearing were totally unrelated to their functions as reporters. Regarding media outlet closures and seizures, it indicated that in some cases they had been closed for technical or economic reasons, or for unauthorized operation. The State indicated that 1889 radio, television, and cable licenses and authorizations had been issued, 22 media outlets closed, and 254 new frequency allocations made.<sup>773</sup> The documentation provided indicated that

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de Noticias del Ecuador y Suramérica (Andes). September 26, 2013. [Gobierno de Ecuador rechaza decisión judicial que prohíbe circulación de libro sobre supuesta matanza a aborígenes.](#)

<sup>770</sup> Unidad Judicial de Violencia contra la Mujer y la Familia - 1. No. Causa: 2013-0802. Available for consultation at: <http://www.funcionjudicial-pichincha.gob.ec/index.php/consulta-de-procesos>

<sup>771</sup> *El Diario*. February 26, 2013. [Impiden la venta de periódicos](#); Fundamedios. February 28, 2013. [Desconocidos impiden circulación de diario](#); Knight Center for Journalism in the Americas. March 4, 2013. [Newspaper copies stolen in Ecuador, daily suspects attempt to muzzle story.](#)

<sup>772</sup> IACHR. 147 Period of Sessions. Hearing on the Situation of the Right to Freedom of Expression in Ecuador. March 12, 2013. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=131> (VIDEO). [0:09:45].

<sup>773</sup> IACHR. 147 Period of Sessions. Hearing on the Situation of the Right to Freedom of Expression in Ecuador. March 12, 2013. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=131> (VIDEO).



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

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

## 11. El Salvador

376. The Office of the Special Rapporteur notes with satisfaction the decision adopted on February 14 by the president of El Salvador, Mauricio Funes, to veto Legislative Decree No. 303<sup>780</sup>,

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[0:29:00].

<sup>774</sup> Brief “Libertad de Expresión en Ecuador”. Document provided to the IACHR by the State of Ecuador during the hearing “Situation of the Right to Freedom of Expression in Ecuador.”. March 12, 2013. Available for consultation at: Archives of the Special Rapporteur for Freedom of Expression.

<sup>775</sup> IACHR. 147 Period of Sessions. Hearing on the Situation of the Right to Freedom of Expression in Ecuador. March 12, 2013. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=131> (VIDEO).

<sup>776</sup> IACHR. 147 Period of Sessions. Hearing on the Situation of the Right to Freedom of Expression in Ecuador. March 12, 2013. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=131> (VIDEO). [0:29:30].

<sup>777</sup> Presidencia de la República del Ecuador/Official YouTube channel. August 31, 2013. [Enlace ciudadano 337](#). [2:55:20].

<sup>778</sup> Canal Teleamazonas/Official YouTube channel. September 2, 2013. [Ratifican que alumnos que protesten contra el Yasuní podrían perder sus cupos](#).

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

<sup>780</sup> Diario Oficial de la República de El Salvador. February 27, 2013. [Acuerdo No. 666](#). P. 47; Presidencia de la República de El Salvador. [Veto al Decreto Legislativo No. 303](#). February 14, 2013.

approved on Friday, February 8 by the Legislative Assembly, and which contained changes to the Access to Public Information Law [*Ley de Acceso a la Información Pública*] (LAIP).<sup>781</sup> Various organizations that are defenders of freedom of expression had criticized the modifications to the Law because they took authority away from the Institute of Access to Public Information [*Instituto de Acceso a la Información Pública*] (IAIP) with respect to institutions of the State.<sup>782</sup> As reported, the veto was “accepted” by the Deputies, who ordered the Decree shelved.<sup>783</sup>

377. Similarly, the Office of the Special Rapporteur welcomes the decision by the President of the Republic to veto Legislative Decree No. 412, which prohibited “propaganda, advertising or campaign events” that, through the media, discredit candidates running for President and Vice president and imposes fines of five thousand to twenty-four thousand United States dollars. In a letter to the legislative body dated July 15, 2013, the President expressed his decision to veto the Decree because he considered it unconstitutional. He particularly indicated that it violated three fundamental constitutional precepts: the principle of equality, the prohibition of prior censorship and the principle of legal certainty.<sup>784</sup>

378. On January 22, a journalistic team from the news program ‘Hechos’ on *Canal 12* received threats as it was leaving a courthouse in Santa Tecla, where proceedings had been initiated against three men detained for their alleged implication in a shootout six days earlier in that city. The vehicle belonging to the media outlet was intercepted by an automobile, whose driver briefly aimed a firearm at the journalists. In a press release, the channel reported that it had received threats, in one case they had been warned that if the channel covered the referred hearing “they would not be responsible for the lives of the cameraman and journalists.”<sup>785</sup> The next day, a man suspected of having made the threats was arrested.<sup>786</sup>

379. Principle 9 of the IACHR’s Declaration of Principles on Freedom of Expression states: “[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly

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<sup>781</sup> Knight Center for Journalism in the Americas. February 18, 2013. [El Salvador's president vetoes reforms that would weaken sunshine law](#); Asociación de Periodistas de El Salvador (Apes). February 15, 2013. [Comunicado de la APES ante veto presidencial](#); Terra/EFE. February 14, 2013. [Funes veta reforma que debilitaba instituto de acceso a información pública](#); El Faro. February 15, 2013. [Funes veta reformas que habrían quitado poder al Instituto de Acceso a la Información](#).

<sup>782</sup> IFEX/Inter American Press Association (IAPA). February 13, 2013. [Reformas obstaculizan al derecho a la información en El Salvador](#); El Faro. February 11, 2013. [Asamblea quita a Instituto de Acceso a la Información la potestad de obligar al gobierno a entregar información](#).

<sup>783</sup> Diario Oficial. February 27, 2013. [Acuerdo No. 666](#). P. 47; La Prensa Gráfica. February 14, 2013. [Diputados aprueban aceptar veto presidencial a reformas de LAIP](#); Diario Co Latino. February 15, 2013. [Diputados aceptan veto presidencial sobre reformas a la LAIP](#).

<sup>784</sup> Asamblea Legislativa de la República de El Salvador. [Decreto No. 412](#). June 27, 2013; Presidencia de la República de El Salvador. Veto al Decreto Legislativo No. 412. July 15, 2013. Available for consultation at: [http://www.elfaro.net/attachment/644/DECRETO%20LEGISLATIVO%20No.%20412.pdf?g\\_download=1](http://www.elfaro.net/attachment/644/DECRETO%20LEGISLATIVO%20No.%20412.pdf?g_download=1); El Faro. July 15, 2013. [Presidente veta decreto que castigaría "desprestigiar" a candidatos presidenciales](#).

<sup>785</sup> El Salvador. January 22, 2013. [Periodistas de Canal 12 son amenazados](#); IFEX/Reporters Without Borders. January 23, 2013. [TV crew covering trial in El Salvador receives menacing threats](#); Inter American Press Association (IAPA). January 23, 2013. [Threats to El Salvador journalists brings IAPA protest, call for prompt investigation](#); Knight Center for Journalism in the Americas. January 23, 2013. [Television crew threatened at gunpoint in El Salvador after leaving courtroom](#).

<sup>786</sup> Reporters Without Borders. January 24, 2013. [Man suspected of pointing gun at TV crew quickly arrested](#); El Mundo. January 23, 2013. [Detienen a sospechoso de amenazar a periodista de canal 12](#).

restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

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

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

382. On July 11, the Legislative Assembly approved the Special Law for Exercising the Right to Rectification or Response [*Ley Especial del Ejercicio del Derecho de Rectificación o Respuesta*],<sup>791</sup> which

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

<sup>788</sup> Presidencia Asamblea Legislativa. August 27, 2013. Carta al Instituto de Acceso a la Información Pública. Proceso Administrativo 25-A-2013. Available for consultation at: [http://www.elfaro.net/attachment/679/IAIPordenaAAsambleaII.PDF?g\\_download=1](http://www.elfaro.net/attachment/679/IAIPordenaAAsambleaII.PDF?g_download=1)

<sup>789</sup> Presidencia Asamblea Legislativa. August 27, 2013. Carta al Instituto de Acceso a la Información Pública. Proceso Administrativo 25-A-2013. Available for consultation at: [http://www.elfaro.net/attachment/679/IAIPordenaAAsambleaII.PDF?g\\_download=1](http://www.elfaro.net/attachment/679/IAIPordenaAAsambleaII.PDF?g_download=1); El Faro. August 30, 2013. [Asamblea Legislativa descata dos órdenes del Instituto de Acceso a la Información.](#)

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

<sup>791</sup> Asamblea Legislativa. July 11, 2013. [Legisladores y legisladoras aprueban Ley para el Ejercicio del Derecho de Rectificación y Respuesta.](#) See also, Federación de Sindicatos de Periodistas. August 12, de 2013. [Nueva ley de rectificación en El Salvador](#); El Faro. July 15, de 2013. [Asamblea aprueba ley que puede suponer cárcel para periodistas que publiquen información "ofensiva".](#)

aims to “regulate exercise of the right of rectification or response as protection for the rights to honor, personal and family privacy and one’s own image, in concordance with the unlimited exercise of freedom of expression and information.”<sup>792</sup>

## 12. United States

### A. Progress

383. On February 19, a judge from the United States District Court for the Southern District of New York quashed a subpoena filed in October 2012 by the attorneys for different agencies and officials of the government of city of New York, requesting access to material surrounding the documentary “The Central Park Five,” including material that had not been included in the final edit of the film. The documentary referred to five individuals who were wrongly accused of attacking and raping a woman in 1989 and spent between seven and thirteen years in prison. In 2003, the five individuals brought a civil suit against various New York City government agencies. The attorneys defending the city government subpoenaed Florentine Films, the distributor of the “The Central Park Five” documentary to access the raw material produced during its making, such as several complete interviews conducted by the producers, arguing, among other, that the scenes excluded from the final version of the film contained material that could be of use in the trial. According to the information received, Florentine Films filed a motion before the District Court for the Southern District of New York to quash the subpoena, arguing that in making the documentary the filmmakers were entitled to the journalistic privileges guaranteed under the legal framework.<sup>793</sup> In his decision, Judge Ronald Ellis found that the petitioners had demonstrated in the documentary the journalistic independence necessary to be protected under the reporters’ privileges set forth in the legal framework, and that the attorneys for the City of New York failed to meet their burden of proving the relevance and the necessity of the material requested in the case.<sup>794</sup>

384. A Washington State Court of Appeals affirmed a decision of a trial court that dismissed a defamation suit filed by a transitional housing service in the city of Seattle against local television station *KIRO-TV*. The lawsuit was filed after the broadcast of reports detailing the organization’s alleged practice of using the residents of the transitional shelters to solicit donations door-to-door.<sup>795</sup>

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

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<sup>792</sup> Asamblea Legislativa. [Ley Especial del Ejercicio del Derecho de Rectificación y Respuesta](#). July 11, 2013. Art. 1.

<sup>793</sup> IFEX/Committee to Protect Journalists (CPJ). February 21, 2013. [US judge denies police access to film outtakes](#); New York Law Journal. February 20, 2013. [Court Quashes City Subpoena for Documentary Outtakes](#); Time. February 20, 2013. [Central Park Five Documentary Subpoena Rejected](#); The New York Times. February 19, 2013. [City Rebuffed in Bid for Outtakes From Central Park Jogger Film](#); United States District Court. Southern District of New York. *In Re McCray, Richardson, Santana, Wise, and Salaam Litigation*. Opinion and Order. 03 Civ. 9685 (DAB) (RLE). February 19, 2013. Pp. 1 to 6. Available for consultation at: <http://www.nylj.com/nylawyer/adgifs/decisions/022013jogger.pdf>

<sup>794</sup> United States District Court. Southern District of New York. *In Re McCray, Richardson, Santana, Wise, and Salaam Litigation*. Opinion and Order. 03 Civ. 9685 (DAB) (RLE). February 19, 2013. Pp. 7 ff. Available for consultation at: <http://www.nylj.com/nylawyer/adgifs/decisions/022013jogger.pdf>

<sup>795</sup> Court of Appeals of the State of Washington. *United States Mission Corporation v. Kiro TV, Inc.* No. 66868-4-I. Published Opinion. January 14, 2013. Available for consultation at: <http://www.leagle.com/decision/In%20WACO%2020130114B77> and at [http://www.mrsc.org/wa/courts/index\\_dtSearch.html](http://www.mrsc.org/wa/courts/index_dtSearch.html)

Bureau of Investigation (FBI) to make warrantless requests for information from wire or electronic communication service providers about their customers, violate the Constitution.<sup>796</sup> The administrative requests are issued without the prior approval of a court and, in most cases, the FBI bars the providers from revealing to their clients or to the public that the information has been requested.<sup>797</sup> In a lawsuit filed in 2011 by a telecommunications company represented by the Electronic Frontier Foundation (EFF), from which the FBI had demanded information about its customers, Judge Susan Illston of the U.S. District Court for the Northern District of California ruled that the legal mechanisms examined, that regulate the NSLs, violate the First Amendment. The Court found, among other, that the law did not require the authorities to submit to a process of judicial supervision in each case to verify the legality of the confidentiality order, or demonstrate the need for such order, and that it did not impose a time limit for the order to be valid prior to judicial review. The Court also determined that the provision that regulates confidentiality orders was overly broad, and did not allow for its adequate judicial oversight. At the conclusion of the judgment, the Court ordered the FBI to stop using the Letters and the nondisclosure orders in this case and all others.<sup>798</sup> According to the information received, on May 6, 2013 the Department of Justice appealed the district court's decision.<sup>799</sup>

386. According to information obtained by the Office of the Special Rapporteur, a settlement was reached in July between the city of Oakland, California, its police department, and the American Civil Liberties Union of Northern California and the National Lawyers Guild, in the case brought by the latter two organizations on behalf of a group of Occupy Oakland protesters. The lawsuit, filed in 2011, called into question the excessive use of force by the police department against the protesters.<sup>800</sup> The settlement agreement requires the Oakland police to abide by its crowd control policies and to negotiate any revision of that policy with the petitioning organizations. It also reportedly agreed to pay \$1.17 million dollars in compensation to affected individuals.<sup>801</sup>

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<sup>796</sup> United States Code. [Title 18. §2709 \(Counterintelligence access to telephone toll and transaction records\)](#); United States Code. [Title 18. §3511 \(Judicial review of requests of information\)](#); U.S. District Court for the Northern District of California. March 14, 2013. *In Re National Security Letter*. N° C 11-02173 SI. *Order Granting Motion to Set Aside NSL Letter*. Available for consultation at: <https://s3.amazonaws.com/s3.documentcloud.org/documents/620676/in-re-national-security-letter-district-court.pdf>

<sup>797</sup> United States Code. [Title 18. §2709 \(Counterintelligence access to telephone toll and transaction records\)](#); United States Code. [Title 18. §3511 \(Judicial review of requests of information\)](#); U.S. District Court for the Northern District of California. March 14, 2013. *In Re National Security Letter*. N° C 1-02173 SI. *Order Granting Motion to Set Aside NSL Letter*. Pp. 13. Available for consultation at: <https://s3.amazonaws.com/s3.documentcloud.org/documents/620676/in-re-national-security-letter-district-court.pdf>

<sup>798</sup> U.S. District Court for the Northern District of California. March 14, 2013. N° C 11-02173 SI. *Order Granting Motion to Set Aside NSL Letter*. Available for consultation at: <https://s3.amazonaws.com/s3.documentcloud.org/documents/620676/in-re-national-security-letter-district-court.pdf>; The Wall Street Journal. March 15, 2013. [Judge Strikes Down Secretive Surveillance Law](#); IFEX/Electronic Frontier Foundation. March 19, 2013. [US federal judge rules national security letters are unconstitutional](#); First Amendment Center. March 18, 2013. [Judge rules secret FBI letters unconstitutional](#).

<sup>799</sup> Attorneys for the United States Department of Justice, the Attorney General, and the Federal Bureau of Investigation. March 6, 2013. Notice of Appeal. Case N° C 11-02173. Available for consultation at: <https://www.eff.org/node/74272>

<sup>800</sup> American Civil Liberties Union of Northern California. November 14, 2011. [ACLU and National Lawyers Guild File Suit Against Oakland Police Department](#); United States District Court for the Northern District of California San Francisco – Oakland Division. *Timothy Scott Campbell et al. v. City of Oakland et al.* Complaint for damages & injunctive and declaratory relief. November 14, 2011. Available for consultation at: [https://www.aclunc.org/sites/default/files/asset\\_upload\\_file496\\_10562.pdf](https://www.aclunc.org/sites/default/files/asset_upload_file496_10562.pdf)

<sup>801</sup> American Civil Liberties Union of Northern California. July 3, 2013. [Tentative Settlement Reached with Oakland in ACLU, National Lawyers Guild Lawsuit Against Oakland Police Department for Use of Excessive Force](#); Los Angeles Times. July 3,

## B. Assaults and threats against journalists and the media

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

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

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

## C. Subsequent liabilities

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2013. [Oakland crafts \\$1.1 million settlement for injured Occupy protesters](#); CBS San Francisco Bay Area. July 3, 2013. [Oakland Reaches Million Dollar Settlement With Group Of Occupy Protesters](#).

<sup>802</sup> The Journal News. December 23, 2012. [The gun owner next door: What you don't know about the weapons in your neighborhood](#); The Journal News. December 22, 2012. [Map: Where are the gun permits in your neighborhood?](#).

<sup>803</sup> Committee to Protect Journalists (CPJ). January 7, 2013. [U.S. daily harassed after publishing map of gun owners](#); The New York Times. 6 de enero de 2013. [After Pinpointing Gun Owners, Paper Is a Target](#); The Journal News. January 5, 2013. [Suspicious powder sent to Journal News, 2nd time in a week](#).

<sup>804</sup> O Estado de São Paulo. September 27, 2013. [Correspondente do 'Estado' é presa e algemada em Yale \(EUA\)](#); Terra. September 27, 2013. [Jornalista brasileira é presa nos EUA durante visita do presidente do STF](#).

<sup>805</sup> O Estado de São Paulo. Blog Claudia Trevisan América. September 28, 2013. [How I was handcuffed and arrested at Yale Law School](#); The Guardian. September 28, 2013. [Brazilian journalist accuses Yale police of 'extremely violent' behavior](#).

<sup>806</sup> Yale Alumni Magazine. September 30, 2013. [Yale arrests, releases Brazilian reporter for trespassing](#); O Estado de São Paulo. Blog Claudia Trevisan América. September 28, 2013. [Yale University account of my arrest](#).

390. On February 14, a teenager was arrested after allegedly having made “terroristic threats” on his personal Facebook account. After spending five months in prison, nineteen-year-old Justin Carter was released on bail when an anonymous donor posted his bond.<sup>807</sup> The arrest took place because the teen posted a comment on Facebook, in the midst of a discussion regarding a videogame. The next day, the police arrested him on the charges of making a “terroristic threat.” According to news reports, the police did not find any weapons in his home.<sup>808</sup>

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

#### D. Surveillance programs

392. The Office of the Special Rapporteur observes with concern the information revealed about the scope of secret surveillance programs reportedly being implemented by the government of the United States for purposes of obtaining foreign intelligence information, which could be affecting large numbers of people. According to the information that has come to light since June 2013—from various print media outlets including the newspapers *The Guardian*, *The Washington Post*, and *The New York Times*, the National Security Agency (NSA) has implemented secret surveillance programs that enable it to obtain metadata on telephonic communications made or received in the United States, as well as access to global electronic communications data.<sup>809</sup>

<sup>807</sup> New York Daily News. July 12, 2013. [Justin Carter, Facebook 'terrorist' poster, free on bond thanks to anonymous donor](#); CNN. July 3, 2013. [Teen in jail for months over 'sarcastic' Facebook threat](#); The Huffington Post. July 11, 2013. [Justin Carter, Teen Jailed Over 'Terroristic' Facebook Comment, Out On Bail](#); CBS News/ AP. July 5, 2013. [Justin Carter, Texas Teen, Jailed since Feb. after Making Alleged Facebook Threat](#).

<sup>808</sup> Business Insider. July 8, 2013. [When A Teen's 'Sarcastic' Facebook Message Goes Terribly Wrong](#); World Socialists Web Site. July 24, 2013. [Justin Carter released on bail after anonymous donation](#); CNN. July 3, 2013. [Teen in jail for months over 'sarcastic' Facebook threat](#).

<sup>809</sup> The Guardian. June 5, 2013. [NSA collecting phone records of millions of Verizon customers daily](#); The Washington Post. June 5, 2013. [Verizon providing all call records to U.S. under court order](#); The Guardian. June 6, 2013. [NSA Prism program taps in to user data of Apple, Google and others](#); The Washington Post. June 6, 2013. [U.S., British intelligence mining data from nine U.S. Internet companies in broad secret program](#); O Globo. July 6, 2013. [EUA espionaram milhões de e-mails e ligações de brasileiros](#); The Guardian. July 11, 2013. [Microsoft handed the NSA access to encrypted messages](#); The Guardian. July 19, 2013. [Secret court lets NSA extend its trawl of Verizon customers' phone records](#); The Guardian. July 31, 2013. [XKeyscore: NSA tool collects 'nearly everything a user does on the internet'](#); The New York Times. September 5, 2013. [N.S.A. Able to Foil Basic Safeguards of Privacy on Web](#); The New York Times. September 28, 2013. [N.S.A. Gathers Data on Social Connections of U.S. Citizens](#); The Washington Post. October 30, 2013. [NSA infiltrates links to Yahoo, Google data centers worldwide, Snowden documents say](#).

393. The information on the existence and scope of these programs was disclosed in documents provided to the press by Edward Snowden, a former employee of the company Booz Allen Hamilton, an NSA contractor.<sup>810</sup>

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

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

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

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<sup>810</sup> The Guardian. June 9, 2013. [Edward Snowden: the whistleblower behind the NSA surveillance revelations](#); CNN. June 23, 2013. [Man behind NSA leaks says he did it to safeguard privacy, liberty](#).

<sup>811</sup> Executive Order 12333. United States Intelligence Activities (As amended by Executive Orders 13284 (2003), 13355 (2004) and 13470 (2008). Available for consultation at: <https://it.ojp.gov/default.aspx?page=1261> and at: <http://www.fas.org/irp/offdocs/eo/eo-12333-2008.pdf>

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

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

<sup>814</sup> Office of the Director of National Intelligence. June 6, 2013. [DNI Statement on Recent Unauthorized Disclosures of Classified Information](#); Office of the Director of National Intelligence. June 6, 2013. [DNI Statement on Activities Authorized Under Section 702 of FISA](#); Office of the Director of National Intelligence. June 8, 2013. [DNI Statement on the Collection of Intelligence Pursuant to Section 702 of the Foreign Intelligence Surveillance Act](#); Director of National Intelligence. June 8, 2013. [Facts on the Collection of Intelligence Pursuant to Section 702 of the Foreign Intelligence Surveillance Act](#); National Security Agency Central Security Service. [Mission](#); IC on the Record. August 26, 2013. [Civil Liberties Protection Officer's Statement Regarding Privacy and Civil Liberties Oversight Board Guidelines Letter](#); United States Foreign Intelligence Surveillance Court. [Rules of Procedure](#). November 1, 2010; The White House. The President's Review Group on Intelligence and Communications Technologies. December 12, 2013. [Liberty and Security in a Changing World](#); United States House of Representatives. Committee on the Judiciary. September 18, 2013. [Chairman Goodlatte Statement on Classified FISA Hearing](#); Office of the Director of National Intelligence. IC on the Record. July 31, 2013. [Hearing of the Senate Judiciary Committee on Strengthening Privacy Rights and National Security: Oversight of FISA \(Foreign Intelligence Surveillance Act\) Surveillance Programs](#).



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

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

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

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<sup>815</sup> The Guardian. June 5, 2013. [NSA collecting phone records of millions of Verizon customers daily](http://www.theguardian.com/world/interactive/2013/jun/06/verizon-telephone-data-court-order?guni=Article:in%20body%20link); United States Foreign Intelligence Surveillance Court. *IN RE Application of the Federal Bureau of Investigation for an order requiring the production of tangible things from Verizon Business Network Services, INC. on Behalf of MCI Communications Services, INC. D/B/A Verizon Business Services*. Docket Number: BR 13-80. Secondary Order. April 25, 2013. Available for consultation: <http://www.theguardian.com/world/interactive/2013/jun/06/verizon-telephone-data-court-order?guni=Article:in%20body%20link>. A ruling on the matter was subsequently published by the government. United States Foreign Intelligence Surveillance Court. *IN RE Application of the Federal Bureau of Investigation for an order requiring the production of tangible things from Verizon Business Network Services, INC. on Behalf of MCI Communications Services, INC. D/B/A Verizon Business Services*. Docket Number: BR 13-80. [Primary Order](#). April 25, 2013.

<sup>816</sup> United States Foreign Intelligence Surveillance Court. *IN RE Application of the Federal Bureau of Investigation for an order requiring the production of tangible things from ----*. Docket Number: BR 06-05. [Order](#). May 24, 2006; United States Foreign Intelligence Surveillance Court. *IN RE Production of Tangible Things from: ----*. Docket No.: BR 08-13. [Supplemental Opinion](#). December 12, 2008; Office of the Director of National Intelligence. June 6, 2013. [DNI Statement on Recent Unauthorized Disclosures of Classified Information](#); Forbes. June 6, 2013. [U.S. Senators: NSA Cellphone Spying Has Gone On 'For Years'](#).

<sup>817</sup> The Guardian. June 5, 2013. [NSA collecting phone records of millions of Verizon customers daily](#); The Wall Street Journal. June 7, 2013. [U.S. Collects Vast Data Trove](#); United States District Court. Southern District of New York. *American Civil Liberties Union et al. v. James R. Clapper et al.* Complaint for declaratory and injunctive relief. June 11, 2013. Available for consultation: [https://www.aclu.org/files/assets/nsa\\_phone\\_spying\\_complaint.pdf](https://www.aclu.org/files/assets/nsa_phone_spying_complaint.pdf).

<sup>818</sup> United States Foreign Intelligence Surveillance Court. *IN RE Application of the Federal Bureau of Investigation for an order requiring the production of tangible things from ---*. Docket Number: BR 13-109. Memorandum Opinion dated August 29, 2013 and Primary Order dated July 19, 2013. Available for consultation: <https://s3.amazonaws.com/s3.documentcloud.org/documents/791759/br13-09-primary-order.pdf>; Office of the Director of National Intelligence. July 19, 2013. [Foreign Intelligence Surveillance Court Renews Authority to Collect Telephony Metadata](#); The Guardian. July 19, 2013. [Secret court lets NSA extend its trawl of Verizon customers' phone records](#); Office of the Director of National Intelligence. July 31, 2013. [DNI Clapper Declassifies and Releases Telephone Metadata Collection Documents](#); The New York Times. September 17, 2013. [Extended Ruling by Secret Court Backs Collection of Phone Data](#); The Washington Post. July 31, 2013. [Newly declassified documents on phone records program released](#); Office of the Director of National Intelligence. October 11, 2013. [Foreign Intelligence Surveillance Court Approves Government's Application to Renew Telephony Metadata Program](#); United States Foreign Intelligence Surveillance Court. *IN RE Application of the Federal Bureau of Investigation for an order requiring the production of tangible things from ---*. Docket Number: BR 13-158. [Primary Order](#). October 11, 2013.

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

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

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<sup>819</sup> Office of the Director of National Intelligence. June 6, 2013. [DNI Statement on Recent Unauthorized Disclosures of Classified Information](#).

<sup>820</sup> The White House. Administration White Paper. August 9, 2013. Bulk Collection of Telephony Metadata under section 215 of the USA PATRIOT Act. Document provided with the communication of the State dated December 4, 2013, submitted following the thematic hearing held on October 28, 2013 by the Inter-American Commission “Freedom of Expression and Communications Surveillance by the United States.” Available for consultation at: <http://apps.washingtonpost.com/g/page/politics/white-house-surveillance-reform-plan/388/>.

<sup>821</sup> The White House. Administration White Paper. August 9, 2013. Bulk Collection of Telephony Metadata under section 215 of the USA PATRIOT Act. Document provided with the communication of the State dated December 4, 2013, submitted following the thematic hearing held on October 28, 2013 by the Inter-American Commission “Freedom of Expression and Communications Surveillance by the United States.” Available for consultation at: <http://apps.washingtonpost.com/g/page/politics/white-house-surveillance-reform-plan/388/>.

400. Within the framework of the thematic hearing held with regard to this matter on October 28, 2013, the IACHR received questions about the scope of the program and its implications for the exercise of the individual rights to privacy and to freedom of expression, in particular by journalists and human rights defenders whose work is related to national security issues.<sup>822</sup> In the opinion of different organizations, although the program would not allow access to the content of communications, the gathering of telephony metadata would still invade reasonable expectations of privacy. They maintained that this type of information, compiled *en masse* and with the support of powerful analytical tools, would exceptionally reveal the habits and associations of individuals, exposing personal relationships, health conditions, employment conduct, and political or religious affiliations, and therefore the State would have to justify the proportionality and reasonableness of the measure in relation to the aims it seeks to protect.<sup>823</sup> In addition, according to the information received, section 215 of the Patriot Act—the legal basis for the mass collection of telephony metadata—is being interpreted in a manner contrary to its ordinary language and the spirit of the lawmakers<sup>824</sup> and the existing judicial oversight is ineffective.<sup>825</sup> Particularly, the Commission received information suggesting that the program would have serious potential to limit the freedom of expression and association of human rights organizations that receive calls from current or potential clients and informants who seek legal support in cases against the government.<sup>826</sup>

401. According to the information obtained, the mass telephony metadata collection program is being litigated nationally. On June 6, U.S citizens Larry Klayman and Charles Strange, with

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<sup>822</sup> American Civil Liberties Union Foundation. Testimony of Alex Abdo, Staff Attorney, National Security Project. October 28, 2013. Document submitted in preparation to the thematic hearing held on October 28, 2013 by the Inter-American Commission on Human Rights “Freedom of Expression and Communications Surveillance by the United States.” Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Center for Democracy and Technology. Document submitted on October 25, 2013 in preparation to the thematic hearing held on October 28, 2013 by the Inter-American Commission on Human Rights “Freedom of Expression and Communications Surveillance by the United States”. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Electronic Frontier Foundation and others. October 2013. Document submitted in preparation to the thematic hearing held on October 28, 2013 by the Inter-American Commission on Human Rights “Freedom of Expression and Communications Surveillance by the United States”. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>823</sup> American Civil Liberties Union Foundation. Testimony of Alex Abdo, Staff Attorney, National Security Project. October 28, 2013. Document submitted in preparation to the thematic hearing held on October 28, 2013 by the Inter-American Commission on Human Rights “Freedom of Expression and Communications Surveillance by the United States.” Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Center for Democracy and Technology. Document submitted on October 25, 2013 in preparation to the thematic hearing held on October 28, 2013 by the Inter-American Commission on Human Rights “Freedom of Expression and Communications Surveillance by the United States.” Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>824</sup> For example, they maintained that the standard used to perform searches of the data obtained through the mass telephone metadata collection program is not established in the law, but rather arises from secret interpretations of executive bodies, approved in secret by the FISC. To this respect, see: Center for Democracy and Technology. Document submitted on October 25, 2013 in preparation to the thematic hearing held on October 28, 2013 by the Inter-American Commission on Human Rights “Freedom of Expression and Communications Surveillance by the United States”. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>825</sup> American Civil Liberties Union. August 16, 2013. Request for a thematic hearing on the human rights implications of communications surveillance in the US and other OAS member states. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>826</sup> American Civil Liberties Union Foundation. Testimony of Alex Abdo, Staff Attorney, National Security Project. October 28, 2013. Document submitted in preparation to the thematic hearing held on October 28, 2013 by the Inter-American Commission on Human Rights “Freedom of Expression and Communications Surveillance by the United States”. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

three other individuals, brought a lawsuit challenging the constitutionality and statutory authorization of certain intelligence-gathering practices by the United States government relating to the wholesale collection of the phone record metadata of all U.S. Citizens.<sup>827</sup> On June 11, the American Civil Liberties Union and the New York Civil Liberties Union filed a lawsuit in the United States District Court for the Southern District of New York alleging that the program is not authorized by the law and that it violates the First and Fourth Amendments of the United States Constitution.<sup>828</sup> Lawsuits have also been filed to demand the disclosure of decisions and the evaluation of the FISC regarding the content, meaning and constitutionality of section 215 of the Patriot Act.<sup>829</sup>

402. The Office of the Special Rapporteur observes with concern the information on the existence and scope of the massive telephone metadata collection program and its implications for the rights to privacy and to freedom of expression. As observed in the Joint Declaration on Surveillance Programs and their Impact on Freedom of Expression (2013), issued by this office and by the United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression, the information available on the scope of these programs “highlights the risks their implementation poses to the right to privacy and freedom of expression, as well as the need to amend the corresponding legislation and establish improved mechanisms for transparency and public debate on these practices.”<sup>830</sup> In this regard, chapter IV of this report explains the requirements that surveillance programs must fulfill in order to be consistent with international human rights law

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<sup>827</sup> As of the closing of this report on November 1, the United States District Court for the District of Columbia ruled in this lawsuit that the “plaintiffs have standing to challenge the constitutionality of the Government’s bulk collection and querying of phone record metadata, that they demonstrated a substantial likelihood of success on the merits of their Fourth Amendment claim, and that they will suffer irreparable harm absent preliminary injunction relief.” Accordingly it granted a Motion for Preliminary Injunction and entered an order that “(1) bars the Government from collecting, as part of the NSA’s Bulk Telephony Metadata Program, any telephony metadata associated with their personal Verizon accounts and (2) requires Government to destroy any such metadata in its possession that was collected through the bulk collection program.” The judge stated that he will stay his order pending appeal “in light of the significant national security interests at stake in this case and the novelty of the constitutional issues.” United States District Court for the District of Columbia. *KLAYMAN et al., v. Obama et al.*. Civil Action No. 13-0851 (RJL). Memorandum Opinion. December 16, 2013. Available for consultation at: <http://online.wsj.com/public/resources/documents/JudgeLeonNSAopinion12162013.pdf>

<sup>828</sup> American Civil Liberties Union. *ACLU v. Clapper – Challenge to NSA Mass Call-Tracking Program*; United States District Court. Southern District of New York. *American Civil Liberties Union; American Civil Liberties Union Foundation; New York Civil Liberties Union; and New York Civil Liberties Union Foundation v. James R. Clapper et al.* Complaint for declaratory and injunctive relief. June 11, 2013. Available for consultation at: [https://www.aclu.org/files/assets/nsa\\_phone\\_spying\\_complaint.pdf](https://www.aclu.org/files/assets/nsa_phone_spying_complaint.pdf). As of the closing of this report, the Office of the Special Rapporteur for Freedom of Expression learned that on December 27, the United States District Court for the Southern District of New York ruled that the NSA’s metadata collection program was legal. The judge denied the request for injunction relief submitted by the plaintiffs and granted Government’s petition for dismissal. The United States District Court. Southern District of New York. *American Civil Liberties Union et al. v. James R. Clapper, et al.* 13 Civ. 3994 (WHP). Memorandum & Order. 27 de diciembre de 2013. Available for consultation at: [https://www.aclu.org/sites/default/files/assets/order\\_granting\\_governments\\_motion\\_to\\_dismiss\\_and\\_denying\\_aclu\\_motion\\_for\\_preliminary\\_injunction.pdf](https://www.aclu.org/sites/default/files/assets/order_granting_governments_motion_to_dismiss_and_denying_aclu_motion_for_preliminary_injunction.pdf). Ver tambien: United States Court District Northern District of California. *First Unitarian Church of Los Angeles et al. v. National Security Agency et al.* Complaint for Constitutional and Statutory Violations Seeking Declaratory and Injunctive Relief. July 16, 2013. Available for consultation at: <https://www.eff.org/files/filenode/firstunitarianvnsa-final.pdf>

<sup>829</sup> United States Foreign Intelligence Surveillance Court. *IN RE Orders Issued by this Court Interpreting Section 215 of the Patriot Act*. Docket No. Misc. 13-02. [Motion of the American Civil Liberties Union, the American Civil Liberties Union of the Nation’s Capital, and Media Freedom and Information Access Clinic for the Release of Court Records](https://www.aclu.org/sites/default/files/assets/order_granting_governments_motion_to_dismiss_and_denying_aclu_motion_for_preliminary_injunction.pdf). June 12, 2013.

<sup>830</sup> United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. June 21, 2013. [Joint Declaration on Surveillance Programs and their Impact on Freedom of Expression](https://www.aclu.org/sites/default/files/assets/order_granting_governments_motion_to_dismiss_and_denying_aclu_motion_for_preliminary_injunction.pdf).

standards. Said requirements are summarized in paragraphs 414 and following of Chapter II of this report (*Infra*), regarding electronic communications surveillance programs.

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

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

404. On July 31, the existence of another digital communications data analysis system known as XKEYSCORE came to light. The system allows, among others, NSA personnel to search and analyze data pertaining to an individual’s Internet activity.<sup>832</sup>

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

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<sup>831</sup> The Guardian. June 6, 2013. [NSA Prism program taps in to user data of Apple, Google and others](#); The Washington Post. June 6, 2013. [U.S., British intelligence mining data from nine U.S. Internet companies in broad secret program](#); The Guardian. July 11, 2013. [How Microsoft handed the NSA access to encrypted messages](#); The Washington Post. July 6, 2013. [NSA slides explain the PRISM data-collection program](#); Office of the Director of National Intelligence. IC on the Record. Sin fecha. [Section 702 of the Foreign Intelligence Surveillance Act](#). See also, Electronic Frontier Foundation and others. October 2013. Document submitted in preparation to the thematic hearing held on October 28, 2013 by the Inter-American Commission on Human Rights “Freedom of Expression and Communications Surveillance by the United States”. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression; American Civil Liberties Union Foundation. Testimony of Alex Abdo, Staff Attorney, National Security Project. October 28, 2013. Document submitted in preparation to the thematic hearing held on October 28, 2013 by the Inter-American Commission on Human Rights “Freedom of Expression and Communications Surveillance by the United States”. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>832</sup> The Guardian. July 31, 2013. [XKeyscore: NSA tool collects 'nearly everything a user does on the internet'](#). The original document indicates that: “XKeyscore provides the technological capability, if not the legal authority, to target even US persons for extensive electronic surveillance without a warrant provided that some identifying information, such as their email or IP address, is known to the analyst.” The Guardian. July 31, 2013. [Xkeyscore System Power Point Presentation from 2008 – read in full](#).

metropolitan area.<sup>833</sup> In response to this article, the NSA told the newspaper that it tries to identify incidents or risks of incidents at the earliest possible moment, implement mitigation measures wherever possible, and drive those numbers down. It also acknowledged that the FISC had determined at one point that some data collection carried out pursuant to Section 702 of the FISA could be construed as unreasonable search and seizure, prohibited under the Fourth Amendment of the Constitution; in response to this decision, procedures were reportedly strengthened to safeguard the rights of U.S. persons, and therefore the court subsequently approved the collection.<sup>834</sup>

406. That same day, *The Washington Post* published the written statement it had received from the Chief Judge of the FISC, District Judge Reggie B. Walton, according to which the court lacks the tools to independently verify how often the Government breaks the court's rules that aim to protect Americans' privacy the implementation of the surveillance programs. According to Judge Walton, the FISC "is forced to rely upon the accuracy of the information that is provided to the Court" and "does not have the capacity to investigate issues of noncompliance". In that respect, the judge maintained that the FISC "is in the same position as any other court when it comes to enforcing [government] compliance with its orders."<sup>835</sup>

407. On September 28, *The New York Times* reported that, according to documents provided by Edward Snowden, the NSA has been using its huge metadata database of telephony and electronic communications since 2010 to create sophisticated graphs of the social connections of some persons, allowing the NSA to identify their relationships, their location at specific times, and other personal information. This type of analysis reportedly helps the agency to "discover and track" connections between foreign intelligence targets and persons in the United States. According to documents obtained by the newspaper, the tracking of Americans' contacts is only authorized if a foreign intelligence justification is cited.<sup>836</sup>

408. On October 30, *The Washington Post* revealed information indicating that the NSA had intercepted the main global communications links between Google and Yahoo data centers. According to the information published, Google and Yahoo maintain data centers on four continents, connected to each other through thousands of kilometers of fiber-optic cables. The main tool that the NSA reportedly has to exploit the data links is a project known as MUSCULAR, a system it operates jointly with the GCHQ.<sup>837</sup>

409. It is apparent from the information disseminated following these revelations that these programs form part of the foreign intelligence data collection systems operated by the NSA pursuant to FISA section 702 and Executive Order No. 12333.<sup>838</sup> In this regard, the Office of the Special Rapporteur

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<sup>833</sup> The Washington Post. August 15, 2013. [NSA broke privacy rules thousands of times per year, audit finds.](#)

<sup>834</sup> The Washington Post. August 15, 2013. [NSA statements to The Post](#); The Washington Post. August 15, 2013. [NSA broke privacy rules thousands of times per year, audit finds.](#)

<sup>835</sup> The Washington Post. August 15, 2013. [Court: Ability to police U.S. spying program limited.](#)

<sup>836</sup> The New York Times. September 28, 2013. [N.S.A. Gathers Data on Social Connections of U.S. Citizens.](#)

<sup>837</sup> The Washington Post. October 30, 2013. [NSA infiltrates links to Yahoo, Google data centers worldwide, Snowden documents say](#); Foreign Policy. The Cable. October 31, 2013. [NSA Bombshell Shocks Former Spooks: "Why in The World Would We Burn Google?"](#).

<sup>838</sup> Office of the Director of National Intelligence. June 6, 2013. [DNI Statement on Activities Authorized Under Section 702 of FISA](#); Office of the Director of National Intelligence. June 8, 2013. [DNI Statement on the Collection of Intelligence](#)

learned that months before the revelations of these surveillance programs the United States Supreme Court dismissed a challenge to section 702 of the Foreign Intelligence Surveillance Act (FISA).<sup>839</sup> The challenge was brought by lawyers, human rights and media organizations who claimed that their sensitive communications with clients, colleagues, and other individuals abroad were likely the target of surveillance, a situation that affected their constitutional rights under the First Amendment, among others. In *Clapper et al. v. Amnesty International USA et al.*, the Supreme Court held that these organizations lacked standing to challenge the law because of the speculative nature of the injuries claimed.<sup>840</sup>

410. Within the framework of the thematic hearing held on this matter by the IACHR on October 28, the organizations maintained that the revelations demonstrate that the United States government is using these provisions to implement excessively broad surveillance programs that interfere with the right to privacy beyond what is strictly necessary to pursue legitimate national security aims and that have a chilling effect on the right to seek, receive, and disseminate information and ideas of all kinds. They expressed their special concern over the breadth of the terms of FISA section 702, which authorizes the NSA to engage in the large-scale capture of electronic communications when two basic conditions are met: (i) that the target of the surveillance is a foreigner; and (ii) that the purpose of the surveillance is to gather “foreign intelligence” information.<sup>841</sup>

411. As explained during the hearing, in the course of the surveillance conducted under section 702 of the FISA, the intelligence agencies can monitor communications “about” their foreign targets. This has reportedly been interpreted to allow the scanning of the content of any communication that originates or terminates in the United States, based on key words relating to their targets. In addition, the phrase “foreign intelligence information” is defined in an overly broad manner to include information about the conduct of international relationships in the United States. In other words, the surveillance conducted by virtue of section 702 of the law is not limited to the investigation of terrorism, but would also include any matter relevant to the country’s foreign interests.<sup>842</sup>

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[Pursuant to Section 702 of the Foreign Intelligence Surveillance Act](#); Office of the Director of National Intelligence. June 8, 2013. [Facts on the Collection of Intelligence Pursuant to Section 702 of the Foreign Intelligence Surveillance Act](#); National Security Agency. [Press Statement on 30 July 2013](#); Office of the Director of National Intelligence. IC on the Record. October 31, 2013. [NSA’s Activities: Valid Foreign Targets are the focus](#).

<sup>839</sup> United States of America. [Foreign Intelligence Surveillance Act of 1978. Amendments Act of 2008, Public Law 110-261, 50 U.S.C. § 1881\(a\)](#).

<sup>840</sup> Supreme Court of the United States. *Clapper, Director of National Intelligence, et al. v. Amnesty International USA et al.*, No. 11-1025. [Opinion of the Court](#). February 26, 2013.

<sup>841</sup> IACHR. 149 Period of Sessions. Hearing on Freedom of Expression and COmmunications Surveillance by the United States. October 28, 2013. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=es&session=132>; American Civil Liberties Union Foundation. Testimony of Alex Abdo, Staff Attorney, National Security Project. October 28, 2013. Document submitted in preparation to the thematic hearing held on October 28, 2013 by the Inter-American Commission on Human Rights “Freedom of Expression and Communications Surveillance by the United States”. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>842</sup> IACHR. 149 Period of Sessions. Hearing on Freedom of Expression and COmmunications Surveillance by the United States. October 28, 2013. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=es&session=132>; American Civil Liberties Union Foundation. Testimony of Alex Abdo, Staff Attorney, National Security Project. October 28, 2013. Document submitted in preparation to the thematic hearing held on October 28, 2013 by the Inter-American Commission on Human Rights “Freedom of Expression and Communications Surveillance by the United States”. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Electronic Frontier Foundation and others. October 2013. Document submitted in

412. Moreover, according to the information provided at the aforementioned hearing, there are no apparent protections or legal procedures designed to ensure the right of those foreigners who reside outside the United States, and who are not being criminally investigated, not to have their communications intercepted by the NSA under the premise that they enjoy lesser protection under the Constitution of the United States. In the opinion of the civil society organizations, this position is not supported by international human rights law. As such, they urged the government of the United States to meet its international obligations both within the United States and abroad.<sup>843</sup> In this respect, the IACHR asked the State to explain whether there are any mechanisms to safeguard the rights of any person who may be adversely affected by the implementation of these programs in terms of international human rights law.<sup>844</sup>

413. In its written response to the issues raised during the thematic hearing on freedom of expression and communications surveillance,<sup>845</sup> the State reiterated that it is “committed to the right of freedom to expression, including freedom of expression on the Internet.” Also, it affirmed that “the United States has long championed these rights domestically and internationally, and [...] firmly believe[s] that privacy rights and the rights to freedom of expression must be respected both online and offline, as demonstrated by [State] co-sponsorship of a resolution on this topic at the UN Human Rights Council: ‘The Promotion, Protection and Enjoyment of Human Rights on the Internet’ and joining consensus on the resolution recently considered by the Third Committee of the UN General Assembly on ‘The Right to Privacy in the Digital Age.’ It is important to note that [the United States] do[es] not use [its] intelligence collection for the purposes of repressing the citizens of any country because of their political, religious or other beliefs.” As is explained below, in response to the aforementioned hearing, the Government indicated that the White House is leading a thorough review of the security programs, “which includes agencies from across the government. The review is looking across the board at our intelligence gathering to ensure that, as [the government agencies] gather intelligence, [they] are properly accounting for [the United States’] national security interests – including the security of [its]

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preparation to the thematic hearing held on October 28, 2013 by the Inter-American Commission on Human Rights “Freedom of Expression and Communications Surveillance by the United States”. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>843</sup> IACHR. 149 Period of Sessions. Hearing on Freedom of Expression and COmmunications Surveillance by the United States. October 28, 2013. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=es&session=132>; American Civil Liberties Union Foundation. Testimony of Alex Abdo, Staff Attorney, National Security Project. October 28, 2013. Document submitted in preparation to the thematic hearing held on October 28, 2013 by the Inter-American Commission on Human Rights “Freedom of Expression and Communications Surveillance by the United States”. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Electronic Frontier Foundation and others. October 2013. Document submitted in preparation to the thematic hearing held on October 28, 2013 by the Inter-American Commission on Human Rights “Freedom of Expression and Communications Surveillance by the United States”. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>844</sup> IACHR. 149 Period of Sessions. Hearing on Freedom of Expression and COmmunications Surveillance by the United States. October 28, 2013. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=es&session=132>.

<sup>845</sup> Communication of the Permanent Representative of the United States of America to the Organization of American States. December 4, 2013. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.



citizens and [its] allies– and for the privacy concerns shared by Americans and citizens around the world.”<sup>846</sup>

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

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

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

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<sup>846</sup> Communication of the Permanent Representative of the United States of America to the Organization of American States. December 4, 2013. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>847</sup> United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. June 21, 2013. [Joint Declaration on Surveillance Programs and their Impact on Freedom of Expression](#).

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

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

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

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

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<sup>848</sup> United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. June 21, 2013. [Joint Declaration on Surveillance Programs and their Impact on Freedom of Expression](#); United Nations. Human Rights Council. [Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/23/40. April 17, 2013.](#)

<sup>849</sup> The Washington Post. August 9, 2013. [Obama vows to reform surveillance programs \(Video\)](#); The White House. August 9, 2013. [Background on the President's Statement on Reforms to NSA Programs](#); The Wall Street Journal. August 9, 2013. [Obama Proposes Surveillance-Policy Overhaul](#); The New York Times. August 9, 2013. [President Moves to Ease Worries on Surveillance](#); The Guardian. August 9, 2013. [Obama touts NSA surveillance reforms to quell growing unease over programs](#); The Washington Post. August 9, 2013. [Obama announces proposals to reform NSA surveillance](#); The White House. August 12, 2013. [Presidential Memorandum – Reviewing Our Signals Intelligence Collection and Communications Technologies.](#)

<sup>850</sup> Communication of the Permanent Representative of the United States of America to the Organization of American States. December 4, 2013. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

national security. Since that time, nearly 2,000 pages of documents have been released.”<sup>851</sup> The State also informed that “these measures have been accompanied by numerous public statements regarding these intelligence programs and the framework within which they operate.” For example, according to the information sent by the State to the Office of the Special Rapporteur, on August 9, the government declassified information clarifying details about the workings and legal basis of one of the programs. Said document (the white paper) explains “why the telephony metadata collection program, subject to the restrictions imposed by the [FISC], is consistent with the Constitution and the standards set forth by Congress in Section 215” of the Patriot Act.<sup>852</sup> During the month of August, the National Intelligence Director announced that the intelligence agencies will publish information annually on the total number of warrants issued and the number of targets affected through various national security-related legal procedures, including the surveillance authorized by section 702 of the FISA and section 215 of the Patriot Act. This information will reportedly be available on a new website (<http://icontherecord.tumblr.com/>) designed to provide direct and immediate access to factual information on the surveillance activities conducted by the United States intelligence community.<sup>853</sup>

421. The State noted as well that “[...] the President called for a review of our surveillance policies and practices to ensure that the security concerns of our citizens and international partners are appropriately balanced with the privacy concerns that all people share. The White House is leading this review, which includes agencies from across the government. The review is looking across the board at our intelligence gathering to ensure that, as [the government agencies] gather intelligence, [they] are properly accounting for [the United States’] national security interests – including the security of [its] citizens and [its] allies– and for the privacy concerns shared by Americans and citizens around the world.”<sup>854</sup>

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

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<sup>851</sup> For example, see: Office of the Director of National Intelligence. July 31, 2013. [DNI Clapper Declassifies and Releases Telephone Metadata Collection Documents](#); Office of the Director of National Intelligence. August 21, 2013. [DNI Declassifies Intelligence Community Documents Regarding Collection Under Section 702 of the Foreign Intelligence Surveillance Act \(FISA\)](#); Office of the Director of National Intelligence. September 10, 2013. [DNI Clapper Declassifies Intelligence Community Documents Regarding Collection Under Section 501 of the Foreign Intelligence Surveillance Act \(FISA\)](#); Office of the Director of National Intelligence. October 11, 2013. [Foreign Intelligence Surveillance Court Approves Government’s Application to Renew Telephony Metadata Program](#); Office of the Director of National Intelligence. October 28, 2013. [DNI Clapper Declassifies Additional Intelligence Community Documents Regarding Collection Under Section 501 of the Foreign Intelligence Surveillance Act](#).

<sup>852</sup> The White House. Administration White Paper. August 9, 2013. Bulk Collection of Telephony Metadata under section 215 of the USA PATRIOT Act. Document provided with the communication of the State dated December 4, 2013, submitted following the thematic hearing held on October 28, 2013 by the Inter-American Commission “Freedom of Expression and Communications Surveillance by the United States”. Available for consultation at: <http://apps.washingtonpost.com/g/page/politics/white-house-surveillance-reform-plan/388/>

<sup>853</sup> Office of the Director of National Intelligence. August 29, 2013. [DNI Clapper Directs Annual Release of Information Related to Orders Issued Under National Security Authorities](#).

<sup>854</sup> Communication of the Permanent Representative of the United States of America to the Organization of American States. December 4, 2013. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

our foreign policy while appropriately accounting for other policy considerations, such as the risk of unauthorized disclosure and [the] need to maintain the public trust.”<sup>855</sup>

423. According to the information provided, on September 4, 2013, the Review Group solicited comments from the public to inform its deliberations. Between September 4, 2013 and October 4, 2013, the Review Group received close to 250 comments<sup>856</sup>. On December 12, the Review Group presented its final report to the President of the United States. The report provided 46 recommendations related to the surveillance of both US persons and non US persons, the reduction of the risk of unjustified or unnecessary surveillance, global communications technology, among others.<sup>857</sup> Regarding the Surveillance of US persons under section 215 of Patriot Act, the Review Group recommended, *inter alia*, that “legislation should be enacted that terminates the storage of bulk telephony meta-data by the government under section 215 [of the Patriot Act] and transitions as soon as reasonably possible to a system in which such meta-data is held instead either by private providers or by a private third party.” It indicated that “[c]onsistent with this recommendation, we endorse a broad principle for the future: as a general rule and without senior policy review, the government should not be permitted to collect and store mass, undigested, non-public personal information about US persons for the purpose of enabling future queries and data-mining for foreign intelligence purposes.” The Review Group recommended restrictions “on the ability of the [FISC] to compel third parties (such as telephone service providers) to disclose private information to the government.” It is also recommended that “legislation should be enacted authorizing telephone, Internet, and other providers to disclose publicly general information about orders they received directing them to provide information to the government”. Regarding the Surveillance of Non-US persons, the Review Group said that “significant steps should be taken to protect the privacy of non-US persons.” It indicated that “any programs that allow surveillance of such persons even outside the United States should satisfy six separate constraints. They: 1) must be authorized by duly enacted laws or properly authorized executive orders; 2) must be directed *exclusively* at protecting national security interests of the United States or [its] allies; 3) must not be directed at illicit or illegitimate ends, such as the theft of trade secrets or obtaining commercial gain for domestic industries; 4) must not target any non-US person based solely on that person’s political views or religious convictions; 5) must not disseminate information about non-United States persons if the information is not relevant to protecting the national security of the United States or [its] allies, and 6) must be subject to careful oversight and to the highest degree of transparency consistent with protecting the national security of the United States and [its] allies.” It also recommended that “in the absence of a specific and compelling showing, the US government should follow the model of the Department of Homeland Security and apply the Privacy Act of 1974 in the same way to both US persons and non-US persons.” The Office of the Special Rapporteur specially notes that the Review Group recommended that “Congress should create the position of Public Interest Advocate to represent privacy and civil liberties interests before the Foreign Intelligence Surveillance Court”; and that “the transparency of the Foreign Intelligence Surveillance Court’s decisions should be increased, including by instituting declassification reviews that comply with existing standards.” Finally, the Office notes that the Review Group recommended that “the US Government should streamline the process for lawful

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<sup>855</sup> Communication of the Permanent Representative of the United States of America to the Organization of American States. December 4, 2013. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>856</sup> Office of the Director of National Intelligence. [The Review Group](#).

<sup>857</sup> The White House. The President’s Review Group on Intelligence and Communications Technologies. December 12, 2013. [Liberty and Security in a Changing World](#).

international requests to obtain electronic communications through the Mutual Legal Assistance treaty process.”<sup>858</sup>

424. The Office of the Special Rapporteur further notes that the United States Congress is studying substantial limitations to the scope of the surveillance programs in operation.<sup>859</sup> On July 24, a bill restricting the NSA’s budget to fund programs for the mass collection of telephonic metadata was defeated in the House of Representatives, with 217 votes against it and 205 in favor.<sup>860</sup> According to the information available, on October 29 Congressman Jim Sensenbrenner introduced the draft USA Freedom Act in the House of Representatives, the purpose of which is to, among others: (1) limit the collection of information by the NSA and other government agencies; (2) increase the transparency of the Foreign Intelligence Surveillance Court; (3) provide businesses the ability to release information regarding FISA requests, and (4) create an independent constitutional advocate to argue cases before the FISC.<sup>861</sup> The same bill was also introduced in the Senate by the Chairman of the Senate Judiciary Committee, Senator Patrick Leahy.<sup>862</sup> This bill is supported by civil society organizations.<sup>863</sup> For its part, on October 31, the Senate Intelligence Committee passed the FISA Improvements Act, which seeks to increase the privacy protections and transparency of the NSA’s telephonic metadata program and of other intelligence activities.<sup>864</sup>

#### **E. Privacy and confidentiality of sources**

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

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<sup>858</sup> The White House. The President’s Review Group on Intelligence and Communications Technologies. December 12, 2013. [Liberty and Security in a Changing World](#).

<sup>859</sup> The New York Times. July 28, 2013. [Momentum Builds Against N.S.A. Surveillance](#); International Business Times. July 29, 2013. [NSA FISA Metadata Program: New Momentum For NSA Reform After Amash Amendment, Senators Say](#); The Hill. July 27, 2013. [Wyden: Talks on NSA overhaul 'accelerated' after House vote](#).

<sup>860</sup> House of Representatives. [Amendment to H.R. 2397, as reported offered by Mr. Amash of Michigan](#); The Guardian. July 24, 2013. [NSA surveillance: narrow defeat for amendment to restrict data collection](#); The Huffington Post. July 24, 2013. [Justin Amash Amendment To Stop NSA Data Collection Voted Down In House \(UPDATE\)](#); The New York Times. July 24, 2013. [House Defeats Effort to Rein In N.S.A. Data Gathering](#); Electronic Frontier Foundation (EFF). July 24, 2013. [In a Close Vote, Congress Defeats Amendment That Sought to Curtail NSA Surveillance](#).

<sup>861</sup> US Congressman Jim Sensenbrenner. [The USA Freedom Act H.R. 3361/S. 1599](#); United States House of Representatives. [H.R. 3361. Uniting and Strengthening America by Fulfilling Rights and Ending Eavesdropping, Dragnet-collection, and On-line Monitoring Act](#). October 29, 2013.

<sup>862</sup> United States Senate. [S. 1599. Uniting and Strengthening America by Fulfilling Rights and Ending Eavesdropping, Dragnet-collection, and Online Monitoring Act](#).

<sup>863</sup> American Civil Liberties Union. October 29, 2013. [The USA Freedom Act is real spying reform](#); Center for Democracy and Technology. October 29, 2013. [CDT letter to Senate and House Endorsing USA FREEDOM Act](#); TIME Magazine. November 1, 2013. [Two Bills Offer Different Visions of NSA Reform](#).

<sup>864</sup> US Senator Diane Feinstein. October 31, 2013. [Senate Intelligence Committee Approves FISA Improvements Act](#); United States Senate. S. 1631. [FISA Improvements Act of 2013](#). October 31, 2013.

of this information had taken place without prior notice to the news agency or its journalists.<sup>865</sup> On May 13, AP President and CEO Gary B. Pruitt sent a letter of protest to Attorney General Eric Holder, in which he objected “in the strongest possible terms to a massive and unprecedented intrusion by the Department of Justice into the newsgathering activities of The Associated Press.” In the letter, the Pruitt stated that, “These records potentially reveal communications with confidential sources across all of the newsgathering activities undertaken by the AP during a two-month period, provide a road map to AP’s newsgathering operations, and disclose information about AP’s activities and operations that the government has no conceivable right to know.”<sup>866</sup> The Deputy Attorney General, James Cole, provided assurances in a response letter to the AP that the Department of Justice strives in every case to strike “the proper balance between the public’s interest in the free flow of information and the public’s interest in the protection of national security and the effective enforcement of our criminal laws.”<sup>867</sup> In turn, Attorney General Eric Holder stated at a May 14 press conference that the actions were taken in the context of an investigation of a “very serious leak” of information that “put the American people at risk,” and that “trying to determine who was responsible for that, I think, required very aggressive action.”<sup>868</sup> For his part, White House Press Secretary Jay Carney stated that the White House had no knowledge of any attempt by the Department of Justice to request AP telephone records. “The President believes that the press, as a rule, needs to have an unfettered ability to pursue investigative journalism.” He added that the president also believes in the need to ensure that “classified information is not leaked, because it can endanger our national security interests; it can endanger [individuals].”<sup>869</sup> The Office of the Special Rapporteur expressed its concern and noted that these types of practices can infringe upon the free exercise of journalism by endangering the confidentiality of journalistic sources.<sup>870</sup> Also, these types of measures must be governed by the human rights standards that guide any surveillance program, as indicated in the paragraphs 414 and following of chapter II of this report and its chapter IV.

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

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<sup>865</sup> The Associated Press. May 13, 2013. [Gov't obtains wide AP phone records in probe](#); CNN. May 14, 2013. [AP acusa al gobierno de EE.UU. de grabar las llamadas de sus periodistas](#); The Washington Post. May 13, 2013. [Under sweeping subpoenas, Justice Department obtained AP phone records in leak investigation](#); The Associated Press. May 13, 2013. [Gary B. Pruitt's Letter to Attorney General Eric Holder](#).

<sup>866</sup> The Associated Press. May 13, 2013. [Carta de Gary B. Pruitt al Fiscal General Eric Holder](#).

<sup>867</sup> Office of the Deputy Attorney General. May 14, 2013. Letter from Deputy Attorney General, James Cole, to Gary B. Pruitt. Available for consultation at: <http://s3.documentcloud.org/documents/700577/051413-letter-to-g-pruitt.pdf>; The Washington Post. May 14, 2013. [In letter to AP, Justice Department maintains it acted properly](#); Reuters. May 14, 2013. [U.S. attorney general says he didn't make AP phone records decision](#).

<sup>868</sup> Politico. March 14, 2013. [Holder's full press conference \(VIDEO\)](#); The Huffington Post. May 14, 2013. [Eric Holder on AP Phone Records Subpoena: Trust Us](#); The Guardian. May 14, 2013. [Eric Holder defends AP seizure citing major security threat to public](#).

<sup>869</sup> The White House. May 14, 2013. [Press Briefing by Press Secretary Jay Carney, 05/14/2013](#); The New York Times. May 13, 2013. [Phone Records of Journalists Seized by U.S.](#); The Atlantic Wire. May 13, 2013. [The White House Wants to Stay Out of the AP Phone Records Story](#); Reuters. May 14, 2013. [Obama seeks balance on free press, classified information leaks](#).

<sup>870</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. Press Release R36/13. May 15, 2013. [Office of the Special Rapporteur for Freedom of Expression Expresses Its Concern over Telephone Records Obtained from Associated Press Journalists](#).

violating the Espionage Act of 1917 for allegedly leaking classified information about North Korea in 2009.<sup>871</sup> On May 19, The Washington Post published the warrant authorizing the search of the journalist's email, together with the search warrant request filed by an FBI agent. In the request to the judge, the FBI special agent described the journalist as "a collaborator, accomplice, and/or co-conspirator" in the espionage case. According to the article, the legal protections of privacy limit the search or seizure of a reporter's work, unless there is evidence that the journalist violated the law against unauthorized leaks. The federal judge authorized the search based on the existence of probable cause that Rosen participated in the offense.<sup>872</sup>

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

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

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<sup>871</sup> The Washington Post. May 19, 2013. [A rare peek into a Justice Department leak probe](#); Committee to Protect Journalists (CPJ). May 21, 2013. [CPJ alarmed by U.S. Justice scrutiny of Fox News reporter](#); The Guardian. May 21, 2013. [James Rosen: Fox News reporter targeted as 'co-conspirator' in spying case](#); The Huffington Post. May 20, 2013. [DOJ Calls Fox News Reporter James Rosen 'Co-Conspirator' In Leak Case; Journalists Outraged](#); United States District Court for the District of Columbia. In the Matter of Search of ---. Case No. 10-291-M-01. Search and Seizure Warrant. May 28, 2010. Available for consultation at: <http://apps.washingtonpost.com/g/page/local/affidavit-for-search-warrant/162/>

<sup>872</sup> United States District Court for the District of Columbia. In the Matter of Search of ---. Case No. 10-291-M-01. Search and Seizure Warrant. May 28, 2010. Available for consultation at: <http://apps.washingtonpost.com/g/page/local/affidavit-for-search-warrant/162/>; The Washington Post. May 19, 2013. [A rare peek into a Justice Department leak probe](#).

<sup>873</sup> Department of Justice. July 12, 2013. [Report on Review of News Media Policies](#); The New York Times. May 23, 2013. [Obama, in Nod to Press, Orders Review of Inquiries](#); Reuters. May 23, 2013. [Obama orders review of guidelines for probing journalists](#).

<sup>874</sup> Department of Justice. July 12, 2013. [Report on Review of News Media Policies](#); The New York Times. July 12, 2013. [Holder Tightens Rules on Getting Reporters' Data](#); The Huffington Post. July 12, 2013. [Justice Department Revises Media Guidelines In Leak Investigations](#).

introduced in May by Senator Charles Schumer, and if passed, it would be the first federal law of its kind.<sup>875</sup> The changes introduced by the Senate Judiciary Committee include the broad definition of “covered journalist,”<sup>876</sup> as well as the potential extension of the protections to any other person if a judge determines that they “would be in the interest of justice and necessary to protect lawful and legitimate news-gathering activities under the specific circumstances of the case.”<sup>877</sup> The bill establishes different exceptions to its enforcement with respect to national security matters, among others.<sup>878</sup>

429. On July 19, in a case brought by the Department of Justice against Jeffrey Sterling, a former CIA officer accused of leaking secret documents,<sup>879</sup> the United States Court of Appeals for the

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<sup>875</sup> United States Senate. [S. 987: Free Flow of Information Act of 2013](#). November 6, 2013; Reuters. September 12, 2013. [U.S. Senate Judiciary Committee passes media shield law](#); Electronic Frontier Foundation. September 20, 2013. [Senate Revises Media Shield Law for the Better, But It’s Still Imperfect](#).

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

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

<sup>878</sup> United States Senate. [S. 987: Free Flow of Information Act of 2013](#). November 6, 2013; The Washington Post. September 12, 2013. [Media shield act moves on to the full Senate](#); Electronic Frontier Foundation. September 20, 2013. [Senate Revises Media Shield Law for the Better, But It’s Still Imperfect](#).

<sup>879</sup> United States District Court for the Eastern District of Virginia. *United States of America v. Jeffrey Alexander Sterling*. No. 1:10CR485 (LMB). Indictment. December 22, 2010. Available for consultation at: <http://cryptome.org/0003/sterling/sterling-001.pdf>; United States District Court for the Eastern District of Virginia. *United States of America v. Jeffrey Alexander Sterling*. No. 1:10CR485 (LMB). Defendant’s Opposition to Government’s Motion for Pretrial Detention. January 21, 2011. Available for consultation at: [http://www.politico.com/static/PPM195\\_sterlingrsmotn.html](http://www.politico.com/static/PPM195_sterlingrsmotn.html); Reuters. January 6, 2011. [Ex-CIA officer charged with giving reporter secrets](#); ABC. January 7, 2011. [Arrestan a ex agente de CIA acusado de divulgar documentos secretos](#).



Fourth Circuit reversed the 2011 decision of a district court and ordered *The New York Times* journalist James Risen to testify in the case against Sterling. The Department of Justice alleges that Mr. Sterling gave classified information to Mr. Risen that served as the basis for one of the chapters in Risen's book *State of War*.<sup>880</sup> The journalist had invoked his right to maintain the confidentiality of his source under the First Amendment of the Constitution.

430. According to the information available, the district court judge had ruled in July 2011 that Risen was protected from testifying by the reporter's privilege. However, on October 19, 2011, the Department of Justice appealed the decision quashing its subpoena to the Fourth Circuit Court of Appeals.<sup>881</sup> In a 2-to-1 decision, the Court of Appeals reversed the lower court's decision and ordered Risen to testify as to the identity of the sources used in his book. In his dissenting opinion, Judge Gregory remarked on the importance of protecting the confidentiality of sources to ensure the free flow of information on issues of public interest. The judge further indicated that, although the public does not have the right to access all classified information in the possession of the government, public debate on the armed forces and the methods used by U.S. intelligence bodies are a critical element of public oversight of the government. To determine when a journalist has the right not to be forced to provide testimony about confidential sources, the judge applied a three-part test to the case, examining: (1) whether the information is relevant; (2) whether the information can be obtained by alternative means; and (3) whether there is a compelling interest in the information. The judge also weighed the public's interest in the information disclosed by the source against the harm caused by its dissemination. Based on those factors, the judge concluded that Risen had a reporter's privilege that entitled him to refuse to testify.<sup>882</sup>

431. In view of the decision, Risen petitioned for a rehearing *en banc*<sup>883</sup> and through his lawyers sent a letter to Attorney General Eric Holder, asking him to withdraw the subpoena for Risen's testimony in light of the Justice Department's new guidelines on the media and the use of subpoenas to obtain information from journalists (*supra*).<sup>884</sup> On August 21, the organization Reporters Committee for

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<sup>880</sup> United States Court of Appeals for the Fourth Circuit. *United States of America v. Jeffrey Alexander Sterling* (defendant – appellee), *James Risen* (intervenor – appellee). No. 11-5028. [Decision of July 19, 2013](#); IACHR. [Annual Report 2011. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation on the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 241. Reporters Without Borders. May 26, de 2011. [Department of Justice wants reporter to betray source but spares one of its own whistle-blowers](#); *The New York Times*. May 24, 2011. [Subpoena Issued to Writer in C.I.A.-Iran-Leak Case](#).

<sup>881</sup> IACHR. [Annual Report 2011. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation on the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 241; United States District Court for the Eastern District of Virginia. *In Re: Grand Jury Subpoena to James Risen*. Case 1:10cr485 (LMB). Memorandum Opinion. July 28, 2011. Available for consultation at: <https://www.fas.org/sfp/jud/sterling/062811-opinion118.pdf>; Committee to Protect Journalists (CPJ). October 25, 2011. [Appeal against Risen keeps source protection in focus](#); Politico. October 19, 2011. [Department of Justice still wants New York Times reporter's sources](#).

<sup>882</sup> United States Court of Appeals for the Fourth Circuit. *United States of America v. Jeffrey Alexander Sterling* (defendant – appellee), *James Risen* (intervenor – appellee). No. 11-5028. [Decision of July 19, 2013](#). Pp. 86-118.

<sup>883</sup> United States Court of Appeals for the Fourth Circuit. *United States of America v. Jeffrey Alexander Sterling* (defendant – appellee), *James Risen* (intervenor – appellee). [Petition for Rehearing en Banc of Appellee James Risen](#). August 2, 2013. Available for consultation at: <http://www.lawfareblog.com/wp-content/uploads/2013/08/2013-08-02-US-v-Sterling-pet-for-rehearing-en-banc.pdf>; Politico. August 2, 2013. [NYT journalist fights ruling nixing reporter's privilege](#).

<sup>884</sup> Cahill Gordon & Reindel LLP. Re: Subpoena to James Risen in *United States of America v. Jeffrey Alexander Sterling*, No. 11-5028 (4th Cir.). July 25, 2013. Available for consultation at: <http://images.politico.com/global/2013/08/07/risenholderltr.html>; *The New York Times*. August 7, 2013. [Times Reporter Seeks](#)

Freedom of the Press sent a letter to the Attorney General, signed by numerous media outlets and nongovernmental organizations, in support of Risen's request.<sup>885</sup> On October 15, the full Court of Appeals denied the petition for a rehearing.<sup>886</sup> According to the information obtained, on November 6 the Court of Appeals granted the journalist's request for a stay of the proceedings<sup>887</sup> so he could ask the Supreme Court of the United States to review the decision against him.<sup>888</sup>

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

#### F. Disclosure of confidential information

433. On January 25, 2013, former Central Intelligence Agency (CIA) employee John Kiriakou was sentenced to 30 months in prison for violating the Intelligence Identities Protection Act by revealing to a journalist the identity of an undercover CIA agent, who allegedly interrogated individuals detained in Guantánamo, Cuba. The journalist reportedly turned over the information to an investigator hired by defense attorneys representing individuals detained in that prison.<sup>889</sup> As previously reported by this

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[Subpoena's Withdrawal](#); Washington Post. August 7, 2013. [James Risen asks Justice to drop subpoena](#); Politico. August 7, 2013. [James Risen seeks Eric Holder meeting on subpoena](#).

<sup>885</sup> Reporters Committee for Freedom of the Press. August 21, 2013. Re: Subpoena to James Risen in U.S. v. Sterling. Available for consultation at: [http://images.politico.com/global/2013/08/22/rcfp\\_coalition\\_letter\\_re\\_risen.html](http://images.politico.com/global/2013/08/22/rcfp_coalition_letter_re_risen.html); Politico. August 22, 2013. [Media group asks AG to remove Risen subpoena](#).

<sup>886</sup> United States Court of Appeals for the Fourth Circuit. *United States of America v. Jeffrey Alexander Sterling (defendant – appellee), James Risen (intervenor – appellee)*. Order. October 15, 2013. Available for consultation at: <https://www.documentcloud.org/documents/805291-sterling-cert-denial.html>; The New York Times. August 26, 2013. [Prosecutors Press Subpoena for Times Reporter in Leak Case](#); The New York Times. October 15, 2013. [Court Rejects Appeal Bid by Writer in Leak Case](#); The Huffington Post. October 16, 2013. [James Risen To Take Leak Case To Supreme Court After Appeal Denied](#).

<sup>887</sup> United States Court of Appeals for the Fourth Circuit. *United States of America v. Jeffrey Alexander Sterling (defendant – appellee), James Risen (intervenor – appellee)*. Order of November 6, 2013. Available for consultation at: <http://images.politico.com/global/2013/11/06/sterlingstay.html>

<sup>888</sup> Politico. November 6, 2013. [Risen gets delay](#); The Washington Times. November 4, 2013. [Supreme Court clash on leaks to reporter Risen moves closer](#).

<sup>889</sup> The Guardian. January 25, 2013. [CIA whistleblower John Kiriakou given more than two years in prison](#); The New York Times. January 25, 2013. [Ex-C.I.A. Officer Sentenced to 30 Months in Leak](#); Al Jazeera. January 31, 2013. [CIA 'whistleblower' sentenced to prison](#); CBS News. January 25, 2013. [Ex-CIA officer John Kiriakou sentenced for leaking name on agency's use of torture](#); United States District Court Eastern District of Virginia Alexandria Division. *United States of America v. John Kiriakou*. Case Number: 1:12MJ33. [Criminal Complaint](#). January 23, 2012; United States District Court for the Eastern District of Virginia Alexandria Division. *United States of America v. John C. Kiriakou*. Criminal No. 1:12cr127 (LMB). Plea Agreement. October 23, 2012. Available for consultation: <http://www.fas.org/spp/jud/kiriakou/plea.pdf>

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

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

435. On July 30, 2013, former soldier Chelsea Manning<sup>894</sup> was convicted by the U.S. Army Military District of Washington of 20 criminal offenses, including "wanton publication," "Stealing USG Property," and of 7 counts under the Espionage Act of 1917, for having given information to Wikileaks

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<sup>890</sup> CIDH. [Informe Anual 2012. Informe de la Relatoría Especial para la Libertad de Expresión](#). Capítulo II (Situación de Libertad de Expresión en los Estados Miembros). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. Para. 260; National Public Radio. October 22, 2012. [UPDATE: Former CIA Officer Pleads Guilty in Leak Case](#); The New York Times. October 23, 2012. [Former CIA Operative Pleads Guilty in Leak of Colleague's Name](#); Federal Bureau of Investigation. 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](#); United States District Court for the Eastern District of Virginia Alexandria Division. *United States of America vs. John C. Kiriakou*. Criminal No. 1:12cr127 (LMB). Plea Agreement. October 23, 2012. Available for consultation at: <http://www.fas.org/sgp/jud/kiriakou/plea.pdf>; Committee to Protect Journalists (CPJ). October 10, 2013. [The Obama Administration and the Press. Leak Investigations and surveillance in post-9/11 America](#).

<sup>891</sup> United States District Court for the Eastern District of Virginia. *United States of America v. Edward J. Snowden*. Case No. 1:13 CR 285 (CMH). Criminal Complaint. June 14, 2013. Available for consultation at: <http://www.politico.com/story/2013/06/edward-snowden-complaint-unsealed-93181.html>; The Washington Post. June 21, 2013. [U.S. charges Snowden with espionage](#); BBC. June 22, 2013. [NSA leaks: US charges Edward Snowden with spying](#); The New York Times. June 21, 2013. [Ex-Contractor Is Charged in Leaks on N.S.A. Surveillance](#); The Guardian. June 22, 2013. [US files criminal charges against NSA whistleblower Edward Snowden](#).

<sup>892</sup> Department of Justice. June 26, 2013. [Justice Department Statement on the Request to Hong Kong for Edward Snowden's Provisional Arrest](#); Embassy of the United States of America, Caracas. Diplomatic Note No. 487. July 3, 2013. Available for consultation at: <http://www.theguardian.com/world/interactive/2013/jul/06/us-request-extradition-edward-snowden>

<sup>893</sup> The Guardian. August 1, 2013. [Edward Snowden leaves Moscow airport after Russia grants asylum](#); Reuters. August 1, 2013. [Russia gives Snowden asylum, Obama-Putin summit in doubt](#); The Washington Post. August 1, 2013. [Snowden granted asylum in Russia, leaves Moscow airport](#).

<sup>894</sup> On public statement on August 22, 2013 Manning requested that the name Chelsea and female pronouns be used in referring to her, according to her gender identity Chelsea Manning was tried and sentenced under her legal name, Bradley Manning. Today News. August 22, 2013. ['I am Chelsea': Read Manning's full statement](#); The Guardian. August 22, 2013. ['I am Chelsea Manning,' says jailed soldier formerly known as Bradley](#); MSNBC. August 22, 2013. ['I am Chelsea Manning'](#); Chelsea Manning. October 7, 2013. Statement for Public Release. Subject: Concerning 2013 Sean MacBride Peace Awards. Available for consultation at: <http://www.theguardian.com/world/interactive/2013/oct/09/chelsea-manning-statement-full-document>

concerning, among other things, acts that allegedly occurred in the wars in Iraq and Afghanistan.<sup>895</sup> On August 21, she received a 35-year prison sentence, which is reportedly the longest sentence ever imposed in a case of leaks of classified information to the public in the United States.<sup>896</sup> She will receive approximately 3 years' credit for time served in pretrial detention, and 112 days for the abusive treatment to which she was subjected during her detention at Quantico.<sup>897</sup> In September, Chelsea formally requested a presidential pardon.<sup>898</sup>

436. Chelsea Manning formally pled guilty to 10 offenses relating to the unlawful possession and distribution of classified information.<sup>899</sup> Manning was acquitted of "aiding the enemy," an offense that carries a sentence of life in prison without parole. On this point, the Court found that the former soldier did not "knowingly give intelligence to the enemy, through indirect means."<sup>900</sup> The information disclosed by Manning included a video that showed an air attack on civilians in Baghdad in 2007, in which two journalists from the Reuters news agency were killed.<sup>901</sup> Human rights organizations also

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<sup>895</sup> United States Army Military District Court. *United States vs. PFC. Bradley E. Manning*. Verdict. July 30, 2013. Available for consultation at: <https://www.documentcloud.org/documents/742326-20130730-ae-624-verdict.html>; The U.S. Army Military District of Washington. July 30, 2013. *News Release. Verdict Announced in United States v. PFC. Bradley E. Manning*. Available for consultation at: <http://alexaobrien.com/13-31-News-Release-PFC-Manning-Verdict-Announced.pdf>; Alexa O'Brien. *Verdict*; CNN. July 31, 2013. *Bradley Manning acquitted of aiding the enemy but guilty of espionage violations*; Washington Post. July 30, 2013. *Wikileaks Leaker Bradley Manning acquitted of aiding enemy, guilty of espionage*.

<sup>896</sup> The New York Times. August 21, 2013. *Manning Sentenced to 35 Years for a Pivotal Leak of U.S. Files*; The Washington Post. August 21, 2013. *Judge sentences Bradley Manning to 35 years*; The Guardian. August 21, 2013. *Bradley Manning given 35-year prison term for passing files to WikiLeaks*; National Public Radio. August 21, 2013. *Manning Sentenced To 35 Years In Prison For Leaks*.

<sup>897</sup> Freedom of the Press Foundation. *In The Matter Of: United States vs. PFC Bradley Manning. Vol. 39. UNOFFICIAL DRAFT – 08/21/13 Morning Session*. August 21, 2013; Denise R. Lind. Chief Judge, 1<sup>st</sup> Judicial Circuit. *United States v. Manning, Bradley E.* Defense Motion to Merge Charges as Unreasonable Multiplication of Charges for Findings and Sentence. 6 de agosto de 2013. Available for consultation at: <https://www.documentcloud.org/documents/748562-20130806-ae-610-defense-motion-to-merge-charges.html>; National Public Radio. January 8, 2013. *Alleged Leaker Manning Subjected To Illegal Pretrial Punishment, Judge Rules*; Wired. January 8, 2013. *WikiLeaker Bradley Manning Awarded 112-Day Prison Credit for Military's Abuse*; CNN. August 22, 2013. *WikiLeaks source Manning gets 35 years, will seek pardon*; The Telegraph. August 21, 2013. *Bradley Manning sentenced to 35 years in prison*; BBC. August 21, 2013. *Bradley Manning sentenced to 35 years in Wikileaks case*.

<sup>898</sup> The Law Office of David E. Coombs. Re: Pardon/Communication Request For Private Bradley E. Manning. September 3, 2013. Available for consultation at: <http://pardon.privatemanning.org/cover> and at: <http://pardon.privatemanning.org/pardonrequest>; Slate. September 4, 2013. *Chelsea Manning Requests a Presidential Pardon*; The Guardian. September 4, 2013. *Chelsea Manning formally appeals for presidential pardon*.

<sup>899</sup> The Huffington Post. February 28, 2013. *Bradley Manning Pleads Guilty to Some Charges In Wikileaks Case*; The Guardian. February 28, 2013. *Bradley Manning pleads guilty to 10 charges but denies 'aiding the enemy'*; Alexa O'Brien. February 28, 2013. *US v Pfc. Manning | Transcript of Manning's formal plea to the charges including excepted and substituted language*.

<sup>900</sup> United States Army Military District Court. *United States v. PFC. Bradley E. Manning*. Verdict. July 30, 2013. Available for consultation at: <https://www.documentcloud.org/documents/742326-20130730-ae-624-verdict.html>; The U.S. Army Military District of Washington. July 30, 2013. *News Release. Verdict Announced in United States Vs. PFC. Bradley E. Manning*. Available for consultation at: <http://alexaobrien.com/13-31-News-Release-PFC-Manning-Verdict-Announced.pdf>; Alexa O'Brien. *Verdict*; CNN. July 31, 2013. *Bradley Manning acquitted of aiding the enemy but guilty of espionage violations*; Washington Post. July 30, 2013. *Wikileaks Leaker Bradley Manning acquitted of aiding enemy, guilty of espionage*.

<sup>901</sup> WikiLeaks. *Collateral Murder*; Reuters. June 12, 2013. *U.S. soldier, WikiLeaks founder discussed air attack video: witness*.

reported that Manning had been kept in solitary confinement for eleven months and had been the victim of mistreatment during her pretrial detention from 2010 to 2011.<sup>902</sup>

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

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

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<sup>902</sup> United Nations. Human Rights Council. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez. *Observations on communications transmitted to Governments and replies received*. A/HRC/19/61/Add.4. February 29, 2012. Para. 170; Amnesty International. January 24, 2011. *US accused of inhumane treatment over Wikileaks soldier case*; The Guardian. March 12, 2012. *Bradley Manning’s treatment was cruel and inhuman, UN Torture chief rules*.

<sup>903</sup> IACHR. 149 Period of Sessions. Hearing on Freedom of Expression and Communications Surveillance by the United States. October 28, 2013. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=es&session=132>; Committee to Protect Journalists (CPJ). October 10, 2013. *The Obama Administration and the Press. Leak Investigations and surveillance in post-9/11 America*.

<sup>904</sup> Communication of the Permanent Representative of the United States of America to the Organization of American States. December 4, 2013. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

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

439. The Office of the Special Rapporteur insists that, as stated in the Joint Declaration on Wikileaks (2010) and Joint Declaration on surveillance programs (2013), that public authorities or its contractors and their staff bear sole responsibility for protecting the confidentiality of legitimately classified information under their control. Other individuals, including journalists, media workers and civil society representatives, who receive and disseminate classified information because they believe it is in the public interest, should not be subject to liability unless they committed fraud or another crime to obtain the information. In addition, "whistleblowers," that being government employees or contractors release information on violations of the law, on wrongdoing by public bodies, on a serious threat to health, safety or the environment, or on a breach of human rights or humanitarian law should be protected against legal, administrative or employment-related sanctions if they act in good faith. Any attempt to impose subsequent liability on those who disseminate classified information should be grounded in previously established laws enforced by impartial and independent legal systems with full respect for due process guarantees, including the right to appeal.<sup>905</sup>

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

## **G. Other relevant situations**

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

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<sup>905</sup> United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. December 21, 2010. [Joint Statement On Wikileaks](#); United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. June 21, 2013. [Joint Declaration on Surveillance Programs and their Impact on Freedom of Expression](#).

<sup>906</sup> Open Society Foundations. June 12, 2013. [The Global Principles on National Security and the Right to Information \(The Tshwane Principles\)](#)

<sup>907</sup> Open Society Foundations. June 12, 2013. [The Global Principles on National Security and the Right to Information \(The Tshwane Principles\)](#). Principles 37 to 40.

account in which the AP was supposedly reporting on explosions at the White House. As a result of the attack, the account was suspended for some 20 hours.<sup>908</sup>

### 13. Grenada

442. The Office of the Special Rapporteur expresses concern over the enactment of the Electronic Crimes Bill on September 9 by the Parliament of Grenada. The new law criminalizes, among other acts, the sending of “offensive” or “threatening” messages through electronic devices or systems, and punishes such acts with fines of up to 100,000 East Caribbean dollars (some US\$ 37,000.00) and up to one year in prison. Civil society organizations criticized the ambiguity of the law, as well as the scope of its application, which would extend to any person in any country when the acts described in the law have “an effect on the security of Grenada or its nationals.”<sup>909</sup>

### 14. Guatemala

#### A. Progress

443. The Office of the Special Rapporteur has learned that the government of Guatemala published the Access to Public Information Act in the K’iche’ language. The initiative was said to be one of the actions being taken to “promote the transparency and social accountability of institutions.” Guatemala’s vice president, Roxana Baldetti, said the initiative constitutes an “important step” because “it will enable citizens who speak [K’iche’] to become aware of and demand better results, and reduce the levels of corruption.” According to the information received, the law will be translated into four additional languages and that the government’s intention is to have it in all 22 of the languages recognized in Guatemala.<sup>910</sup>

444. The Office of the Special Rapporteur was informed that the State of Guatemala is in the early stages of designing and creating program to protect at-risk journalists. According to the information received, in May of 2013, the president of Guatemala - Otto Pérez Molina - reiterated in the presence of UNESCO and the United Nations Office of the High Commissioner for Human Rights in Guatemala his commitment to local journalism associations and the Centro de Reportes Informativos

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<sup>908</sup> USA Today. April 23, 2013. [AP Twitter feed hacked; no attack at White House](#); Gigaom. April 24, 2013. [AP returns to Twitter after hack — but where are its 2 million followers?](#); The Guardian. April 23, 2013. [AP Twitter hack causes panic on Wall Street and sends Dow plunging](#); The Huffington Post. April 24, 2013. [Associated Press Twitter Account Restored After Hack](#).

<sup>909</sup> Reporters Without Borders. September 23, 2013. [Governor-General urged to veto law](#); Knight Center for Journalism in the Americas. September 27, 2013. [RSF calls for veto of Electronic Crimes law in Grenada](#); Knight Center for Journalism in the Americas. September 18, 2013. [New law in Grenada to punish offensive online content with up to one year in prison](#); International Press Institute (IPI). September 9, 2013. [Once withdrawn, electronic defamation bill passes in Grenada](#). Government of Grenada. [Electronic Crimes Bill, 2013](#). “6. (1) A person shall not knowingly or without lawful excuse or justification send by means of an electronic system or an electronic device— (a) information that is grossly offensive or has a menacing character [...]” “3. This Act applies where— (e) an offence under this Act was committed by any person, of any nationality or citizenship or in any place outside or inside Grenada, having an effect on the security of Grenada or its nationals, or having universal application under international law, custom and usage.”

<sup>910</sup> Gobierno de Guatemala. Secretaría de Comunicación Social de la Presidencia de la República. June 14, 2013. [Vicepresidenta promueve acceso a información pública en idioma K’iche’](#); Gobierno de Guatemala. Ministerio de Gobernación. June 17, 2013. [Gobernación departamental respalda Ley de Acceso a la Información en idioma K’iche’](#); Agencia Guatemalteca de Noticias (AGN). June 13, 2013. [Ejecutivo divulgará Ley de Acceso a la Información en idioma K’iche’](#); Inter American Press Association (IAPA). June 19, 2013. [En idioma k’iche’ la Ley de Libre Acceso a la Información](#).

sobre Guatemala (CERIGUA) “[t]o draw up and implement as soon as possible a preventive program for the protection of journalists”.<sup>911</sup> In August 2013, the President of the Republic reiterated his commitment and affirmed that the State was studying the creation of a body to protect the work and lives of journalists.<sup>912</sup>

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

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

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<sup>911</sup> Compromiso suscrito por el Gobierno de Guatemala a través del Presidente de la República de Guatemala. May 3, 2013. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression; IFEX/Centro de Reportes Informativos sobre Guatemala (CERIGUA). May 7, 2013. [El futuro para un programa de protección a periodistas en Guatemala](#); elPeriódico. August 21, de 2013. [Gobierno anuncia un sistema de protección a periodistas](#).

<sup>912</sup> Terra/ Agence France Presse. August 22, 2013. [Guatemala suscribirá acuerdo de protección a periodistas de ONU](#); El País. August 20, 2013. [Guatemala busca proteger a los periodistas tras cuatro asesinatos](#); Yahoo! Noticias. August 21, 2013. [Firma Guatemala con aval de ONU acuerdo para proteger a periodistas](#); Agencia Guatemalteca de Noticias (AGN). August 20, 2013. [Establecerán en Guatemala instancia que brinde protección a periodistas](#).

<sup>913</sup> Communication from the Permanent Mission of Guatemala to the OAS. M12-OEA-F.2.4.2.1. No. 1230-2013 December 24, 2013, forwarding the communication from the Comisión Presidencial de Derechos Humanos (COPREDEH) Ref. P-100-2013/AFAF/MR/hm of December 18, 2013.

<sup>914</sup> Communication from the Permanent Mission of Guatemala to the OAS. M12-OEA-F.2.4.2.1. No. 1230-2013 of December 24, 2013, forwarding the communication from the Comisión Presidencial de Derechos Humanos (COPREDEH) Ref. P-100-2013/AFAF/MR/hm of December 18, 2013 and the communication from the Ministerio Público SAIC-1355-2013 of November 26, 2013. Secretaría de Comunicación Social de la Presidencia. November 28, 2013. *Propuesta de Programa de Protección al Periodista*.

<sup>915</sup> Communication from the Permanent Mission of Guatemala to the OAS. M12-OEA-F.9.2.1 No. 463-2013. April 22, 2013, forwarding the communication from the Comisión Presidencial de Derechos Humanos (COPREDEH) Ref. P-150-2013/AFAF/MR/hm of March 4, 2013.



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

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

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

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<sup>916</sup> Communication from the Permanent Mission of Guatemala to the OAS. M12-OEA-F.9.2.1 No. 463-2013. April 22, 2013, forwarding the communication from the Comisión Presidencial de Derechos Humanos (COPREDEH) Ref. P-150-2013/AFAF/MR/hm of March 4, 2013.

<sup>917</sup> Congreso de la República de Guatemala. [Decreto Numero 70-96](#). September 27, 1996. Articles 1 y 2.

<sup>918</sup> Communication from the Permanent Mission of Guatemala to the OAS. M12-OEA-F.9.2.1 No. 463-2013. April 22, 2013, forwarding the communication from the Comisión Presidencial de Derechos Humanos (COPREDEH) Ref. P-150-2013/AFAF/MR/hm of March 4, 2013.

<sup>919</sup> Communication from the Permanent Mission of Guatemala to the OAS. M12-OEA-F.9.2.1 No. 463-2013. April 22, 2013, forwarding the communication from the Comisión Presidencial de Derechos Humanos (COPREDEH) Ref. P-150-2013/AFAF/MR/hm of March 4, 2013.

<sup>920</sup> Communication from the Permanent Mission of Guatemala to the OAS. M12-OEA-F.9.2.1 No. 463-2013. April 22, 2013, forwarding the communication from the Comisión Presidencial de Derechos Humanos (COPREDEH) Ref. P-150-2013/AFAF/MR/hm of March 4, 2013.

<sup>921</sup> Communication from the Permanent Mission of Guatemala to the OAS. M12-OEA-F.9.2.1 No. 463-2013. April 22, 2013, forwarding the communication from the Comisión Presidencial de Derechos Humanos (COPREDEH) Ref. P-150-2013/AFAF/MR/hm of March 4, 2013.

reporter with *elPeriódico*.<sup>922</sup> On March 7, the journalist reportedly was a victim of intimidation on the part of the former minister, due to investigations and articles published about the relationship between a retired member of the military, who had been sentenced in the death of Bishop Juan José Gerardi, and prison system authorities. As alleged by *elPeriódico*, the reporter had been warned by the former minister that she should no longer publish stories about the former military man, and he had advised the journalist to “place her trust in God” so that nothing would happen to her.<sup>923</sup>

449. As regards these events, the State of Guatemala reported, in a communication of December 24, 2013, that “upon receiving the report the Office of the Public Prosecutor carried out various investigative activities, among them copying video, photogram, interviews and testimonies of colleagues from work, friends of the journalist, in addition to documentary evidence. Psychological and linguistic expert reports were produced, as well as an analysis of inter-communication. With that evidence the conviction” of the former official “was obtained for the crime of threats.”<sup>924</sup>

450. On October 17, the Second Criminal Court of First Instance sentenced two mining company employees to two years in prison (commutable), for threatening five journalists in November 2012, while they were covering protests against a mining project. According to the information received, the court found them guilty of the crimes of “intimidation and threats,” for which they must pay approximately \$3 for each day of the suspended prison sentence and must pay financial restitution to the journalists.<sup>925</sup>

## B. Murders

451. The Office of the Special Rapporteur has become aware of cases of journalists being killed in which there is still no clear connection with the practice of journalism. Along these lines, the Office of the Special Rapporteur believes it is essential for the authorities to investigate these incidents without dismissing the hypothesis of a connection with journalism and freedom of expression. On March 20, journalist Jaime Napoleón Jarquín Duarte, a correspondent for the newspaper *Nuestro Diario*, was killed in the city of Pedro de Alvarado, in the department of Jutiapa. According to the information received, the journalist had not received threats.<sup>926</sup> On April 7, also in Jutiapa, journalist Luis Alberto Lemus Ruano was killed; he was the head of *Radio Stereo Café*, owner of the cable channel *Café TV*, and

<sup>922</sup> Milenio/EFE. October 10, 2013. [Seis meses de cárcel para ex ministro guatemalteco por amenazar a periodista](#); Fox News Latino/The Associated Press. October 9, 2013. [Juez condena a ex Ministro de Guatemala que amenazó a periodista](#); Prensa Libre. October 9, 2013. [Jueza condena a Jerónimo Lancerio por amenazas a periodista](#).

<sup>923</sup> *elPeriódico*. March 8, 2013. [Intimidación a reportera que escribió sobre Lima](#); Lainformación.com. March 8, 2013. [Denuncian a condenado asesinato obispo de intimidar periodista guatemalteca](#).

<sup>924</sup> Communication from the Permanent Mission of Guatemala to the OAS. M12-OEA-F.2.4.2.1. No. 1230-2013 of December 24, 2013, forwarding the communication from the Comisión Presidencial de Derechos Humanos (COPREDEH) Ref. P-100-2013/AFAF/MR/hm of December 18, 2013 and the communication from the Ministerio Público SAIC-1355-2013 of November 26, 2013.

<sup>925</sup> Ministerio Público. October 23, 2013. [Sentencia por amenazas contra periodistas](#); Prensa Libre. October 17, 2013. [Condenan a trabajadores de mina por amenazar a periodistas](#); Centro de Reportes Informativos sobre Guatemala (CERIGUA). October 18, 2013. [Condenan a empleados de empresa minera por amenazar a periodistas](#); Lainformación.com/ EFE. October 17, 2013. [Condenan en Guatemala a dos empleados de minera por amenazar a periodistas](#).

<sup>926</sup> Knight Center for Journalism in the Americas. March 21, 2013. [Journalist shot, killed in southern Guatemala](#); IFEX/Centro de Reportes Informativos sobre Guatemala (CERIGUA). March 22, 2013. [Guatemalan journalist shot dead](#); El Universal. March 21, 2013. [Asesinan a balazos a corresponsal de periódico en sur de Guatemala](#); Prensa Libre. March 20, 2013. [Periodista jutiapaneco Jaime Jarquin muere en ataque armado](#).

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

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

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

### C. Attacks and threats against media outlets and journalists

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<sup>927</sup> Centro de Reportes Informativos sobre Guatemala (CERIGUA). April 8, 2013. [Periodista es ultimado en Jutiapa, segunda víctima mortal del año](#); Knight Center for Journalism in the Americas. April 9, 2013. [Second journalist shot dead in less than a month in Guatemala](#); Reporters Without Borders. April 9, 2013. [Second Journalist Murdered in Jutiapa Department, Motive Still Unknown](#).

<sup>928</sup> Prensa Libre. August 6, 2013. [Asesinan a locutor Luis Lima](#); Centro de Reportes Informativos sobre Guatemala (CERIGUA). August 6, 2013. [Locutor fue asesinado en Zacapa](#); Reporters Without Borders. August 7, 2013. [Another Journalist Gunned Down, Third since Start of Year](#); Inter American Press Association (IAPA). August 7, 2013. [IAPA denounces murder of another journalist in Guatemala](#).

<sup>929</sup> Siglo 21. August 20, 2013. [Acribillan a periodista en Suchitepéquez](#); United Nations Educational, Scientific and Cultural Organization (UNESCO). August 26, 2013. [Director-General deplores murder of Guatemalan journalist Carlos Alberto Orellana Chávez](#); elPeriódico. August 20, 2013. [Asesinan a periodista Carlos Orellana en Mazatenango](#); Committee to Protect Journalists (CPJ). August 20, 2013. [One journalist murdered, another attacked, in Guatemala](#); Centro de Reportes Informativos sobre Guatemala (CERIGUA). August 19, 2013. [Otro periodista asesinado en Guatemala; cuatro en lo que va del año](#).

<sup>930</sup> Communication from the Permanent Mission of Guatemala to the OAS. M12-OEA-F.2.4.2.1. No. 1230-2013 of December 24, 2013, forwarding the communication from the Comisión Presidencial de Derechos Humanos (COPREDEH) Ref. P-100-2013/AFAF/MR/hm of December 18, 2013 and the communication from the Ministerio Público SAIC-1355-2013 of November 26, 2013.

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

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

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

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

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<sup>931</sup> Centro de Reportes Informativos sobre Guatemala (CERIGUA). April 4, 2013. [Reporteros sufren amenaza y hurto de pertenencias](#); *Prensa Libre*. July 17, 2013. [Agresores de la prensa](#); *elPeriódico*. August 15, 2013. [APG condena agresiones y amenazas contra periodistas](#).

<sup>932</sup> Centro de Reportes Informativos sobre Guatemala (CERIGUA). April 12, 2013. [Director Editorial de Prensa Libre condena agresión contra reporteros](#); *Emisoras Unidas*. April 11, 2013. [Agentes de la seguridad presidencial agreden a periodistas](#); *Prensa Libre*. April 12, 2013. [Agentes de SAAS agreden a Prensa](#); Cámara Guatemalteca de Periodismo. April 2013. [Comunicado de Prensa](#).

<sup>933</sup> Communication from the Permanent Mission of Guatemala to the OAS. M12-OEA-F.2.4.2.1. No. 1230-2013 of December 24, 2013, forwarding the communication from the Comisión Presidencial de Derechos Humanos (COPREDEH) Ref. P-100-2013/AFAF/MR/hm of December 18, 2013 and the communication from the Ministerio Público SAIC-1355-2013 of November 26, 2013.

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

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

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

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

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<sup>934</sup> Prensa Libre. April 25, 2013. [Atropello de MP y PNC](#); Asociación de Periodistas de Guatemala. April 25, 2013. *Comunicado No. 8-04-2013. Intimidan y agreden a corresponsal*. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

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

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

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

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

<sup>939</sup> IFEX/Centro de Reportes Informativos sobre Guatemala (CERIGUA). July 10, 2013. [Periodista víctima de amenazas por parte de alcalde municipal en Guatemala](#); Siglo 21. July 13, 2013. [APG condena amenaza contra periodista](#); Prensa Libre. July 9, 2013. [Alcalde amenaza a periodista](#).

<sup>940</sup> Prensa Libre. July 9, 2013. [Alcalde amenaza a periodista](#).

reported that the Office of the Public Prosecutor “requested the preliminary proceeding against the Mayor, who because of his position enjoys immunity.”<sup>941</sup>

461. Starting on June 13, a correspondent for *Siglo 21* and *Al Día*, Otoniel Esaú Rivera Rivera, and a correspondent for *Nuestro Diario*, Irma Elizabeth Tzi Yat, became targets of death threats as a result of their coverage of the arrest of alleged rapists in the department of Alta Verapaz. Both journalists filed complaints with the Office of the Public Prosecutor.<sup>942</sup> In the communication of December 24, 2013, the State reported that the case “is under investigation” and that several steps were taken, such as documenting the crime scene and the linguistic expert report “that determines the existence of threats against journalists.” In addition, the State reported that “those who made direct threats have been identified, and the process is under way to identify persons who may be responsible for making threats via Facebook.”<sup>943</sup>

462. In addition, Tzi Yat complained that she continued to receive threats and attacks related to her journalistic work.<sup>944</sup> In the communication of December 24, 2013, the State reported that a series of steps have been taken in the context of the investigations into the threats allegedly directed against the journalist by an agent of the National Civilian Police. According to the State, those steps include documenting the crime scene using photography and planimetry; the request to conduct a psychological evaluation of the journalist; and obtaining a report on the offenses committed by the agent who is under investigation.<sup>945</sup>

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

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<sup>941</sup> Communication from the Permanent Mission of Guatemala to the OAS. M12-OEA-F.2.4.2.1. No. 1230-2013 of December 24, 2013, forwarding the communication from the Comisión Presidencial de Derechos Humanos (COPREDEH) Ref. P-100-2013/AFAF/MR/hm of December 18, 2013 and the communication from the Ministerio Público SAIC-1355-2013 of November 26, 2013.

<sup>942</sup> Centro de Reportes Informativos sobre Guatemala (CERIGUA). July 2, 2013. [Agresiones contra la prensa aumentaron durante el segundo trimestre del año](#); IFEX/Centro de Reportes Informativos sobre Guatemala (CERIGUA). June 19, 2013. [Dos periodistas sufren amenazas de muerte por su trabajo en Guatemala](#); Noticias La Esfinge. June 18, 2013. [Dos periodistas de A.V. denuncian amenazas de muerte](#).

<sup>943</sup> Communication from the Permanent Mission of Guatemala to the OAS. M12-OEA-F.2.4.2.1. No. 1230-2013 of December 24, 2013, forwarding the communication from the Comisión Presidencial de Derechos Humanos (COPREDEH) Ref. P-100-2013/AFAF/MR/hm of December 18, 2013 and the communication from the Ministerio Público SAIC-1355-2013 of November 26, 2013.

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

<sup>945</sup> Communication from the Permanent Mission of Guatemala to the OAS. M12-OEA-F.2.4.2.1. No. 1230-2013 of December 24, 2013, forwarding the communication from the Comisión Presidencial de Derechos Humanos (COPREDEH) Ref. P-100-2013/AFAF/MR/hm of December 18, 2013 and the communication from the Ministerio Público SAIC-1355-2013 of November 26, 2013.

recorded.<sup>946</sup> On December 24, 2013, the State reported that the facts had not been “made known to the Office of the Public Prosecutor.”<sup>947</sup>

464. On July 17, the president of the Association of Journalists and Social Communicators of Sololá, and correspondent for the *Centro de Reportes Informativos sobre Guatemala* (CERIGUA) Alfonso Guárquez, reportedly received threats via anonymous text messages. Guárquez apparently filed a complaint with the Human Rights Ombudsman’s Office (PDH).<sup>948</sup>

465. Meanwhile, the Office of the Special Rapporteur was informed that journalist and *elPeriódico* chairman José Rubén Zamora complained that individuals identifying themselves as officers of the Secretariat for Administrative and Security Affairs (SAAS) and the National Civilian Police [*Policía Nacional Civil*] (PNC) had showed up at his house on August 9 and 10 with a supposed search warrant.<sup>949</sup> The journalist complained that these operations were acts of intimidation due to the journalistic work of the newspaper he heads.<sup>950</sup> The Office of the Rapporteur was informed that Interior Minister Mauricio López Bonilla denied, during a news conference, that the officers had tried to enter the journalist’s home, and said the operation were related to a change of bodyguards, since precautionary measures were in place for the journalist.<sup>951</sup>

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

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<sup>946</sup> IFEX/Centro de Reportes Informativos sobre Guatemala (CERIGUA). July 22, 2013. [Tres periodistas agredidos por autoridades de policía en Guatemala](#); Periodistas en español.com. October 2, 2013. [Guatemala: aumentan agresiones contra periodistas](#).

<sup>947</sup> Communication from the Permanent Mission of Guatemala to the OAS. M12-OEA-F.2.4.2.1. No. 1230-2013 of December 24, 2013, forwarding the communication from the Comisión Presidencial de Derechos Humanos (COPREDEH) Ref. P-100-2013/AFAF/MR/hm of December 18, 2013 and the communication from the Ministerio Público SAIC-1355-2013 of November 26, 2013.

<sup>948</sup> Centro de Reportes Informativos sobre Guatemala (CERIGUA). July 18, 2013. [Periodista en Sololá denuncia intimidación en su contra](#); Asociación de Periodistas de Guatemala. August 21, 2013. *Comunicado de Prensa No. 20-08-2013. Reportero sololateco amenazado de muerte*. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>949</sup> *elPeriódico*. August 10, 2013. [Carta abierta a las autoridades de Gobierno, al Ministerio Público, al Procurador de los Derechos Humanos, a la opinión pública y a la Comunidad Internacional](#); Centro de Reportes Informativos sobre Guatemala (CERIGUA). August 12, 2013. [Presidente de elPeriódico denuncia intento de allanamiento en su vivienda](#); Knight Center for Journalism in the Americas. August 14, 2013. [Director of Guatemalan newspaper accuses police force of attempting to raid his home](#).

<sup>950</sup> *elPeriódico*. August 10, 2013. [Carta abierta a las autoridades de Gobierno, al Ministerio Público, al Procurador de los Derechos Humanos, a la opinión pública y a la Comunidad Internacional](#); *elPeriódico*. August 12, 2013. [Solidaridad con Jose Rubén Zamora](#); Inter American Press Association (IAPA). August 15, 2013. [Preocupa a la SIP deterioro de la libertad de prensa en Guatemala](#).

<sup>951</sup> *elPeriódico*. August 12, 2013. [Ministro niega intento de allanamiento en vivienda de Jose Rubén Zamora](#); Knight Center for Journalism in the Americas. August 14, 2013. [Director of Guatemalan newspaper accuses police force of attempting to raid his home](#); Centro de Reportes Informativos sobre Guatemala (CERIGUA). August 12, 2013. [Presidente de elPeriódico denuncia intento de allanamiento en su vivienda](#).

and his family to communicate to him or notify him of the change in the office that would be in charge of the service of protection with bodyguard.” According to the State, the journalist’s wife “was informed of the procedure and at the moment when she was going to be given the letter signed by the president of COPREDEH she suddenly accelerated her vehicle, which is why a copy of the letter was placed in the mailbox of his residence.” The State reported that the act was suspended and rescheduled for August 10. According to the State, on August 10, 2013, the change was made to the protection service.<sup>952</sup>

467. On August 12, journalist Fredy Rodas, a correspondent for radio *Sonora es la Noticia*, was intercepted when heading for his home by unidentified individuals who shot him at least three times in the face and the back. The journalist was seriously injured in one eye and was taken to the hospital.<sup>953</sup> The Office of the Special Rapporteur was informed that the police had arrested the alleged culprit.<sup>954</sup> In the communication of December 24, 2013, the State of Guatemala informed the Office of the Special Rapporteur that “several investigative steps have been taken to clarify the incident and that are aimed at producing the respective evidence, whose positive results are translated into the apprehension” of two individuals “accused of committing the criminal act.”<sup>955</sup>

468. The Office of the Special Rapporteur was informed about threats and attacks reportedly suffered by journalists Aroldo Marroquín, of *Prensa Libre*, and Esner Gómez Navarro, of *Nuestro Diario*, at the hands of alleged officers of the National Civilian Police (PNC), on August 25.<sup>956</sup> According to the information received, these incidents were repudiated by the authorities, and a deputy police inspector was being investigated over the threats and his dismissal was being considered.<sup>957</sup> In the communication of December 24, 2013, the State provided updated information on the investigations. In this regard, it reported that a series of steps had been taken to clarify the facts, such as “documenting the crime scene with photography and planimetry, interviews and testimony of the journalists’ colleagues from work, field investigation and documentary investigation [...], road map, GPS report to determine the exact location of the patrol car in which the agents of the National Civilian Police implicated were driving.” In

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<sup>952</sup> Communication from the Permanent Mission of Guatemala to the OAS. M12-OEA-F.2.4.2.1. No. 1230-2013 of December 24, 2013, forwarding the communication from the Comisión Presidencial de Derechos Humanos (COPREDEH) Ref. P-100-2013/AFAF/MR/hm of December 18, 2013.

<sup>953</sup> Lainformación.com/EFE. August 13, 2013. [Periodista recibe tres balazos en un ataque en la costa sur de Guatemala](#); Centro de Reportes Informativos sobre Guatemala (CERIGUA). August 13, 2013. [Observatorio de los Periodistas condena ataque contra Fredy Rodas](#); Inter American Press Association (IAPA). August 15, 2013. [Preocupa a la SIP deterioro de la libertad de prensa en Guatemala](#); Fox News Latino/EFE. August 13, 2013. [Journalist shot in Guatemala](#).

<sup>954</sup> Lainformación.com/EFE. August 17, 2013. [Policía captura a presunto responsable de herir a periodista guatemalteco](#); Publinews. August 17, 2013. [Capturan a presunto responsable del ataque contra periodista Fredy Rodas](#); Diario de Centro América. August 17, 2013. [Presunto responsable de ataque contra periodista es capturado](#).

<sup>955</sup> Communication from the Permanent Mission of Guatemala to the OAS. M12-OEA-F.2.4.2.1. No. 1230-2013 of December 24, 2013, forwarding the communication from the Comisión Presidencial de Derechos Humanos (COPREDEH) Ref. P-100-2013/AFAF/MR/hm of December 18, 2013 and the communication from the Ministerio Público SAIC-1355-2013 of November 26, 2013.

<sup>956</sup> Prensa Libre. August 26, 2013. [Policía amenaza de muerte a periodistas](#); Centro de Reportes Informativos sobre Guatemala (CERIGUA). August 26, 2013. [Periodistas en San Marcos amenazados por miembro de la PNC](#); Terra. August 26, 2013. [Periodista guatemalteco denuncia amenazas de policía \(prensa\)](#); Prensa Libre. August 27, 2013. [Rechazo unánime por amenazas a periodistas](#).

<sup>957</sup> Prensa Libre. August 26, 2013. [Subinspector policial será destituido por amenazas a periodistas](#); Siglo 21. August 27, 2013. [Pérez afirma que no tolerará ataques contra periodistas](#); Centro de Reportes Informativos sobre Guatemala (CERIGUA). August 29, 2013. [Subinspector que agredió a periodistas será dado de baja](#).



addition, according to what was reported by the State, six National Police agents “were summoned in their capacity as persons accused of the crimes of threats and abuse of authority.”<sup>958</sup>

469. On August 25, journalist Lucrecia Mateo, a correspondent for *Corporación de Noticias* (publishing house of the newspapers *Siglo 21* and *Al Día*), was attacked while she was covering a meeting on hydroelectric projects in Huehuetenango. A group of people purportedly headed by a community leader was said to have burst into the place where the meeting was being held, attacking those who were present. Mateo was grabbed by her hair, flung to the ground, and struck, and her camera was snatched away from her.<sup>959</sup> In the communication of December 24, 2013, the State reported that “the incident was not made known to the Prosecutorial Unit for Crimes against Journalists [*Unidad Fiscal de Delitos contra Periodistas*].”<sup>960</sup>

470. On September 30, news teams from the media outlets *Prensa Libre* and *Nuestro Diario* were blocked from entering the municipality of Santa Cruz Barillas, in the department of Huehuetenango, where they were heading to cover some disturbances that took place during protests by community residents against a hydroelectric company. Journalist Hugo Alvarado and photographer Erick Ávila, of *Prensa Libre*, and journalist Keneth Monzón and photographer René Ruano, of *Nuestro Diario*, were prevented from driving down the road, which was blocked by *campesinos* who threw rocks, threatened to burn their vehicles, and threatened them with machetes so that they would leave. In addition, they forced photographer Ruano to erase the photos from his camera and punctured a tire on the vehicle belonging to *Nuestro Diario*.<sup>961</sup>

471. On October 19, the bodyguard of journalist Karina Rottman, a board member of the cable channel *Vea Canal*, was killed by unknown individuals. According to the information received, this is the second attack on members of her security team during that month. Spokespeople for the channel reportedly stated that the attacks are meant to have a chilling effect on the journalist’s work.<sup>962</sup> Previously, the general manager of *Vea Canal*, Otto Rottman, had complained that a number of cable

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<sup>958</sup> Communication from the Permanent Mission of Guatemala to the OAS. M12-OEA-F.2.4.2.1. No. 1230-2013 of December 24, 2013, forwarding the communication from the Comisión Presidencial de Derechos Humanos (COPREDEH) Ref. P-100-2013/AFAF/MR/hm of December 18, 2013 and the communication from the Ministerio Público SAIC-1355-2013 of November 26, 2013.

<sup>959</sup> Siglo 21. August 27, 2013. [Agreden a periodistas de Siglo 21](#); Centro de Reportes Informativos sobre Guatemala (CERIGUA). October 1, 2013. [Agresiones contra la prensa aumentan entre julio y septiembre](#); elPeriódico. August 28, 2013. [APG condena, por enésima vez, agresiones y amenazas contra periodistas](#).

<sup>960</sup> Communication from the Permanent Mission of Guatemala to the OAS. M12-OEA-F.2.4.2.1. No. 1230-2013 of December 24, 2013, forwarding the communication from the Comisión Presidencial de Derechos Humanos (COPREDEH) Ref. P-100-2013/AFAF/MR/hm of December 18, 2013 and the communication from the Ministerio Público SAIC-1355-2013 of November 26, 2013.

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

<sup>962</sup> El tiempo. October 20, 2013. [Desconocidos asesinaron a tiros a uno de los guardaespaldas de Karina Rottman, directiva del canal de televisión por cable VEA Canal de Guatemala, que difunde programas de análisis y críticas](#); Centro de Reportes Informativos sobre Guatemala (CERIGUA). October 21, 2013. [Guardaespaldas de Karina Rottman fue asesinado; segundo ataque contra su personal de seguridad](#); elPeriódico. October 20, 2013. [Matan a guardaespaldas de personal de “Vea Canal”](#).

companies had blocked *Vea Canal's* signal, which he said came in response to pressures due to the critical nature of its programs.<sup>963</sup>

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

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

#### D. Subsequent liability

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

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<sup>963</sup> HispanTV. September 29, 2013. [Gobierno de Guatemala censura medios de comunicación](#); Reporters Without Borders. October 23, 2013. [El canal por cable Vea Canal en el punto de mira: asesinan a un guardaespaldas](#); Centro de Reportes Informativos sobre Guatemala (CERIGUA). October 21, 2013. [Guardaespalidas de Karina Rottman fue asesinado; segundo ataque contra su personal de seguridad](#).

<sup>964</sup> Communication from the Permanent Mission of Guatemala to the OAS. M12-OEA-F.2.4.2.1. No. 1230-2013 of December 24, 2013, forwarding the communication from the Comisión Presidencial de Derechos Humanos (COPREDEH) Ref. P-100-2013/AFAF/MR/hm of December 18, 2013 and the communication from the Ministerio Público SAIC-1355-2013 of November 26, 2013.

<sup>965</sup> Centro de Reportes Informativos sobre Guatemala (CERIGUA). July 31, 2013. [Demanda contra periodista es improcedente](#); Prensa Libre. July 26, 2013. [Ingenio acusa a periodista](#).

the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.”

#### **E. Access to public information**

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

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

#### **F. The Internet and freedom of expression**

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

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<sup>966</sup> Procurador de los Derechos Humanos (PDH). April 2013. [Informe Anual de Situación del Derecho Humano de Acceso a la Información Pública 2012](#); Centro de Reportes Informativos sobre Guatemala (CERIGUA). April 25, 2013. [Entidades del Estado niegan información pública](#).

<sup>967</sup> *elPeriódico*. January 4, 2013. [Denuncia de ataque cibernético](#); *elPeriódico*. March 25, 2013. [Ataques cibernéticos](#); Inter American Press Association (IAPA). April 9, 2013. [Reported government harassment of Guatemala paper brings IAPA rebuke](#); Committee to Protect Journalists (CPJ). May 2, 2013. [Guatemalan outlet harassed after critical reporting](#); Knight Center for Journalism in the Americas. April 17, 2013. [Cyberattack on El Periódico in Guatemala is the most recent in a long history of aggressions](#).

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

## G. Community radio broadcasting

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

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

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100-2013/AFAF/MR/hm of December 18, 2013 and the communication from the Ministerio Público SAIC-1355-2013 of November 26, 2013.

<sup>969</sup> IACHR. 147 Period of Sessions. Hearing on the Situation of the Right to Freedom of Expression of the Indigenous Peoples in Guatemala. March 15, 2013. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=en&Session=131&page=2>

<sup>970</sup> IACHR. 147 Period of Sessions. Hearing on the Situation of the Right to Freedom of Expression of the Indigenous Peoples in Guatemala. March 15, 2013. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=en&Session=131&page=2>; Superintendencia de Telecomunicaciones. República de Guatemala. [Decreto 94-96 del Congreso de la República de Guatemala. Ley General de Telecomunicaciones.](#)

<sup>971</sup> IACHR. 147 Period of Sessions. Hearing on the Situation of the Right to Freedom of Expression of the Indigenous Peoples in Guatemala. March 15, 2013. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=en&Session=131&page=2>; Centro Nacional de Análisis y Documentación Judicial. [Decreto No. 34-2012](#). November 30, 2012; IACHR. [Annual Report 2012. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. Para. 277.

<sup>972</sup> The General Telecommunications Act establishes fines of up to US\$10,000 for the illegal broadcast of frequencies. Superintendencia de Telecomunicaciones. República de Guatemala. [Decreto 94-96 del Congreso de la República de Guatemala. Ley General de Telecomunicaciones](#). Articles 79-81.

<sup>973</sup> IACHR. 147 Period of Sessions. Hearing on the Situation of the Right to Freedom of Expression of the Indigenous Peoples in Guatemala. March 15, 2013. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=en&Session=131&page=2>; Congreso de la República de Guatemala. July 10, 2012. [Iniciativa que dispone aprobar reformas al decreto número 17-73 del Congreso de la República, Código Penal](#). Numero de registro 4474. Available for consultation at: <http://www.lexglobal.com/documentos/1351882373.pdf>;

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

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

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

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Centro de Reportes Informativos sobre Guatemala (CERIGUA). August 25, 2012. [Denuncian iniciativa de ley que busca criminalizar a las radios comunitarias.](#)

<sup>974</sup> Corte de Constitucionalidad de la República de Guatemala. Judgement of March 14, 2012. Inconstitucionalidad General Parcial. [Expediente 4238-2011](#); IACHR. [Annual Report 2012. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. Para. 275.

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

<sup>976</sup> See, for example: IACHR. [Justice and Social Inclusion: the Challenges of Democracy in Guatemala](#). OEA/Ser.L/V/II.118 Doc. 5 rev. 1. December 29, 2003. Chapter VII (The Situation of Freedom of Expression). Para. 414 and 428.

<sup>977</sup> IACHR. 147 Period of Sessions. Hearing on the Situation of the Right to Freedom of Expression of the Indigenous Peoples in Guatemala. March 15, 2013. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=en&Session=131&page=2>. See, for example: Congreso de la República de Guatemala. [Iniciativa que dispone aprobar ley de medios de comunicación comunitaria. Numero de registro 4087](#). August 20, 2009.

<sup>978</sup> IACHR. 147 Period of Sessions. Hearing on the Situation of the Right to Freedom of Expression of the Indigenous Peoples in Guatemala. March 15, 2013. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=en&Session=131&page=2>.

<sup>979</sup> IACHR. 147 Period of Sessions. Hearing on the Situation of the Right to Freedom of Expression of the Indigenous Peoples in Guatemala. March 15, 2013. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=en&Session=131&page=2>.

such,” and it indicated that the Congress is studying various alternatives in response to the Constitutional Court’s judgment.<sup>980</sup>

482. During the hearing, the Special Rapporteur for Freedom of Expression indicated that the community radio stations of the indigenous peoples have the right to be recognized and that, as part of this recognition, they have the right for community broadcasting to be properly recognized and regulated. In addition, the Rapporteur noted that it would be improper to equate community broadcasting with illegal broadcasting. In this sense, she considered it essential for the State to regulate the phenomenon of community broadcasting in accordance with international standards on the matter.<sup>981</sup> In the opinion of the Special Rapporteur’s Office, not having a specific definition of community broadcasting means not having regulations that address its particular realities.

483. The Office of the Special Rapporteur reiterates its recommendation that the “the State must promote different groups’ access to radio and television frequencies and licenses under conditions of equality and non-discrimination, no matter their technology. In effect, the State is obligated to recognize and facilitate equal access to commercial, social, or public radio or television proposals, both in the radio spectrum and in the new digital dividend. It is crucial that all disproportionate or discriminatory restrictions that block radio or television broadcasters be removed so that the broadcasters can access their frequencies and complete the mission they have taken up. The State regulatory frameworks should establish open, public, and transparent processes for assigning licenses or frequencies. These processes should have rules that are clear and pre-established, as well as requirements that are necessary, just, and fair.’ Likewise, to ensure free, vigorous, and diverse radio and television broadcasting, the private sector media must have guarantees against State arbitrariness; social media should enjoy conditions that prevent them from being controlled by the State or by economic groups; and public media should be independent of the Executive Branch.”<sup>982</sup>

484. On June 6, alleged officers of the National Civilian Police and the Public Prosecutor’s Office allegedly raided the premises of the community broadcast station *Radio Roca*, in Sololá, and seized transmission equipment, according to a complaint by the Kaji B’atz association.<sup>983</sup>

## H. Other relevant situations

485. In March, the Public Prosecutor’s Office and the Special Prosecutor’s Office of the International Commission against Impunity in Guatemala (CICIG) reportedly subpoenaed a reporter from

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<sup>980</sup> IACHR. 147 Period of Sessions. Hearing on the Situation of the Right to Freedom of Expression of the Indigenous Peoples in Guatemala. March 15, 2013. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=en&Session=131&page=2>.

<sup>981</sup> IACHR. 147 Period of Sessions. Hearing on the Situation of the Right to Freedom of Expression of the Indigenous Peoples in Guatemala. March 15, 2013. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=en&Session=131&page=2>; IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009.

<sup>982</sup> IACHR. [Annual Report 2010. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 284.

<sup>983</sup> Centro de Reportes Informativos sobre Guatemala (CERIGUA). June 8, 2013. [Denuncian allanamiento de radio comunitaria en Sololá](#); Kaji Batz Solola. June 6, 2013. [Comunicado por allanamiento ilegal a radios comunitarias de Solola](#).

the newspaper *La Hora* to ask her details about her source of information for an article citing a confidential report on the situation in the country's prisons. According to an editorial in the newspaper *La Hora*, after the journalist refused to reveal details to protect the identity of her source, one of the investigators reportedly stated that they had information about the reporter's emails.<sup>984</sup>

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

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

## 15. Guyana

### A. Progress

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

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

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<sup>984</sup> La Hora. March 20, 2013. [Fuentes anónimas](#); Knight Center for Journalism in the Americas. March 25, 2013. [Guatemalan prosecutors ask reporter to reveal source of leaked prison report](#); Centro de Reportes Informativos sobre Guatemala (CERIGUA). March 21, 2013. [Acoso legal contra la prensa](#).

<sup>985</sup> Prensa Libre. September 22, 2013. [Prensa Libre señala bloqueo a sus lectores](#); Centro de Reportes Informativos sobre Guatemala (CERIGUA). October 1, 2013. [Agresiones contra la prensa aumentan entre julio y septiembre](#).

<sup>986</sup> "Attorney General Anil Nandlall expressly agreed that journalists 'should not go to jail for practising their craft,' and pledged to prepare a memo on the issue for the country's cabinet. Nandlall stated: 'I cannot see the utility of having something in the law that is not used,' adding that no Guyanese journalist had been charged with criminal libel in recent times." International Press Institute (IPI). April 18-20, 2013. [Final Report on the 2013 IPI Mission to Guyana: Focus on Criminal Defamation](#); International Press Institute (IPI). April 23, 2013. [Guyanese government considers IPI argument against criminal libel](#).

<sup>987</sup> Government's Information Agency. May 23, 2013. [Charles Ramson Sr. appointed Commissioner of Information](#); Government's Information Agency. July 16, 2013. [Justice Charles Ramson sworn-in as first Commissioner of Information](#); Guyana Times. 23 de mayo de 2013. [Ramson appointed commissioner of information](#); Stabroek News. May 23, 2013. [Charles Ramson Snr appointed Commissioner of Information](#); Freedom Info. August 5, 2013. [First Guyana Information Commissioner Sworn In](#).

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

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

## 16. Haiti

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

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

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<sup>988</sup> Kaieteur News. October 19, 2013. [Two cable TV operators among nine licensed broadcasters](#); iNews Guyana. October 18, 2013. [TV, Radio stations receive licenses from Broadcasting Authority](#); International Press Institute (IPI). April 18-20, 2013. [Final Report on the 2013 IPI Mission to Guyana: Focus on Criminal Defamation](#).

<sup>989</sup> "This ruling may be in collision with freedom of expression and its fundamental adjunct, freedom of the press, a fundamental right guaranteed by the Constitution, our supreme law". Ministry of Legal Affairs. Attorney General's Chamber. [Press Release](#). See also, Guyana Times. October 26, 2013. [Gag on Guyana Times colliding with press freedom – Nandlall](#); iNews Guyana. October 25, 2013. [AG criticizes High Court Judge for issuing gag order against Guyana Times](#).

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

<sup>991</sup> Ministry of Legal Affairs. Attorney General's Chamber. [Press Release](#).

<sup>992</sup> International Press Institute (IPI). March 27, 2013. [Haitian editor-in-chief killed in drive-by shooting](#); Fox News/AP. March 25, 2013. [Haiti PM: government aide slain outside home in drive-by by masked gunmen on motorcycle](#); Haïti Progrès. March 26, 2013. [Haïti Progrès En deuil](#).



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

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

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

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

497. Principle 5 of the IACHR’s Declaration of Principles on Freedom of Expression, approved in 2000, states that: “[r]estrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”

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

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<sup>993</sup> Radio Kiskeya. May 20, 2013. [Radio Kiskeya pleure Pierre-Richard Alexandre, enlevé brutalement aux siens](#); El Confidencial/EFE. May 21, 2013. [RSF pide a Haití que aclare la muerte de un corresponsal de Radio Kiskeya](#); Haiti Public News. May 21, 2013. [Haiti: Veteran journalist Pierre-Richard Alexandre fatally shot](#).

<sup>994</sup> Knight Center for Journalism in the Americas. February 20, 2013. [Haitian reporters accuse president’s security of attack](#); The Sentinel. February 16, 2013. [Two Journalists Beaten by President Martelly’s Security](#); Rapadoo Observateur/Le Nouvelliste. February 15, 2013. [Des incidents qui discréditent le gouvernement](#).

<sup>995</sup> RTVC. February 10, 2013. [La RTVC expulsée du bal des reines au Palais Sans-Souci](#); Knight Center for Journalism in the Americas. February 20, 2013. [Haitian reporters accuse president’s security of attack](#).

<sup>996</sup> Information sent by the State of Haiti within the hearing Situation of the Right to Freedom of Expression in Haiti, held during the 147 Period of Sessions of the IACHR. Available for consultation at: Archives of the Office of Special Rapporteur for Freedom of Expression.

the ministries and other public institutions. The government indicated that additional efforts remained to be made, and therefore it would be ready to discuss with the relevant actors the need for legislative reform, which will be an indispensable part of building the rule of law.<sup>997</sup>

499. With respect to the status of community radio broadcasters in Haiti, the State indicated at the aforementioned hearing that the sector's regulatory agency (CONATEL) was making efforts to regulate their operation. In this regard, the State reported that it was preparing a new draft of law to allow existing community radio stations continue operating, and to facilitate the creation of new stations.<sup>998</sup> Although it was not in attendance, the organization that requested the hearing had provided information in which it referred to the need to put an end to what it called "arbitrary and illegal" judicial measures against community radios, and to authorize the operation of the community broadcasters that submit applications.<sup>999</sup>

500. The Office of the Special Rapporteur recalls its recommendation that, "the State must promote different groups' access to radio and television frequencies and licenses under conditions of equality and non-discrimination, no matter their technology. In effect, the State is obligated to recognize and facilitate equal access to commercial, social, or public radio or television proposals, both in the radio spectrum and in the new digital dividend. It is crucial that all disproportionate or discriminatory restrictions that block radio or television broadcasters be removed so that the broadcasters can access their frequencies and complete the mission they have taken up. The State regulatory frameworks should establish open, public, and transparent processes for assigning licenses or frequencies. These processes should have rules that are clear and pre-established, as well as requirements that are necessary, just, and fair. Likewise, to ensure free, vigorous, and diverse radio and television broadcasting, the private sector media must have guarantees against State arbitrariness; social media should enjoy conditions that prevent them from being controlled by the State or by economic groups; and public media should be independent of the Executive Branch."<sup>1000</sup>

501. In a communication sent to the IACHR, the organizations that had requested the hearing expressed the need for the revision of those regulatory provisions that may limit freedom of expression, especially *desacato* laws, which would be contrary to the inter-American standards.<sup>1001</sup>

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

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

<sup>998</sup> IACHR. 147 Period of Sessions. Hearing on the Situation of the Right to Freedom of Expression in Haiti. March 16, 2013. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=en&Session=131&page=3>

<sup>999</sup> Association des Journalistes Indépendants d'Haïti. Hearing request to the IACHR on the situation of the freedom of expression in Haiti. January 7, 2013. Available for consultation at: Archives of the Office of Special Rapporteur for Freedom of Expression.

<sup>1000</sup> IACHR. [Annual Report 2010. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 284

<sup>1001</sup> Association des Journalistes Indépendants d'Haïti. Hearing request to the IACHR on the situation of the freedom of expression in Haiti. January 7, 2013. Available for consultation at: Archives of the Office of Special Rapporteur for Freedom of Expression.

to assassinate Jean Monard Métellus, a journalist from *Radio Caraïbes FM*.<sup>1002</sup> According to press reports, Monard Métellus was also victim of threats. The Minister of Justice and Public Safety, Juan Renel Sanon, was reported to have publicly expressed the State's intent to provide protection to the journalist.<sup>1003</sup>

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

## 17. Honduras<sup>1004</sup>

### A. Progress

504. The IACHR is pleased to take note of the bill drafted by the Secretariat of Justice and Human Rights of Honduras, which proposes a reform to the Criminal Code. The bill partly repeals the criminal offenses of defamation [*injuria*, *calumnia* and *difamación*] in keeping with the recommendation made to the States of the region by the Office of the Special Rapporteur for Freedom of Expression in the 2012 Annual Report of the Inter-American Commission on Human Rights, concerning criminal or civil provisions that sanction expression.<sup>1005</sup> The Commission urges the government to move forward in said process of reform.

505. In April, the Sentencing Court of San Pedro Sula convicted an agent of the National Police to five years imprisonment for the torture of a cameraman on May 6, 2011, in Valle de Sula. The sentence was commutable and the convict could pay a fine of 10 lempiras (some US\$ 0.5) per day of jail term.<sup>1006</sup> On May 6, 2011, cameraman Uriel Rodríguez, who at the time was working for *Globo TV*, was allegedly beaten by the agent of the National Police, while he was filming the breaking up of a demonstration. The reporter sustained injuries on the head and thorax and required hospitalization. On November 18, 2011, the Office of the Public Prosecutor brought charges for the Crime of Torture.<sup>1007</sup>

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<sup>1002</sup> Agence Haitienne de Presse (AHP). October 22, 2013. [Réactions en chaine après la note du Ministère de la justice accusant un secteur plitique de vouloir attenter a la vie du journaliste Jean Monard Métellus pour en faire porter la responsabilité au gouvernement](#); Radio Télévisión Caraïbes (RTVC). October 21, 2013. [L'éventuel complot pour assassiner un journaliste annoncé par le gouvernement soulève des remous](#).

<sup>1003</sup> Reporters Without Borders. October 23, 2013. [Murder contract on journalist amid rising political tension](#); Bèl Politik. October 19, 2013. [Plot To Assassinate Caraibes FM Journalist Jean Monard Metellus Uncovered](#).

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

<sup>1005</sup> Secretaría de Estado en los Despachos de Justicia y Derechos Humanos. May 22, 2013. Communication to the Office of Special Rapporteur for Freedom of Expression. Available for consultation at: Archives of the Office of Special Rapporteur for Freedom of Expression.

<sup>1006</sup> La Tribuna. April 17, 2013. [Cinco años de cárcel para policía agresor](#); Revistazo. April 18, 2013. [Condenan policia que agredió a reportero grafico en Honduras](#); El Libertador. April 22, 2013. [Honduras: mandan a la cárcel a policia por torturar a camarógrafo en 2011](#).

<sup>1007</sup> IACHR. [Annual Report 2011. Annual Report of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere) OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 344.

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

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

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

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<sup>1008</sup> Presidencia de Honduras. August 27, 2013. [Gobierno firma convenio para electrificar centros educativos](#); El Heraldo. August 27, 2013. [Presidente Lobo entrega frecuencias de radio](#).

<sup>1009</sup> Presidencia de Honduras. October 1, 2013. [Available for consultation at: http://www.noodls.com/view/E0B4B9B8004194E347FD7C34877267217629CED3](#)

<sup>1010</sup> In Communication from the State of Honduras, Official Letter No. SP-A-166-2013, dated December 19, 2013, “Observations of the State of Honduras on the Draft Report on the Situation of Human Rights in Honduras.”

<sup>1011</sup> In Communication from the State of Honduras, Official Letter No. SP-A-166-2013, dated December 19, 2013, “Observations of the State of Honduras on the Draft Report on the Situation of Human Rights in Honduras.”

<sup>1012</sup> Estado de Honduras. Progress report on implementation of the National Plan for the Protection of Human Rights Defenders, Journalists, Media Workers, and Legal Practitioners. October 23, 2013. P. 8. Information provided by the State within the Hearing on the Implementation of Precautionary Measures in Honduras, held during the 149 Period of Sessions of the IACHR. *See also*, IACHR. 149 Period of Sessions. Hearing on the Implementation of Precautionary Measures in Honduras. October 28, 2013. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=en&session=132>

<sup>1013</sup> According to Article 17 of the Draft Law for the Protection of Human Rights Defenders, Journalists, Media Workers, and Legal Practitioners, the National Protection Council will be composed of representatives from: the Office of the Secretary of State for Justice and Human Rights; the Office of the Secretary of State for Security; the Office of the Secretary of State for Foreign Affairs; the Office of the National Human Rights Commissioner; the Office of the Public Prosecutor; the Office of the Attorney General of the Republic; the Judiciary; the Honduran Bar Association; the Honduran Association of Journalists; and by five representatives of civil society organizations. Draft Law for the Protection of Human Rights Defenders, Journalists, Media Workers, and Legal Practitioners. Article 17. Information provided by the State at the Hearing on the Implementation of Precautionary Measures in Honduras, held during the 149 Period of Session of the IACHR. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

Human Rights Defenders, Journalists, Media Workers, and Legal Practitioners, will be the body responsible for “handling complaints of risk to the beneficiaries of this law, and the instructions and policies issued by the National Protection Council.”<sup>1014</sup> Accordingly, the Draft Law provides that the Office of Protection Mechanisms will have three auxiliary units: the Case Intake, Risk Assessment, and Immediate Response Unit<sup>1015</sup>, the Prevention, Monitoring, and Analysis Unit<sup>1016</sup>, and the Unit for the Protection of At-Risk Individuals.<sup>1017</sup> Additionally, the Draft Law contains various preventive and protective measures that will be able to be implemented according to the risk faced by the beneficiary, and provides that, “to the extent possible, the protection measures shall not restrict the normal activities of the beneficiaries or involve unwanted surveillance or intrusions in their personal or professional lives.”<sup>1018</sup> The State reported that the Draft Law was introduced to the Congress of the Republic on August 28, 2013 for debate and approval.<sup>1019</sup> Different civil society organizations reportedly made important observations to the draft bill at the hearing on the implementation of precautionary measures in Honduras, held on October 28, 2013, during the 149 Period of Sessions of the IACHR, especially insofar as it refers to the participation of social organizations in the protection mechanism, its institutional design, and the indiscriminate treatment under the draft bill of the populations subject to protection.<sup>1020</sup>

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<sup>1014</sup> Draft Law for the Protection of Human Rights Defenders, Journalists, Media Workers, and Legal Practitioners. Article 25. Information provided by the State within the Hearing on the Implementation of Precautionary Measures in Honduras, held during the 149 Period of Sessions of the IACHR. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

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

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

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

<sup>1018</sup> Draft Law for the Protection of Human Rights Defenders, Journalists, Media Workers, and Legal Practitioners. Article 44. Information provided by the State within the Hearing on the Implementation of Precautionary Measures in Honduras, held during the 149 Period of Sessions of the IACHR. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1019</sup> Estado de Honduras. Progress report on implementation of the National Plan for the Protection of Human Rights Defenders, Journalists, Media Workers, and Legal Practitioners. October 23, 2013. P. 10. Information provided by the State within the Hearing on the Implementation of Precautionary Measures in Honduras, held during the 149 Period of Sessions of the IACHR. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1020</sup> IACHR. 149 Period of Sessions. Hearing on the Implementation of Precautionary Measures in Honduras. October 28, 2013. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=en&session=132>

509. In its communication of December 19, 2013, the State reported on the approval of the National Plan for the Protection of Human Rights Defenders, Journalists, Media Workers, and Legal Practitioners. The State reported that the plan was “in a process of socialization” and that an “awareness plan for the national authorities concerned with its implementation” had been approved for its proper implementation. The State also reported that a national directory of human rights defense organizations, journalists, media workers, and legal practitioners had been established, with the participation of 50 non-governmental organizations. According to the information provided by the State, a Working Table was assembled to monitor the implementation of the Plan for the Protection of Human Rights Defenders, Journalists, Media Workers, and Legal Practitioners, comprised by representatives from government institutions, academia, professional associations, and civil society. The State also reported that it convened civil society organizations to form the “National Protection Network for Human Rights Defenders, Media Workers, and Legal Practitioners, as a space for coordination, collaboration, and open dialogue among those organizations, with a view to empowering and strengthening the work of local, regional, and national alliances and networks.”<sup>1021</sup>

510. Additionally, at the hearing on the implementation of precautionary measures in Honduras, held on October 28, 2013 during the IACHR’s 149 Period of Sessions, the State provided information on the creation of a “High Impact Deaths Unit” assigned to the Office of the Special Prosecutor for Crimes against the Person. According to the information received, the unit was established to identify the murders of persons belonging to groups particularly affected by violence, such as journalists, legal practitioners, and human rights defenders. According to the information received, the unit was involved in 26 investigations into the murder of journalists during the period from 2009 to 2013, of which 10 have reportedly been prosecuted.<sup>1022</sup> The State reported that the case of the May 15, 2012 murder of journalist Alfredo Villatoro<sup>1023</sup> “was pending trial” against four defendants accused of aggravated kidnapping. According to reports, the trial is set for March, 2014.<sup>1024</sup>

## **B. Murders<sup>1025</sup>**

511. On July 9, the lifeless body of journalist Aníbal Barrow was found in the municipality of Villanueva, Department of Cortes. Barrow had been abducted on June 24 by armed individuals in the

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<sup>1021</sup> Communication from the State of Honduras, Official Letter No. SP-A-166-2013, dated December 19, 2013, “Observations of the State of Honduras on the Draft Report on the Situation of Human Rights in Honduras.”

<sup>1022</sup> IACHR. 149 Period of Sessions. Hearing on the Implementation of Precautionary Measures in Honduras. October 28, 2013. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=en&session=132> (video) [00:44:00].

<sup>1023</sup> IACHR. [Annual Report 2012. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. Para. 304.

<sup>1024</sup> IACHR. 149 Period of Sessions. Hearing on the Implementation of Precautionary Measures in Honduras. October 28, 2013. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=en&session=132> (video) [00:44:50].

<sup>1025</sup> During 2013 the Office of the Special Rapporteur reported the assassinations of journalists Aníbal Barrow and Juan Carlos Argeñal. The latter took place after the closing of this report. IACHR. Office of the Special Rapporteur for Freedom of Expression. December 11, 2013. [Press Release R 98/13. Office of the Special Rapporteur Condemns Murder of Journalist in Honduras](#); IACHR. Office of the Special Rapporteur for Freedom of Expression. July 15, 2013. [Press Release R 50/13. Office of the Special Rapporteur Condemns Murder of Kidnapped Journalist in Honduras](#).

City of San Pedro Sula, Cortés.<sup>1026</sup> According to the information received, the journalist, the host of the television program ‘Aníbal Barrow y nada mas [‘Just Aníbal Barrow’], broadcast by *Globo TV*, was in his automobile along with two family members and a driver, when unidentified individuals took control of the vehicle and, after releasing those who were accompanying him, proceeded to abduct him. The vehicle was found a few hours later with traces of blood and signs of gunshots. The authorities began an intensive search to find the journalist, who was finally found on July 9 in the area of a lake in the municipality of Villanueva. According to the report, the body of the journalist was mutilated and partially burned. The police authorities have reported that there are five suspects in custody and an arrest warrant is outstanding for another three individuals for their alleged association with the crime.<sup>1027</sup>

512. With regard to Barrow’s murder, in a communication dated December 19 the State reported that the Office of the Public Prosecutor (MP) had indicted eight individuals for the offenses of murder, aggravated robbery, and criminal conspiracy, and that hearings before the respective court are forthcoming. The State further indicated that it would continue the preliminary investigation to identify other persons involved.<sup>1028</sup>

513. Also, on July 9, the same day the body of Aníbal Barrow was found, journalist Eduardo Maldonado, the owner of the television channel *Hable como habla*, publicly exposed during the program ‘Hable como Habla’ that he had received a threatening text message: “That’s why you’re getting killed assholes because you mettle in things you shouldn’t, you’re scared you’ll be killed too.”<sup>1029</sup>

514. Additionally, on July 15, journalist Aldo Calderón of *Channel 11* and the daily newspaper *Diario Tiempo*, was allegedly poisoned to death, after ingesting aluminum phosphide.<sup>1030</sup> Subsequently, the former chief of the office known at the time as the Internal Affairs Unit of the National Police stated to the organization C-Libre that at the time of his death, the journalist was in the process of investigating the murder of Aníbal Barrow. According to this account, the journalist had found evidence implicating authorities in the Barrow crime.<sup>1031</sup> According to the State, in relation to Calderón’s death, “there is no evidence that his death was a murder; rather, it would appear to be a suicide.”<sup>1032</sup>

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<sup>1026</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. July 15, 2013. [Press Release R 50/13. Office of the Special Rapporteur Condemns Murder of Kidnapped Journalist in Honduras](#); Proceso Digital. July 10, 2013. [Fiscalía confirma que cuerpo encontrado en Siboney pertenece a Aníbal Barrow](#); La Prensa. July 10, 2013. [Honduras: Confirman que cadáver hallado es de Aníbal Barrow](#).

<sup>1027</sup> El Heraldo. September 25, 2013. [Cae supuesto asesino de Aníbal Barrow](#); El Tiempo. September 25, 2013. [De chiripa cae sospechoso de asesinar a Aníbal Barrow](#); La Prensa. October 3, 2013. [Supuesto asesino de Barrow seguirá en el penal](#).

<sup>1028</sup> In Communication from the State of Honduras, Official Letter No. SP-A-166-2013, dated December 19, 2013, “Observations of the State of Honduras on the Draft Report on the Situation of Human Rights in Honduras.”

<sup>1029</sup> IFEX/C-Libre. July 16, 2013. [Honduran reporter threatened with same fate as murdered colleague](#).

<sup>1030</sup> La Tribuna. July 16, 2013. [Fallece periodista Aldo Calderón](#).

<sup>1031</sup> IFEX/C-Libre. July 29, 2013. [Reportero hondureño muere después de investigar asesinato de otro periodista](#); ADEPA. July 30, 2013. [Periodista hondureño que investigaba asesinato de colega muere envenenado](#).

<sup>1032</sup> In Communication from the State of Honduras, Official Letter No. SP-A-166-2013, dated December 19, 2013, “Observations of the State of Honduras on the Draft Report on the Situation of Human Rights in Honduras.”

515. In its December 19, 2013 communication, the State of Honduras asserted that, just as it had indicated in its Observations to the 2011 Annual Report, “in the context of general violence that the country is unfortunately experiencing, there have been murders, attempts, and threats against members of the media during the past five years.” As it stated in those Observations, “The State of Honduras is aware of its commitment to guarantee that diligent and exhaustive investigations are conducted into the facts. Accordingly, the State of Honduras took part in the public hearing before the IACHR entitled ‘Situation of the Right to Freedom of Expression in Honduras,’ held in October 2010, and in the ‘Hearing on the General Human Rights Situation’ of March 2013.” It further indicated that “the preliminary investigations confirm that the homicides perpetrated are the result of common crime or organized crime, and it has not been determined that the opinions expressed by the media workers about the government served as the motive for their deaths. Proof of this cooperation is the progress made in the investigation and prosecution of those cases.”<sup>1033</sup>

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

517. In their duties to protect and guarantee, States must carry out diligent, impartial, and effective investigations of the murders, attacks, threats, and acts of intimidation committed against journalists and media workers. This entails the creation of specialized units and special investigative protocols, as well as the identification and exhaustion of all possible case theories related to the professional work of the victim.

### C. Attacks on and Threats against Media Outlets and Journalists

518. In early 2013, journalist and human rights defender Itsmania Pineda Platero was the victim of harassment, threats and email and blog account hacking. Consequently, the journalist announced that she was compelled to close the offices of her human rights defense organization, Xibalba Arte y Cultura.<sup>1034</sup> The journalist had been the victim of threats in the past.<sup>1035</sup> With respect to the incidents occurred in 2013, the State indicated that there wasn’t any complaint filed in the office of the Office of the Public Prosecutor (MP) regarding those events, and therefore asks the affected person to file the respective complaint “in order for the pertinent investigations to be conducted.”<sup>1036</sup>

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<sup>1033</sup> In Communication from the State of Honduras, Official Letter No. SP-A-166-2013, dated December 19, 2013, “Observations of the State of Honduras on the Draft Report on the Situation of Human Rights in Honduras.”

<sup>1034</sup> Reporters Without Borders. January 8, 2013. [RWB alerts minister to case of journalist threatened by her “protectors”](#); C-Libre. January 8, 2013. [Continúan agresiones contra periodistas](#); Knight Center for Journalism in the Americas. January 10, 2013. [Two Honduran journalists under threat, warn organizations](#).

<sup>1035</sup> IACHR. [Annual Report 2012. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. Para. 313.

<sup>1036</sup> In Communication from the State of Honduras, Official Letter No. SP-A-166-2013, dated December 19, 2013, “Observations of the State of Honduras on the Draft Report on the Situation of Human Rights in Honduras.”



519. Television reporter Selvin Martínez, of the city of Puerto Cortés, reported that he had received death threats since early 2013 via text message.<sup>1037</sup> In 2012, the journalist was the victim of two armed assaults and several threats.<sup>1038</sup>

520. With respect to the attacks, the State reported that the Office of the Public Prosecutor (MP) had filed an indictment charging one individual with “attempted murder,” and that the court ordered his pretrial detention following an initial hearing. The public, oral phase of the trial will take place in March 2014. The State indicated with regard to the text message threats that Martínez had told the Prosecutor handing his case that they had stopped; “however, the Office of the Public Prosecutor (MP) took several steps, including filing a request for a wiretap.”<sup>1039</sup>

521. On January 15, alleged agents of the National Police arrested Honduran historian and writer Edgar Israel Soriano and transferred him in a supposed patrol car to police facilities. According to the information received, as soon as situation came to the attention of special Human Rights Prosecutor Leonel Casco Gutiérrez, he went to the police station and personally requested the release of the writer and said prosecutor was also arrested for allegedly disrespecting authorities. Both men were released the following morning.<sup>1040</sup> After decrying these incidents, the Office of the Special Prosecutor for Human Rights of the Office of the Public Prosecutor brought charges against Harold Bonilla Andara, head of Metropolitan Police Station Number 1 of Tegucigalpa, the official who had ordered the arrest of Casco Gutiérrez, for abuse of authority and unlawful detention.<sup>1041</sup> Available information indicates that in the context of this process, a hearing was held before a criminal court judge, who dismissed the charges and, consequently, the defendant was released in late May 2013.<sup>1042</sup> Casco Gutiérrez is the beneficiary of precautionary measures issued by the Commission [72-11].

522. With regard to these events, the State indicated in a communication dated December 19, 2013 that “the Office of the Public Prosecutor (MP) took the appropriate steps against Mr. Harold Bonilla Andara. The Office of the Public Prosecutor (MP) filed the respective appeal of the Court’s ruling, which is currently pending decision.”<sup>1043</sup>

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<sup>1037</sup> C-Libre. January 8, 2013. [Continúan agresiones contra periodistas](#); El Heraldo. March 10, 2013. [Persisten amenazas y agresiones contra la libertad de expresión](#); Knight Center for Journalism in the Americas. January 10, 2013. [Two Honduran journalists under threat, warn organizations](#).

<sup>1038</sup> IACHR. [Annual Report 2012. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. Para. 328.

<sup>1039</sup> In Communication from the State of Honduras, Official Letter No. SP-A-166-2013, dated December 19, 2013, “Observations of the State of Honduras on the Draft Report on the Situation of Human Rights in Honduras.”

<sup>1040</sup> Comisionado Nacional de los Derechos Humanos. January 16, 2013. [Comunicado](#); IFEX/C-Libre. January 21, 2013. [Escritor de opinión hondureño detenido por la noche](#); Habla Honduras. January 16, 2013. [Defensores de derechos humanos víctimas de detención ilegal](#).

<sup>1041</sup> El Heraldo. February 7, 2013. [Requerimiento fiscal para exjefe policial](#); La Tribuna. February 6, 2013. [Dictan requerimiento fiscal contra jefe de la Metropolitana](#); El Heraldo. May 7, 2013. [En audiencia inicial comparece exjefe policial](#).

<sup>1042</sup> Conexihon. April 11, 2013. [Medidas sustitutivas contra subcomisionado por detener ilegalmente a historiador y procurador de DD.HH](#); La Prensa. June 1, 2013. [Nuevo requerimiento fiscal contra ex director de Policía Metropolitana](#); Proceso Digital. June 1, 2013. [Ministerio Público libró requerimiento contra ex director de Policía Metropolitana](#); Honduras Tierra Libre. May 29, 2013. [Honduras: se reafirma la política de protección a violadores de derechos humanos. Sobreseimiento definitivo a jefe de Policía Metropolitana](#).

<sup>1043</sup> In Communication from the State of Honduras, Official Letter No. SP-A-166-2013, dated December 19, 2013, “Observations of the State of Honduras on the Draft Report on the Situation of Human Rights in Honduras.”

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

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

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

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<sup>1044</sup> C-Libre. January 23, 2013. [Periodista denuncia campaña de odio](#); La Prensa. January 22, 2013. [Renato Álvarez denuncia a Juan Orlando Hernández](#)

<sup>1045</sup> La Prensa. January 24, 2013. [Policía tiene indicios de agresiones contra Renato](#); Proceso Digital. January 23, 2013. [“Tigre” Bonilla ofrece protección a Renato Álvarez ante “indicios” de fraguarse un atentado](#); El Herald. January 23, 2013. [Policía sospecha que quieren afectar a Renato](#).

<sup>1046</sup> Proceso Digital. January 3, 2013. [Crean cuentas falsas en redes sociales para suplantar al periodista Renato Álvarez](#); Knight Center for Journalism in the Americas. January 28, 2013. [Honduran TV journalist accuses presidential candidate of supporting a “hate campaign” against him](#).

<sup>1047</sup> IFEX/C-Libre. February 11, 2013. [TV journalists attacked during transport protest in Honduras](#); ArgenPress. February 8, 2013. [Periodistas hondureños agredidos y amenazados. Solidaridad internacional a los colegas hondureños](#).

<sup>1048</sup> In Communication from the State of Honduras, Official Letter No. SP-A-166-2013, dated December 19, 2013, “Observations of the State of Honduras on the Draft Report on the Situation of Human Rights in Honduras.”

<sup>1049</sup> Cerigua. February 20, 2013. [Corresponsal de Radio Progreso en Honduras denunció amenazas por parte de la Policía Nacional](#); Reporters Without Borders. February 22, 2013. [HONDURAS | Amenazas e intimidaciones a periodistas por parte del ejército y la policía](#).

<sup>1050</sup> In Communication from the State of Honduras, Official Letter No. SP-A-166-2013, dated December 19, 2013, “Observations of the State of Honduras on the Draft Report on the Situation of Human Rights in Honduras.”

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

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

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

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

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<sup>1051</sup> Reporters Without Borders. March 18, 2013. [Journalist suspends popular radio programme amid mounting threats](#); Front Line Defenders. March 8, 2013. [Honduras: Human rights defender and journalist Mr Julio Ernesto Alvarado resigns from national radio programme due to fears for his life](#); Knight Center for Journalism in the Americas. March 19, 2013. [Honduran journalist cancels radio and TV programs after threats](#).

<sup>1052</sup> IFEX/C-Libre. April 9, 2013. [Targeted Honduran journalist escapes shooting unharmed](#); La Prensa. April 8, 2013. [Atentan contra periodista hondureña de Globo TV](#); Front Line Defenders. April 10, 2013. [Honduras: Shots fired at human rights defender and journalist Ms Fidelina Sandoval](#); Committee to Protect Journalists (CPJ). April 10, 2013. [Armed men shoot at TV journalist in Honduras](#).

<sup>1053</sup> IFEX/C-Libre. April 26, 2013. [Director of Honduran free expression NGO warned of plot against him](#); Cerigua. April 26, 2013. [C-Libre denunció amenazas de muerte contra su director](#); Amnistía Internacional. May 5, 2013. [¿Quién quiere matar al periodista hondureño Héctor Longino Bacerra?](#)

political life.<sup>1054</sup> The alleged offended parties confirmed the reports published by *El Heraldo* and the Council of Defense and Security ordered investigations to be opened into the complaint.<sup>1055</sup>

530. In the municipality of Nacaome of the Department of Valle, journalist Leonel García, of the programs ‘Noticias al pueblo’ and ‘Dígallo como quiera’ of *Radio Discovery*, charged that he had been the target of death threats and intimidation by means of emissaries, who approached him as he left the radio station, as well as calls and text messages to his cell phone. According to the journalist, the intimidation could be linked to criticism on his news shows of local issues and authorities and the fact that he encouraged citizen participation during his news slots.<sup>1056</sup>

531. With regard to the case of journalist Leonel García, in its communication of December 19, 2013 the State referred to an event from 2011, indicating that “there was a complaint before the Office of the Public Prosecutor (MP) alleging threats and battery, but upon investigation the Office of the Public Prosecutor (MP) determined that they were not acts that constituted crimes, but rather were misdemeanors, as they were insults.” It adds that, “there have been no other complaints since then.”<sup>1057</sup>

532. On May 4, radio broadcaster and president of the Association of Independent Radio and Television Networks, Elías Javier Chahín, was beaten and threatened by three young men when he was leaving the premises of the radio stations *La Buenísima* and *Estéreo Tic Tac*. The assailants threatened to take his life. Chahín claimed that a few weeks earlier, an unidentified man doused gasoline on his house and set it on fire and he alleged that the incident was related to his criticism of the draft reform to the telecommunications law. President Porfirio Lobo condemned the acts and ordered an investigation and that security be provided to the businessman.<sup>1058</sup>

533. In a December 19, 2013 communication, the State reported that on May 10 Chahín was deposed before the Office of the Public Prosecutor (MP), and was ordered to undergo a physical evaluation by the Office of Forensic Medicine. Other proceedings were also reportedly conducted, “including investigations in the area into potential witnesses or video recordings,” and the State reported that “the preliminary investigation is ongoing in an attempt to identify the suspects.”<sup>1059</sup>

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

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<sup>1054</sup> El Heraldo. April 22, 2013. [Al descubierto plan para ejecutar figuras públicas en Honduras](#); Prensa Libre. April 22, 2013. [Denuncian plan para asesinar a periodista, diputado y policía hondureños](#); Terra. April 22, 2013. [Honduras: revelan plan para matar a políticos y periodista](#).

<sup>1055</sup> El Heraldo. April 22, 2013. [Ordenan que se investigue plan para ejecutar a figuras públicas](#); Proceso Digital. April 22, 2013. [Planes para cometer asesinatos selectivos son reales: comisionado Iván Mejía](#); La Prensa. April 22, 2013. [Alertan de posible plan para asesinar personajes públicos en Honduras](#).

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

<sup>1057</sup> In Communication from the State of Honduras, Official Letter No. SP-A-166-2013, dated December 19, 2013, “Observations of the State of Honduras on the Draft Report on the Situation of Human Rights in Honduras.”

<sup>1058</sup> La Prensa. May 5, 2013. [Elías Chahín recibe golpiza por cuestionar "ley mordaza"](#); El Heraldo. May 5, 2013. [Atentan contra empresario Elías Chahín por cuestionar "ley mordaza"](#); Inter American Press Association (IAPA). May 6, 2013. [Condena la SIP agresión contra empresario periodístico en Honduras](#).

<sup>1059</sup> In Communication from the State of Honduras, Official Letter No. SP-A-166-2013, dated December 19, 2013, “Observations of the State of Honduras on the Draft Report on the Situation of Human Rights in Honduras.”

“maras” (criminal gangs) while filming in the city of San Pedro Sula.<sup>1060</sup> With respect to these events, the State of Honduras indicated that “it is unknown whether a complaint was filed before any State institution.”<sup>1061</sup>

535. On May 15, journalist Geyby Arriaga, opinion columnist of the magazine *Revista Imagen*, was assaulted by unidentified individuals, who fired on the vehicle she was riding in with her husband, in the city of San Pedro Sula, Department of Cortés.<sup>1062</sup> With respect to these incidents, the State indicated that “it has not been able to locate any complaint regarding these events”, and therefore requests that the affected person file the respective complaint “in order for the pertinent investigations to be conducted.”<sup>1063</sup>

536. On May 20, in the city of La Ceiba, journalist Ramón Maldonado, correspondent of the television channel *Hable como habla* and host of the program ‘Noticias con Café’ of the TV station *Litoral Atlántico*, and cameraman Daniel Sánchez were the targets of an attempt on their lives by alleged hired hit men, who fired several shots at the vehicle they were driving in. Neither of the men was hit by the bullets. Maldonado reported the incidents and contended that the assault could be linked to broadcasting of reports criticizing issues tied to the local government.<sup>1064</sup> The State of Honduras indicated that the Office of the Public Prosecutor (MP) learned of these events through the media, and “immediately proceeded to obtain a statement from Mr. Maldonado”; nevertheless, he declined to file a formal complaint before the Office of the Public Prosecutor.<sup>1065</sup>

537. Journalist Isabel Antúnez, reporter of the television news program ‘Última Hora’ of *Nortv Tocoa Canal 38*, was assaulted by a public official of the Department of Justice of the Municipality of Tocoa, as she attempted to ask him questions about the presence of vendors stands on public roads.<sup>1066</sup> In its December 19, 2013 communication, the State of Honduras informed the IACHR that the Office of the Public Prosecutor (MP) “took the respective victim statement, however [the journalist] indicated that she did not want to have trouble with anyone.” The State reported that a document was drawn up informing the journalist of her right to file a formal complaint against the Municipal Judge.<sup>1067</sup>

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<sup>1060</sup> RTVE. May 7, 2013. [Susto y fin de la grabación](#); Proceso Digital. May 8, 2013. [Equipo de Radio Televisión Española asegura que abandona Honduras por amenazas de mareros](#).

<sup>1061</sup> In Communication from the State of Honduras, Official Letter No. SP-A-166-2013, dated December 19, 2013, “Observations of the State of Honduras on the Draft Report on the Situation of Human Rights in Honduras.”

<sup>1062</sup> IFEX/C-Libre. May 24, 2013. [Journalists targeted in gunfire in northern Honduras](#); Reporters Without Borders. June 27, 2013. [Journalist abducted just days ahead of military coup anniversary](#).

<sup>1063</sup> In Communication from the State of Honduras, Official Letter No. SP-A-166-2013, dated December 19, 2013, “Observations of the State of Honduras on the Draft Report on the Situation of Human Rights in Honduras.”

<sup>1064</sup> El Heraldo. May 20, 2013. [Atentan contra equipo de Hable Como Habla](#); La Tribuna. May 20, 2013. [Periodista ceibeño sufre atentado](#); Committee to Protect Journalists (CPJ). May 23, 2013. [Honduras should investigate attack on two journalists](#).

<sup>1065</sup> In Communication from the State of Honduras, Official Letter No. SP-A-166-2013, dated December 19, 2013, “Observations of the State of Honduras on the Draft Report on the Situation of Human Rights in Honduras.”

<sup>1066</sup> Conexhion. May 5, 2013. [Funcionario municipal agrede a periodista en Tocoa](#); Nortv Tocoa Canal 38/Facebook. May 2, 2013. Disponible en: <https://es-es.facebook.com/pages/Nortv-Tocoa-Canal-38/424930090869091>

<sup>1067</sup> In Communication from the State of Honduras, Official Letter No. SP-A-166-2013, dated December 19, 2013, “Observations of the State of Honduras on the Draft Report on the Situation of Human Rights in Honduras.”

538. On July 4, journalist Mario Castro, host of the program ‘El látigo Contra La Corrupción’ [‘The Whip against Corruption’], broadcast by *Globo TV*, was threatened via text message, in which he was warned that the same thing would happen to him as to his colleague, apparently in reference to journalist Aníbal Barrow, abducted on June 24 and found dead five days later, on July 9.<sup>1068</sup> The State indicated that it has not been able to locate a complaint regarding these events and therefore requests that the affected person file the respective complaint “in order for the pertinent investigations to be conducted.”<sup>1069</sup>

539. On July 17, journalist Joel Coca, coordinator of the program ‘Más Noticias’ of *Canal 12* and correspondent of *Canal 11* in the city of Puerto Cortés, was assaulted by two individuals, who beat him with a baseball bat and a weapon. He sustained two broken fingers, and had to receive medical care. The journalist linked the assault to his reporting work, because he had received threats for allegedly speaking out against local corruption on his program. Coca filed a complaint with the National Directorate of Criminal Investigation (DNIC) in Puerto Cortés.<sup>1070</sup> Subsequently, the journalist and his family left the country for reasons of security.<sup>1071</sup>

540. With regard to this case, the State of Honduras reported that the Office of the Public Prosecutor had knowledge of the complaint and initiated the respective proceedings, but indicated that “Mr. Coca had not cooperated subsequently in the investigation.”<sup>1072</sup>

541. On August 18, broadcaster Rosa Álvarez, manager of the community radio station radio *Wagia*, was assaulted by an unidentified individual, who allegedly attempted to sexually assault her. Neighbors to the station came to the aid of the broadcaster, and were successful at preventing the assault. The director of the community radio station, Horacio Martínez Cáliz, asserted that the assault was no isolated incident, but was instead linked to the station’s reporting criticizing the local situation.<sup>1073</sup> The State indicated that it has not been able to locate a complaint regarding these events and therefore requests that the affected person file the respective complaint “in order for the pertinent investigations to be conducted.”<sup>1074</sup>

542. On September 26, the daily newspaper *El Heraldo* denounced that armed individuals had told journalists of the company that they had orders from their superiors to follow the staff of the

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<sup>1068</sup> IFEX/C-Libre. July 16, 2013. [Honduran reporter threatened with same fate as murdered colleague](#); Inter American Press Association (IAPA). [Assembly: 2013 – General Assembly of the IAPA - Denver, United States, Reports. Country Report: Honduras](#).

<sup>1069</sup> In Communication from the State of Honduras, Official Letter No. SP-A-166-2013, dated December 19, 2013, “Observations of the State of Honduras on the Draft Report on the Situation of Human Rights in Honduras.”

<sup>1070</sup> C-Libre. July 17, 2013. [Con bate de madera golpean a periodista hondureño](#); La Prensa. July 18, 2013. [Atentan contra periodista Joel Coca cuando salía de su trabajo](#); Committee to Protect Journalists (CPJ). July 24, 2013. [Assailants attack Honduran TV journalist](#).

<sup>1071</sup> Tiempo. September 1, 2013. [Periodista Durón Coca abandona el país por temor](#); Inter American Press Association (IAPA). [Assembly: 2013 – General Assembly of the IAPA - Denver, United States, Reports. Country Report: Honduras](#).

<sup>1072</sup> In Communication from the State of Honduras, Official Letter No. SP-A-166-2013, dated December 19, 2013, “Observations of the State of Honduras on the Draft Report on the Situation of Human Rights in Honduras.”

<sup>1073</sup> C-Libre. September 3, 2013. [Pobladores frustran ataque contra administradora de radio comunitaria](#).

<sup>1074</sup> In Communication from the State of Honduras, Official Letter No. SP-A-166-2013, dated December 19, 2013, “Observations of the State of Honduras on the Draft Report on the Situation of Human Rights in Honduras.”

media outlet closely. In addition to intimidating the journalists, the alleged University Teaching Hospital security guards prevented them from taking photographs and conducting interviews.<sup>1075</sup> According to press reports, members of the Office of the Public Prosecutor (MP) had expressed concern over the alleged intimidation and threats of the reporters of the daily newspaper *El Heraldo*, and had started an investigation.<sup>1076</sup>

543. The State informed the IACHR that “The Office of the Public Prosecutor (MP) was aware and made statements in the media indicating that the reporters should go to the Office of the Public Prosecutor (MP) to file a complaint,” but that “there is no record of any complaint having been filed.”<sup>1077</sup>

544. On October 28, journalist Adolfo Hernández decried before the Human Rights Commissioner (CONADEH) that his television program ‘No se Deje’ [‘Don’t give in’], broadcast from Monday to Friday by *Telered 21*, was taken off the air as a result of political pressure after broadcasting reports of alleged acts of corruption involving public officials. The broadcaster also denounced that in the days prior to the suspension of his program, had had received death threats.<sup>1078</sup> The State of Honduras informed the IACHR that the case had been taken up by the Office of the Public Prosecutor (MP) and that the appropriate investigative proceedings were being conducted.<sup>1079</sup>

545. In its communication of December 19, the Honduran State indicated to the IACHR that “with respect to the complaints of threats and assaults, the State has made efforts to investigate the cases and punish the perpetrators, whether or not they are State agents, who have violated the rights of these persons. It has done so in compliance with its international and constitutional commitments, bearing in mind that it is necessary for a complaint to be filed before the authorities in order for the pertinent investigations to be conducted; under the Criminal Code, threats constitute a criminal offense that is actionable by the public prosecutor only at the request of the victim.” The State indicated that in most cases the investigations have revealed that they are private situations unrelated to the exercise of the right to freedom of expression and completely unrelated to the victims’ occupation, as crimes and attempted crimes have been committed against professional journalists and members of the media for different reasons.”<sup>1080</sup>

546. Principle 9 of the IACHR Declaration on Freedom of Expression, approved in 2000, establishes that “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals

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<sup>1075</sup> El Heraldo. September 26, 2013. [MP indaga amenazas contra EL HERALDO](#); Inter American Press Association (IAPA). [Assembly: 2013 – General Assembly of the IAPA - Denver, United States, Reports. Country Report: Honduras.](#)

<sup>1076</sup> El Heraldo. September 26, 2013. [MP indaga amenazas contra EL HERALDO](#); Inter American Press Association (IAPA). [Assembly: 2013 – General Assembly of the IAPA - Denver, United States, Reports. Country Report: Honduras.](#)

<sup>1077</sup> In Communication from the State of Honduras, Official Letter No. SP-A-166-2013, dated December 19, 2013, “Observations of the State of Honduras on the Draft Report on the Situation of Human Rights in Honduras.”

<sup>1078</sup> C-Libre. October 29, 2013. [Político ordena cierre de espacio informativo](#); Proceso Digital. October 28, 2013. [Periodista “Yofo” Hernández denuncia amenazas a muerte ante el Conadeh](#); La Tribuna. October 28, 2013. [Cierran programa de televisión a “Yofo” Hernández.](#)

<sup>1079</sup> In Communication from the State of Honduras, Official Letter No. SP-A-166-2013, dated December 19, 2013, “Observations of the State of Honduras on the Draft Report on the Situation of Human Rights in Honduras.”

<sup>1080</sup> In Communication from the State of Honduras, Official Letter No. SP-A-166-2013, dated December 19, 2013, “Observations of the State of Honduras on the Draft Report on the Situation of Human Rights in Honduras.”

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

547. In their duties to protect and guarantee, States must carry out diligent, impartial, and effective investigations of the murders, attacks, threats, and acts of intimidation committed against journalists and media workers. This entails the creation of specialized units and special investigative protocols, as well as the identification and exhaustion of all possible case theories related to the professional work of the victim.

#### **D. Access to Public Information**

548. The IACHR received information to the effect that the Sentencing Court with Nationwide Jurisdiction in Criminal Matters had denied a request made by a journalist for access to a copy of the transcript of the public oral trial against a group of police agents convicted of murdering two university students. Journalist Wendy Funes requested a copy of the judgment and of the volumes of the case file. The coordinator of the Sentencing Court argued that the journalist did not state the purpose she was pursuing in requesting said information. Additionally, the coordinator contended that she was unable to disclose the names of the witnesses who had already testified in the trial.<sup>1081</sup>

549. In relation to this case, the State of Honduras indicated that “in view of the Trial Court’s alleged denial, [the journalist] should have made that request following the process” established in the law “that provides that in case of the denial of information by a State authority, the IAIP facilitates and guarantees public information.”<sup>1082</sup>

550. In addition, with respect to access to public information, the State of Honduras reported that by means of Decree 170-2006 of November 27, 2006, which contains the Transparency and Access to Public Information Act, the State “promotes the development and implementation of the National Transparency Policy, as well as the exercise of the right of every person to access public information in order to strengthen the rule of law and consolidate democracy through citizen participation.” The State indicated that although “it is undeniable that the subculture of secrecy and opacity still prevails in some sectors of government,” the enactment of the Transparency and Access to Public Information Act (LTAIP) “has laid the foundation for a culture of transparency, and made significant progress so that the public nature of government acts will be the rule and not the exception.” The State indicated that “in order to attain this transition from opacity to transparency, among other actions, results-based management has been implemented at all levels of government. This is the model of public resources administration that centers on accomplishing the strategic actions defined in the government plan for a specific period of time.” The State reported that the Institute for Access to Public Information (IAIP) takes steps to promote the culture of transparency, the right to access to public information, accountability, and the protection of personal data, through the implementation of formal and informal educational activities in different sectors of the population. It reported that “it is a great initiative that seeks to educate students in their last year of teacher training, using content that revolves around transparency in order for them to replicate it in their teaching practice as a prerequisite to graduation.” It indicated that in 2013 “training conferences were held with students at the teacher training colleges

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<sup>1081</sup> IFEX/C-Libre. September 3, 2013. [Corte Suprema en Honduras se niega acceso a información sobre juicio público.](#)

<sup>1082</sup> In Communication from the State of Honduras, Official Letter No. SP-A-166-2013, dated December 19, 2013, “Observations of the State of Honduras on the Draft Report on the Situation of Human Rights in Honduras.”



in cities like La Paz (La Paz), Juticalpa (Olancho), Danlí (El Paraíso), La Esperanza (Intibucá), and Gracias (Lempira), reaching 2,602 students.” The State further reported that “training on the Transparency and Access to Public Information Act has been provided through symposiums, forums, trainings, workshops, and panels aimed at: the university community; public information officers; civil society; public servants, and teachers.” The State also informed the IACHR that in 2013 the IAIP created “the Verification and Transparency Management Office, for purposes of corroborating the information that the Obligated Institutions are required to publish on their transparency portals.”<sup>1083</sup>

551. In fact, the right of access to information is a universal human right and because of that the IACHR notes with satisfaction the measures adopted to implement it. In this regard, it should be mentioned that everyone is entitled to request access to information, as set forth in Article 13 of the American Convention. In this regard, the Inter-American Court has clarified that it is not necessary to prove a direct interest or any infringement of one’s own rights in order to obtain information in the possession of the State, except in instances in which a legitimate restriction applies, as defined under the American Convention. Additionally, should the information requested contain confidential or classified information, public agencies must produce a redacted version of the information leaving out or excluding only the classified information.

552. Principle 4 of the IACHR Declaration on Freedom of Expression, approved in 2000, establishes that “[a]ccess to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.”

#### **E. Stigmatizing Statements**

553. On February 18, in a press conference and release issued that day, the Xatruch Joint Task Force of the Armed Forces made statements accusing journalists and human rights defenders of carrying out a “Disinformation Campaign” and of tarnishing “the image of the Honduran nation” by allegedly publishing communications, which are “groundless and far from the truth” about the performance of its members.<sup>1084</sup>

#### **F. Other Relevant Situations**

554. Journalist and owner of the daily newspaper *El Libertador*, Jhonny Lagos, denounced that the staff and the media company was under surveillance by a person allegedly linked to the Armed Forces of Honduras. Additionally, the newspaper company had been the victim of hacking several times.<sup>1085</sup>

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<sup>1083</sup> In Communication from the State of Honduras, Official Letter No. SP-A-166-2013, dated December 19, 2013, “Observations of the State of Honduras on the Draft Report on the Situation of Human Rights in Honduras.”

<sup>1084</sup> Fuerza de Tarea Conjunta “Xatruch”. February 18, 2013. [Conferencia de Prensa](#); Reporters Without Borders. February 22, 2013. [HONDURAS | Amenazas e intimidaciones a periodistas por parte del ejército y la policía](#); Front Line Defenders. February 21, 2013. [Honduras: Military Commander accuses human rights defenders of orchestrating a campaign of disinformation](#); Cerigua. February 22, 2013. [Ejército realiza acusaciones contra periodistas y defensores de derechos humanos en Honduras](#).

<sup>1085</sup> *El Libertador*. July 29, 2013. [Honduras: organizaciones civiles se solidarizan con EL LIBERTADOR por represión](#); C-Libre. July 30, 2013. [Periódico bajo supuesta vigilancia de Inteligencia militar](#).

555. On August 19, the agent of the Special Forces of the National Police in charge of the investigations into the attempts on the lives and assaults against journalist José Luis Galdámez Álvarez and his family, was murdered. Police inspector Rubén Rolando Méndez Montenegro was shot to death by unidentified individuals.<sup>1086</sup> Galdámez and his family are beneficiaries of precautionary measures granted in 2010 by the Inter-American Commission to a group of community leaders, journalists and human rights defenders, who were victims of state persecution.

556. The Inter-American Commission reminds the State of the obligation to ensure the security of authorities responsible for investigations and to adopt whatever measures or means necessary to prevent inquiries from being hampered, in addition to measures designed to provide security to witnesses, victims, family members and other judicial representatives vis-à-vis threats and acts of intimidation or assaults, which are aimed at obstructing these processes. In this same vein of thought, the Inter-American Court has held categorically that, in order to meet the obligation to investigate within the framework of guarantees of due process of the law, the State must facilitate all necessary means to protect operators of justice, investigators, witnesses and family members of the victims from harassment and threats that are intended to hinder the investigation, prevent the truth of the facts to be known and avoid the identification of those responsible.<sup>1087</sup>

## 18. Jamaica

557. The Office of the Special Rapporteur commends the important legislative reform passed by the Parliament of Jamaica to decriminalize defamation offenses. According to the information received, the Jamaican Parliament's House of Representatives enacted the Defamation Act of 2013,<sup>1088</sup> which does away with the use of criminal law in defamation matters, on November 5. The bill was passed with bi-partisan support in the Senate on July 12, and amends the defamation laws that have been on the books since 1851 and 1961.<sup>1089</sup> The reform decriminalizes criminal libel and establishes advanced criteria for the resolution of civil cases in accordance with the highest principles of international law on the issue. Thus, for example, it provides that the civil judge must consider principles such as *exceptio veritatis*, fair and accurate reports, innocent dissemination, and malice when dealing with media outlets that publish specially protected speech regarding matters of public interest. In this respect, the reform represents significant progress in the advancement of International Human Rights Law in civil proceedings pertaining to freedom of expression.<sup>1090</sup> The Office of the Special Rapporteur

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<sup>1086</sup> IFEX/C-Libre. August 23, 2013. [Police officer killed after investigating threats against Honduran journalist](#).

<sup>1087</sup> I/A Court H.R., *Rochela Massacre v. Colombia Case. Merits, Reparations and Costs*. Judgment of May 11, 2007. Series C No. 163. Para. 171.

<sup>1088</sup> On November 28 Sir Patrick Linton Allen, Governor-General of Jamaica, assented the Defamation Act. Jamaica Houses of Parliament. [Defamation Act, 2013](#). Act No. 31.

<sup>1089</sup> Ministry of Justice. [The Defamation Act](#). Law 33 of 1961. Act 47 of 1963; Ministry of Justice. [The Libel and Slander Act](#). 1851.

<sup>1090</sup> Houses of Parliament. [Defamation Act, 2013](#). Act No. 31. *See also*, Jamaica Information Service. November 5, 2013. [Defamation Act Passed in the House of Representatives](#); IFEX/IPI. November 6, 2013. [Jamaica decriminalises defamation](#); Jamaica Observer. November 6, 2013. [House passes Defamation Act](#); Committee to Protect Journalists (CPJ). November 7, 2013. [CPJ hails elimination of criminal defamation in Jamaica](#).

views this legislative advance positively, finds that it is a vital contribution to the protection of freedom of expression and the promotion of more vigorous democratic debate throughout the Americas.<sup>1091</sup>

558. The Office of the Special Rapporteur views positively the statements of Sandra Falconer, the Minister with responsibility for Information in the Office of the Prime Minister of Jamaica, on the occasion of the International Right to Know Day, in which she expressed the State's commitment to "will continue to ensure that an effective and strong access to information regime exists including strengthening proactive disclosure [...] ensuring that public bodies and public officials are held accountable for actions and decisions made on behalf of the people."<sup>1092</sup> The Minister also mentioned the forthcoming comprehensive Government Communications Policy, which meets the information needs of the public, fosters greater access to information, and uses the best social media and technology available.<sup>1093</sup> Falconer stated that from 2009 to 2012 the number of requests for access to information increased and she emphasized that most of those requests have resulted in grants of partial or total access to the information requested; fewer than 1% of the requests have been denied.<sup>1094</sup>

559. The Office of the Special Rapporteur was informed of the decision by television channels *CVMTV* and *Television Jamaica* not to authorize dissemination of the commercial "Love & Respect," which apparently seeks to promote tolerance of diverse sexual orientations. An activist from the LGBTI community, who appears as one of the actors in the commercial, requested intervention by the Broadcasting Commission. That institution found no legal reason not to broadcast the advertisement, and urged the parties to engage in dialogue. Without having reached agreement, on October 2012, the activist filed a civil suit against the above-mentioned channels, alleging violation of his right to freedom of expression.<sup>1095</sup> In May of 2013, the Supreme Court of Jamaica held a hearing on the case.<sup>1096</sup> At the time of the report, the Supreme Court had not resolved the case.<sup>1097</sup> The Office of the Special

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<sup>1091</sup> IAHR. Office of the Special Rapporteur for Freedom of Expression. November 11, 2013. [Press Release R 85/13. Office of the Special Rapporteur for Freedom of Expression Commends Jamaica's Recent Legislative Reform Regarding Freedom of Expression.](#)

<sup>1092</sup> Jamaica Information Service. September 28, 2013. [Information Minister's International Right To Know Day Message.](#) See also, The Gleaner. September 28, 2013. [Falconer: More J'cans utilising Access to Information Act.](#)

<sup>1093</sup> "As part of this process, a comprehensive Government Communications Policy which is responsive to the diverse information needs of the public, supports greater access to information and utilizes the best available technology and social media is being finalized." Jamaica Information Service. September 28, 2013. [Information Minister's International Right To Know Day Message.](#)

<sup>1094</sup> "The number of requests to public authorities monitored by the Access to Information Unit during the first four years of full implementation of the Act averaged 460. That number has jumped to an average of 960 during the last three years, 2009-2012. The majority of requests for information have been favourably responded to with full or partial access being granted. Less than one per cent of applications for information has been refused." Jamaica Information Service. September 28, 2013. [Information Minister's International Right To Know Day Message.](#)

<sup>1095</sup> IACHR. [Annual Report 2012. Annual Report of the Office of the Special Rapporteur for Freedom of Expression.](#) Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. Para. 350; The Gleaner. October 29, 2012. [Gay Activist Takes TV Stations to Court](#); Aids-Free World. October 19, 2012. [AIDS-Free World Supports Case against Censorship of Gays on Jamaica TV.](#)

<sup>1096</sup> The Gleaner. May 31, 2013. [Court Reserves Decision In Tolerance Case](#); Gay Star News. May 29, 2013. [Jamaica TV must not ban gay adverts, Supreme Court hears.](#)

<sup>1097</sup> The case was decided by the Supreme Court of Jamaica on November 15, 2013. Supreme Court of Judicature of Jamaica. Civil Division. [Claim No. 2012 HCV 05676.](#) The Gleaner. November 16, 2013. [Court Throws Out Gay Rights Activist's Case Against TV Stations](#); Caribbean Broadcasting Corporation. November 15, 2013. [Jamaican court throws out case involving gay activist.](#)

Rapporteur observes that the media is a vehicle for the exercise of freedom of expression. Therefore, in terms of Principle 5 of the IACHR Declaration of Principles, the State cannot arbitrarily impose or control the contents of broadcasts. Nonetheless, the media that use the radio electric spectrum, because they are using public assets for their dissemination, they can be subject to a series of reasonable and proportionate regulations regarding the use of said public asset. Thus, for example, the media are free to choose among the diverse offerings both from commercial advertising and questions of public interest. However, in this selection process, they cannot, based on suspicious categories, exclude certain speech that promotes goods or values protected by international human rights law, such as equality and nondiscrimination.

560. Additionally, the Office of the Special Rapporteur expresses its concern over the promotion in some media outlets of outwardly discriminatory and homophobic messages that could incite violence against members of the LGBTI community, especially when those messages come from shapers of public opinion. According to the information received, during 2013 some media systematically published articles that could incite violence against LGBTI individuals, by disseminating messages that encourage hatred against the members of that community.

561. For example, on February 20, the newspaper Jamaica Observer published an article entitled “Vicious gays - Homosexual men stone supermarket, threaten staff.”<sup>1098</sup> On February 21, the paper published an article entitled, “Marauding homosexuals and J-FLAG,” which contains statements such as the following: the Jamaican nation continues to “struggle with the delicate issue of how to treat those of our citizens who are homosexuals.” In fact, “the problem has been seriously exacerbated by the emergence of a growing band of homosexual men, largely operating in New Kingston, who have demonstrated a willingness to attack other citizens and to carry out criminal acts.”<sup>1099</sup> The paper made similar, subsequent publications: on April 8, it ran an article entitled “Gay men, bystanders in missile-throwing brawl during road march;”<sup>1100</sup> on May 26 the article “Residents say gays take over Barbican house;”<sup>1101</sup> and on June 12, an article entitled “Caretaker wants uncontrollable gay men out of Millsborough house;”<sup>1102</sup> On previous occasions, the newspaper reportedly published cartoons depicting LGBTI persons with discriminatory stereotypes.<sup>1103</sup>

562. The Office of the Special Rapporteur notes that these types of discriminatory statements can potentially cause violence, depending on the context in which they are disseminated.<sup>1104</sup> In this respect, hate speech directed at against individuals on the basis of their sexual orientation or gender

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<sup>1098</sup> Jamaica Observer. February 20, 2013. [Vicious gays - Homosexual men stone supermarket, threaten staff.](#)

<sup>1099</sup> Jamaica Observer. February 21, 2013. [Marauding homosexuals and J-FLAG.](#)

<sup>1100</sup> Jamaica Observer. April 8, 2013. [Gay men, bystanders in missile-throwing brawl during road march.](#)

<sup>1101</sup> Jamaica Observer. May 26, 2013. [Residents say gays take over Barbican house.](#)

<sup>1102</sup> Jamaica Observer. June 12, 2013. [Caretaker wants uncontrollable gay men out of Millsborough house.](#)

<sup>1103</sup> IACHR. [Annual Report 2012. Annual Report of the Office of the Special Rapporteur for Freedom of Expression.](#) Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. Para. 351.

<sup>1104</sup> In the context of Jamaica, there have been numerous attacks and assaults against persons because of their sexual orientation or gender identity. One example is the case of the murder of Dwayne Jones on July 22, 2013. IFEX/Human Rights Watch. August 1, 2013. [Cross-dressing teenager murdered in Jamaica;](#) Huffington Post/AP. August 11, 2013. [Dwayne Jones, Jamaican Transgender Teen, Murdered By Mob: Report.](#)

identity that constitutes the incitement of violence is not protected by freedom of expression<sup>1105</sup>. Article 13(5) of the American Convention establishes that: “[a]ny propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.”

563. In addition, Article 9 of the Inter-American Democratic Charter states that: “[t]he elimination of all forms of discrimination, especially gender, ethnic and race discrimination, as well as diverse forms of intolerance, the promotion and protection of human rights of indigenous peoples and migrants, and respect for ethnic, cultural and religious diversity in the Americas contribute to strengthening democracy and citizen participation.” Similarly, the Office of the Special Rapporteur recalls that principle 6 of the IACHR’s Declaration of Principles on Freedom of Expression, adopted in 2000, establishes, *inter alia*, that journalistic activities must be guided by ethical conduct.

## 19. Mexico

### A. Progress

564. On February 6, the First Chamber of the Supreme Court of Justice declared unconstitutional several legal provisions establishing the absolute secrecy of criminal investigations (investigative proceedings undertaken by the Public Prosecutor’s Office following an allegation or complaint, to determine whether criminal action should be brought before the courts).<sup>1106</sup> The First Chamber of the Court ruled that the following provisions, whose interpretation had resulted in the prohibition of public access to any piece of information from a criminal investigation, are unconstitutional: paragraphs second, third and sixth of Article 16 of the Federal Code of Criminal Procedure<sup>1107</sup>; Articles 13, section V, and 14, sections I and III, of the Federal Transparency and Access to Public Government Information Act<sup>1108</sup>; and Article 9 of the National Human Rights Commission’s Rules

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<sup>1105</sup> IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 58-59.

<sup>1106</sup> Primera Sala de la Suprema Corte de Justicia de la Nación (SCJN). [Amparo en Revisión 173/2012](#). February 6, 2013. See also, El Diario. February 6, 2013. [Declara Corte inconstitucional secrecía absoluta de averiguaciones previas](#); Excelsior. February 6, 2013. [Inconstitucional reserva de averiguaciones previas: Corte](#); Aristegui Noticias. February 6, 2013. [Decreta SCJN inconstitucional reserva absoluta de averiguaciones previas](#).

<sup>1107</sup> Cámara de Diputados del H. Congreso de la Unión. [Código Federal de Procedimientos Penales](#). Article 16. “... Only the accused, his/her defender, and the victim or offended party or his/her legal representative shall have access to the criminal investigation file. The criminal investigation and all documents, regardless of their content or nature, and any objects or voice and image records, or related materials, are strictly confidential. For the purposes of access to governmental public information, only a public version shall be provided of the resolution to not bring criminal action, as long as a time period equal to that of the statute of limitations for the crimes involved has transpired, pursuant to the provisions of the Federal Criminal Code, provided that it is not less than three nor more than twelve years from the date such a resolution has been made final. [...]The Public Prosecutor’s Office may not provide information to anyone who is not authorized once a criminal action has been brought [...]”.

<sup>1108</sup> Cámara de Diputados del H. Congreso de la Unión. [Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental](#). June 11, 2002. Article 13. “Privileged information shall be that information the dissemination of which may: V. Cause a severe damage to law enforcement activities, crime prevention or prosecution, the administration of justice, tax collection, migratory control operations, procedural strategies in judicial or administrative actions, as long as their resolutions shall have not become final and conclusive”.

of Procedure on Transparency and Access to Information.<sup>1109</sup> The decision of Court's First Chamber supported the claim of the weekly magazine *Proceso*, which had challenged the decision of the National Human Rights Commission to classify as secret information documents of a file related to a petition against the Federal Secretary of Public Security [*Secretaría de Seguridad Pública Federal*]. Among other reasons, the Commission stated that the documents were "related to information in a criminal investigation", which according to the Office of the Attorney General of the Republic [*Procuraduría General de la Nación*] were subject to secrecy rules.<sup>1110</sup> The decision of the First Chamber of the Supreme Court of Justice stated that "[i]n the matter under discussion, the aforementioned requirement [proportionality] has not been met, inasmuch as there is no proper balance between the principles at play, [that is], between the right of access to public information and the purpose and objective being sought with its restriction, relative to the *public or general interest* inherent in the *public duty* to investigate and prosecute crimes."<sup>1111</sup>

565. On June 20, Mexico's Supreme Court of Justice reportedly ruled in favor of the National Human Rights Commission, which had filed unconstitutionality action 29/2011 seeking to invalidate Article 373 of the State of Veracruz Criminal Code, which had been amended via Decree 296 published in the Official Gazette on September 20, 2011.<sup>1112</sup> The challenged article established prison terms of one to four years and fines of five hundred to a thousand salary days for anyone who "falsely asserts the existence of explosive or other devices; of attacks with firearms; or of chemical, biological, or toxic substances that may cause harm to health, causing disturbance to law and order."<sup>1113</sup> The justices determined that the article was unconstitutional and invalid, finding it "in violation of human rights enshrined in the Constitution of the United Mexican States, specifically with reference to freedom of expression, right to information, legality, legal security, and precise application of criminal law," as the Supreme Court of Justice reported in a press release.<sup>1114</sup>

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Article 14. "The following information shall also be considered privileged information: I. That information which may be treated as confidential, privileged, privileged commercial information or governmental confidential information under a specific legal provision; [...] III. Criminal investigations".

<sup>1109</sup> Comisión Nacional de Derechos Humanos. [Reglamento de Transparencia y Acceso a la Información de la Comisión Nacional de los Derechos Humanos](#). April 29, 2003. Article 9. "Pursuant article 4 of the National Commission of Human Rights Act and in accordance with section I of article 14 of the Act, the information or documentation contained in files of complaints, orientation, submission [*remisión*], recommendation follow ups and challenges that are processed by the Commission will be considered secret."

<sup>1110</sup> Primera Sala de la Suprema Corte de Justicia de la Nación (SCJN). [Amparo en Revisión 173/2012](#). February 6, 2013. See also, *Proceso*. February 6, 2013. [Sienta precedente la Suprema Corte con amparo a Proceso](#); Article 19. February 7, 2013. [Sobre declarar la inconstitucionalidad de la reserva absoluta de las averiguaciones previas](#).

<sup>1111</sup> Primera Sala de la Suprema Corte de Justicia de la Nación (SCJN). [Amparo en Revisión 173/2012](#). February 6, 2013. Para. 199.

<sup>1112</sup> Suprema Corte de Justicia de la Nación. June 20, 2013. [Invalida SCJN Artículo 373 del Código Penal del Estado de Veracruz](#). See also: Suprema Corte de Justicia de la Nación. [Contenido de la versión taquigráfica de la sesión pública ordinaria del pleno de la Suprema Corte de Justicia de la Nación, celebrada el jueves 20 de junio de 2013](#).

<sup>1113</sup> El Economista. June 21, 2013. [La Corte Suprema mexicana despenaliza la difusión de rumores en redes sociales](#); Excelsior. June 20, 2013. [SCJN declara inconstitucional 'ley antituitera'](#); Animal Político. June 20, 2013. [Corte tumba la Ley Duarte en Veracruz contra tuiteros](#). See also, Suprema Corte de Justicia de la Nación. June 20, 2013. [Invalida SCJN Artículo 373 del Código Penal del Estado de Veracruz](#); Suprema Corte de Justicia de la Nación. [Contenido de la versión taquigráfica de la sesión pública ordinaria del pleno de la Suprema Corte de Justicia de la Nación, celebrada el jueves 20 de junio de 2013](#).

<sup>1114</sup> Suprema Corte de Justicia de la Nación. June 20, 2013. [Invalida SCJN Artículo 373 del Código Penal del Estado de Veracruz](#).

566. On April 17, the state Congress of Colima reportedly approved Decree No. 99 rescinding the crime of defamation [*delito de difamación*] in the state Criminal Code.<sup>1115</sup> After the multi-judge Circuit Court of Colima declared that “the crime of defamation is unconstitutional in the State of Colima,”<sup>1116</sup> legislators voted unanimously to repeal Articles 218, 219, and 220 of the Criminal Code.<sup>1117</sup> Under the legislation, the crime of defamation [*delito de calumnia*] remains in effect and carries a penalty of two to five years in prison.<sup>1118</sup>

567. On November 26, 2013, the Chamber of Deputies of the United Mexican States passed an initiative to amend the Constitution that had been sent to it by the Senate. The initiative would give constitutional autonomy to the federal oversight agency on matters of transparency and access to public information. The scope of this autonomy would mean that its rulings are “definitive, binding and cannot be challenged by those legally bound” and that hereinafter it will hear matters resolved by its peer institutions in the federal entities as well as challenges to denials of information resolved by other constitutionally autonomous bodies and other powers, with the exception of the Supreme Court of Justice of the Nation. It also allows federal oversight agency to participate in conflicts over the constitutionality of actions and laws. The ongoing reform also broadens the sources of information considered public<sup>1119</sup>.

**B. Federalizing investigations into crimes against journalists, individuals, or facilities that may affect, limit, or undermine the right to information or freedom of expression**

568. On June 6, 2012, the Permanent Commission of the Mexican Congress approved an amendment to Article 73 of the Constitution, granting powers to the federal authorities to take over investigations of crimes committed in local jurisdictions when these involve crimes against journalists, individuals, or facilities that affect, limit, or undermine the right to information or freedom of expression or of the press.<sup>1120</sup>

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<sup>1115</sup> H. Congreso del Estado de Colima. Decreto N° 99. April 17, 2013. Available for consultation at: [http://www.congresocol.gob.mx/decretos57/decretos57\\_2013.html](http://www.congresocol.gob.mx/decretos57/decretos57_2013.html)

<sup>1116</sup> H. Congreso del Estado de Colima. Decreto N° 99. April 17, 2013. Available for consultation at: [http://www.congresocol.gob.mx/decretos57/decretos57\\_2013.html](http://www.congresocol.gob.mx/decretos57/decretos57_2013.html)

<sup>1117</sup> Proceso. April 17, 2013. [Deroga Congreso de Colima el delito de difamación](#); Colima Noticias. April 17, 2013. [Diputados derogan difamación pero mantienen calumnia en Código Penal](#); El Universal. April 17, 2013. [La difamación deja de ser un delito en Colima](#). See also, H. Congreso del Estado de Colima. Decreto N° 99. April 17, 2013. Available for consultation at: [http://www.congresocol.gob.mx/decretos57/decretos57\\_2013.html](http://www.congresocol.gob.mx/decretos57/decretos57_2013.html)

<sup>1118</sup> H. Congreso del Estado de Colima. [Código Penal para el Estado de Colima. Capítulo III. Calumnia](#). December 21, 2013. Article 221.- “Those who falsely impute to someone facts that the law establishes as crime, knowing that the crime was not committed or that the accused is not responsible for it, will be punished by two to five years of imprisonment and fine of 70 units”.

<sup>1119</sup> Cámara de Diputados. H. Congreso de la Unión. [Minuta. Proyecto de Decreto por el que se reforman y adicionan diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos, en materia de transparencia](#). November 26, 2013. See also, Cámara de Diputados. H. Congreso de la Unión. November 26, 2013. [Boletín No 2613 Aprueban diputados minuta en materia de transparencia; la remiten a Congresos estatales](#); Cámara de Diputados. H. Congreso de la Unión. November 26, 2013. [Nota No 5131 Aprueban Diputados minuta que regresó el Senado sobre reforma constitucional al IFAI y la turna a los congresos estatales para su eventual ratificación](#).

<sup>1120</sup> Senado de la República. June 6, 2012. [Boletín No. 1111 Valida la Permanente reforma constitucional a favor de periodistas](#). See also, Secretaría de la Gobernación. Diario Oficial de la Federación. [Decreto por el que se adiciona el párrafo segundo de la fracción XXI del artículo 73 de la Constitución Política de los Estados Unidos Mexicanos](#). June 25, 2012.

569. The Office of the Special Rapporteur is pleased to take note of the legal reform approved in Mexico regulating the jurisdiction of federal authorities to investigate and punish crimes committed against journalists for practicing their profession. On April 25, the Chamber of Deputies approved a draft decree—approved in the Senate on April 11<sup>1121</sup>—authorizing the Federal Public Prosecutor’s Office to take over investigations into crimes of ordinary courts committed against journalists, individuals, or facilities that may affect, limit, or undermine the right to information or freedom of expression.<sup>1122</sup> The new provisions amend and add various provisions of the Federal Code of Criminal Procedure, the Organic Law of the Federal Judiciary, the Organic Law of the Office of the Attorney General, and the Federal Criminal Code.<sup>1123</sup> The reform establishes that “the Federal Office of the Public Prosecutor shall be able to exercise its takeover authority” to take cognizance of and prosecute crimes that threaten freedom of expression, and “federal judges, moreover, shall have jurisdiction to try them.”<sup>1124</sup> This authority shall be exercised in cases involving crimes presumed to be premeditated, when there is evidence that a state or municipal public servant may have participated in the crime, or in the case of felonies as defined by law. Other cases include when the victim’s life or physical integrity is at actual risk, when the competent state authority so requests, or when the events that constitute crime have a major impact on the exercise of the right to information or freedom of expression or the press. Moreover, the bill provides for this authority to be exercised when a judgment or resolution by a body established in an international treaty to which Mexico is a party has determined the State’s international responsibility, by fault or omission, in the investigation, prosecution, or judgment of crimes against journalists and/or media outlets.<sup>1125</sup> In addition, in all these cases “the victim or offended party may request that the Federal Public Prosecutor’s Office exercise its authority to take over [the case].”<sup>1126</sup> The bill also establishes that the penalty established for a specified offense is increased by up to one third when the offense is committed against a journalist, individual, or facility with the intent of affecting, limiting, or undermining the right to information or freedom of expression. The penalty shall be increased “by up to one half when, in addition, the crime is committed by a public

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<sup>1121</sup> Cámara de Diputados. Comisión de Derechos Humanos. [Proyecto de Decreto que reforma y adiciona diversas disposiciones del Código Federal de Procedimientos Penales, de la Ley Orgánica del Poder Judicial de la Federación, de la Ley Orgánica de la Procuraduría General de la República y del Código Penal Federal](#). April 24, 2013.

<sup>1122</sup> Cámara de Diputados. April 25, 2013. [Boletín No. 1445 Dan facultades al Ministerio Público Federal para atraer delitos del fuero común contra periodistas](#); Secretaría de la Gobernación. Diario Oficial de la Federación. [Decreto por el que se reforman y adicionan diversas disposiciones del Código Federal de Procedimientos Penales, de la Ley Orgánica del Poder Judicial de la Federación, de la Ley Orgánica de la Procuraduría General de la República y del Código Penal Federal](#). May 3, 2013.

<sup>1123</sup> Cámara de Diputados. April 25, 2013. [Boletín No. 1445 Dan facultades al Ministerio Público Federal para atraer delitos del fuero común contra periodistas](#); Secretaría de la Gobernación. Diario Oficial de la Federación. [Decreto por el que se reforman y adicionan diversas disposiciones del Código Federal de Procedimientos Penales, de la Ley Orgánica del Poder Judicial de la Federación, de la Ley Orgánica de la Procuraduría General de la República y del Código Penal Federal](#). May 3, 2013.

<sup>1124</sup> Secretaría de la Gobernación. Diario Oficial de la Federación. [Decreto por el que se reforman y adicionan diversas disposiciones del Código Federal de Procedimientos Penales, de la Ley Orgánica del Poder Judicial de la Federación, de la Ley Orgánica de la Procuraduría General de la República y del Código Penal Federal](#). May 3, 2013.

<sup>1125</sup> Cámara de Diputados. April 25, 2013. [Boletín No. 1445 Dan facultades al Ministerio Público Federal para atraer delitos del fuero común contra periodistas](#); Secretaría de la Gobernación. Diario Oficial de la Federación. [Decreto por el que se reforman y adicionan diversas disposiciones del Código Federal de Procedimientos Penales, de la Ley Orgánica del Poder Judicial de la Federación, de la Ley Orgánica de la Procuraduría General de la República y del Código Penal Federal](#). May 3, 2013.

<sup>1126</sup> Secretaría de la Gobernación. Diario Oficial de la Federación. [Decreto por el que se reforman y adicionan diversas disposiciones del Código Federal de Procedimientos Penales, de la Ley Orgánica del Poder Judicial de la Federación, de la Ley Orgánica de la Procuraduría General de la República y del Código Penal Federal](#). May 3, 2013.



servant in the exercise of his or her duties, or when the victim is a woman and gender motives also come into play in the commission of the crime.”<sup>1127</sup>

570. On August 13, the Office of the Special Prosecutor on Crimes against Freedom of Expression, of the Office of the Attorney General of the Republic, reportedly took over the investigations into the killing of Armando Rodríguez Carreón, a reporter from the Juárez newspaper *El Diario*, who was killed on November 13, 2008, in Ciudad Juárez. This is apparently the first homicide case the Office of the Special Prosecutor has taken over since the legal reforms were approved giving it jurisdiction to investigate crimes against journalists, according to the head of that office, Laura Angelina Borbolla Moreno. Media reports said that, according to that official, the Special Prosecutor’s Office has taken over another five cases involving crimes against media workers that have to do with attacks and abuse of authority.<sup>1128</sup>

571. Mexico’s National Human Rights Commission, in its General Recommendation No. 20, noted the lack of efficiency in the performance of the Special Prosecutor on Crimes against Freedom of Expression of the Office of the Attorney General of the Republic, based on the results obtained since its creation in 2010. The National Commission found that of the 378 criminal investigations initiated by the Special Prosecutor between July 5, 2010, and July 5, 2013, 210 were forwarded to other authorities due to lack of jurisdiction. Of the 168 remaining cases, criminal actions were brought in 28% of the cases, there has been no determination in 55% of the investigations, and in only one case has a ruling been issued.<sup>1129</sup> Meanwhile, according to information reported to the media by the deputy director of the Special Prosecutor Office, Alberto Peralta Flores, in the first nine months of 2013 the entity had reportedly initiated 150 criminal investigations into attacks against journalists.<sup>1130</sup>

572. In its 2010 Special Report on Freedom of Expression in Mexico, the Office of the Special Rapporteur urged the Mexican State to resolve “the existing ambiguity with regard to jurisdiction over crimes against freedom of expression, in order to permit the exercise of federal jurisdiction over crimes against freedom of expression when circumstances so demand.” It underscored the “greatest importance that the necessary reforms be advanced to allow federal judges jurisdiction over these kinds of crimes.”<sup>1131</sup>

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<sup>1127</sup> Cámara de Diputados. April 25, 2013. [Boletín No. 1445 Dan facultades al Ministerio Público Federal para atraer delitos del fuero común contra periodistas](#); Secretaría de la Gobernación. Diario Oficial de la Federación. [Decreto por el que se reforman y adicionan diversas disposiciones del Código Federal de Procedimientos Penales, de la Ley Orgánica del Poder Judicial de la Federación, de la Ley Orgánica de la Procuraduría General de la República y del Código Penal Federal](#). May 3, 2013.

<sup>1128</sup> El Diario. August 13, 2013. [Atrae fiscalía federal el caso de ‘El Choco’, reportero de El Diario](#); Zócalo. August 14, 2013. [Atrae PGR caso de periodista asesinado](#); See also, IFEX/International Press Institute. August 30, 2013. [In Mexico, signs of life in the fight against impunity](#).

<sup>1129</sup> Comisión Nacional de los Derechos Humanos. [Recomendación General Nº 20 sobre agravios a periodistas en México y la impunidad imperante](#). August 15, 2013.

<sup>1130</sup> Proceso. October 14, 2013. [Acumula PGR 150 averiguaciones por agresiones a periodistas](#).

<sup>1131</sup> IACHR. [Annual Report 2010. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II 2010 Special Report on Freedom of Expression in Mexico. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Para. 725.

### C. Constitutional Reform on Telecommunications and Economic Competition

573. The Constitutional Reform on Telecommunications and Economic Competition was enacted in Mexico on June 10.<sup>1132</sup>

574. The Office of the Special Rapporteur is pleased to note that the initiative of the reform presented to Congress mentions international standards on freedom of expression; Article 13 of the American Convention on Human Rights; inter-American case law; the IACHR Declaration of Principles on Freedom of Expression; advisory opinions of the Inter-American Court of Human Rights; and the Joint Declaration on Freedom of Expression and the Internet, of the United Nations (UN) Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, the Representative on Freedom of the Media of the Organization for Security and Co-operation in Europe (OSCE), the Special Rapporteur on Freedom of Expression of the Inter-American Commission on Human Rights (IACHR), and the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples' Rights (ACHPR), published on June 1, 2011<sup>1133</sup>. According to this declaration, States have "an obligation [...] to promote universal access to the Internet. Access to the Internet is also necessary to promote respect for other rights, such as the right to education, health care and work, the right to assembly and association, and the right to free elections."<sup>1134</sup>

575. The reform introduces important changes to the constitutional legal framework on broadcasting and telecommunications, including the following: 1) the recognition of the right to free access to information that is pluralistic and timely, as well as the right to seek, receive, and disseminate information of all kinds by any means of expression; 2) the creation of two new, autonomous constitutional agencies on the issue: the Federal Economic Competition Commission and the Federal Institute for Telecommunications; and 3) the establishment of multi-judge and single-judge Circuit Courts and District Courts that are specialized in matters involving economic competition, broadcasting, and telecommunications. The Federal Institute for Telecommunications will be responsible for the regulation, promotion, and oversight of the use, operation, and development of the radio spectrum and networks, and the provision of broadcast and telecommunications services, as well as access to active and passive infrastructure and other essential inputs. In addition, the reform requires the Congress to issue a series of secondary laws for the purpose of, among others: 1) defining special criminal offenses to penalize monopolistic practices and situations of ownership concentration; 2) regulating the agencies that were created; 3) regulating the right to reply; 4) establishing mechanisms to ensure the promotion of independent domestic production; and 5) issuing a single legal framework to ensure the convergent regulation of the use, operation, and development of the radio spectrum, among other things. In addition, the reform mandates that the law must establish the rights of telecommunications users and

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<sup>1132</sup> Secretaría de la Gobernación. Diario Oficial de la Federación. [Decreto por el cual se reforman y adicionan diversas disposiciones de los artículos 6º., 7º., 27, 28, 73, 78, 94 y 105 de la Constitución Política de los Estados Unidos Mexicanos, en materia de Telecomunicaciones](#). June 11, 2013. *See also*, El País. June 10, 2013. [Peña Nieto promulga la reforma de telecomunicaciones de México](#); Cronista. June 11, 2013. [Peña Nieto promulga en México la nueva ley de telecomunicaciones](#); CNN México. June 10, 2013. [El Gobierno promulga la Ley de Telecom](#).

<sup>1133</sup> Presidencia de los Estados Unidos Mexicanos. [Iniciativa de Decreto que reforma y adiciona diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos](#). March 11, 2013.

<sup>1134</sup> United Nations (UN) Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, the Organization for Security and Cooperation in Europe's (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 on the Internet](#). Point 6(a).

of the public, as well as protection mechanisms. It also contemplates that, once the Federal Institute for Telecommunications has been set up, bidding will be opened for new licenses for television broadcast frequencies to create at least two new open television channels that offer national coverage.<sup>1135</sup>

576. The reform mandates that “the law must establish a decentralized public agency with technical, operational, decision-making, and management autonomy, which shall aim to provide broadcasting service on a nonprofit basis, in order to ensure that the greatest numbers of people in each of the federative entities have access to content that promotes national integration; educational, cultural, and civic instruction; equality between women and men; and the dissemination of impartial, objective, timely, and truthful information regarding national and international events, and which makes room for independently produced works, as well as the expression of diversity and pluralism of ideas and opinions that strengthen the democratic life of a society.”<sup>1136</sup> The public agency will have a Citizen Council “for the purpose of ensuring its independence and impartial and objective editorial policies.”<sup>1137</sup>

577. The Office of the Special Rapporteur notes, in any case, that the reform establishes that said body will ensure access to contents that promote “equality between women and men, the dissemination of impartial, objective, timely and truthful information about national and international events.”<sup>1138</sup> In this respect, it is true that the promotion of content to foster integration, education, equality, diversity and plurality of ideas, the dissemination of impartial information and independent production constitute a valuable asset. Nonetheless, this must not be understood as a prior condition, which is prohibited by Principle 7 of the Declaration of Principles on Freedom of Expression of the IACHR. In any case, the State must be neutral about editorial content or other information while seeking to avoid intervening in said content, with the sole exception stated in article 13 of the American Convention on Human Rights.

578. The Office of the Special Rapporteur reminds that the allocation of radio and television licenses has a definitive impact on the right to freedom of expression in its two dimensions: the right to freely express oneself and society’s right to receive diverse ideas and opinions. Therefore, this process must serve two objectives: 1) to ensure greater security so that people can freely express themselves without fear of being punished or stigmatized, and 2) to ensure equality in the conditions of access to frequencies and greater diversity in the media. The process of allocating frequencies must be strictly

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<sup>1135</sup> Presidencia de la República. [Decreto por el cual se reforman y adicionan diversas disposiciones de los artículos 6º., 7º., 27, 28, 73, 78, 94 y 105 de la Constitución Política de los Estados Unidos Mexicanos, en materia de Telecomunicaciones.](#) 10 de junio de 2013; *Ver también:* CNN México. 10 de junio de 2013. [El Gobierno promulga la Ley de Telecom;](#) Informador. 11 de junio de 2013. [Pretende la reforma en telecomunicaciones más competencia;](#) Vanguardia. 14 de junio de 2013. [Leyes secundarias, el riesgo en la reforma de telecomunicaciones.](#)

<sup>1136</sup> Secretaría de la Gobernación. Diario Oficial de la Federación. [Decreto por el cual se reforman y adicionan diversas disposiciones de los artículos 6º., 7º., 27, 28, 73, 78, 94 y 105 de la Constitución Política de los Estados Unidos Mexicanos, en materia de Telecomunicaciones.](#) June 11, 2013.

<sup>1137</sup> Secretaría de la Gobernación. Diario Oficial de la Federación. [Decreto por el cual se reforman y adicionan diversas disposiciones de los artículos 6º., 7º., 27, 28, 73, 78, 94 y 105 de la Constitución Política de los Estados Unidos Mexicanos, en materia de Telecomunicaciones.](#) June 11, 2013.

<sup>1138</sup> Secretaría de la Gobernación. Diario Oficial de la Federación. [Decreto por el cual se reforman y adicionan diversas disposiciones de los artículos 6º., 7º., 27, 28, 73, 78, 94 y 105 de la Constitución Política de los Estados Unidos Mexicanos, en materia de Telecomunicaciones.](#) June 11, 2013.

regulated by law, characterized by transparency and guided by objective, clear, public-spirited and democratic criteria.<sup>1139</sup>

579. Similarly, as it was stated in the Special Report on Freedom of Expression in Mexico, the Office of the Special Rapporteur believes that the State must encourage media autonomy, as well as diversity and pluralism in the media by adopting structural measures, such as setting up a regulatory body for broadcasting that is independent of the government<sup>1140</sup>. The Office of the Special Rapporteur notes that the State must recognize the unique existence of community stations and provide for reserving parts of the spectrum for this type of media, as well as for maintaining equitable conditions for access to licenses that differentiate among the varied circumstances under which private non-commercial media operate. As this office has indicated, states must have a clear, pre-established, precise and reasonable legal framework that recognizes the special characteristics of community radio broadcasting and that includes simple, accessible procedures for obtaining licenses that do not impose excessive technological requirements, that allow the possibility of using advertising as a means of financing, and that do not impose discriminatory limits on their financing and reach.<sup>1141</sup>

#### D. Murders and disappearances

580. Journalist Sergio Landa Rosado, a police reporter for the local newspaper *Cardel*, reportedly disappeared in the state of Veracruz on January 23. A month before his disappearance, the journalist had reportedly been kidnapped by an armed group and released following the intervention of the authorities.<sup>1142</sup>

581. Jaime Guadalupe González Domínguez, journalist and head of the digital newspaper *Ojinaga Noticias*, was killed on March 3 in the city of Ojinaga, in the state of Chihuahua. According to the information received, González Domínguez was attacked by armed men, who reportedly fired at least 17 shots at him. The attackers then reportedly stole his camera. Before working for *Ojinaga Noticias*, González Domínguez worked for several years as a journalist for the weekly newspaper *Contacto*, but he had reportedly resigned from that job after receiving threats. The Office of the Rapporteur was informed that the *Ojinaga Noticias* portal was suspended after the attack, out of fear of future attacks.<sup>1143</sup>

<sup>1139</sup> IACHR. [Annual Report 2010. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II 2010 Special Report on Freedom of Expression in Mexico. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Para. 746.

<sup>1140</sup> IACHR. [Annual Report 2010. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II 2010 Special Report on Freedom of Expression in Mexico. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Para. 751.

<sup>1141</sup> IACHR. [Annual Report 2010. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II 2010 Special Report on Freedom of Expression in Mexico. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Para. 757.

<sup>1142</sup> Committee to Protect Journalists (CPJ). April 22, 2013. [Journalist missing in Veracruz for 3 months](#); Reporters Without Borders. April 18, 2013. [Veracruz journalist reported missing, Proceso reporter goes into hiding](#); CNN México. April 8, 2013. [Más ataques a la prensa y un periodista desaparecido en el inicio de 2013](#); Diario 24 horas. April 23, 2013. [Piden investigar desaparición de reportero en Veracruz](#).

<sup>1143</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. March 6, 2013. [Press Release R15/13. Office of the Special Rapporteur Condemns Murder of Journalist in Mexico](#); Article 19. March 4, 2013. [ALERTA: Grupo armado asesina a periodista en Ojinaga, Chihuahua](#); Committee to Protect Journalists (CPJ). March 5, 2013. [News website editor shot to death in Mexico](#); Proceso. March 4, 2013. [Investigan crimen de periodista en Chihuahua; desaparece su portal noticioso](#).

582. On April 24, Daniel Alejandro Martínez Bazaldúa, a photographer for the newspaper *Vanguardia* of Saltillo, state of Coahuila, was killed. The 22-year-old photographer's body was found with that of Julián Alejandro Zamora Gracia, who was 23. Both bodies were found mutilated. Martínez had been working for the newspaper for a month, as a photographer for the society pages.<sup>1144</sup> The crime does not have a clear connection with the profession of journalism. However, the Office of the Special Rapporteur urges the authorities to investigate the incident and make a judicial determination as to any connection it might have with journalism and freedom of expression.

583. On July 17, journalist Alberto López Bello, a reporter with the newspaper *El Imparcial*, was reportedly killed in Oaxaca de Juárez, in the state of Oaxaca. López Bello covered the police beat for said newspaper and was a contributor to the local radio station *Radiatorama*. According to the information that was received, the journalist's body was found around 7 a.m. on July 17, along with the body of another victim. Police authorities reported that the victims had been beaten and showed signs of injury.<sup>1145</sup> The governor of Oaxaca reportedly gave instructions to the state Office of the Attorney General for this crime against the journalist to "be handled as a high-impact crime and channeled toward the Special Committee on Journalists [*Mesa Especial para la Atención a Periodistas*] so as to clear up the killing, working where appropriate with the Office of the Attorney General of the Republic (PGR)," as the state government of Oaxaca said in a press release.<sup>1146</sup> Previously, on May 18, López Bello and reporter Jacobo López of *El Imparcial* were detained for five hours by individuals presumed to be members of the State Police when they were found taking photographs of a banner with threats that had been hung over an avenue by a criminal group.<sup>1147</sup>

584. The National Human Rights Commission, in its General Recommendation No. 20, indicated that "the authorities responsible for pursuing justice have caused a significant gap when it comes to results in the investigation of crimes committed against journalists and media outlets."<sup>1148</sup> The CNDH also stated that "deficiencies in the public security system and justice system; corruption and abuse of power in some institutions; the lack of programs for effective prevention, inspection, and oversight; and the lack of timely sanctions that would set an example for law-breaking or negligent public servants have all led to an increase in impunity with respect to attacks against members of the journalism field."<sup>1149</sup>

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<sup>1144</sup> *Vanguardia*. April 24, 2013. [Asesinan a fotógrafo de Vanguardia](#); CNN México. April 25, 2013. [Autoridades encuentran el cuerpo de un fotoperiodista en Coahuila](#); Article 19. April 25, 2013. [ALERTA: Asesinan a fotoperiodista de Vanguardia](#); Proceso. April 25, 2013. [Descuartizan a fotógrafo del periódico Vanguardia](#).

<sup>1145</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. July 22, 2013. [Press Release R53/13. Office of the Special Rapporteur Condemns Murder of Journalist in Mexico](#); Gobierno del Estado de Oaxaca. July 17, 2013. [Instruye el Gobernador de Oaxaca investigar homicidio del periodista Alberto López Bello](#); Article 19. July 17, 2013. [ALERTA: Asesinan a periodista en Oaxaca](#); Committee to Protect Journalists (CPJ). July 18, 2013. [Mexican crime reporter shot to death in Oaxaca](#); El Diario. July 17, 2013. [Matan a periodista policiaco de El Imparcial de Oaxaca](#); El Universal. July 17, 2013. [Asesinan a periodista policiaco en Oaxaca](#); Proceso. July 17, 2013. [Asesinan a Alberto López Bello, periodista policiaco de 'El Imparcial' de Oaxaca](#).

<sup>1146</sup> Gobierno del Estado de Oaxaca. July 17, 2013. [Instruye el Gobernador de Oaxaca investigar homicidio del periodista Alberto López Bello](#).

<sup>1147</sup> Article 19. May 18, 2013. [Alerta: Policía Estatal de Oaxaca detiene ilegalmente a reporteros de El Imparcial](#); El Universal. July 17, 2013. [Asesinan a periodista policiaco en Oaxaca](#).

<sup>1148</sup> Comisión Nacional de los Derechos Humanos. August 15, 2013. [Recomendación General Nº 20, sobre agravios a periodistas en México y la impunidad imperante](#). Para. 9.

<sup>1149</sup> Comisión Nacional de los Derechos Humanos. August 15, 2013. [Recomendación General Nº 20, sobre agravios a periodistas en México y la impunidad imperante](#). Para. 52.

585. Along these lines, the National Commission recommended to the National Security Commissioner and public security secretaries at the state level that “a decisive and effective response be provided by the authorities from the three levels of government to foster an effective, complete, and independent public security system, in order to prevent and dissuade attacks against members of the journalism field and thus prevent a greater increase in murders and disappearances of journalists, as well as attacks on media facilities.” It also recommended that “those concerned be instructed for the purpose of providing training in prevention and dissuasion of criminal acts so that members of law enforcement at the three levels of government preserve and guarantee the rights of journalists.”<sup>1150</sup>

586. Finally, the National Commission recommended to Mexico’s Attorney General and to state attorneys general that “instructions be issued to those concerned so that, in each case, the respective steps are taken to set up an effective inquiry, for the purpose of exhausting all avenues of investigation, including those related to the work of journalism in the exercise of the right to freedom of expression,” and that “the necessary and appropriate measures be implemented and applied purposefully, directly, and permanently to combat impunity, so that the appropriate criminal investigations are resolved as soon as possible, to clear up any murders, disappearances, attacks, threats, and any and all other offenses committed against journalists.”<sup>1151</sup>

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

588. The obligations of the State in regard to the prevention and protection of journalists, and to the fight against impunity, are developed in Chapter III of this report.

## **E. Detentions, attacks, and threats against media outlets and journalists**

### **a. Attacks on journalists and media workers during demonstrations**

589. On February 24, a group of journalists were reportedly attacked in Hermosillo, state of Sonora, while they were covering a march by a movement called “No More Taxes” [*“No Más Impuestos”*]. The journalists were said to have been victims of physical and verbal attacks. The attackers were allegedly members of a group that called itself “I Am Low-Income” [*“Soy Bajos Recursos”*].<sup>1152</sup>

590. On April 26, journalist Martha Izquierdo, from the news program ‘Orientación Matutina’ in Ixtepec, state of Oaxaca, was reportedly assailed and held by workers and *ejidatarios* de Nizanda while she was covering a dispute between them and the community of Ixtepec. The workers and

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<sup>1150</sup> Comisión Nacional de los Derechos Humanos. August 15, 2013. [Recomendación General N° 20, sobre agravios a periodistas en México y la impunidad imperante.](#)

<sup>1151</sup> Comisión Nacional de los Derechos Humanos. August 15, 2013. [Recomendación General N° 20, sobre agravios a periodistas en México y la impunidad imperante.](#)

<sup>1152</sup> Article 19. February 26, 2013. [Alerta: Agreden a periodistas en Hermosillo](#); Meganoticias. February 26, 2013. [Agreden a manifestantes](#); Dossier Político. February 24, 2013. [Agreden encapuchados a la prensa y “Malnacidos”.](#)

*ejidatarios* reportedly detained her and forced her to erase her photos and recordings with the interviews she had conducted. Other journalists were also reported to have been threatened while they were covering the conflict.<sup>1153</sup>

591. On September 1, four journalists were reported to have been detained by officers of the Metropolitan Police and one journalist was injured, during protests against educational reforms and the president's presentation of the government's annual report. According to reports, Daniel Cruz, a photojournalist for the newspaper *Milenio*, was attacked by someone presumed to be a policeman, who reportedly hit him with his shield, even after the reporter had identified himself as a member of the press. Journalists Estela Morales, from *Regeneración Radio*; Alejandro Amado Fraustro, an independent journalist; Pável Primo Noriega, from *Multimedios Cronopios*; and Gustavo Ruíz, from *Subversiones*, reportedly were all arrested while they were doing their jobs of reporting the news.<sup>1154</sup> On September 3, journalists Alejandro Amado Fraustro and Estela Morales apparently were released on bail.<sup>1155</sup> On September 6, Gustavo Ruíz and Pável Primo Noriega reportedly were released after posting bail.<sup>1156</sup> On September 10, the Division 23 Misdemeanor Judge of the Federal District Superior Court (TSJDF) [*Juez Vigésimo Tercero de Delitos No Graves del Tribunal Superior de Justicia del Distrito Federal*], reportedly ordered the incarceration of Gustavo Ruíz, who will face charges for the crimes of dishonor to the authority (*ultrajes*) and resistance by individuals.<sup>1157</sup>

592. On September 12, journalists Anarcis Pacheco Polito and photographer Lenin Ocampo Torres, from the newspaper *El Sur*; Jonathan Cuevas, from the newspaper *Novedades*; Jesús Eduardo Guerrero, from the newspaper *La Jornada*; and Víctor Hugo Wences Martínez, from *Radio Universidad*,

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<sup>1153</sup> Article 19. April 26, 2013. [México: Amenazan de muerte en Oaxaca a la periodista Martha Izquierdo](#); El Piñero. April 26, 2013. [Secuestran a la periodista oaxaqueña Martha Izquierdo, premio nacional de periodismo en 2007](#); Despertar de Oaxaca. April 27, 2013. [Transportistas agredieron a periodistas en Ixtalpetec](#); Las Caracolas. April 26, 2013. [Retienen a la periodista Martha Izquierdo y la amenazan de muerte](#).

<sup>1154</sup> Milenio. September 3, 2013. [Pide RSF liberar a cuatro periodistas detenidos en marcha 1SMX](#); Campaña Permanente de Protección a Periodistas en México/Article 19. September 1, 2013. [#ALERTA: Policías capitalinos agreden y detienen a periodistas durante manifestaciones del #1SMX](#); Centro de Reportes Informativos sobre Guatemala (CERIGUA). September 2, 2013. [Agentes policiales agreden y detienen a periodistas durante protesta en DF](#); Subversiones. September 1, 2013. [Detención Arbitraria de periodista de Agencia Subversiones](#); Proceso. September 2, 2013. [Denuncian periodistas detenciones arbitrarias durante marcha del #1SMX](#).

<sup>1155</sup> Insurgentes. September 3, 2013. [Liberan a cuatro de los 16 detenidos en marcha 1SMX](#); Reforma. September 3, 2013. [Liberan a cuatro del #1SMX](#); Aristegui Noticias. September 3, 2013. [Liberan con fianza a 7 detenidos en 1SMX; consignan a 7 a Reclusorio Sur](#).

<sup>1156</sup> Subversiones. September 6, 2013. [En libertad provisional, el fotógrafo Gustavo Ruíz Lizárraga, el reportero Pavel Primo Noriega y cuatro compañeros más](#); Reporters Without Borders. September 9, 2013. [Two journalists held since 1 September finally freed on bail](#).

<sup>1157</sup> CNN México. September 10, 2013. [Un juez dicta formal prisión a fotógrafo detenido en marchas del #1SMX](#); Centro de Reportes Informativos sobre Guatemala (CERIGUA). September 12, 2013. [México: Juez dicta auto de formal prisión contra reportero](#); Subversiones/Article 19. September 12, 2013. [México: las pruebas que rechazó el Juez en el juicio contra fotoperiodista de Subversiones](#). According to the information received after closing this report, on November 11 the lawyers of Gustavo Ruíz Lizárraga were reportedly notified of a decision of the Fifth Criminal Chamber of the Superior Tribunal of the Distrito Federal, according to which the imprisonment order issued against the reporter was revoked and his release was decreed "due to lack of sufficient elements for trial". Article 19. November 11, 2013. [Gustavo Ruíz de SubVersiones ¡libre! Fue detenido el #1SMX](#). Available for consultation at: <http://subversiones.org/archivos/15342>

were reportedly attacked by individuals presumed to be police officers during the eviction of demonstrators from the area around the palace of government in Chilpancingo, state of Guerrero.<sup>1158</sup>

593. On September 14, in Xalapa, Veracruz, during an operation to evict teachers who were demonstrating in the city's main plaza, at least five journalists were reportedly assaulted by the state police. Melina Zurita, a reporter for *Radio Centro* and correspondent for *AFP*, was reportedly assaulted when covering the eviction by individuals presumed to be police officers who also stole her camera and other belongings. Óscar Martínez and Rubén Espinoza, photojournalists for the *AVC* agency, were reportedly held by individuals presumed to be police officers, who erased their camera memory cards. Roger López Martínez, a photographer and director of *Imagen del Golfo*, reportedly had his camera stolen by individuals presumed to be police officers, who were said to have chased him and attacked him with an electric device.<sup>1159</sup>

594. In addition, Juan Alberto Arellano Mariano, photojournalist and member of the organization La Vida, was reportedly arrested and charged with the crimes of illegal possession of firearms and narcotics. Reportedly he was freed on bail, but still faces criminal proceedings.<sup>1160</sup>

595. Multiple journalists were reported to have been injured while they were covering a march to commemorate the 45<sup>th</sup> anniversary of the October 2, 1968, Tlatelolco massacre, according to reports from organizations such as Article 19 and Periodistas de a Pie. Most of the attacks on journalists and members of the media were reportedly committed by members of the Federal District Metropolitan Police. There were also attacks on demonstrators, particularly a group of self-described "anarchists."<sup>1161</sup>

596. According to reports, Arturo Ramos, of *Agencia Libre Foto*, was injured in the face when he was hit by a rock thrown by individuals presumed to be police officers.<sup>1162</sup> Four journalists with *Agence France-Presse (AFP)* were reportedly assaulted by individuals presumed to be police officers;

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<sup>1158</sup> El Financiero. September 12, 2013. [Agreden a 5 periodistas durante desalojo en Guerrero](#); Proceso. September 13, 2013. [Reporteros presentan queja contra la Policía de Guerrero por abuso de autoridad](#).

<sup>1159</sup> Article 19. September 16, 2013. [FEADLE debe investigar agresiones cometidas a libertad de expresión en Xalapa](#). Available for consultation at: <http://www.libertad-expresion.org.mx/alertas-de-agresiones/feadle-debe-investigar-agresiones-cometidas-a-libertad-de-expresion-en-xalapa/>; Reporters Without Borders. September 16, 2013. [More police violence against journalists covering demonstrations](#); Periódico Veráz. [Rechazamos prácticas ilegales de censura periodística por parte de Seguridad Pública](#); CNN México. September 14, 2013. [La policía de Veracruz desaloja plantón de profesores](#); Proceso. September 14, 2013. [Desalojan de madrugada a maestros y estudiantes de la plaza Lerdo de Xalapa](#).

<sup>1160</sup> Reporters Without Borders. September 16, 2013. [More police violence against journalists covering demonstrations](#); Article 19. September 16, 2013. [FEADLE debe investigar agresiones cometidas a libertad de expresión en Xalapa](#). Available at: <http://www.libertad-expresion.org.mx/alertas-de-agresiones/feadle-debe-investigar-agresiones-cometidas-a-libertad-de-expresion-en-xalapa/>; La Jornada. September 15, 2013. [Estiman 40 desaparecidos y detenidos tras desalojo](#); Plumas Libres. September 17, 2013. [Activista pide a PGR lo exonere de delitos fabricados en su contra tras desalojo](#).

<sup>1161</sup> Article 19. October 2, 2013. [#RompeElMiedo documenta violencia durante marchas](#); Herramientas de Periodismo. October 9, 2013. [51 periodistas agredidos en la marcha del 2 de octubre](#); Prensa Libre México/YouTube. October 11, 2013. [Voces de periodistas mexicanos tras las agresiones en la marcha del 2 de octubre](#); Reporters Without Borders. October 3, 2013. [More than fifteen journalists assaulted during Mexico City marches](#); Variopinto. October 3, 2013. [22 periodistas silenciados por SSPDF durante conmemoración del 2 de octubre](#); Lado B. October 2, 2013. [Un #2deoctubre entre balas de goma y bombas molotov](#).

<sup>1162</sup> Foto Reporteros MX/Vimeo. [Testimonio de Arturo Ramos, Fotorreportero de Agencia Libre Foto](#); Brigada informativa altavoz/YouTube. October 7, 2013. [Jemima encuentra a FotoReportero herido por granaderos. Marcha 2 Octubre 2013 #20Mx](#); Article 19. October 2, 2013. [#RompeElMiedo documenta violencia durante marchas](#); Página 3. October 14, 2013. [Exigen periodistas no ser agredidos; lanzan campaña "No es normal"](#).



among the journalists were Guillermo Barros, Yuri Cortez, and Alfredo Estrella.<sup>1163</sup> Verónica Galicia of *La Voladora* reportedly suffered an attempt of detention.<sup>1164</sup> Freelance photographers Consuelo Pagaza and Iván Castaniera; Quetzalli González, a photographer for *Excélsior*; Nicolás Tavira of *Notimex*; and Javier Lira of *Notimex* were reportedly struck by individuals presumed to be police officers.<sup>1165</sup> Journalist Alejandro Medina Guzmán, a photographer for *OOCHEL*, was reportedly detained.<sup>1166</sup> Xilonen Pérez, a reporter with *Subversiones*, was reportedly beaten in the head and kicked in the back by individuals presumed to be police officers.<sup>1167</sup> Freelance photo journalist José Manuel (Pepe) Jiménez was reportedly struck by a group of alleged members of the police.<sup>1168</sup> Journalist Daniel Paniagua was reportedly detained for about 20 minutes.<sup>1169</sup> *Milenio* photographer Mónica González was reportedly attacked by individuals presumed to be police officers.<sup>1170</sup> Journalist Nayeli Roldán from *Efekte Noticias* was reportedly struck by individuals presumed to be police officers.<sup>1171</sup> Simón Hernández León, human

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<sup>1163</sup> Reporters Without Borders. October 3, 2013. [More than fifteen journalists assaulted during Mexico City marches](#); Article 19. October 2, 2013. [#RompeElMiedo documenta violencia durante marchas](#); Herramientas de Periodismo. October 9, 2013. [51 periodistas agredidos en la marcha del 2 de octubre](#).

<sup>1164</sup> Article 19. October 2, 2013. [#RompeElMiedo documenta violencia durante marchas](#); Herramientas de Periodismo. October 9, 2013. [51 periodistas agredidos en la marcha del 2 de octubre](#); Campaña Permanente de Protección a Periodistas/Cimac. October 4, 2013. [Golpean, agreden y detienen a reporteras en marcha del 2 de octubre](#).

<sup>1165</sup> Foto Reporteros MX/Vimeo. [Testimonio de Consuelo Pagaza, fotorreportera independiente](#); Foto Reporteros MX/Vimeo. [Testimonio de Iván Castaniera, Fotorreportero independiente](#); Foto Reporteros MX/Vimeo. [Testimonio de Quetzalli González, Fotorreportera de Excélsior](#); Article 19. October 2, 2013. [#RompeElMiedo documenta violencia durante marchas](#); Herramientas de Periodismo. October 9, 2013. [51 periodistas agredidos en la marcha del 2 de octubre](#); Reporters Without Borders. October 3, 2013. [More than fifteen journalists assaulted during Mexico City marches](#); Relatoría para la Libertad de Expresión de la Comisión de Derechos Humanos del Distrito Federal. Information sent to the IACHR Office of the Special Rapporteur for Freedom of Expression on October 4, 2013. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Campaña Permanente de Protección a Periodistas/Cimac. October 4, 2013. [Golpean, agreden y detienen a reporteras en marcha del 2 de octubre](#).

<sup>1166</sup> Article 19. October 2, 2013. [#RompeElMiedo documenta violencia durante marchas](#); Herramientas de Periodismo. October 9, 2013. [51 periodistas agredidos en la marcha del 2 de octubre](#); Reporters without Borders. October 3, 2013. [More than fifteen journalists assaulted during Mexico City marches](#); Relatoría para la Libertad de Expresión de la Comisión de Derechos Humanos del Distrito Federal. Information sent to the IACHR Office of the Special Rapporteur for Freedom of Expression on October 4, 2013. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1167</sup> Foto Reporteros MX/Vimeo. [Testimonio de Xilonen Pérez](#); Article 19. October 2, 2013. [#RompeElMiedo documenta violencia durante marchas](#); Reporters Without Borders. October 3, 2013. [More than fifteen journalists assaulted during Mexico City marches](#); Herramientas de Periodismo. October 9, 2013. [51 periodistas agredidos en la marcha del 2 de octubre](#); Reporters without Borders. Campaña Permanente de Protección a Periodistas/Cimac. October 4, 2013. [Golpean, agreden y detienen a reporteras en marcha del 2 de octubre](#).

<sup>1168</sup> Foto Reporteros MX/Vimeo. [Testimonio de Pepe Jiménez, Fotorreportero independiente](#); Foto Reporteros MX/Vimeo. [Testimonio de Xilonen Pérez](#); Article 19. October 2, 2013. [#RompeElMiedo documenta violencia durante marchas](#); Relatoría para la Libertad de Expresión de la Comisión de Derechos Humanos del Distrito Federal. Information sent to the IACHR Office of the Special Rapporteur for Freedom of Expression on October 4, 2013. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1169</sup> Article 19. October 2, 2013. [#RompeElMiedo documenta violencia durante marchas](#); Relatoría para la Libertad de Expresión de la Comisión de Derechos Humanos del Distrito Federal. Information sent to the IACHR Office of the Special Rapporteur for Freedom of Expression on October 4, 2013. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1170</sup> Foto Reporteros MX/Vimeo. [Testimonio de Mónica González Fotorreportera de Milenio](#); Herramientas de Periodismo. October 9, 2013. [51 periodistas agredidos en la marcha del 2 de octubre](#).

<sup>1171</sup> Article 19. October 2, 2013. [#RompeElMiedo documenta violencia durante marchas](#); Reporters without Borders. October 3, 2013. [More than fifteen journalists assaulted during Mexico City marches](#); Relatoría para la Libertad de Expresión de

rights defender with the group *Centro Prodh*, was reportedly struck when they tried to help journalist Roldán.<sup>1172</sup> Omar Franco of *Sol de México* reportedly attacked and resulted injured.<sup>1173</sup> Gregorio Cortés Rojas of *Agencia Prensa Internacional* reportedly was beaten and had his equipment stolen by demonstrators.<sup>1174</sup> Issac López, a cameraman with *Grupo Imagen Multimedia*, reportedly had his video camera stolen by demonstrators.<sup>1175</sup> Raúl Sánchez, a cameraman with *Efeko Noticias*, was reportedly attacked by demonstrators.<sup>1176</sup> Heriberto Paredes, cameraman with *Subversiones* was reportedly beaten by individuals presumed to be police officers.<sup>1177</sup> Ricardo del Conde, a documentary filmmaker for *Tejemedios-EmergenciaMX*, was reportedly struck with rocks by individuals presumed to be police officers.<sup>1178</sup> Journalism student Frida Casillas was reportedly detained.<sup>1179</sup> In addition, a group of demonstrators reportedly threw rocks at the offices of the newspaper *Excélsior*, breaking windows.<sup>1180</sup>

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la Comisión de Derechos Humanos del Distrito Federal. Information sent to the IACHR Office of the Special Rapporteur for Freedom of Expression on October 4, 2013. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1172</sup> Centro Prodh. October 3, 2013. [Agreden a defensores de Centro Prodh en la marcha conmemorativa del 68.](#)

<sup>1173</sup> Article 19. October 2, 2013. [#RompeElMiedo documenta violencia durante marchas](#); Reporters Without Borders. October 3, 2013. [More than fifteen journalists assaulted during Mexico City marches](#); Herramientas de Periodismo. October 9, 2013. [51 periodistas agredidos en la marcha del 2 de octubre](#); Relatoría para la Libertad de Expresión de la Comisión de Derechos Humanos del Distrito Federal. Information sent to the IACHR Office of the Special Rapporteur for Freedom of Expression on October 4, 2013. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1174</sup> Article 19. October 2, 2013. [#RompeElMiedo documenta violencia durante marchas](#); Herramientas de Periodismo. October 9, 2013. [51 periodistas agredidos en la marcha del 2 de octubre](#); Relatoría para la Libertad de Expresión de la Comisión de Derechos Humanos del Distrito Federal. Information sent to the IACHR Office of the Special Rapporteur for Freedom of Expression on October 4, 2013. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1175</sup> Excelsior. October 10, 2013. [FOTOGALERÍA: Nuevas imágenes del robo de la cámara a reportero el 2 de octubre](#); Herramientas de Periodismo. October 9, 2013. [51 periodistas agredidos en la marcha del 2 de octubre](#); Relatoría para la Libertad de Expresión de la Comisión de Derechos Humanos del Distrito Federal. Information sent to the IACHR Office of the Special Rapporteur for Freedom of Expression on October 4, 2013. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1176</sup> Herramientas de Periodismo. October 9, 2013. [51 periodistas agredidos en la marcha del 2 de octubre](#); Relatoría para la Libertad de Expresión de la Comisión de Derechos Humanos del Distrito Federal. Information sent to the IACHR Office of the Special Rapporteur for Freedom of Expression on October 4, 2013. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1177</sup> Foto Reporteros MX/Vimeo. [Testimonio de Heriberto Paredes, camarógrafo de la Agencia Subversiones, Agredido durante Marcha 2 de Octubre del 2013](#); Article 19. October 2, 2013. [#RompeElMiedo documenta violencia durante marchas](#); Reporters without Borders. October 3, 2013. [More than fifteen journalists assaulted during Mexico City marches](#); Relatoría para la Libertad de Expresión de la Comisión de Derechos Humanos del Distrito Federal. Information sent to the IACHR Office of the Special Rapporteur for Freedom of Expression on October 4, 2013. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1178</sup> Article 19. October 2, 2013. [#RompeElMiedo documenta violencia durante marchas](#); Relatoría para la Libertad de Expresión de la Comisión de Derechos Humanos del Distrito Federal. Information sent to the IACHR Office of the Special Rapporteur for Freedom of Expression on October 4, 2013. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1179</sup> Herramientas de Periodismo. October 9, 2013. [51 periodistas agredidos en la marcha del 2 de octubre](#); Cencos/Article 19. October 2, 2013. [#AlertaLE: Autoridades policíacas actúan contra periodistas y defensores de DH en marcha del 2 de octubre.](#)

<sup>1180</sup> El Universal. October 2, 2013. [Rompen cristales del periódico Excélsior en Reforma](#); La Jornada. October 3, 2013. [Agreden a periodistas.](#)

597. In addition, the organization Periodistas de a Pie documented attacks on Alberto Torres, photographer of *El Universal*, Edgar López photographer of *El Financiero*; *Excélsior* photographer Karina Tejada; Jorge González, from *El Razón* newspaper; Marco Rosales, from *La Crónica*; freelancer Moisés Rosas; Juan Pablo Zamora and Adriana Álvarez,<sup>1181</sup> photographers with the *Cuartoscuro* agency; independent cameraman Froylán Gutiérrez; Javier Vázquez, from *Nuestro Diario*; Prometeo Lucero<sup>1182</sup>, a contributing photographer for the newspaper *La Jornada*; Rodolfo Valtierra, a photographer for *En Foco*; freelancer Guadalupe Ramírez; Kenya Ramírez, a reporter for *Excélsior TV*; Miguel Dimayuga, Octavio Gómez, Hugo Cruz and Alejandro Saldívar photographers for *Proceso* magazine; Leonardo Sánchez and Daniel Villa Rodríguez, photographers for the newspaper *Reforma*; Javier García, photographer for *Milenio*; Rodolfo González Ortega, video producer for *Reforma*; freelance photographer Carlos Echegoyen; and María Constante Cepeda, of the *Agencia República Española*.<sup>1183</sup>

598. On October 18, the Inter-American Commission sent the State a request for information regarding the attacks on and detentions of journalists, media workers, human rights defenders, and demonstrators that took place during the October 2 demonstrations. In its reply, dated October 28, the State of Mexico informed the Commission about the aforementioned acts of violence. It indicated that the Federal District Human Rights Commission (CDHDF) had begun *ex officio* investigations into the incidents that took place during the march. It reported that the CDHDF had received seven complaints from journalists, four from human rights defenders, and eight from individuals who participated in the march. It also reported that the CDHDF deployed a group of deputy visitors and officials to act as observers and monitor events during the march, and they were able to verify acts of violence against demonstrators, passersby, and law enforcement officers. It added that the CDHDF's medical personnel treated 21 individuals, of which 15 were demonstrators, 5 human rights defenders, and 1 journalist. It also reported on the situation of the demonstrators who were arrested during the march.<sup>1184</sup>

599. On October 16, journalist Fátima Monterrosa and cameraman Víctor Olvera, of the *Televisa* program "Punto de Partida," were reportedly attacked by teachers demonstrating against educational reforms, in the municipality of Simojovel, Chiapas. The demonstrators reportedly struck them and snatched the journalists' video camera and credentials.<sup>1185</sup>

600. In addition, in November the Inter-American Commission received information on attacks against journalists committed by individuals presumed to belong to the teaching profession in Chiapas, during demonstrations against educational reforms. A group of journalists from Chiapas sent a letter addressed to the Mexican authorities and to several organizations, including the IACHR, denouncing "the systematic attacks, censorship, persecution, and threats perpetrated by teachers

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<sup>1181</sup> Foto Reporteros MX/Vimeo. [Testimonio de Adriana Álvarez, Fotorreportera colaboradora de la Agencia Cuartoscuro.](#)

<sup>1182</sup> Foto Reporteros MX/Vimeo. [Testimonio de Prometeo Lucero, Fotorreportero colaborador de La Jornada.](#)

<sup>1183</sup> Herramientas de Periodismo. October 9, 2013. [51 periodistas agredidos en la marcha del 2 de octubre.](#)

<sup>1184</sup> Communication from the Mexican State submitted to the Inter-American Commission on Human Rights (IACHR), October 28, 2013. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1185</sup> Campaña Permanente de Protección a Periodistas/Centro Nacional de Comunicación Social. October 16, 2013. [AlertaE: Agreden a la reportera Fátima Monterrosa y al camarógrafo Víctor Olvera de Punto de Partida en Simojovel, Chiapas;](#) Proceso. October 16, 2013. [En Chiapas, maestros asaltan y golpean a dos periodistas;](#) Chiapas Paralelo. October 16, 2013. [Maestros agreden, roban y vejan a periodistas de Punto de Partida.](#)

against journalists, on grounds of inexistent instances of bias.” The letter reported on an attack on November 6 suffered by journalist Claudia Lobatón Vásquez and cameraman Ernesto Morales Lira, who was reportedly threatened so he would erase the images he had recorded during the protest.<sup>1186</sup>

601. In its General Recommendation No. 20, the National Human Rights Commission (CNDH) recommended that the Federal District government take “necessary and decisive steps to ensure adequate conditions for security and prevention, so that the work carried out by members of the journalism profession is not hampered or threatened by any circumstance; moreover, so that public policies are implemented to guarantee journalists’ safety, especially for those who cover dangerous situations.”<sup>1187</sup>

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

603. Similarly, the Office of the Special Rapporteur reminds that the Joint Declaration on violence against journalists and media workers in the context of protests, adopted in 2013, indicates that during demonstrations and situations of social unrest, the work of journalists and media workers, as well as the free flow of information, “is essential to keeping the public informed of the events. At the same time, it plays an important role in reporting on the conduct of the State [...] preventing the disproportionate use of force and the abuse of authority.”<sup>1188</sup> Accordingly, the authorities must provide journalists with the maximum guarantees in order for them to perform their functions. In this respect, they must ensure that journalists are not arrested, threatened, assaulted, or limited in any manner in their rights as a result of practicing their profession in the context of a public demonstration. The State must not prohibit or criminalize live broadcasts of events, and must abstain from imposing measures that regulate or limit the free circulation of information.<sup>1189</sup> Journalists must not be called as witnesses before the courts, and the authorities must respect the right to the confidentiality of sources of information. In addition, their work materials and tools must not be destroyed or confiscated.<sup>1190</sup> The authorities must adopt a public discourse that helps prevent violence against journalists, vigorously condemning assaults, investigating the facts, and punishing the perpetrators, as established in Principle

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<sup>1186</sup> Letter from Chiapas journalists. November 2013. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression. See also, Todo Chiapas. November 9, 2013. [Gremio periodístico se solidariza con periodistas agredidos y agredidas por el magisterio](#); El Universal. November 7, 2013. [Periodistas denuncian a maestros en Chiapas](#).

<sup>1187</sup> Comisión Nacional de los Derechos Humanos. August 15, 2013. [Recomendación General N° 20, sobre agravios a periodistas en México y la impunidad imperante](#).

<sup>1188</sup> United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. [Joint Declaration on Violence against Journalists and Media Workers in the Context of Protests](#).

<sup>1189</sup> United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. [Joint Declaration on Violence against Journalists and Media Workers in the Context of Protests](#).

<sup>1190</sup> United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. [Joint Declaration on Violence against Journalists and Media Workers in the Context of Protests](#).

9 of the IACHR's Declaration of Principles.<sup>1191</sup> It is also especially important in these contexts that the authorities have special protocols for protecting the press in situations of social unrest and educate State security forces on the role of the press in a democratic society.<sup>1192</sup>

**b. Attacks and arrests**

604. On January 4, journalist Carmen Olsen, who runs the website *rosaritoenlanoticia.info*, was reportedly assaulted by someone presumed to be a member of the municipal police, and later insulted by the director of public security, in Playas de Rosarito, state of Baja California. The journalist has reportedly filed a criminal complaint with the Office of the Attorney General of the Republic against the public official. According to the available information, on January 31 the journalist was reportedly enlisted to the National Mechanism for the Protection of Human Rights Defenders and Journalists and given protection measures ordered by the Governing Junta of that mechanism<sup>1193</sup>.

605. On May 2, journalist Armando Acosta Rojas, a correspondent for the newspaper *El Mexicano* in Tecate, Baja California, and his son, journalist Armando Acosta Vargas, president of the Manuel Buendía Association of Journalists, were reportedly detained and beaten by alleged municipal police officers when Acosta was arriving at his home. After the attack, Acosta Rojas, his son, and his wife were reportedly taken to facilities of the municipal police, where they were told that the individuals presumed to be police officers had accused them of assault and that they had to post bail of 7,000 pesos each (some US\$ 500) before they could be released. Acosta reportedly filed a criminal complaint over the incidents.<sup>1194</sup>

606. In the state of Guerrero, on May 14, journalist Sergio Ulises Ferrer Martínez, a reporter for *El Sur* and for the radio station *Kukulcan Sonido Antisistema*, was reportedly beaten by someone alleged to be a member of the municipal police.<sup>1195</sup>

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<sup>1191</sup> [Principle 9 of the IACHR Declaration of Principles](#): “[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation”.

<sup>1192</sup> United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. [Joint Declaration on Violence against Journalists and Media Workers in the Context of Protests](#).

<sup>1193</sup> Consejo Consultivo del Mecanismo para la Protección para Personas Defensoras de Derechos Humanos y Periodistas. Press Release. December 18, 2013. [Integrantes del Consejo Consultivo llaman a autoridades de Baja California a que cese el hostigamiento en contra de la periodista Carmen Olsen](#); Uniradioinforma. January 8, 2013. [Agentes actuaron de acuerdo a la ley: Francisco Castro Trenti](#); Knight Center for Journalism in the Americas. January 9, 2013. [Editor of website in Mexico accuses local police of abuse of authority](#).

<sup>1194</sup> Article 19. May 3, 2013. [Alerta: Periodistas son agredidos por policías municipales de Tecate](#); Los Ángeles Press. May 3, 2013. [Periodista golpeado por municipales en Tecate "sin saber por qué"](#); Diario Tijuana. May 3, 2013. [Repudia ANPAC agresión vs periodista Armando Acosta](#). Lindero Norte. May 4, 2013. [Presenta periodista denuncia penal vs policías de Tecate por agresiones y abuso de autoridad](#).

<sup>1195</sup> Campaña Permanente de Protección a Periodistas/Cencos. May 17, 2013. [Alerta LE: Policía Municipal golpea a reportero durante cobertura de movilizaciones de maestros en Guerrero](#); Los Angeles Press. June 13, 2013. [Despido de periodista de El Sur causa indignación en Guerrero](#); El Foro de Taxco. May 16, 2013. [Policía Federal agrede a corresponsal de Proceso; comunicador interpondrá queja ante Coddehum](#).

607. On May 15, journalist Ezequiel Flores Contreras and photographer José Luis de la Cruz, of *Proceso* magazine, were reportedly attacked by someone presumed to belong to the Federal Judicial Police while they were covering the court appearance of two union leaders, in Chilpancingo, state of Guerrero.<sup>1196</sup>

608. For more than three years, journalist María José Gamboa with the newspaper *Notiver*, in the state of Veracruz, reportedly lived on the paper's premises as a security measure after she was a victim of several attacks. According to the journalist, in the first attack her car windows were broken, and in the second, her tires were damaged. In a third attack, unidentified individuals reportedly entered her ex-husband's house and scattered her daughter's toys, burying one of them in the ground along with a machete.<sup>1197</sup>

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

### c. Threats

610. The Office of the Special Rapporteur was informed that the Mexican newspaper *Zócalo*, in Saltillo, Coahuila state, announced that as of March 11 it would no longer publish information involving organized crime.<sup>1198</sup> The decision was reportedly taken after dozens of banners appeared on March 7 in various cities in Coahuila, with threats against the newspaper and its managers.<sup>1199</sup> Following the threats, the Coahuila General Prosecutor's Office reportedly launched a criminal investigation into the appearance of the messages.<sup>1200</sup> The newspaper's editorial board stated that "there are no guarantees or security for the full exercise of journalism," and explained: "The decision to suspend all information involving organized crime is based on our responsibility to safeguard the integrity and security of more than a thousand workers and their families, as well as our own."<sup>1201</sup>

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<sup>1196</sup> *Proceso*. May 15, 2013. [Ratifican amparo a líderes de la CETEG; agrade federal a corresponsal y fotógrafo de Proceso](#); El foro de Taxco. May 16, 2013. [Policía Federal agrade a corresponsal de Proceso; comunicador interpondrá queja ante Coddehum](#); Article 19. May 16, 2013. [Alerta: Agreden a periodistas de Guerrero](#); Centro de Reportes Informativos sobre Guatemala (CERIGUA). May 18, 2013. [Reporteros son agredidos y amenazados por agente federal](#).

<sup>1197</sup> CNN México. March 28, 2013. [Una periodista de Veracruz vive en su lugar de trabajo tras agresiones](#); El Diario Fénix. April 9, 2013. [El periodismo se encuentra bajo amenaza de muerte](#); Knight Center for Journalism in the Americas. March 29, 2013. [After attacks, Mexican journalist in Veracruz has lived at newspaper's offices for three years](#).

<sup>1198</sup> *Zócalo*. March 11, 2013. [Editorial](#). See also, *El Economista*. March 12, 2013. [El Zócalo deja de publicar del crimen organizado](#); Knight Center for Journalism in the Americas. March 11, 2013. [Newspaper in northern Mexico will stop reporting on crime after threats](#).

<sup>1199</sup> *Proceso*. March 7, 2013. [Arrecian ataques contra la prensa: amenazan a Zócalo, de Saltillo](#); Knight Center for Journalism in the Americas. March 8, 2013. [Authorities remove 45 signs threatening a newspaper along the Texas-Mexico border](#); Informador. March 7, 2013. [La Procuraduría de Coahuila reporta amenazas contra periódico](#).

<sup>1200</sup> CNN México. March 7, 2013. [Autoridades de Coahuila investigan supuestas amenazas contra un diario](#); Excelsior. March 7, 2013. [Coahuila toma medidas para proteger a medios de comunicación](#); *Proceso*. March 7, 2013. [Arrecian ataques contra la prensa: amenazan a Zócalo, de Saltillo](#); Knight Center for Journalism in the Americas. March 8, 2013. [Authorities remove 45 signs threatening a newspaper along the Texas-Mexico border](#).

<sup>1201</sup> *Zócalo*. March 11, 2013. [Editorial](#).

611. On March 20, the editor and publisher of *Raza Cero*, Fernando Miranda Servín, reportedly received threats from two individuals with alleged ties to the mayor of Durango. In addition, on March 25 newspaper vendors who sell *Raza Cero* in the city of Durango reportedly received threats from municipal employees who warned them to stop selling the newspaper. The paper publishes critical coverage of local authorities in Durango, and it has reported on cases of corruption and irregularities in the region.<sup>1202</sup>

612. On April 4, individuals presumed to be police officers of the state of Oaxaca reportedly arrested and attacked journalist Carlos Sánchez Martínez, of *Radio Totopo*.<sup>1203</sup> In addition, on March 26 the journalist was reportedly injured while he was covering a clash between police and indigenous demonstrators who were trying to block construction of a wind farm in the area.<sup>1204</sup> That same day, *Radio Totopo* alleged in a press release that unidentified individuals had cut off the radio station's electricity and stolen the meter.<sup>1205</sup> The incidents were said to be linked to the station's opposition to the wind farm, which is proposed to be set up in an area in the state of Oaxaca. In addition, on March 20, journalist Filiberto Vicente Aquino, of *Radio Xadani*, reportedly received death threats after attending a conference on opposition to the aforementioned wind farm project. On March 21, several journalists were reportedly detained for a number of hours when they were reporting on area residents' opposition to construction of the wind farm.<sup>1206</sup>

613. On April 16, the weekly magazine *Proceso* publicly complained that it had received information regarding the alleged intention of Veracruz state officials and former officials to "violate the personal integrity" of *Proceso* journalist Jorge Carrasco, reportedly because of his coverage of the case involving the killing of the *Proceso* correspondent in Veracruz, Regina Martínez Pérez. The magazine reported that it had received information concerning meetings held between former and current state officials of Veracruz for the purpose of reaching agreement on hostile actions to take against the reporter, in response to what he had published about the Regina Martínez case. The weekly indicated that it had informed the National Human Rights Commission, the Office of the Attorney General of the Republic, and the Secretariat of the Interior as to the details of these meetings and the alleged participants. The authorities reportedly activated the mechanism for protection of journalists for the reporter's benefit.<sup>1207</sup> According to the magazine, the state governor, the deputy secretary of state public security, and the director of the Veracruz Investigation Agency were reported to have sharply

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<sup>1202</sup> Prensa Indígena. March 28, 2013. [México: Se agrava libertad de prensa en Durango](#); *Raza Cero*. April 1, 2013. [Alcalde de Durango ordena "levantar" a periodista](#).

<sup>1203</sup> Reporters Without Borders. April 5, 2013. [Oaxaca community radios hounded for opposing wind farm](#); Knight Center for Journalism in the Americas. April 8, 2013. [Community radio stations in Oaxaca denounce repression for reporting on local wind power project](#).

<sup>1204</sup> La Jornada. March 27, 2013. [Se enfrentan policías e indígenas en Juchitán](#); Knight Center for Journalism in the Americas. April 8, 2013. [Community radio stations in Oaxaca denounce repression for reporting on local wind power project](#).

<sup>1205</sup> Agencia Púlsar. April 3, 2013. [Comunicado en apoyo a la radio comunitaria Totopo tras intento de desalojo en México](#); La Jornada. March 27, 2013. [Se enfrentan policías e indígenas en Juchitán](#).

<sup>1206</sup> Reporters Without Borders. April 5, 2013. [Oaxaca community radios hounded for opposing wind farm](#); Amnesty International. March 27, 2013. [Acción Urgente. Amenaza de muerte contra un activista](#); La Jornada. March 22, 2013. [Gente vinculada a edil priísta oaxaqueño retiene a dos periodistas de La Jornada](#); Knight Center for Journalism in the Americas. April 8, 2013. [Community radio stations in Oaxaca denounce repression for reporting on local wind power project](#).

<sup>1207</sup> *Proceso*. April 16, 2013. [Amenazas contra el reportero Jorge Carrasco](#); El País. May 29, 2013. ["Nunca imaginas que vayan a ir a por ti"](#).

denied having taken part in the meetings. In statements to *Proceso*, the governor and his associates apparently made an explicit commitment to respect the journalistic efforts of the magazine, its reporters, and its correspondent in Xalapa, Noé Zavaleta.<sup>1208</sup> The day *Proceso* was published, the Veracruz Attorney General disseminated a letter in which he rejected the accusations and asked requested that, if the magazine had evidence, it should present it “immediately to the relevant authorities so that due process can be followed and, if appropriate, accountability can be assigned.”<sup>1209</sup>

614. On April 19, the international organization Article 19, dedicated to defending and promoting the right to freedom of expression, received an anonymous letter at its office for Mexico and Central America, threatening the organization’s team. The letter, addressed to its director, Darío Ramírez, contained death threats against him and the organization’s staff.<sup>1210</sup> Moreover, the organization denounced that on October 11, independent journalist and documentary filmmaker Ricardo del Conde and two members of the Article 19 staff were reportedly assaulted and intimidated while they were holding an informal meeting at the organization’s offices. According to reports, the three individuals were on the balcony of the building when they noticed someone taking pictures of them. According to the organization, minutes later, a metal object reportedly hit one of the staff members in the torso, and then someone with a radio communication device appeared. When the staff of Article 19 started to photograph him, the individual apparently reacted by saying hello to the camera and laughing in a threatening manner, the organization reported.<sup>1211</sup>

615. On April 30, journalists Pedro Matías Arrazola, a *Proceso* magazine correspondent in Oaxaca, and Giovanni Vásquez Sagrero, host of the radio news program “Sin Muros,” reportedly received death threats via a message<sup>1212</sup> sent to Vásquez’s cell phone.<sup>1213</sup> On July 22, journalist Matías Arrazola reportedly received more threats, this time after publishing a critical article about a visit by two federal government officials to Oaxaca. The journalist stated that he had received messages with threats and disparaging remarks on his Twitter social network account. The journalist blamed the harassment on one of the officials referred to in the published article.<sup>1214</sup>

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<sup>1208</sup> Proceso. April 16, 2013. [Amenazas contra el reportero Jorge Carrasco](#).

<sup>1209</sup> Coordinación General de Comunicación Social del estado de Veracruz. April 16, 2013. [Carta del Procurador de Justicia a la revista Proceso](#).

<sup>1210</sup> Article 19. April 19, 2013. [ALERTA: México: Amenazan al equipo de ARTICLE19](#); Knight Center for Journalism in the Americas. April 22, 2013. [Press freedom organization Article 19 receives threats in Mexico](#); Committee to Protect Journalists (CPJ). April 22, 2013. [CPJ alarmed by threats against Article 19 in Mexico](#).

<sup>1211</sup> Article 19. October 14, 2013. *Comunicado: el Estado es responsable de nuestra seguridad*. Available for consultation at: <http://www.libertad-expresion.org.mx/alertas-de-agresiones/comunicado-el-estado-es-responsable-de-nuestra-seguridad/>; La Centro Nacional de Comunicación Social (Cencos). October 16, 2013. [Cencos condena las agresiones a Ricardo del Conde y Artículo 19](#).

<sup>1212</sup> In Spanish the message stated: “Que paso pendejo ya bajale de wevos porque te los vamos a cortar y dile a ese pendejo que luego handa llorando y no entiende con sus notas varatas y esta vez no llegara ni Alemania” [sic]. Article 19. May 6, 2013. [ALERTA México: Amenazan de muerte a periodistas de Oaxaca](#).

<sup>1213</sup> Article 19. May 6, 2013. [ALERTA México: Amenazan de muerte a periodistas de Oaxaca](#); Diario Despertar de Oaxaca. May 1, 2013. [Amenazan a periodistas por audio escándalos de Jorge Coco Castillo](#).

<sup>1214</sup> Notiese. July 30, 2013. [CARTAS A NOTIESE. Demandan detener amenazas a reportero de Oaxaca](#); Revista Tucán. July 27, 2013. [Pedro Matías, Corresponsal de Proceso en Oaxaca, amenazado por funcionario de Enrique Peña Nieto; Presenta denuncia ante la Fiscalía Especial](#); El Piñero. July 26, 2013. [Héctor Pablo Ramírez Puga Leyva amenaza a corresponsal de la Revista Proceso en Oaxaca](#).



616. On May 20, the newspaper *Notivisión*, which circulates in several towns in the north of Veracruz, reportedly received an anonymous message threatening newspaper's editor and publisher and its staff. The editor and publisher stated that the threat could be tied to the paper's critical coverage of the municipal governments in the midst of an electoral campaign.<sup>1215</sup>

617. On May 22, journalist Rocío Gallegos, of *El Diario* in Ciudad Juárez, Chihuahua, reportedly received intimidating telephone calls after publishing an article about ongoing investigations of a businessman for the alleged crime of fraud. Gallegos reportedly filed a complaint with the state delegation of the Office of the Attorney General of the Republic (PGR).<sup>1216</sup>

618. On June 7, journalist Alfonso Hernández, a correspondent in Torreón for a media outlet based in the city of Saltillo, received threats, reportedly from a federal congressman. The reporter reportedly filed a complaint with the regional office of the Human Rights Commission.<sup>1217</sup>

619. The editor and publisher of the news site *Ágora Guerrero*, Emilio Lugo, reportedly decided to leave the city of Acapulco to "protect his integrity," after being repeatedly threatened and intimidated since March.<sup>1218</sup>

620. The newspaper *Presencia*, in the municipality of Las Choapas, Veracruz, was reportedly subject to threats and intimidation in connection with its coverage of the July 7 elections of local authorities, according to the editor and publisher, Roberto Morales Ayala. According to the information disclosed by said newspaper, they had received "warnings and threats of an attack on the newspaper's staff and premises due to the climate of hostility that prevails in the municipality because of the results of the elections." As it was reported, after receiving the complaint the state authorities contacted the media outlet "to warn that protective measures were being sent to the newspaper to prevent any type of attack against the safety of officers of the SSP [*Secretaría de Seguridad Pública*]"<sup>1219</sup>.

621. In July, journalist Jaime Delgado, who runs the news portal *Periodismo Negro*, edited in Baja California, reported that threats had been made against him and against his family in connection with the dissemination of a video said to link a congressman romantically with a minor.<sup>1220</sup>

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<sup>1215</sup> Article 19. May 21, 2013. [Alerta: Amenazan a director y trabajadores de periódico veracruzano](#); Proceso. May 21, 2013. [Amenazan a periódico del norte de Veracruz; dejan mensaje en oficinas](#); El Mexicano. May 21, 2013. [Amenazan a un diario en el norte de Veracruz](#).

<sup>1216</sup> Article 19. May 24, 2013. [Alerta: Acosan y hostigan a periodista del Diario de Juárez](#); Proceso. May 24, 2013. [Denuncian a funcionario de Chihuahua por amenazas a reportera de "El Diario" de Juárez](#); Clases de periodismo. May 24, 2013. [México: Periodista del Diario de Juárez denuncia hostigamiento](#).

<sup>1217</sup> Proceso. June 25, 2013. [Periodista amenazado por diputado busca protección de Human Rights Watch](#); La Laguna. June 26, 2013. [Amenazan a reportero y presenta denuncia contra el diputado federal Guillermo Anaya Llamas](#).

<sup>1218</sup> *Ágora Guerrero*. June 24, 2013. [Por amenazas y falta de garantías Emilio Lugo abandona el estado de Guerrero](#); Article 19. June 26, 2013. [#ALERTA México: Amenazan a Director de Ágora Guerrero](#); Proceso. June 25, 2013. [Por amenazas, administrador de 'Ágora Guerrero' deja el estado](#).

<sup>1219</sup> *Diario Presencia*. July 9, 2013. [PRESENCIA pide al Gobierno del Estado seguridad para su personal y sus instalaciones](#). See also, Campaña Permanente de Protección a Periodistas/Article 19. July 11, 2013. [ALERTA: Periódico veracruzano recibe amenazas](#); Proceso. July 10, 2013. [Sufren amenazas periodistas del diario Presencia, en Veracruz](#); Centro de Reportes Informativos sobre Guatemala (CERIGUA). July 12, 2013. [Director de medio denuncia intimidaciones tras proceso electoral](#).

<sup>1220</sup> Campaña Permanente de Protección a Periodistas/Article 19. July 2, 2013. [Alerta: En BC, director del portal "Periodismo Negro" es amenazado](#); La Silla Rota. July 2, 2013. [Amağan a director de "Periodismo Negro"](#).

622. On July 10, unidentified individuals were said to have threatened vendors of the weekly *Luces del Siglo* in Quintana Roo, as part of a harassment campaign reportedly waged against the publication during the July 7 election process. A chain of sales outlets where the weekly was sold reportedly told the publication's management that it would stop sales until after the elections. According to what the editor of the weekly, Norma Madero, stated, the magazine keeps a critical coverage of state's government.<sup>1221</sup>

623. On October 14, in Tijuana, Baja California, journalist Lorenzo Garibay Martínez, editor and publisher of the weekly *Expediente Público*, reportedly found a black mourning bow on his vehicle. Days later, he reportedly found a cluster of black plastic roses in the same place. According to the reporter, the threats came from authorities of the municipal police, due to information the weekly had published in August and September, linking police officers to irregularities that had been committed during a police operation.<sup>1222</sup>

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

#### **d. Attacks on media outlets**

625. The newspaper *El Siglo de Torreón*, in the state of Coahuila, was reportedly the target of attacks over three consecutive days, February 25-27. According to the information received, on February 25 a Federal Police patrol vehicle that was designated to guard the newspaper building was attacked by an armed group. On the 26<sup>th</sup>, the newspaper was reportedly attacked by unidentified individuals who fired at the building and at federal police officers who were keeping watch over the premises. The next day, a Federal Police patrol vehicle that guarded *El Siglo de Torreón's* building was attacked again by unidentified individuals who fired at the vehicle, killing someone who worked in the vicinity. A policeman and a civilian were also reportedly wounded.<sup>1223</sup> The newspaper had already suffered an attack several weeks earlier, when on the night of February 7 five of its employees were kidnapped then released several hours later. The workers reportedly had been captured by an armed group, which held them hostage for 10 hours.<sup>1224</sup> After the events, the authorities announced the detention of individuals allegedly associated with the kidnapping of the workers of *El Siglo de Torreón* and the attacks against

<sup>1221</sup> IFEX/Centro Nacional de Comunicación Social (Cencos). July 24, 2013. [Diario en el Sur de México sufre amenazas y actos de intimidación](#); Article 19. July 12, 2013. [Alerta semanario de Quintana Roo denuncia compra masiva de ejemplares](#).

<sup>1222</sup> El Sol de Tijuana. October 24, 2013. [Amenazan de muerte la SSPM a periodista Garibay](#); Tijuana Digital. October 27, 2013. [Dávalos Flores defiende a periodistas por el caso de Lorenzo Garibay](#); Monitor BC. October 24, 2013. [Protestan contra amenazas a otro periodista](#); Rosarito en la Noticia. October 23, 2013. [Amenazan al periodista Lorenzo Garibay; Roberto Dávalos pide que se le brinde protección](#).

<sup>1223</sup> El Siglo de Torreón. February 28, 2013. [91 Años](#); El norte de Castilla/EFE. February 28, 2013. [Diario mexicano seguirá informando pese a nueva "embestida de violencia"](#); El Diario/El Universal. February 28, 2013. [Sufre El Siglo de Torreón tercer ataque en 3 días](#); El País. February 28, 2013. [Tercer ataque en tres días contra el diario mexicano El Siglo de Torreón](#); Article 19. February 28, 2013. [PRONUNCIAMIENTO: ¿En dónde está el Estado Mexicano?](#)

<sup>1224</sup> El Siglo de Torreón. February 8, 2013. [Postura de El Siglo de Torreón ante la agresión contra 5 trabajadores](#); Terra. February 8, 2013. [Cinco empleados de El Siglo de Torreón sufren secuestro](#); CNN México. February 8, 2013. ['El Siglo de Torreón' decide no dar detalles del secuestro de 5 empleados](#).

the police officers that kept watch over the facilities of the newspaper.<sup>1225</sup> *El Siglo de Torreón* has reportedly been the victim of two other attacks on its premises, in August 2009<sup>1226</sup> and November 2011.<sup>1227</sup>

626. On March 6, the premises of two media outlets in Ciudad Juárez, state of Chihuahua, were reportedly attacked. Around 1 a.m., the newspaper *El Diario* apparently was hit with seven gunshots, and approximately 20 minutes later a similar attack was made on *Canal 44*. Following the incidents, local and state police officers reportedly provided security at the offices of other media outlets to prevent new attacks.<sup>1228</sup>

627. On April 17, the premises of the Zapopan, state of Jalisco, newspaper *Mural*—part of the Grupo Reforma—reportedly were attacked with two explosive devices. The attack left no injuries, although it apparently did cause damage to the building<sup>1229</sup>. According to the organization Article 19, this is said to be the seventh attack on Grupo Reforma since 2010.<sup>1230</sup>

628. On July 27, unidentified individuals reportedly threw an explosive device at the facilities of the newspaper *El Piñero de la Cuenca*, in the municipality of Loma Bonita, in the state of Oaxaca.<sup>1231</sup> The governor of Oaxaca reportedly condemned the attack and instructed the state Office of the Attorney General to open the relevant investigations to identify those responsible for the attack.<sup>1232</sup> Some weeks before that, the newspaper had made allegations of attacks and threats targeting the newspaper's vendors, allegedly ordered by political figures from the region.<sup>1233</sup>

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<sup>1225</sup> CNN México. March 7, 2013. [Autoridades detienen a los presuntos atacantes de 'El Siglo de Torreón'](#); Animal Político. March 7, 2013. [Detienen a presuntos atacantes de El Siglo de Torreón](#); El Universal. June 3, 2013. [Detienen a 9 presuntos agresores de El Siglo del Torreón](#); Reforma. June 3, 2013. [Detienen a 9 ligados a ataque a diario](#).

<sup>1226</sup> El Mundo. August 18, 2009. [Atacan a tiros la sede del diario 'El Siglo de Torreón'](#); La Jornada. August 19, 2009. [Atacan El Siglo de Torreón](#).

<sup>1227</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. November 18, 2011. [Press Release R122/11. Office of the Special Rapporteur Expresses Deep Concern over Attacks Against Newspaper Workers in Mexico](#); Animal Político. November 16, 2011. [Atacan edificio de El Siglo de Torreón](#).

<sup>1228</sup> El Diario. March 6, 2013. [Balean instalaciones de El Diario](#); El Universal. March 6, 2013. [Balean Diario de Juárez y Cadena 44 en Chihuahua](#); Knight Center for Journalism in the Americas. March 6, 2013. [Newspaper and TV station attacked in Ciudad Juárez](#); Red de periodistas de Juárez. March 6, 2013. [Pronunciamiento ante ataque a El Diario y Canal 44](#).

<sup>1229</sup> Article 19. April 17, 2013. [ALERTA: Atacan con artefactos explosivos las instalaciones del Periódico Mural en Jalisco](#); El Universal. April 17, 2013. [Explotan 2 granadas en el periódico Mural de Jalisco](#); Proceso. April 17, 2013. [Usaron dos granadas en ataque al diario 'Mural'; no hay pistas de responsables](#); El Economista. April 17, 2013. [Arrojan granadas al diario Mural](#).

<sup>1230</sup> Article 19. April 17, 2013. [ALERTA: Atacan con artefactos explosivos las instalaciones del Periódico Mural en Jalisco](#).

<sup>1231</sup> Article 19. July 29, 2013. [Alerta. Periódico oaxaqueño es atacado con "explosivo casero"](#); Sin embargo. July 29, 2013. [Atacan instalaciones de El Piñero de la Cuenca; Artículo 19 exige al gobierno de Oaxaca esclarecer los hechos](#); Gobierno del Estado de Oaxaca. July 28, 2013. [Instruye Gabino Cué investigar agresión a las instalaciones del diario El Piñero de la Cuenca](#).

<sup>1232</sup> Gobierno del Estado de Oaxaca. July 28, 2013. [Instruye Gabino Cué investigar agresión a las instalaciones del diario El Piñero de la Cuenca](#).

<sup>1233</sup> El Piñero de la Cuenca. July 8, 2013. [Gamboa, a través de esbirros, ataca y frena la circulación de El Piñero de la Cuenca en Loma Bonita](#).

629. On August 1, individuals presumed to be police officers reportedly raided the premises of the newspaper *Contexto*, in the town of Miguel Alemán, in Hermosillo, Sonora. Editor and publisher Carlos Roberto Marroquín reported that the operation was carried out violently and that no search warrant was shown.<sup>1234</sup>

630. On October 1, a distributor of the newspaper *El Norte*, which belongs to the Grupo Reforma, reportedly was attacked by armed individuals who beat and threatened him before demanding a payment of 3,000 pesos per week to allow him to continue distributing the paper in the area around the La Talavera arroyo, between the towns of Guadalupe and San Nicolás, in Nuevo León. It was reported that the attackers had also shouted threats against the newspaper: “And tell your bosses that if they don’t get in line they’re going to be screwed... Fucking sensationalists!”<sup>1235</sup>

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

#### F. Mechanism for the Protection of Human Rights Defenders and Journalists

632. The Office of the Special Rapporteur has observed that on June 2012, the “Law for the Protection of Human Rights Defenders and Journalists” entered into force.<sup>1236</sup> The law creates the “Mechanism for the Protection of Human Rights Defenders and Journalists” in order to attend the State’s “fundamental responsibility to protect, promote and guarantee human rights.”<sup>1237</sup> Its stated objective is to establish coordination between federal and state governments in the implementation of preventive and protective measures to guarantee the “life, integrity, liberty and security of persons who are in a situation of risk as a consequence of the defense or promotion of human rights or the exercise of freedom of expression and journalism.”<sup>1238</sup> As is developed in greater detail in Chapter III of this report, the mechanism is made up of a Government Council, an Advisory Board, and a National Executive Coordinator, and it is run by the Ministry of Interior.

633. On November 8, 2013, the State sent updated information on the national protection mechanism.<sup>1239</sup> The State reported that 105 requests for protection had been received, 40 of which

<sup>1234</sup> Article 19, August 2, 2013. [México: Policías catean “violentamente” instalaciones de periódico sonorenses](#); Centro de Reportes Informativos sobre Guatemala (CERIGUA). August 5, 2013. [México: Autoridades allanan medio de comunicación](#).

<sup>1235</sup> Reforma. October 3, 2013. [Ahora pretenden piso por... ¡noticias!](#); Proceso. October 3, 2013. [Extorsionan a distribuidor del periódico El Norte](#); Noroeste.com. October 4, 2013. [Extorsionan y agreden a un distribuidor](#); IFEX/Centro Nacional de Comunicación Social (Cencos). October 16, 2013. [Agreden a distribuidor de diario en México](#).

<sup>1236</sup> United Mexican States. June 25, 2012. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#).

<sup>1237</sup> United Mexican States. June 25, 2012. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). Artículo 1.

<sup>1238</sup> United Mexican States. June 25, 2012. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). Artículo 1.

<sup>1239</sup> Communication No. OEA-04472 from Mexico’s Permanent Mission to the OAS, dated November 8, 2013, forwarding the letter from the Secretaría de la Gobernación CEN/640/2013, dated November 5, 2013. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

were requests from journalists. In 9 of the 105 cases, the determination was reportedly made not to include the petitioning individual in the mechanism. In addition, the State reported that the main protection measures that had been granted included ongoing bodyguard services or transportation security; security measures at residences; armored vehicles and the provision of gasoline; telecommunications equipment; panic buttons; surveillance by police patrols; a directory to be used in case of emergencies; self-defense manuals; and support in the filing of complaints. The State also reported that the Government Council had approved the Protocols on Preventive, Protective, and Urgent Measures for Risk Assessment and Protection.<sup>1240</sup>

634. With respect to the Mechanism's operational personnel, the State reported that the National Executive Coordination and its three technical units would be comprised by 20 individuals, and that "there are plans to increase the technical know-how of the individual members of the Government Council and the Advisory Board, as well as of the personnel that form part of the National Executive Coordination."<sup>1241</sup> The State further reported that various measures would be put in place with the "objective of consolidating and strengthening the operation of the Mechanism," including the integration of indicators for the evaluation of the mechanism, in cooperation with the Office of the United Nations High Commissioner for Human Rights in Mexico, and the signing of a memorandum of understanding with the organization Freedom House, which "has the purpose of strengthening the Mechanism technically."<sup>1242</sup> The State also provided information on the establishment of the "Fund for the Protection of Human Rights Defenders and Journalists." According to the information received, the Rules of Operation of the Public Trust were reportedly approved on February 27, 2013, and published on November 5, 2013. On October 1, the funds authorized for the 2013 fiscal year were reportedly transferred to the Trust, a total of \$127,500,000.00 Mexican pesos (some US\$ 9,720,000). As of the date of the communication, the Trust has \$169,895,841.61 Mexican pesos (some US\$ 12,952,145). Finally, the State reported that 25 Mexican states had signed Cooperation Agreements with the federal mechanism.<sup>1243</sup>

635. The Office of the Special Rapporteur notes that the law was passed in June 2012, meaning that the Mechanism is in its initial stage of implementation. That said, the resolution of certain pending questions is crucial for guaranteeing the law's effectiveness and adequate application. As is developed further on Chapter III of this report, the Office of the Special Rapporteur would particularly like to point to the importance of assigning and training of personnel necessary for its proper operation; guaranteeing that studies and implementation of urgent, preventative and protective measures are

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<sup>1240</sup> Communication No. OEA-04472 from Mexico's Permanent Mission to the OAS, dated November 8, 2013, forwarding the letter from the Secretaría de la Gobernación CEN/640/2013, dated November 5, 2013. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1241</sup> Communication No. OEA-04472 from Mexico's Permanent Mission to the OAS, dated November 8, 2013, forwarding the letter from the Secretaría de la Gobernación CEN/640/2013, dated November 5, 2013. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1242</sup> Communication No. OEA-04472 from Mexico's Permanent Mission to the OAS, dated November 8, 2013, forwarding the letter from the Secretaría de la Gobernación CEN/640/2013, dated November 5, 2013. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1243</sup> The federal entities are: Aguascalientes, Campeche, Coahuila, Colima, Chiapas, Chihuahua, Durango, Guanajuato, Guerrero, Hidalgo, Jalisco, Estado de México, Michoacán, Morelos, Nayarit, Oaxaca, Puebla, Querétaro, San Luis Potosí, Sinaloa, Tabasco, Tamaulipas, Veracruz, Yucatán and Zacatecas. Communication No. OEA-04472 from Mexico's Permanent Mission to the OAS, dated November 8, 2013, forwarding the letter from the Secretaría de la Gobernación CEN/640/2013, dated November 5, 2013. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

carried out in an adequate manner, meeting the deadlines set by law, and that the urgent measures and protective measures granted are not replaced or withdrawn prior to the resolution of potential disagreement and; guaranteeing the coordination of the different State federal agencies, as well as with the federal entities for its adequate operation.

### G. Subsequent liabilities

636. On March 6, 2013, the First Chamber of the Supreme Court of Justice of the Nation ruled on a review appeal against direct protection (*amparo*), in which it found that homophobic expressions used in a newspaper column to criticize a newspaper owner were not protected by the right to freedom of expression. In its ruling, the Court did not take into account whether the expressions had been produced in a context of violence against the homosexuals or if they would constitute incitement to violence. For the First Chamber, it was sufficient that they involved expressions that, because of their content, would generate “incitement or promotion of intolerance towards homosexuality” and that they were “impertinent because they had no connection with the message that the author intended to deliver.”<sup>1244</sup>

637. The Office of the Special Rapporteur observes that article 13.5 of the American Convention provides that “any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law”. In a sense, to avoid use of a punitive law to silence uncomfortable or offensive ideas, article 13 proscribed the so-called “crime of opinion.” By virtue of this provision, the offensive character of speech, in and of itself, is not sufficient reason to prohibit it. In effect, as has been said by this Office of the Special Rapporteur, speech that offends because of the intrinsic falsity of its homophobic and discriminatory contents must be refuted: those who promote such views need to be persuaded of their error in public debate. There is no better response to unfair opinions than the justice of arguments, and that requires more and better debate, not less. This is the logic of the American Convention that was expressed by the Inter-American Court in the case of *The Last Temptation of Christ*, where it held that freedom of expression protects not only expressions that are “favorably received or considered inoffensive or indifferent, but also for those that shock, concern or offend the State or any sector of the population. Such are the requirements of pluralism, tolerance and the spirit of openness, without which no ‘democratic society’ can exist.”<sup>1245</sup>

638. On April 7, journalist Martín Ruiz Rodríguez, editor and publisher of the digital newspaper *e-consulta Tlaxcala*, was arrested as the result of an arrest warrant issued by the Judge of the First Criminal Court of Sánchez Piedras, in Tlaxcala. As it was informed, the journalist was reportedly accused of defamation by a high-level administrative official of the government of Tlaxcala, Ubaldo Velasco, who claimed he had been aggrieved because the journalist, in his “Señorío Tlaxcalteca” column, had referred to the official as “a hobbled little old man” and “mediocre.” The journalist was released

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<sup>1244</sup> Primera Sala de la Suprema Corte de Justicia de la Nación. Amparo directo en revisión 2806/2012. Judgment of March 6, 2013; Suprema Corte de Justicia de la Nación. March 6, 2013. [Resuelve Primera Sala amparo directo en revisión 2806/2012.](#)

<sup>1245</sup> I/A Court H.R. *Case of “The Last Temptation of Christ” (Olmedo-Bustos et al.) v. Chile. Merits, Reparations and Costs.* Judgment of February 5, 2001. Series C No. 73. para. 69, citing the European Court of Human Rights.

after being held for hours and posting bail of 35,351 Mexican pesos (some US\$ 3,000).<sup>1246</sup> On April 10, the Judge of the First Criminal Court in Sánchez Piedras, Tlaxcala, reportedly issued an order for the journalist's incarceration.<sup>1247</sup>

639. In its General Recommendation No. 20, Mexico's National Human Rights Commission (CNDH)<sup>1248</sup> mentioned that one "practice that stifles freedom of the press comes into play in those cases in which public servants or representatives of groups that actually hold power file a criminal complaint when they see that their right to honor has been impaired, thus hampering freedom of expression. In that regard, criminal offenses such as defamation [*difamación, injuria o calumnia*] have become the most common means used to establish subsequent liability for reported abuses of freedom of expression. The inhibiting effect that the mere existence of these criminal offenses can have on public debate must not escape notice, because these charges lead to indirect restrictions on freedom of expression, as they carry the threat of incarceration or fines for anyone who allegedly insults or offends a public servant." Along these lines, the CNDH indicated that "criminal penalties are not necessary to protect the honor of public individuals, as a degree of inhibition is established that has a persuasive effect on the population as a whole and on whoever speaks out publicly to criticize someone carrying out a government role. The effect that is created exceeds the minimum restriction standard, because of the fear of losing freedom over the act of criticizing."

640. As Mexico's CNDH points out in its General Recommendation No. 20, "freedom of expression is a precondition in every democratic society, as it constitutes a prior condition for the full exercise of other fundamental rights closely tied to a pluralistic system, such as ideological and religious freedom, the right of assembly, the right of petition, and the right to education, among others. Thus, any limitation or restriction undermining this fundamental freedom is bound to have repercussions on the advancement of other rights, leading to consequences that in no way benefit the development of the country's democratic life."

641. Additionally, the CNDH points out in its cited General Recommendation No. 20, that "any attack or act of aggression against a media worker constitutes an attack to the detriment of the democratic life of the country, as it attacks the collective right to information."

642. The crimes of defamation [*difamación y calumnia*] were eliminated from the Federal Criminal Code and from several state legislations, but they are still present in the criminal legislations of several states of Mexico.<sup>1249</sup>

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<sup>1246</sup> E-Consulta. April 7, 2013. [Detienen ministeriales a director de e-consulta Tlaxcala](#); E-Consulta. April 10, 2013. [Dictan auto de formal prisión contra director de e-consulta](#); Ladobe. April 7, 2013. [Tras pago de fianza liberan a director de e-consulta Tlaxcala](#); Proceso. April 7, 2013. [Detienen por difamación a director de "e-consulta Tlaxcala"; funcionario lo acusó](#); Article 19. April 11, 2013. [TLAXCALA: Criminalizan a la prensa. Dictan Auto de Formal Prisión contra el director de e-consulta acusado de "difamación"](#).

<sup>1247</sup> E-Consulta. April 10, 2013. [Dictan auto de formal prisión contra director de e-consulta](#); Article 19. April 11, 2013. [TLAXCALA: Criminalizan a la prensa. Dictan Auto de Formal Prisión contra el director de e-consulta acusado de "difamación"](#).

<sup>1248</sup> Comisión Nacional de los Derechos Humanos. August 15, 2013. [Recomendación General N° 20, sobre agravios a periodistas en México y la impunidad imperante](#).

<sup>1249</sup> Comisión Nacional de los Derechos Humanos. August 15, 2013. [Recomendación General N° 20, sobre agravios a periodistas en México y la impunidad imperante](#).

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

#### H. Stigmatizing statements

644. On March 15, an official from the government of Veracruz reportedly disparaged the work of photojournalist Félix Márquez, from the *Cuartoscuro* agency, related to a news report on the establishment of a “Self-Defense Civil Guard” in Tlalixcoyan, Veracruz.<sup>1250</sup> The Secretary of Public Security of Veracruz reportedly said that photographer Márquez should be detained for photographing members of an alleged paramilitary group called the Self-Defense Civil Guard in the town of Tlalixcoyan, and questioned the veracity of the images: “who should be in custody is the person who went to take their photos”, the secretary was quoted as saying.<sup>1251</sup> On March 15, a group of journalists demonstrated in the state capital of Xalapa to express their solidarity with the photographer with the slogan “Veracruz, we photographers are not criminals.”<sup>1252</sup> According to the available information, the Secretary of Public Security reportedly apologized for his remarks and offered assurances that he had not intended to threaten the photographer nor discredit his work.<sup>1253</sup> For his safety, the journalist decided to leave the state of Veracruz.<sup>1254</sup>

#### I. Confidentiality of sources of information

645. Journalists Daniel Ángel and Vicente Calderón, of the *Tijuana Press* news agency, were reportedly subpoenaed for the second time to serve as witnesses in the trial of an alleged drug trafficker. According to the information received, the subpoena was issued at the request of the defense

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<sup>1250</sup> Proceso. March 15, 2013. [Arremete gobierno de Veracruz contra fotógrafo que grabó a guardia comunitaria](#); Cuartoscuro. March 15, 2013. [Postura de Cuartoscuro sobre las fotografías de Tlalixcoyan, Veracruz](#); Campaña Permanente de Protección a Periodistas/Centro Nacional de Comunicación Social (Cencos). March 15, 2013. [Alerta LE: Gobierno de Veracruz intimida a fotoperiodista de Cuartoscuro](#).

<sup>1251</sup> La Jornada. March 16, 2013. [Duda Bermúdez Zurita que fotos sean una prueba de que hay grupos de autodefensa](#); SdpNoticias. March 15, 2013. [“El que debería estar detenido es el que sacó las fotos”: Arturo Bermúdez sobre grupos armados en Tlalixcoyan](#); Proceso. March 15, 2013. [Arremete gobierno de Veracruz contra fotógrafo que grabó a guardia comunitaria](#); Campaña Permanente de Protección a Periodistas/Centro Nacional de Comunicación Social (Cencos). March 15, 2013. [Alerta LE: Gobierno de Veracruz intimida a fotoperiodista de Cuartoscuro](#).

<sup>1252</sup> Imagen del Golfo. March 15, 2013. [Se manifiestan reporteros y fotógrafos en Xalapa](#); La Jornada. March 16, 2013. [Duda Bermúdez Zurita que fotos sean una prueba de que hay grupos de autodefensa](#).

<sup>1253</sup> Veracruzanos.info. March 15, 2013. [Bermúdez se disculpa con fotógrafo](#); SdpNoticias. March 15, 2013. [Se disculpa Secretario de Seguridad Pública de Veracruz con fotógrafo](#).

<sup>1254</sup> Cuartoscuro. March 15, 2013. [Postura de Cuartoscuro sobre las fotografías de Tlalixcoyan, Veracruz](#); Article 19. March 16, 2013. [México: Descalificación y la posibilidad de criminalización a fotoperiodista por funcionarios públicos de Veracruz ameritan más que una disculpa](#); Proceso. March 19, 2013. [Huye de Veracruz fotoperiodista acosado por el gobierno](#).



so that the journalists would provide recordings they had made of the defendant's arrest. According to the information received, reporters and camera operators from other media outlets who had covered the defendant's arrest had also been subpoenaed to appear in court at the request of the defense.<sup>1255</sup>

646. Along these lines, it is worth noting that Mexico's National Human Rights Commission (CNDH), in its General Recommendation No. 20, stated that "news professionals should not be subject without just cause to subpoenas from courts or judges, summoning them to appear and using them in judicial investigations, as this inhibits their work." Moreover, "practices in which justice officials summon journalists to appear, as a result of some criminal investigation underway involving facts they have reported to the public, and ask them to reveal their sources, infringe on their right to privacy." In this regard, the CNDH recommended to the government of the Federal District that it "promote, with the respective legislatures, the necessary additions and reforms so that federal criminal codes and codes of criminal procedure, as well as state criminal codes, decriminalize so-called press crimes, and so that confidentiality of sources is expressly protected, it also being necessary that, as is the case for defamation [*calumnias* and *difamación*], civil legislation establish the steps to follow when a harm is inflicted."<sup>1256</sup>

647. Principle 8 of the Declaration of Principles on Freedom of Expression states that "[e]very social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential."

#### J. The Internet and freedom of expression

648. The Office of the Rapporteur was informed that the Twitter and Facebook accounts called "Valor por Tamaulipas" ("Courage for Tamaulipas"), which were used to report on incidents of violence and dangerous situations in the northern part of Mexico, were closed. On April 7 the account administrator reportedly announced their final shutdown after fliers had appeared in the state of Tamaulipas in February, offering a reward for information that would lead to the identification of the administrator of the "Valor por Tamaulipas" account or of any of his family members.<sup>1257</sup>

649. On May 12, the website of the newspaper *El Mañana*, in Nuevo Laredo, Tamaulipas, was reportedly the victim of two cyber-attacks, which caused service to be interrupted for several minutes. According to the information received, the attacks occurred after the newspaper published articles questioning the performance of the municipal authorities.<sup>1258</sup>

<sup>1255</sup> Campaña Permanente de Protección a Periodistas/Article 19. June 21, 2013. [ALERTA: En Tijuana, catorios a periodistas vulneran libertad de expresión](#); El Sol de Tijuana. June 20, 2013. [Abogado de "El Melvin" llama a tres reporteros y pide videos a televisoras](#). See also, Tijuana Press/YouTube. [Citan a Reporteros en Juicio contra Melvin Gutiérrez](#).

<sup>1256</sup> Comisión Nacional de los Derechos Humanos. August 15, 2013. [Recomendación General N° 20, sobre agravios a periodistas en México y la impunidad imperante](#).

<sup>1257</sup> Valor por Tamaulipas. April 7, 2013. [Untitled](#); Proceso. April 7, 2013. [Administrador de 'Valor por Tamaulipas' anuncia cierre definitivo de la página](#); BBC. April 8, 2013. [México: página de Facebook Valor por Tamaulipas cerrará definitivamente](#). See also, Proceso. February 13, 2013. [Grupo criminal quiere la cabeza del administrador de una página en Facebook](#); Proceso. February 13, 2013. [No todos nos rendiremos ante ustedes, responde "Valor por Tamaulipas"](#); Sin embargo. February 15, 2013. ["Tengo tanto miedo que ya no puedo tener más", dice, oculto, el administrador en FB de "Valor por Tamaulipas"](#); Proceso. April 30, 2013. [Gobierno y narco, unidos contra "Valor por Tamaulipas"](#).

<sup>1258</sup> El Mañana. May 14, 2013. [Atacan a El Mañana, ahora por vía Internet](#); Article 19. May 13, 2013. [ALERTA. México: Atacan la página de internet de "El Mañana" de Nuevo Laredo](#).

650. The Office of the Special Rapporteur was informed that in July, the Internet portals of the newspapers *El Mañana*, in Nuevo Laredo, Tamaulipas; *Zócalo*, in Saltillo, Coahuila; and *Noroeste*, in Sinaloa, were targets of cyber-attacks that caused momentary shutdowns of their websites. The attacks reportedly occurred in the days leading up to the July 7 elections.<sup>1259</sup>

### K. Other relevant situations

651. On August 8, the Seventh Criminal Chamber of the State of Veracruz Superior Court overturned the 38-year prison sentence of the man who had been convicted of killing Mexican journalist Regina Martínez Pérez in 2012. The grounds for the court's decision were that due process guarantees of the accused had been violated.<sup>1260</sup> On April 9, the Third Trial Court of the judicial district of Xalapa had handed down a prison sentence of 38 years and 2 months to a man who had confessed to killing the journalist Regina Martínez. The court also imposed a fine and reparations, in an amount of close to \$8,000, for the crimes of aggravated homicide and aggravated robbery.<sup>1261</sup> Nevertheless, *Proceso* magazine, where the journalist worked, has expressed its doubts about the arrest and confession of the individual who was sentenced. "We did not believe them, and we do not believe them now that they have sentenced someone who cannot defend himself," the magazine said after the conviction ruling.<sup>1262</sup> According to *Proceso*, there were a number of inconsistencies in the investigation of the homicide: the most significant was that the fingerprints found at the scene of the crime did not match those of the accused. Moreover, the man convicted reportedly made allegations that he was tortured by Mexican authorities into confessing to the killing<sup>1263</sup>. The defense reportedly has appealed the sentence.<sup>1264</sup> The body of Regina Martínez Pérez was found in her home, with signs of violence, on April 28, 2012, in the state of Veracruz. The journalist had covered issues related to state policy, and organized crime. Moreover, days before her death she had published an article on alleged irregularities committed by local authorities.<sup>1265</sup>

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<sup>1259</sup> Campaña Permanente de Protección a Periodistas/Article 19. July 7, 2013. [México: Atacan portales de internet de "El Mañana" y "Zócalo"](#); AM. July 5, 2013. [Periódicos sufren ataques cibernéticos](#); Centro de Reportes Informativos sobre Guatemala (CERIGUA). July 8, 2013. [Portales de noticias sufren ataques cibernéticos](#); El Universal. July 5, 2013. [Diario "Zócalo" denuncia ciberataques; notifica a PGR](#); Sin Embargo. July 6, 2013. [El diario Noroeste denuncia ataques de computadoras "zombies" desde el pasado miércoles](#).

<sup>1260</sup> CNN México. August 8, 2013. [Tribunal revoca la sentencia de inculpado por la muerte de Regina Martínez](#); Milenio. August 9, 2013. [Liberan a presunto asesino de periodista en Veracruz](#); Reporters Without Borders. August 9, 2013. [Court overturns conviction for Proceso reporter's murder](#).

<sup>1261</sup> Proceso. April 9, 2013. [Dan 38 años de cárcel a presunto asesino de Regina Martínez](#); El Universal. April 10, 2013. [Dan 38 años de cárcel a asesino de periodista](#); CNN México. April 9, 2013. [Juzgado da 38 años de cárcel al asesino de la periodista Regina Martínez](#).

<sup>1262</sup> Proceso. April 9, 2013. [Proceso y el caso Regina: "No les creímos y no les creemos"](#); See also, Proceso. April 28, 2013. [No hay orden de aprehensión contra "El Jarocho", señalado por gobierno de Duarte como el asesino](#); Committee to Protect Journalists (CPJ). April 30, 2013. [Mexican press fails to question Martínez murder case](#); CNN México. April 27, 2013. [El caso de Regina Martínez sigue abierto a un año de su asesinato](#).

<sup>1263</sup> Proceso. April 9, 2013. [Proceso y el caso Regina: "No les creímos y no les creemos"](#); Proceso. April 13, 2013. [Caso Regina: una sentencia encubridora](#). See also, Committee to Protect Journalists (CPJ). April 30, 2013. [Mexican press fails to question Martínez murder case](#).

<sup>1264</sup> Proceso. April 13, 2013. [Caso Regina: una sentencia encubridora](#); 20 minutos. April 28, 2013. [Exigen al gobierno mexicano que aclare crímenes de periodistas](#); La Jornada. April 28, 2013. [A un año, piden justicia para Regina Martínez](#).

<sup>1265</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. April 30, 2012. [Press Release No. R41/12. Office of the Special Rapporteur Condemns Murder of Journalist in Veracruz](#); See also, IACHR. [Annual Report 2012. Report of](#)

652. The Office of the Special Rapporteur notes that the Federal Institute for Access to Information (IFAI) and the Permanent Commission of the Mexican Congress are reportedly investigating allegations that telecommunications companies and federal government entities are using a surveillance software program (spyware) that makes it possible to access Internet users' private communications.<sup>1266</sup>

653. The Sixth District Judge for Federal Criminal Proceedings of the State of Mexico, reportedly absolved Marco Arturo Quiñones Sánchez with regard to his alleged involvement in the armed attack on journalist Jesús Blancornelas, founder and former editor of the weekly *Zeta*, in Tijuana. In November 1997, Blancornelas survived an attack by a group of hit men, in which his bodyguard, Luis Valero, was killed. Investigations by the authorities identified Marco Arturo Quiñones as one of the hit men in the attack, working in the pay of a Tijuana drug cartel. In 2003, Quiñones was charged for his alleged participation in the murder of Valero and the attempted murder of the journalist. Although he has been absolved of that conviction, currently Quiñones is reportedly serving a prison sentence of 12 years and 9 months for the crime of organized crime, and he is scheduled to be released in October 2016.<sup>1267</sup>

654. According to the information received, on November 8, 2013, the Sixth Collegiate Court of the Auxiliary Circuit of the Third Region of the Judicial Branch of the Federation decided to revoke the protective sentence that prevented the exhibition and commercialization of the documentary film *Presunto Culpable* ["Presumed Guilty"].<sup>1268</sup> The documentary questions the Mexican judicial system and lays out the proceeding against José Antonio Zúñiga Rodríguez, who was convicted and sentenced to 20 years in prison for the crime of first-degree murder without any clear evidence and despite the existence of testimony placing the defendant elsewhere at the time the crime took place. In April 2008, after 28 months in prison, the Fifth Chamber of the Tribunal of Justice of the Federal District acquitted him for reasonable doubt.<sup>1269</sup>

655. The received information indicates that the protective appeal to prevent the public exhibition of the documentary was presented by a person who appeared as witness of the legal

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[the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Situation of freedom of expression in Member States). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. Para. 356.

<sup>1266</sup> Citizen Lab. April 30, 2013. [For Their Eyes Only: The Commercialization of Digital Spying](#); ContigenteMX. June 21, 2013. [Propuesta Cívica y ContigenteMX solicitan al IFAI que inicie procedimiento de verificación conforme a la Ley de Protección de Datos Personales en Posesión de Particulares \[Boletín de Prensa\]](#); IFEX. July 24, 2013. [Corruption scandal reveals use of surveillance software in Mexico](#); ContigenteMX. October 7, 2013. [Comunicado de prensa sobre los avances en las investigaciones sobre #Finfisher en Mexico](#); Vanguardia. July 24, 2013. [Piden al Ifai investigar sobre software espía FinFisher](#); El Economista. June 20, 2013. [México, en alerta por riesgo de espionaje digital](#); Global Voices. June 22, 2013. [México: Activistas piden investigación de software espía FinFisher](#).

<sup>1267</sup> Committee to Protect Journalists (CPJ). September 6, 2013. [Mexico drops charges in Blancornelas murder attempt](#); Sin embargo/ZETA. September 8, 2013. [Juez exonera a responsable de atentado en contra del periodista Jesús Blancornelas, hace 16 años](#); Inter-American Press Association (IAPA). September 11, 2013. [Attack on Jesús Blancornelas still unpunished 14 years later](#).

<sup>1268</sup> Poder Judicial de la Federación. November 14, 2013. [Nota Informativa - Caso Presunto Culpable](#). See also, Quadratin. November 8, 2013. [Levantán censura a Presunto Culpable](#); Milenio. November 8, 2013. [Tribunal levanta censura a Presunto Culpable](#); Vanguardia. November 10, 2013. ['Presunto Culpable' obliga revisar los límites de libertad de expresión](#); El Universal. November 9, 2013. [Presunto culpable ganó ayer una batalla legal](#).

<sup>1269</sup> IACHR. [Annual Report 2011. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/SER.L/V/II. Doc. 69. December 30, 2011. Para. 398.

investigation, and who understood that an unauthorized use of her image had taken place, thus characterizing a violation of her human rights. The judge, through the protective measure [*amparo*] issued on December 19, 2011, ordered the Direction-General of Radio, Television and Cinematography (RTC) of the Ministry of Interior to leave the authorizations of publication and commercialization of the film without effect, and to determine whether these authorizations would infringe the claimant's right to privacy, by describing, in the case of granting the authorizations, the reasons for which his right to privacy was not being violated.<sup>1270</sup> After analyzing the matter, the Sixth Collegiate Court decided to revoke the appealed sentence and to pronounce on the impropriety of the protection appeal [*amparo*]. The Court understood that the claimant did not present sufficiently strong evidences to substantiate the juridical interest he was claiming, as both in the documentary's motion picture and in the anthropometric expert evidence – which could effectively establish if the person in the documentary was the claimant – were excluded by the district judge after being submitted extemporaneously.<sup>1271</sup> According to the information, the documentary was also facing millionaire suits for non-material damage.<sup>1272</sup>

656. Principle 5 of the IACHR's Declaration of Principles establishes that, “[p]rior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”

657. The Inter-American Court has established that “the fear of a civil penalty, considering the claim [...] for a very steep civil reparation, may be, in any case, equally or more intimidating and inhibiting for the exercise of freedom of expression than a criminal punishment, since it has the potential to attain the personal and family life of an individual who accuses.”<sup>1273</sup>

658. In its General Recommendation No. 20, Mexico's National Human Rights Commission (CNDH) indicated that “indirect means of restriction often involve using legitimate mechanisms in ways that are discretionary or abusive to reward or punish journalists or other people based on what they say. Nowadays it is common for federal or local public officials to engage in these types of practices that hamper the freedom of expression of journalists and media workers; these involve practices such as the arbitrary and discriminatory allocation of official advertising and official credit, lawsuits, restrictive legislation, police harassment, and the refusal to provide official information to certain media outlets.”<sup>1274</sup>

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<sup>1270</sup> Poder Judicial de la Federación. November 14, 2013. [Nota Informativa - Caso Presunto Culpable](#); CNN México/YouTube. November 26, 2013. Entrevista de Carmen Aristegui a Miguel Carbonell. [De 'Presunto culpable' a una posible censura](#).

<sup>1271</sup> Poder Judicial de la Federación. November 14, 2013. [Nota Informativa - Caso Presunto Culpable](#).

<sup>1272</sup> Quadratín. November 8, 2013. [Levantán censura a Presunto Culpable](#); CNN México/YouTube. November 26, 2013. Entrevista de Carmen Aristegui a Miguel Carbonell. [De 'Presunto culpable' a una posible censura](#); CNN México. July 10, 2013. ['Presunto culpable' enfrenta un 'futuro negro' por una lluvia de demandas](#).

<sup>1273</sup> Inter-American Court. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. Para. 129.

<sup>1274</sup> Comisión Nacional de los Derechos Humanos. August 15, 2013. [Recomendación General Nº 20, sobre agravios a periodistas en México y la impunidad imperante](#).

## 20. Nicaragua

### A. Arrests and assaults

659. According to information received, on May 7 Chilean photojournalist Héctor Retamal, a correspondent for *Agence France-Presse (AFP)*, was reportedly arrested and transported to the Judicial Assistance offices of the police while on his way to cover a meeting between Nicaraguan President, Daniel Ortega and the Foreign Minister of the Palestinian Authority. The journalist reportedly remained in custody for four days, without being given the opportunity to communicate with anyone on the outside and without legal assistance. On May 11, Retamal was reportedly deported from the country.<sup>1275</sup> As explained by Nicaragua's Ministry of Interior, the journalist was deported because he was working as a reporter without a work visa, did not have the legal documentation for the vehicle in which he was traveling, and attempted to breach the security cordon of the Office of the President of the Republic.<sup>1276</sup> AFP's Latin American chief, Juliette Hollier-Larousse, sent a letter to the Communications and Citizenship Coordinator of the Office of the President of Nicaragua and First Lady Rosario Murillo, expressing her "most vigorous protest" against the reporter's detention "for four days, without the opportunity to communicate with anyone on the outside and without legal assistance" and his subsequent expulsion from the country, and asking for the government to explained what happened and to guarantee the conditions for the practice of journalism.<sup>1277</sup>

660. The Office of the Special Rapporteur received information indicating that, on February 9, 2013, during a protest held in Santo Domingo, Chontales, by local mining groups and members of the environmental movement *Salvemos Santo Domingo (SSD)* against a foreign mining company, multiple assaults and arrests were reportedly made by alleged state agents. According to reports, alleged riot police belonging to government special forces went to the protest and violently removed the protesters. Both police officers and demonstrators were reported to have been injured, and other individuals were reportedly detained. According to the information available, some of the detainees were released the same day; however, others were prosecuted, including twelve leaders who were apparently taken to the country's capital. The court hearing the case scheduled a hearing for April 25, 2013, although the detainees were reportedly released prior to that date.<sup>1278</sup>

661. The Office of the Special Rapporteur was informed that, during the peaceful protests held by the National Union of Older Adults [*Unión Nacional de Adultos Mayores*] (UNAM) over alleged reductions to their pension benefits, members of the community of older adults from at least four departments of Nicaragua reportedly staged takeovers of Nicaraguan Social Security Institute (INSS) facilities and held a sit-in that lasted for several days. According to reports, there were multiple acts of violence during the demonstration, against demonstrators as well as journalists who were there

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<sup>1275</sup> AFP. May 14, 2013. [AFP protesta por la expulsión de su fotógrafo de Nicaragua](#); Confidencial. May 11, 2013. [Gobierno expulsa al fotógrafo carcelado de la AFP](#); La Prensa. May 11, 2013. [Expulsan de Nicaragua a reportero gráfico de AFP](#).

<sup>1276</sup> Ministerio de Gobernación. May 14, 2013. [Comunicado](#).

<sup>1277</sup> AFP. May 14, 2013. [AFP protesta por la expulsión de su fotógrafo de Nicaragua](#); El Heraldo. May 13, 2013. [AFP entrega carta de protesta a gobierno por trato a fotoperiodista](#).

<sup>1278</sup> Centro Nicaragüense de Derechos Humanos (CENIDH). March 1, 2013. [Violencia y represión contra población del municipio de Santo Domingo, Chontales](#); Confidencial. February 25, 2013. [Relatos de horror en Santo Domingo](#); El Nuevo Diario. February 26, 2013. [Mineros a juicio el 25 de abril](#); La Prensa. April 24, 2013. [Mineros libres en audiencia silenciosa](#).

covering the events. The available information indicates that the government sent police forces to remove the protesters. According to complaints filed, law enforcement officers reportedly used tear gas and assaulted senior citizens and others present.<sup>1279</sup> In particular, on June 19 journalist Roberto José Martínez of *El Nuevo Diario* was reportedly struck by police officers while covering the protest, in spite of the fact that he had stated that he was a journalist. According to the journalist, the alleged agents hit him in the head and the back, held him with his arms behind his back, which prevented him from being able to show his identification, and then threw him up against a wall in the vicinity of the San Pedro Cemetery.<sup>1280</sup> On June 22, a group of hooded individuals riding in trucks, allegedly from the Managua mayor's office, reportedly assaulted and attacked peaceful demonstrators who were still at the UNAM protests. The victims were reported to have been beaten, robbed, and subjected to the destruction of their property. According to complaints, the attackers were tied to pro-government groups and were acting in complicity with state agents, who also failed to take any measures in response to the attacks.<sup>1281</sup>

662. On October 11, a peaceful march protesting the exclusive use of electronic cards for the payment of city bus fares was reportedly dispersed by a group of motorcyclists, allegedly belonging to a para-state group, which assaulted and intimidated the demonstrators. A news team from *El Nuevo Diario* that was covering the events was also threatened and intimidated by these motorcyclists, who had complained about being photographed. According to reports, government forces failed to intervene in the events.<sup>1282</sup>

663. The Joint Declaration on violence against journalists and media workers in the context of protests, adopted in 2013, indicates that during demonstrations and situations of social unrest, the work of journalists and media workers, as well as the free flow of information, "is essential to keeping the public informed of the events. At the same time, it plays an important role in reporting on the conduct of the State [...] preventing the disproportionate use of force and the abuse of authority."<sup>1283</sup> Accordingly, the authorities must provide journalists with the maximum guarantees in order for them to perform their functions. In this respect, they must ensure that journalists are not arrested, threatened, assaulted, or limited in any manner in their rights as a result of practicing their profession in the context

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<sup>1279</sup> Centro Nicaragüense de Derechos Humanos (CENIDH). October 28, 2013. Letter addressed to the Office of the Special Rapporteur for Freedom of Expression. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression; La Prensa. June 17, 2013. [Adultos mayores se toman el INSS](#); El País. June 20, 2013. [Los "viejitos" plantan cara a Daniel Ortega](#); Trinchera de la Noticia. June 20, 2013. [Decenas de heridos y golpeados](#).

<sup>1280</sup> El Nuevo Diario. June 20, 2013. [Golpean a periodista de El Nuevo Diario](#); Nicanoticias. June 19, 2013. [Policía agrede a periodista de El Nuevo Diario](#); Inter-American Press Association (IAPA). October, 2013. [Report of General Assembly 2013 – Denver, United States - Nicaragua](#).

<sup>1281</sup> Centro Nicaragüense de Derechos Humanos (CENIDH). October 28, 2013. Letter addressed to the Office of the Special Rapporteur for Freedom of Expression. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Confidencial. October 24, 2013. [Cenidh: impunidad policial ante CIDH](#); El Nuevo Diario. June 25, 2013. [Cenidh informará a CIDH sobre agresión a jóvenes](#); La Prensa. June 24, 2013. [Denuncian torturas ante el Cenidh](#).

<sup>1282</sup> Centro Nicaragüense de Derechos Humanos (CENIDH). October 28, 2013. Letter addressed to the Office of the Special Rapporteur for Freedom of Expression. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Hoy. October 11, 2013. [Motorizados dispersan protesta contra MPeso](#); El Nuevo Diario. October 11, 2013. [Motorizados amenazan a equipo de El Nuevo Diario](#); Televisión de Nicaragua. October 11, 2013. [Motorizados intimidan protesta en contra de MPESO \(VIDEO\)](#).

<sup>1283</sup> United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. [Joint Declaration on Violence against Journalists and Media Workers in the Context of Protests](#).

of a public demonstration. The State must not prohibit or criminalize live broadcasts of events, and must abstain from imposing measures that regulate or limit the free circulation of information.<sup>1284</sup> Journalists must not be called as witnesses before the courts, and the authorities must respect the right to the confidentiality of sources of information. In addition, their work materials and tools must not be destroyed or confiscated.<sup>1285</sup> The authorities must adopt a public discourse that helps prevent violence against journalists, vigorously condemning assaults, investigating the facts, and punishing the perpetrators, as established in Principle 9 of the IACHR's Declaration of Principles.<sup>1286</sup> It is also especially important in these contexts that the authorities have special protocols for protecting the press in situations of social unrest and educate State security forces on the role of the press in a democratic society.<sup>1287</sup>

## **B. Access to public servants and public places**

664. On May 24, 2013 the newspaper *La Prensa* denounced the expulsion of one of its teams of reporters from the Central Judicial Complex in Managua, while they were trying to cover the filing of a lawsuit by the daughter of the Nicaraguan President's wife. According to the newspaper, while journalist Martha Vásquez was registering the press team at the respective office, photographer Manuel Esquivel was surrounded by alleged security agents who, after a struggle, violently threw him out of the area.<sup>1288</sup>

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

## **C. Reforms underway: the Internet and the forced localization of intermediaries**

666. The Office of the Special Rapporteur notes that an initiative proposing the amendment of the Constitution of Nicaragua was introduced before the National Assembly. The proposed reforms include the amendment of Article 92 of the Constitution regarding the defense and security of the State.

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<sup>1284</sup> United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. [Joint Declaration on Violence against Journalists and Media Workers in the Context of Protests](#).

<sup>1285</sup> United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. [Joint Declaration on Violence against Journalists and Media Workers in the Context of Protests](#).

<sup>1286</sup> [Principle 9 of the IACHR Declaration of Principles](#): "[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation".

<sup>1287</sup> United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. [Joint Declaration on Violence against Journalists and Media Workers in the Context of Protests](#).

<sup>1288</sup> *La Prensa*. May 25, 2013. [Abuso orteguista](#); *La Prensa*. May 28, 2013. [Vocero del poder judicial culpa de su abuso a guardas](#); Confidencial/EFE. May 24, 2013. [Expulsan de juzgados a periodistas de La Prensa](#); Inter-American Press Association (IAPA). October, 2013. [Report of General Assembly 2013 – Denver, United States - Nicaragua](#); Centro Nicaragüense de Derechos Humanos (CENIDH). October 28, 2013. Letter addressed to the Office of the Special Rapporteur for Freedom of Expression. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

The new article<sup>1289</sup> would require that all “databases and computer records remain in the country,” and would prohibit the establishment of “systems that alter or affect national communications systems.” These provisions have reportedly given rise to debate about the scope of state power over telecommunications, the handling of information said to be controlled by the State, and the possible consequences that such measures could have on individual privacy and freedom of expression.<sup>1290</sup>

667. Indeed, in the event that the constitutional amendment is passed, the government could require all Internet intermediaries that store data to have their servers located in Nicaragua. This concept, known as “forced localization,” has complex repercussions on the freedom of users to choose the intermediaries that they believe provide better security, and bars intermediate companies from providing the service unless their data storage equipment is located in Nicaraguan territory. In addition, it prohibits those companies from being able to be located in those States that offer the best guarantees for their proper operation, and facilitates the establishment of surveillance programs that have already been called into question by this Office of the Special Rapporteur.<sup>1291</sup>

668. According to the information received, the Nicaraguan Government explained that “the intention of the Executive Branch is not to violate the privacy of companies’ internal data, but rather to have them [in the country] so that citizens can make claims based on the use that is made of the information they produce.”<sup>1292</sup>

669. The Office of the Special Rapporteur finds that this amendment could have a serious and negative impact on the use of the Internet, for the reasons explained in Chapter IV of this report. Therefore, it recommends to the Nicaraguan State, as well as to all States that have at any point suggested this alternative, to abandon the proposal of forced localization contained in the abovementioned constitutional reform, and to allow users to choose the intermediaries that, in their opinion, are the most trustworthy.

#### **D. Other relevant situations**

670. The Office of the Special Rapporteur received information that on October 28, 2013, journalist Carlos Fernando Chamorro presented a letter to the Nicaraguan Army Chief to officially complain of alleged intimidating activities and espionage by the Directorate of Defense Information [*Dirección de Información para la Defensa*] (DID) against journalist Ismael López Ocampo of *Esta Semana*

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<sup>1289</sup> Article 92 “[...] It is the responsibility of the Commander in Chief of the Nicaraguan Army, under guidance of the President of the Republic as chief supreme of the Nicaraguan Army, to participate in the formulation of national defense and security plans and policies and in the coordination of its execution. In terms of national defense and security: a) Databases and computer registries must remain in the country; b) In no case the establishment of systems that alter or affect national communication systems are to be allowed; c) State communication points must be the property of the State of Nicaragua; and d) the radio electric and satellite spectrum that affects Nicaraguan communications must be controlled by the State. National Assembly of Nicaragua. [Proyecto de Ley de Reforma Parcial a la Constitución Política de Nicaragua](#). October 31, 2013.

<sup>1290</sup> Yahoo! News/The Associated Press. November 8, 2013. [Nicaragua: debate por reforma constitucional](#); El Nuevo Diario. November 13, 2013. [Diputados sandinistas defienden reforma al artículo 92 de la Constitución](#); Confidencial. November 15, 2013. [Sergio Ramírez critica reformas de Ortega](#); IT Now. November 13, 2013. [Reformas constitucionales podrían impactar telecomunicaciones en Nicaragua](#).

<sup>1291</sup> United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. June 21, 2013. [Joint Declaration on Surveillance Programs and their Impact on Freedom of Expression](#).

<sup>1292</sup> El Nuevo Diario. November 13, 2013. [Diputados sandinistas defienden reforma al artículo 92 de la Constitución](#).



and *Confidencial* and his family since August 2013. According to Chamorro, who is the director of both media outlets, Ismael López was summoned on October 11 to a meeting with the DID, at which time he was questioned about his personal life and issues concerning his professional activities, including the news agenda of the media outlets for which he works, the positions of the columnists critical of the government, the duties and responsibilities of the producers and editors of both media outlets, and their funding policies. Chamorro reportedly asked the Army Chief for “the immediate cessation of all overt and covert activities of intimidation and espionage against journalist Ismael López and his family, and against the media outlets *Esta Semana* and *Confidencial*,” as well as for the Army Chief “to take corrective measures and punish those responsible.” In addition, he asked the National Assembly to conduct “an independent investigation into these overt and covert practices of political espionage and intimidation, which are prohibited by the Constitution.”<sup>1293</sup>

671. In a communication received on December 18, 2013,<sup>1294</sup> the State informed the Office of the Special Rapporteur that the National Army had learned of the “‘alleged intimidating activities’ conducted against the journalist” through the media and from the letter submitted by journalist Fernando Chamorro. The State reported that on November 13, 2013, the Inspector General of the National Army reportedly stated to the media that “the Military Institution is not engaged in any type of espionage, let alone political espionage.” Additionally, the State was of the opinion that the journalist’s public condemnation of the events failed to “provide specific information on the involvement of any member of the National Army in the alleged intimidating acts,” and that the country’s legal system “allows for the use of several remedies and mechanisms so that individuals who believe that their constitutional rights—or any other rights—have been violated, or are in danger of being violated, can demand their protection and reestablishment,” and that the journalist had not availed himself of them.

672. According to reports, Elizabeth Romero, a correspondent for the newspaper *La Prensa*, complained of alleged acts of intimidation, detention, and espionage against the newspaper, as well as against representatives of the Nicaraguan Association for Human Rights [*Asociación Nicaragüense Pro Derechos Humanos*] (ANPDH), following the coverage of the alleged existence of irregular armed groups.<sup>1295</sup>

673. Principle 9 of the IACHR’s Declaration of Principles establishes that “the murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction

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<sup>1293</sup> Letter from Carlos F. Chamorro to Army General Julio César Avilés, chief of the Nicaraguan Army. October 28, 2013. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Centro Nicaragüense de Derechos Humanos (CENIDH). October 28, 2013. Letter addressed to the Office of the Special Rapporteur for Freedom of Expression. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression; *La Prensa*. October 29, 2013. [Acusan a Ejército de espionaje](#); *Confidencial*. October 28, 2013. [Periodista denuncia espionaje de la DID](#); The Huffington Post/The Associated Press. October 28, 2013. [Acusan de espionaje al Ejército de Nicaragua](#); *América Económica*. October 29, 2013. [El Ejército de Nicaragua, acusado de espionaje](#); Fox News Latino/EFE. October 28, 2013. [Acusan al Ejército de Nicaragua de espiar y perseguir a un periodista](#).

<sup>1294</sup> Communication from the Permanent Mission of Nicaragua to the Organization of American States. MPN-OEA-00131, received on December 18, 2013. Available for consultation at: [http://www.oas.org/en/iachr/expression/docs/Nicaragua\\_MPN\\_OEA\\_00131.pdf](http://www.oas.org/en/iachr/expression/docs/Nicaragua_MPN_OEA_00131.pdf).

<sup>1295</sup> *La Prensa*. Communication from Diario *La Prensa* to Centro Nicaragüense de Derechos Humanos (CENIDH). October 24, 2013. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Centro Nicaragüense de Derechos Humanos (CENIDH). October 28, 2013. Letter addressed to the Office of the Special Rapporteur for Freedom of Expression. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

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

## 21. Panama

### A. Progress

674. The Supreme Court of Justice of Panama granted an unconstitutionality writ against a ruling issued in September of 2010 by the Second Superior Criminal Court of Justice that sentenced the former news director of *TVN Canal Dos*, Sabrina Bacal, and radio journalist Justino González, of *KW Continente*, to one year in prison for the alleged crime of defamation [*calumnia*]. Both journalists were sued in 2005 by officials from the Directorate of Migration, over a news story mentioning them as alleged members of a people-trafficking network. On September 28, 2010, the Second Superior Criminal Court of Justice of Panama sentenced the journalists to one year in prison for the crime of defamation [*calumnia*]. The ruling also prohibited them from engaging in activities associated with their profession for one year and replaced the jail term with a fine of US\$ 3,650 for each.<sup>1296</sup> On October 7, 2010, President Ricardo Martinelli pardoned the convicted journalists.<sup>1297</sup> However, journalist Bacal initiated amparo proceedings against the Supreme Court’s ruling, which she considered –as stated by magistrate Jerónimo Megía in a reasoned opinion—that “the fact that the President of the Republic has granted a pardon in this case in no way impedes the relief functions of the amparo tribunal, taking into account that the main legal effect of a pardon is to extinguish the penalty, leaving intact all of the other consequences that arise from a criminal conviction, which do not disappear merely because of the issuance of a presidential pardon.”<sup>1298</sup>

675. In the Supreme Court Ruling of June 4, 2012 –publicly disseminated on February 22, 2013– the magistrates cite the ruling by the Inter-American Court of Human Rights in the *Case of Herrera Ulloa v. Costa Rica*,<sup>1299</sup> which establishes that “democratic control by society through public opinion fosters transparency of state activities and promotes responsibility on the part of government officials in their work, which is why there must be a reduced margin for any restriction on political debate or debate over questions of public interest. [...] In this context, it is logical and appropriate that expressions concerning government officials or others who fulfill duties of a public nature must enjoy, under the terms of article 13.2 of the Convention, a margin of openness to broad debate regarding matters of public interest, which is essential for the functioning of a truly democratic system.” In that sense, the magistrates state that “freedom of information and the press, in relation to a matter of public interest, displaces the protection of honor and dignity, only when it involves situations, discussions, criticisms and opinions about the actions or omissions of public servants, as well as literary, artistic, historic, scientific, or professional criticism; so that this exception of liability do not apply to people who do not hold a

<sup>1296</sup> Segundo Tribunal Superior de Justicia del Primer Distrito Judicial. [Sentencia N° 250-S.I.](#). September 28, 2010. See also, IACHR. Office of the Special Rapporteur for Freedom of Expression. October 8, 2010. [Press Release R101/10. Office of the Special Rapporteur Concerned about Criminal Conviction of Journalist in Panama](#); Inter American Press Association (IAPA). October 6, 2010. [La SIP califica de retroceso para la libertad de prensa fallo judicial en Panamá contra dos periodistas](#).

<sup>1297</sup> República de Panamá. Ministerio de Gobierno. [Decreto Ejecutivo No.864](#). October 7, 2010.

<sup>1298</sup> Órgano Judicial de la República de Panamá. Corte Suprema de Justicia. Acción de Amparo de Garantías Constitucionales, Expediente 1292-10. July 4, 2012. Available for consultation at: <http://bd.organojudicial.gob.pa/registro.html>

<sup>1299</sup> I/A Court H.R. *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107.

government post.” The magistrates concluded that the journalist’s intention “was not to affect the honor of the public officials, but rather to exercise the right to information about questionable actions, derived from a Security Council report, which was not refuted as false and evidently was going to cause scrutiny by their hierarchical superiors, as well as by the society in general.”<sup>1300</sup>

676. The Office of the Special Rapporteur welcomes the application of Inter-American standards in the field of freedom of expression in the above-mentioned ruling, particularly in relation to specially protected speech.<sup>1301</sup> Indeed, according to the jurisprudence developed in recent years by the organs of the Inter-American system, a democratic and pluralistic regimen must work for the largest and broadest circulation of information, opinions and ideas relating to the State, particularly in relation to the above-mentioned forms of speech. At the same time, emphasis has been placed on freedom of expression as one of the most effective ways to expose corruption.<sup>1302</sup> In this respect, Principle 11 of the Declaration del Principles provides that “[p]ublic officials are subject to greater scrutiny by society.”. Similarly, Principle 10 of the Declaration of Principles provides that “[p]rivacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.”

677. On April 1, the Public Prosecutor, Ana I. Belfón, issued a bulletin to all superior prosecutors, circuit level prosecutors and ombudsmen of the Office of the Public Prosecutor at the national level, containing the text of the Declaration of Principles on Freedom of Expression of the IACHR and urged that it be complied with.<sup>1303</sup> The Public Prosecutor called particular attention “to the fulfillment of aspects of procedural character of evidentiary order, which arises from its postulates, considering as a fact that in their actions, journalists are covered by the *animus informandi*, unless there is proof to the contrary that shows that there was an *animus contrario*.”

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<sup>1300</sup> Órgano Judicial de la República de Panamá. Corte Suprema de Justicia. Acción de Amparo de Garantías Constitucionales, Expediente 1292-10. July 4, 2012. Available for consultation at: <http://bd.organismojudicial.gob.pa/registro.html>; Colegio Nacional de Periodistas (CONAPE). February 25, 2013. [Fallo de la CSJ Garantiza Derecho a la Información](#); La Estrella. February 23, 2013. [Corte absuelve a Sabrina Bacal](#); La Prensa. February 27, 2013. [Fallo sienta precedente positivo](#).

<sup>1301</sup> This office has indicated that while it is true that all forms of expression are protected in principle by the freedom enshrined in Article 13 of the Convention, there are certain types of speech that receive special protection because of their importance to the exercise of other human rights, or to the consolidation, proper functioning and preservation of democracy. In the case law of the inter-American system, the types of specially protected speech are the following three: (a) political speech and speech involving matters of public interest; (b) speech regarding public officials in the exercise of their duties and candidates for public office; and (c) speech that is an element of the identity or personal dignity of the person expressing herself. IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 33.

<sup>1302</sup> I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008. Series C No. 177. Para. 88; I/A Court H.R. *Case of “The Last Temptation of Christ” (Olmedo-Bustos et al.) v. Chile. Merits, Reparations and Costs*. Judgment of February 5, 2001. Series C No. 73. Para. 69; I/A Court H.R. *Case of Ivcher-Bronstein v. Peru. Merits, Reparations and Costs*. Judgment February 6, 2001. Series C No. 74. Para. 152; I/A Court H.R. *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. Para. 83.

<sup>1303</sup> Procuraduría General de la Nación. Despacho Superior. [Circular DPGN-002-2013](#). April 1, 2013; La Prensa. April 18, 2013. [Apoyo a la libertad de expresión](#).

678. According to available information, in June, the Office of the Public Prosecutor of Panama allowed to lapse visual inspection orders for the installations of the daily newspapers *El Siglo* and *La Estrella*. The proceedings had been ordered as part of criminal proceedings initiated following the filing of lawsuits by a government official, who alleged the commission of crimes against his honor and which were detrimental to him, stemming from the publication of “de glosas en las columnas ‘La Llorona’ (*La Estrella*) and ‘Infidencias y confidencias’ (*El Siglo*)”. The visual inspection orders sought to gain access to the computers on which the articles in question presumably were edited<sup>1304</sup>. The Office of the Special Rapporteur subsequently found that the Office of the Attorney General had requested the judicial branch to shelve both proceedings permanently.<sup>1305</sup>

679. On August 8, the Eleventh Criminal Court order the provisional shelving of an investigation for defamation [*injuria* and *calumnia*] against journalist Jairo Cornejo of *Mi Diario*, the former director of *El Siglo* Jean Marcel Chéry and the acting director of *El Siglo*, Magaly Montilla. The suit was filed in 2011 by the director of the Panama Canal Authority. In August, the attorney of the director announced that they will appeal the decision<sup>1306</sup>.

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

680. On February 17, journalist Álvaro Alvarado, host of the news program ‘Telemetro Reporta’, of *Canal 13*, received threats through the Twitter social network, presumably from an attorney and at that time adviser to the National Assembly. In his Twitter account, the attorney published a message that said: “I’ve decided not to read the press or see the opposition newscasts of 2 and 13. Whenever I see Mr. Alvaro Alvarado, I am going to punch him out.”<sup>1307</sup>

681. On June 11, journalist Elizabeth González and cameraman Bolívar Jurado, of television channel 2, *TVN*, were detained by members of the State Security Council. The journalist in her Twitter account reports that “Units of the SPI or Security Council have detained me along with my cameraman. The agent wants access to my camera and recording. I refuse.” The journalistic team had tried to film in an area near one of the offices of the Security Council in Ancón.<sup>1308</sup> The secretary general of the Journalists Union of Panama, Filemón Medina, went to the scene of the events. According to what was reported, Medina tried to record what they were saying, which led public officials to assault him in an

<sup>1304</sup> *El Siglo*. June 26, 2013. [Fiscalía desiste de auditoría](#); *La Prensa*. June 26, 2013. [Fiscalía deja sin efecto requisa en ‘El Siglo’](#); *La Estrella*. June 25, 2013. [Fiscal octava suspende inspección ocular a ‘El Siglo’](#); Panamá América. June 25, 2013. [Polémica por inspección al diario ‘El Siglo’](#); *La Estrella*. June 24, 2013. [Abogados dan la espalda a Carreyó](#); *La Estrella*. June 20, 2013. [Ana Belfón apoya reserva de la fuente](#). See also, *La Estrella*. December 16, 2012. [La Llorona](#); *El Siglo*. December 18, 2012. [Infidencias y confidencias](#); *La Prensa*. July 5, 2013. [Solicitan cierre de caso contra ‘La Estrella’](#).

<sup>1305</sup> *La Prensa*. July 3, 2013. [Remiten caso contra ‘El Siglo’](#); *La Estrella*. July 4, 2013. [Fiscalía Séptima, pendiente de vista](#); *La Prensa*. July 5, 2013. [Solicitan cierre de caso contra ‘La Estrella’](#); *La Estrella*. July 5, 2013. [Sobreseimiento para ‘La Estrella’](#).

<sup>1306</sup> *La Prensa*. September 15, 2013. [Directora de la ACP apela en proceso contra periodistas](#); *La Prensa*. August 27, 2013. [Juzgado archiva querrela contra periodistas](#); *La Prensa*. August 29, 2013. [Castillo insiste en caso contra periodistas](#); Hora Cero. August 29, 2013. [Monitoreo de prensa nacional del jueves 29 de agosto de 2013](#).

<sup>1307</sup> Colegio Nacional de Periodistas (CONAPE). February 19, 2013. [En Defensa de los Periodistas en Panamá](#); *El Siglo*. February 18, 2013. [Nefalí Jaén amenaza por Twitter a Alvaro Alvarado](#); *Telemetro*. February 18, 2013. [Periodista Alvaro Alvarado recibe amenaza de abogado Nefalí Jaén](#).

<sup>1308</sup> *Tvn-2*. [Retienen a periodista y camarógrafo de TVN](#); *La Estrella*. June 11, 2013. [Retienen a periodista Elizabeth González y camarógrafo de TVN](#); Inter American Press Association (IAPA). [Assembly: 2013 – General Assembly of the IAPA - Denver, United States: Panama](#).

effort to take away his cellular phone. As a result, Filemón Medina suffered two broken vertebrae.<sup>1309</sup> The secretary of the Public Security Council, after reviewing the videos of the journalistic team, apologized to them for what had happened.<sup>1310</sup> The secretary general of the Journalists Union of Panama published a report on freedom of expression and journalism in Panama in which he affirmed that the criminal complaint filed regarding these events before the Third Anti-corruption Prosecutors Unit was not admitted.<sup>1311</sup> The Ombudsman's Office announced that "it will initiate proceedings regarding the denunciation of the detention of journalist Elizabeth González and her cameraman, Bolívar Jurado".<sup>1312</sup> The Latin American Federation of Culture and Social Communications Workers (FELATRACCS), in a letter of June 13, condemned the events and demanded that the State carry out "the immediate firing of the public official responsible for the attack".<sup>1313</sup>

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

### C. Subsequent liabilities

683. On April 15, the Eleventh Criminal Court called to trial a team of journalists from *La Estrella* for alleged crimes against honor committed in a series of reports published in the daily newspaper between May and June of 2011, regarding possible irregularities in the awarding of a State contract to a company. The suit was filed by a company shareholder against the director of the media outlet, Gerardo Berroa; the head of information, Alexis Charris; editor Carlos Atencio and the former general manager of the GESE group (Grupo La Estrella and El Siglo), Juan Luis Correa, for alleged attacks against her honor. The articles made no mention of the entrepreneur, but only the company, as a result of which the prosecutors who investigated the case moved for dismissal of the lawsuit during different hearings, as they considered that crimes against honor are applicable to private individuals and not legal persons, and in view of which they maintain that no crime was committed<sup>1314</sup>.

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<sup>1309</sup> La Prensa. June 13, 2013. [Medina reitera que presentará querrela contra Garúz](#); La Prensa. September 10, 2013. [Periodista incluye informe por agresión](#); Centro de Reportes Informativos sobre Guatemala (CERIGUA). September 20, 2013. [Periodista panameño sufre secuelas tras agresión física](#); Crítica. June 12, 2013. [Sindicato condena agresión contra periodistas](#); La Estrella. June 11, 2013. [Viceministro Garuz y tres agentes golpearon a periodista Filemón Medina](#).

<sup>1310</sup> Crítica. June 11, 2013. [Garuz pide disculpas, no hubo grabación](#); La Prensa. June 13, 2013. [Medina reitera que presentará querrela contra Garúz](#).

<sup>1311</sup> Sindicato de Periodistas de Panamá. September 17, 2013. *Informe sobre la Libertad de Expresión y el Periodismo en Panamá, durante el segundo cuatrimestre del 2013*. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1312</sup> Defensoría del Pueblo. June 18, 2013. [Defensoría del Pueblo abrirá queja ante retención de periodista y camarógrafo](#).

<sup>1313</sup> Federación Latinoamericana de Trabajadores de la Cultura y la Comunicación Social (FELATRACCS). June 14, 2013. [Felatraccs demanda destitución de funcionario público que agredió a periodista panameño](#); Crónica Viva. June 14, 2013. [Felatraccs demanda destitución de funcionario público que agredió a periodista panameño](#).

<sup>1314</sup> La Estrella. April 24, 2013. [Periodistas de La Estrella, a juicio](#); Inter American Press Association (IAPA). April 25, 2013. [Preocupación de la SIP por orden de juicio contra periodistas en Panamá](#); La Prensa. April 24, 2013. [Periodistas irán a juicio](#).

684. On October 10, the First Municipal Criminal Court of the District of Panama handed down ruling No. 54, holding Balbina Herrera Araúz criminally responsible for a crime against privacy,<sup>1315</sup> specifically for reporting on the contents of an e-mail that had not been sent to her. She was sentenced to three years imprisonment and barred from holding public office for the three years after having served her principal punishment.<sup>1316</sup> In 2011, Balbina Herrera showed personal e-mails on television that had been sent by President Ricardo Martinelli.<sup>1317</sup> On October 17, the President of Panama, Ricardo Martinelli, issued executive decree No. 717, granting “total reduction of the penalty imposed by sentence No. 54 of October 10, 2013”<sup>1318</sup> on behalf of Balbina Herrera. On October 21, Herrera Araúz filed an appeal against the ruling.<sup>1319</sup>

685. Likewise, the Office of the Special Rapporteur has indicated that “public authorities and their staff bear sole responsibility for protecting the confidentiality of legitimately classified information under their control. Other individuals, including journalists, media workers and civil society representatives, who receive and disseminate classified information because they believe it is in the public interest, should not be subject to liability unless they committed fraud or another crime to obtain the information”.<sup>1320</sup>

686. As already pointed out by this office,<sup>1321</sup> various media outlets have had civil lawsuits filed against them in relation to the publication of news of public interest. The plaintiffs, who were public officials or owners of companies that maintain contracts with State agencies, demanded payment of large sums of money for damages and losses, which in one case would total as much as \$5.5 million. According to information published by the daily newspaper *La Prensa*, the cases remain open and pending resolution in diverse judicial instances.<sup>1322</sup>

687. Principle 10 of the IACHR’s Declaration of Principles establishes that, “[t]he protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false

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<sup>1315</sup> Criminal Code of Panama. “Article 164. Whoever seizes or improperly reports the contents of a letter, e-mail message, document, telegram or of another type, which was not addressed to them, shall be punished by imprisonment of one to three years or its equivalent in daily fines or weekend arrest.”

<sup>1316</sup> Gaceta Oficial. [Decreto Ejecutivo No. 717](#). October 17, 2013.

<sup>1317</sup> La Información. October 4, 2013. [Sentenciarán en un mes a opositora panameña por filtrar correos de Martinelli](#); Fox News Latino. September 24, 2013. [Aplazan juicio de líder opositora panameña por filtrar correos de Martinelli](#); Telemetro. December 5, 2011. [Balbina Herrera revela relación entre Martinelli y Lavitola](#) (VIDEO).

<sup>1318</sup> Gaceta Oficial. [Decreto Ejecutivo No. 717](#). October 17, 2013.

<sup>1319</sup> La Prensa. October 21, 2013. [Defensa de Balbina Herrera presenta apelación](#); Crítica. October 22, 2013. [Defensa de Balbina Herrera apela condena de cárcel](#); Panamá América. October 22, 2013. [Balbina Herrera decide apelar fallo de jueza](#).

<sup>1320</sup> UN Special Rapporteur on the Promotion and Protection the Right to Freedom of Opinion and Expression Inter-American Commission on Human Rights Special Rapporteur for Freedom of Expression. December 21, 2010. [Joint Statement On Wikileaks](#).

<sup>1321</sup> IACHR. [Annual Report 2012. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. Para. 400.

<sup>1322</sup> La Prensa. September 17, 2013. [54 demandas a periodistas](#).

news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.” Similarly, principle 11 of the IACHR’s Declaration of Principles establishes that, “Public officials are subject to greater scrutiny by society.”

688. As far the imposition of subsequent liability through civil sanctions, the Inter-American Court established in the case of *Tristán Donoso v. Panama* that these could be just as intimidating and have just as much of a chilling effect on the exercise of freedom of expression as a criminal sanction. In this regard, it observed that “the fear of a civil penalty, considering the claim [...] for a very steep civil reparation, may be, in any case, equally or more intimidating and inhibiting for the exercise of freedom of expression than a criminal punishment, since it has the potential to attain the personal and family life of an individual who accuses a public official, with the evident and very negative result of self-censorship both in the affected party and in other potential critics of the actions taken by a public official.”<sup>1323</sup>

#### D. Stigmatizing statements

689. The Office of the Special Rapporteur has warned of an increased climate of tension between senior officials of the Panamanian State and certain media outlets in 2013. According to available information, high public officials regularly used the social network Twitter to question the work of daily newspapers that they consider to be of the “opposition.” For example, on July 10, President Ricardo Martinelli published on his Twitter account that “The opposition newspaper is doing poorly with the Italian actors in its soap operas. They use confessed thieves and drug addicts to discredit the government.”<sup>1324</sup> On September 26, he said “[w]hat the opposition newspaper most lacks is objectivity and through its evasion and its candidate tried to block the sun with their hand. If someone else does so, they lash out at them.”<sup>1325</sup> On October 15, he stated that in the “[o]pposition media, they have defamed [*calumniado* and *injurado*] me about everything associated with Italy just to charge taxes for carrying out works. No objectivity.”<sup>1326</sup>

690. When asked during a television interview if he had any “apprehension” about the daily newspaper *La Prensa*, the President of Panama answered in the following terms: “No [...] in fact, I am a shareholder of *La Prensa* [...] and sincerely, they do have quite a critical policy over there [...] They come after you with everything, a lot of times with invented things [...] they have invented everything about me in that medium [...] They have not wanted to publish things as they are [referring to the *Finmeccanica* case and Italy] and that was totally planned by one person, two people, one is a cocaine addict and the other is someone who competed against me [...] and have tried to demerit the government’s actions [...] They [*La Prensa*] sometimes confuse liberty with licentiousness, they denigrate people.”<sup>1327</sup>

691. Also, according to available information, president Martinelli discredited journalist Santiago Cumbreira, from the newspaper *La Prensa*, after the publication of an article linking individuals

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<sup>1323</sup> 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.

<sup>1324</sup> Ricardo Martinelli’s Twitter account @rmartinelli. [July 10, 2013 – 6:40 AM](#).

<sup>1325</sup> Ricardo Martinelli’s Twitter account @rmartinelli. [September 26, 2013 – 7:42 AM](#).

<sup>1326</sup> Ricardo Martinelli’s Twitter account @rmartinelli. [October 15, 2013 – 6:40 AM](#).

<sup>1327</sup> NEXtv/Official YouTube channel. May 7, 2013. [Entrevista NEX NOTICIAS al Presidente Ricardo Martinelli \(6/MAYO/2013\) - PT.2](#). [2:33].

close to the president with the country's hydroelectric plants. On his Twitter social network account, the president published a message that said: "For anyone who does not know about the hatred that Santiago Cumbreira has for me, it is because he is being fired from the Epasa [publishing group] for corruption and harassment."<sup>1328</sup> The journalist was a reporter for Editora Panamá América (Epasa), in which the Martinelli family is a shareholder.<sup>1329</sup>

692. In this context, the newspaper *La Prensa* has reported the existence of obstacles to obtaining access to public officials by certain media and journalists.<sup>1330</sup> In that sense, on October 10, president Martinelli requested that his officials abstain from giving declarations to journalists from that newspaper. The president affirmed that "that is what the opposition newspaper is asking for [...] Every time they send me a questionnaire [...] I have told people 'do not answer the questionnaires' [...] you write about something and they take it up and don't include what you have written. They use whatever they want."<sup>1331</sup> As reported by the newspaper, the president of the Committee on Freedom of the Press of the Inter American Press Association stated with respect to Martinelli's declarations that: "Presidents have the right to speak to whatever media they wish, or to stop saying whatever they want. But in no case do they have the right to order the entire government not to provide information of a public nature or not to make comments to a particular medium." Respectively, the director of the Americas Division of Human Rights Watch declared that: "It's very serious when a government, whether it be the Government of Panama, or any other, decides not to act with transparency and account for its actions, and instead resorts to discrimination with respect to those with whom it communicates and those with whom it doesn't."<sup>1332</sup>

693. On June 17, the governor of the province of Panama, Omaira Correa, referred to journalist Flor Mizrahi Ángel as "the little Jewess of the Gestapo." The aggression came about during the radio program 'La palabra', which is broadcast by *KW Continente*.<sup>1333</sup> In a letter to Deputy Elías Castillo (President of the Latin American Parliament, Parlatino), Shimon Samuels (Director of International Relations at the Wiesenthal Center) and Sergio Widder (Director for Latin America), condemned the governor's words and requested that "this incident be denounced as a violation of the Declaration against Anti-Semitism, initiated by [the] Center and adopted by the PARLATINO during its XXVII Assembly in December of 2011."<sup>1334</sup>

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<sup>1328</sup> Ricardo Martinelli's Twitter account @rmartinelli. [May 20, 2013 – 4:34 AM](#).

<sup>1329</sup> Hora Cero. May 20, 2013. [Martinelli acusa periodista de coimero y acosador sexual y levanta reacciones](#); Colegio Nacional de Periodistas de Panamá (CONAPE). May 21, 2013. [Comunicado de CONAPE por Ataque a Periodista](#); Yahoo Noticias/Notimex. May 20, 2013. [Causan polémica en Panamá críticas de Martinelli a periodista](#); *La Prensa*. May 20, 2013. [Martinelli ratifica lo escrito en un tuit contra periodista Cumbreira](#).

<sup>1330</sup> *La Prensa*. July 3, 2013. [Gobierno discrimina a medios](#); *La Prensa*. June 7, 2013. [Henríquez: 'No le doy declaraciones a 'La Prensa'](#).

<sup>1331</sup> *La Prensa*. October 10, 2013. [Martinelli admite que niega información a 'La Prensa'](#); *La Prensa/Telemetro*. October 10, 2013. [Prensa.com: Martinelli admite que niega información a 'La Prensa'](#).

<sup>1332</sup> *La Prensa*. October 11, 2013. [Todos esperan a Martinelli](#).

<sup>1333</sup> *La Estrella*. June 20, 2013. [Primero Garuz y ahora Mayín Correa son criticados por agredir a periodistas](#); Aurora. June 27, 2013. [Llaman "judiita de la Gestapo" a una periodista](#).

<sup>1334</sup> Wiesenthal. June 19, 2013. [Wiesenthal Center Condemns Panama Governor's Anti-Semitic Attack on Jewish Journalist](#); Aurora. June 27, 2013. [Llaman "judiita de la Gestapo" a una periodista](#).



694. The Office of the Special Rapporteur recalls the importance of creating a climate of respect and tolerance for all ideas and opinions. Diversity, pluralism, and respect for the dissemination of all ideas and opinions are essential conditions for the proper functioning of any democratic society. Accordingly, the authorities must contribute decisively to the building of a climate of tolerance and respect in which all people can express their thoughts and opinions. The Office of the Special Rapporteur additionally recalls that freedom of expression must be guaranteed not only with respect to the dissemination of ideas and information that are received favorably or considered inoffensive or indifferent but also in cases of speech that is offensive, shocking, unsettling, unpleasant, or disturbing to the State or to any segment of the population.<sup>1335</sup>

#### **E. Access to public information**

695. On April 25, the National Assembly approved Law No. 33, which created a National Authority of Transparency and Access to Information.<sup>1336</sup> The new authority is constituted as the “guiding body in the field of the right to petition and gain access to public information, protection and of personal data, transparency, ethics and prevention of corruption at the governmental level” (Art. 4.2). It is to be a decentralized institution “with full functional, administrative and independent authority” (Art. 1). Its main powers include overseeing compliance with the Law on Transparency (Arts. 4.6 and 6.6); to periodically providing statistics, reports and evaluative reports on the compliance of all institutions with the law (Art. 6.7); coordinating and facilitating the requests of interested parties their requests for access to public information when an institution has not responded regarding the requested information (Art. 6.11); training public servants regarding transparency and access to information (Art. 6.16) and dealing with claims, complaints and matters involving the right to petition and the right of access to information and “to press the respective institutions to eliminate practices that prevent people from fully exercising their rights” (Art. 6.24). The law stipulates that all persons can “petition the Authority when the established measures for the effective exercise of the right to petition and the right of access to public information held by the state” are not being met (Art. 36) and that “once a claim has been admitted, the Authority must verify and resolve the complaint” (Art. 38). The Authority may sanction the public official responsible if it is proven that they did not comply with the law (Arts. 40 y 41).

696. The Authority will be directed and administered by a director general nominated by the executive branch and confirmed by the National Assembly for a period of seven years, renewable for one time only (Art. 10 and 12). The Law also provides for establishment of information officials in various state institutions, which are to serve as liaisons with the Authority to coordinate implementation of the Law on Transparency (Arts. 7 and 8).

697. On other occasions, the Office of the Special Rapporteur has recognized that the creation of an autonomous and specialized agency for supervision, responsible for promoting implementation of legislation on access to public information and for reviewing negative responses by the administration with the aim of adopting a decision in this respect is essential to achieve effective satisfaction of the right.<sup>1337</sup> Experience and compared practice have shown the importance of the

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<sup>1335</sup> IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 32.

<sup>1336</sup> OEA/Gobierno Nacional de Panamá. [Gaceta Oficial Digital No. 27275-A](#). 26 de abril de 2013.

<sup>1337</sup> IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 208.

existence of this type of independent and specialized authorities in the diverse legal systems to avoid weakening efforts to comply with laws regarding access to public information. All of the above, naturally, notwithstanding timely judicial control with respect to decisions denying access to information. In this sense, the Office of the Special Rapporteur has urged states to shape their legislation to strengthen the institutional structure for oversight of the implementation of laws regarding access to public information, pursuant to the highest standards in this area, such as those adopted by the General Assembly of the OAS, in its Resolution AG/RES. 2607 (XLO/10), by means of which it adopts the “Model Inter-American Law on Access to Information.”<sup>1338</sup>

698. The Model Law provides for the creation of a specialized agency called the “Information Commission,”<sup>1339</sup> which is to be in charge of promoting effective implementation of the Law in each Member State and the review of appeals of rulings adopted regarding its nonfulfillment. Among other specifications, the Model Law stipulates that said agency must have full legal standing, operational, budgetary and decision-making autonomy, and be composed of at least three commissioners, designated by means of a public, open and transparent process. Also, as a means to guarantee the effectiveness of the supervisory agency’s decisions, the Model Law stipulates that, independently of its mediating role, in resolving appeals, the agency shall have the power “to require the public authority to take necessary measures to comply with its obligations under [...] Law, such as, but not limited to, providing information and/or reduction of costs” and to “file a complaint with the competent tribunal to obtain compliance with its decisions.” Practice has shown that systems that have an autonomous and specialized “Information Commission,” as provided for in the Model Law, are in a better position to guarantee adequate implementation and supervision of norms in the field of access. In this sense, it is relevant to review aspects such as the integration of the National Authority and the guarantees that it has to adequately carry out its duties.

699. The Office of the Special Rapporteur views as crucial that the recently-created National Authority of Transparency and Access to Information in Panama, in carrying out its duties for supervision of the functioning and compliance of the system for access to information, be able to decisively promote timely resolution of requests for access in Panama and help to surmount obstacles that continue to prevent full exercise of this right in the country. In this sense, the Office of the Special Rapporteur recalls that, during the public hearing on Access to Public Information in Panama, held by the IACHR on October 28, 2011, it received information that indicated that the effectiveness of the law has encountered difficulties, given the issuance of administrative decisions that contradict what is stipulated by the Law - such as the requirement to be an interested party in a matter in order to request public information - non-fulfillment of the stipulated time limits for providing information and the lack of an effective judicial remedy to opportunely protect this right. According to information received, there is a problem of delay in the provision of information at administrative offices and considerable congestion in the judicial remedies that are processed by the judicial branch in this field.<sup>1340</sup>

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Along the same lines: OAS. Permanent Council. Committee on Juridical and Political Affairs. [Commentary and Guide for Implementation for the Model Inter-American Law on Access to Information](#). OEA/Ser.G CP/CAJP-2841/10. April 23, 2010. P. 14.

<sup>1338</sup> OAS. General Assembly. [Model Inter-American Law on Access to Public Information](#). AG/RES. 2607 (XL-O/10). June 8, 2010.

<sup>1339</sup> OAS. General Assembly. [Model Inter-American Law on Access to Public Information](#). AG/RES. 2607 (XL-O/10). June 8, 2010.

<sup>1340</sup> IACHR. 143 Period of Sessions. Hearing on Access to Public Information in Panama. October 28, 2011. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=en&session=123&page=2>

700. In that respect, for example, the daily newspaper *La Prensa* reported that on 19 occasions in 2013, it went before the Supreme Court of Justice, by means of *habeas data* actions, due to refusals by public officials to provide public information and that as of October 20, 2013, these actions have not been resolved.<sup>1341</sup>

701. As an action to foster effective and efficient implementation of norms on access to information, the Office of the Special Rapporteur has recommended that the States adequately train officials and educate the citizenry regarding their rights in order to eradicate the culture of secrecy. To this end, it reiterates its complete willingness to cooperate with the state authorities and civil society to adequately implement the right of access to information in Panama.

#### F. Internet and freedom of expression

702. On December 12, 2012 the daily newspaper *La Estrella* of Panama was the victim of a cyber-attack that affected the functioning of its website and blocked access to it. The attack followed the December 10 posting on the newspaper's website of a video showing the transfer to Panama of former dictator Manuel Noriega and alleging a lack of professional and fraternal treatment by some of the guards involved.<sup>1342</sup>

703. On October 9, access to the website of the daily newspaper *La Prensa* was blocked for approximately eight hours. According to *La Prensa*, when readers attempted to access certain information on the website's pages, an "error" message appeared.<sup>1343</sup>

#### G. Other relevant situations

704. According to information received by the Office of the Special Rapporteur, Spanish journalists Francisco Gómez Nadal and María Pilar Chato Carral, expelled from Panama in February of 2011, are still unable to return to the country, despite expiration of the legal prohibition on February 27, 2013. As reported, on February 28, 2011, the national authorities ordered the "voluntary return" of the journalists to their country of origin. Gómez Nadal and Chato Carral were in the country filming in documenting a demonstration by indigenous people in Panama City for a documentary.<sup>1344</sup> A press release issued by the organization Human Rights Everywhere indicated that on April 4, an application had been filed with the National Director of Migration to lift the measure that had been imposed, given

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<sup>1341</sup> La Prensa. September 18, 2013. [Silencio en la Corte Suprema](#); La Prensa. October 20, 2013. [La muralla que alzó Martinelli](#).

<sup>1342</sup> La Estrella. December 12, 2012. [Ataque cibernético a página web de La Estrella](#); Inter American Press Association (IAPA). December 13, 2012. [Online attack on Panama paper La Estrella brings IAPA rebuke](#); Fundación Forum de Periodistas. December 14, 2012. [Comunicado al país: Diciembre 14, 2012](#).

<sup>1343</sup> La Prensa. October 10, 2013. ['La Prensa' fue bloqueada en su versión digital](#); Telemetro. October 9, 2013. [La Prensa denuncia bloqueo de su sitio web](#); El Mexicano/The Associated Press. October 9, 2013. [Diario panameño denuncia bloqueo de sitio web](#).

<sup>1344</sup> Committee to Protect Journalists (CPJ). March 2, 2011. [Periodistas españoles críticos expulsados de Panamá](#); Human Rights Foundation. April 5, 2011. [Arbitrary Detention and Expulsion of Foreign Journalists and Human Rights Defenders from Panama](#); La Prensa. March 1, 2011. [Periodistas repatriados](#); Communication from the Permanent Mission of Panama to the OAS. April 18, 2011. PANA-OEA-3-361-2011.

its expiration, without having received a response.<sup>1345</sup> According to available information, the legality of the repatriation order was being questioned in the courts.<sup>1346</sup>

## 22. Paraguay

### A. Progress

705. On June 15, the indigenous radio station *Voces Nativas 90.9 FM* was inaugurated in the Cayin ô clim community, in the Colonia Neuland in the district of Mariscal Estigarribia. This is the fourth indigenous radio station inaugurated within the framework of the National Program for Communication and Indigenous Peoples [*Programa Nacional de Comunicación y Pueblos Indígenas*] of the Secretariat of Information and Communication for Development [*Secretaría de Información y Comunicación para el Desarrollo*] (Sicom).<sup>1347</sup>

706. The Office of the Special Rapporteur received with satisfaction the ruling by the Supreme Court of Justice of Paraguay, on an action of unconstitutionality brought by the Ombudsman of the Republic [*Defensor del Pueblo de la República*] against Agreement and Judgment No. 78 of July 16, 2008, issued by the Fifth Chamber of the Civil and Commercial Appeals Court of the Capital [*Tribunal de Apelaciones en lo Civil y Comercial Quinta Sala de la Capital*]. In this decision the Court denied an appeal for legal protection brought by a citizen to obtain information on the number of employees, names, positions and salaries of employees in the different departments of a municipality.<sup>1348</sup> In its ruling of October 15, 2013 the Supreme Court of Justice decided to annul the decision that had refused access to public information and, instead, determined that the information should be published and disseminated. The Court cited the sentence by the Inter-American Court of Human Rights in the case of *Claude-Reyes et al. v. Chile* as the precedent for establishing the scope of the right to access to information, pursuant to Article 13 of the American Convention on Human Rights. The Office of the Special Rapporteur considers this decision a significant regional advance on the issue of access to information and freedom of expression.<sup>1349</sup>

### B. Detentions

707. The Office of the Special Rapporteur was informed that the Police had detained an activist who expressed opposition to the then president of Paraguay, Federico Franco. Dressed as the German Nazi party dictator and leader, Adolf Hitler, and holding a sign that said: “I am Franco, coup d’état president”, Malena Bareiro stood at the entrance to the offices of the Liberal Party, where Franco

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<sup>1345</sup> Human Rights Everywhere (HREV). July 26, 2013. [El Gobierno de Panamá incumple la ley para impedir la entrada de periodistas y defensores de DDHH expulsados ilegalmente en 2011](#); La Prensa. July 27, 2013. [Impiden retorno de periodistas al país](#).

<sup>1346</sup> La Prensa. October 29, 2012. [Corte admite testimonios en caso de periodistas](#); La Prensa. January 25, 2013. [‘Impiden defender nuestra inocencia’](#); Panamá América. September 6, 2011. [Solicitan información en caso de Gómez Nadal](#).

<sup>1347</sup> República de Paraguay. Secretaría de Información y Comunicación para el Desarrollo (Sicom). June 19, 2013. [Inauguran la cuarta radio indígena del país](#); Última Hora. June 15, 2013. [Radio indígena fue inaugurada en Neuland, Chaco](#).

<sup>1348</sup> Corte Suprema de Justicia República de Paraguay. [Acción de Inconstitucionalidad en el Juicio: “Defensoría del Pueblo c/Municipalidad de San Lorenza s/Amparo”](#). Acuerdo y Sentencia número 1,306. October 15, 2013.

<sup>1349</sup> Corte Suprema de Justicia República de Paraguay. [Acción de Inconstitucionalidad en el Juicio: “Defensoría del Pueblo c/Municipalidad de San Lorenza s/Amparo”](#). Acuerdo y Sentencia número 1,306. October 15, 2013; Corte Suprema de Justicia República de Paraguay. October 15, 2013. [La Corte sienta jurisprudencia en materia de acceso a la información pública](#).

was to present a report on the government's administration. Supposed officers temporarily took Bareiro to a police precinct. According to the media, a police officer reported that the demonstrator had been detained for obstructing entrance to the offices.<sup>1350</sup>

### C. Attacks and threats against media outlets and journalists

708. The Office of the Special Rapporteur was informed that in 2013, in the city of Pedro Juan Caballero, capital of the department of Amambay, bordering Brazil, at least five journalists had received death threats. On April 18, journalist Aníbal Gómez, of *Radio América* was threatened by text messages sent to his mobile phone while broadcasting his radio program.<sup>1351</sup> Similarly, on April 26, journalist Cándido Figueredo, correspondent for the daily newspaper *ABC Color* of Asunción, received text messages containing death threats on his mobile phone after having reported on the attack against journalist Carlos Artaza.<sup>1352</sup> Both Figueredo and Gómez received police protection following the threats.<sup>1353</sup> On July 9 and 12, journalist Cándido Figueredo again received threats.<sup>1354</sup> Similarly, on May 8, journalist Lourenso Veras, owner of the *Pedro Juan News* portal and correspondent for *ADN*, received threats by means of text messages, presumably related to his journalistic coverage.<sup>1355</sup> On May 11, journalist Marciano Candia, correspondent for *Última Hora*, received a threatening message on his mobile phone. Journalist Emerson Dutra, of *La Nación*, also received a threatening message on his cellular phone on May 11 and again on July 9.<sup>1356</sup> The three journalists filed a complaint with the first Police Precinct of Pedro Juan Caballero.<sup>1357</sup>

<sup>1350</sup> Hoy. July 9, 2013. [Detienen a una mujer por escrachar a Federico Franco](#); Paraguay. July 9, 2013. [Policía reprime y detiene a mujer que parodia a Franco](#); ABC Color. July 9, 2013. [Detienen a mujer que se burló de Franco](#).

<sup>1351</sup> La Nación. April 19, 2013. [Periodista y su familia reciben amenazas de muerte](#); Reporters Without Borders. April 26, 2013. [Journalist's murder highlights threat from organized crime, political tension](#); La Nación. April 26, 2013. [Atentado en Amambay: Piden protección para periodista amenazado con ser "el próximo"](#).

<sup>1352</sup> Amambay Noticias. April 25, 2013. [Corresponsal de ABC denunció amenazas de muerte](#); ABC Color. April 26, 2013. [Amenazan a corresponsal de ABC Color](#); La Nación. April 26, 2013. [Atentado en Amambay: Piden protección para periodista amenazado con ser "el próximo"](#).

<sup>1353</sup> Última Hora. April 27, 2013. [Disponen custodia policial para periodistas amenazados en Pedro Juan Caballero](#); Hoy. April 27, 2013. [Periodistas de Pedro Juan tendrán custodia policial](#); ABC Color. April 27, 2013. [Policías resguardarán a periodista](#).

<sup>1354</sup> ABC Color. July 13, 2013. [Nueva amenaza al corresponsal de ABC Color en Pedro Juan Caballero](#); ABC Color. July 10, 2013. [Amenazan de muerte a corresponsal de ABC Color](#); Hoy. July 14, 2013. [Amenazas de muerte a periodistas: Presidente ordena intervención](#).

<sup>1355</sup> ADN. May 10, 2013. [Periodista de ADN es amenazado](#); Pedro Juan News. May 9, 2013. [Amenazan a periodista en Pedro Juan Caballero](#); Abraj. May 10, 2013. [Jornalista é ameaçado na fronteira entre Brasil e Paraguai](#); Última Hora. May 10, 2013. [Otro comunicador denuncia que es amenazado en PJC](#).

<sup>1356</sup> Última Hora. May 14, 2013. [Amenazan a corresponsal de ÚH por mensaje en el celular](#); ADN. May 17, 2013. [Siguen amenazas a periodista](#); Zona Conflictiva. July 10, 2013. [Nuevas amenazas a periodistas en Pedro Juan](#); Crónica. July 10, 2013. [Vuelven a amenazar a periodistas en Pedro Juan](#); Amambay Noticias. May 12, 2013. [Corresponsal del Grupo La Nación también denunció amenazas](#).

<sup>1357</sup> Última Hora. May 14, 2013. [Amenazan a corresponsal de ÚH por mensaje en el celular](#); ADN. May 17, 2013. [Siguen amenazas a periodista](#).

709. On May 1, the vehicle belonging to radio announcer Luis Horacio Fernández, of *Radio Difusora Mangoré*, of San Juan Bautista, Misiones, was hit by a bullet that damaged the windshield. The journalist stated that he is frequently attacked because of criticisms he makes on his radio program.<sup>1358</sup>

710. Also on May 1, unknown persons broke into the facilities of *Radio Libertad FM 95.7*, of San Estanislao, and assaulted and threatened announcers Iván Ruiz, the owner of the station, and Antonio Dávalos. Shortly after, unknown persons fired shots from a vehicle at the home of Dávalos. The journalists told the media that the attacks may be linked to citizens' complaints aired on the station.<sup>1359</sup>

711. Journalist Perla Silguero, of radio station *Radio UNO 650 AM*, was violently expelled by a security guard from the Luque courthouse, while covering a trial.<sup>1360</sup>

712. Journalist Arturo Godoy of the daily newspaper *ABC Color* was assaulted when trying to photograph a prosecutor who was having lunch in the restaurant of the Governing Board of the Colorado Party.<sup>1361</sup>

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

#### D. Other relevant situations

714. In May of 2013, announcers at *Radio Comunitaria Integral*, in the municipality Carlos Antonio López, department of Itapúa, were subpoenaed by a prosecutor supposedly due to information disseminated by the radio station about a fire that had broken out during celebrations over the results of national elections on April 21. Radio announcer Derlis Benítez declared to a media outlet that he does not rule out an attempt to frighten the radio station in order to obstruct its work.<sup>1362</sup>

715. On October 9, a group of social organizations that make up the Initiative for Democratization of Communications in Paraguay issued a public press release rejecting accusations by

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<sup>1358</sup> ABC Color. May 2, 2013. [Rompen parabrisas de comunicador radial](#); Inter-American Press Association (IAPA). Assembly: 2013 – General Assembly of the IAPA - Denver, United States, Reports. [Country Report: Paraguay](#); Paraguay. May 3, 2013. [Atacan a dos radialistas en el interior](#).

<sup>1359</sup> ABC Color. May 3, 2013. [Atropellan una radio y balean casa de locutor](#); Inter-American Press Association (IAPA). Assembly: 2013 – General Assembly of the IAPA - Denver, United States, Reports. [Country Report: Paraguay](#); Cardinal AM 730. May 3, 2013. [Antonio Dávalos, conductor de Radio Libertad FM de Santaní, dijo que un grupo de desconocidos atacaron brutalmente la radio y que luego se trasladaron hasta su vivienda ocasionando varios disparos](#) (AUDIO).

<sup>1360</sup> ABC Color. April 24, 2013. [Agreden a una periodista en juicio a Trotte](#); Hoy. April 24, 2013. [Caso Trotte: Guardia agrede a periodista de Radio UNO](#).

<sup>1361</sup> ABC Color. April 21, 2013. [Colorados agreden a periodista en ANR](#). Knight Center for Journalism in the Americas. April 22, 2013. [Daily News Digest: Journalists call for federal shield law to protect confidential sources, reporters](#).

<sup>1362</sup> E'a. Periódico de Interpretación y Análisis. May 8, 2013. [Citación fiscal a comunicadores de una radio campesina genera reacción comunitaria](#); Proyecto Democratización de la Información. May 8, 2013. [Citación fiscal a comunicadores de una radio campesina genera reacción comunitaria](#).

certain communications companies regarding alleged collaboration by community radio stations with the EPP guerrilla group (Paraguayan People's Army [*Ejército del Pueblo Paraguayo*]). According to the press release, representatives of those media outlets had stated before the Office of the Attorney General of the Republic and before the media that the popular and educational radio stations are instruments used by the EPP to obtain information and carry out their attacks.<sup>1363</sup> The community radio stations categorically rejected these accusations, calling them unfounded declarations seeking "to limit free expression by the country's least favored citizens, for whom the community radio stations are the only channel for making their voices and thoughts heard."<sup>1364</sup>

716. The Office of the Special Rapporteur reminds that community media perform an essential function not only in the process of social inclusion but also as mechanisms to promote culture and history, and for the development and education of different communities.<sup>1365</sup> The right to freedom of expression requires that the States not only refrain from performing acts that prevent the exercise of the right but also take measures to guarantee its exercise under conditions of equality and nondiscrimination.<sup>1366</sup> On several occasions, the IACHR and the Office of the Special Rapporteur have recognized that community media perform an essential function in our hemisphere for different sectors of society to exercise their rights to freedom of expression and access to information.<sup>1367</sup> In those declarations they have established that it is necessary for States to legally recognize community media, for spectrum to be reserved for these types of media, and for there to be equal access to licenses that recognize the distinct nature of private non commercial media.<sup>1368</sup>

717. Principle 12 of the IACHR's Declaration of Principles on Freedom of Expression, approved in 2000, establishes that "[m]onopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people's right to information. In no case should such laws apply exclusively to the media. The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals."

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<sup>1363</sup> Sindicato de Periodistas del Paraguay. October 9, 2013. [Organizaciones campesinas denuncian campaña de criminalización contra radios comunitarias](#); Agencia Popular de Comunicación Suramericana. October 11, 2013. [Paraguay: pronunciamiento ante el embate contra radios comunitarias](#); Knight Center for Journalism in the Americas. October 21, 2013. [Rural community radios in Paraguay accuse larger media outlets of pressuring them to shut down](#).

<sup>1364</sup> Sindicato de Periodistas del Paraguay. October 9, 2013. [Organizaciones campesinas denuncian campaña de criminalización contra radios comunitarias](#); Agencia Popular de Comunicación Suramericana. October 11, 2013. [Paraguay: pronunciamiento ante el embate contra radios comunitarias](#).

<sup>1365</sup> IACHR. [Justice and Social Inclusion: The challenges of democracy in Guatemala](#). Chapter VII (The Situation of Freedom of Expression). OEA/Ser.L/V/II.118. Doc. 5 rev. 1. December 29, 2003. Para. 414.

<sup>1366</sup> IACHR. [Annual Report 2008. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II.134 Doc. 5 rev. 1. February 25, 2009. Para. 230. In general, about the State's obligation to guarantee rights without discrimination, see also, I/A Court H.R. *Juridical Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18. Para. 103-104.

<sup>1367</sup> IACHR. [Justice and Social Inclusion: The challenges of democracy in Guatemala](#). Chapter VII (The Situation of Freedom of Expression). OEA/Ser.L/V/II.118. Doc. 5 rev. 1. December 29, 2003. Para. 414; IACHR. [Annual Report 2002. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Freedom of Expression and Poverty). OEA/Ser.L/V/II.117. Doc. 1 rev. 1. March 7, 2003. Para. 41.

<sup>1368</sup> IACHR. [Annual Report 2007. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Conclusions and Recommendations). OEA/Ser.L/V/II.131 Doc. 34 rev. 1. March 8, 2008. Para. 5.

## 23. Peru

### A. Progress

718. On March 21, the First Criminal Appeals Chamber of the Superior Court of Justice of Lambayeque acquitted journalist Daniel Chávez Huapaya of the crime of aggravated defamation against the district mayor. The chamber revoked a sentence of October, 2012, that had sentenced Chávez to a suspended sentence of six months imprisonment and payment of civil reparations in the amount of 5,000 new soles (some US\$ 1,700). The journalist was sued for defamation by the mayor of the District of La Victoria after publishing information on supposed regularities in a public tender process.<sup>1369</sup>

719. On April 25, the Judge of the 25th Criminal Court of Lima acquitted journalists César Hildebrandt, director of the weekly *Hildebrandt en sus Trece*, and Melissa Pérez, a reporter for that same publication, in a suit for defamation [*difamación e injuria*] filed in 2012 by the president of the regional government of Ancash, César Álvarez Aguilar. The suit was filed after the publication in 2012 of two reports on supposed irregularities under the administration of Álvarez. In her sentence of acquittal, the judge argued, among other things, that “protection of the affected party will be relativized when the questioned expressions involve public personalities or people of public relevance, who, in the general interest at play, must tolerate certain risks that their subjective rights may be affected by expressions or information of that caliber – particularly if those expressions involve political criticism, as these are perceived as rights of political participation.”<sup>1370</sup>

720. On May 25, a judge of the Ninth Criminal Court of Free Defendants in Lima declared inadmissible the suit brought by the former president of Peru, Alan García Pérez, against journalist Fernando Valencia, director of *diario16*, for the supposed crime of defamation.<sup>1371</sup> The suit was brought in response to a publication by that periodical on March 1, 2013, which, according to the plaintiff, was defamatory because it attacked his honor and reputation. In the ruling, the judge considered that the publication had limited itself to making publications and reporting on complaints and facts revealed by a third person. The former president appealed the ruling.<sup>1372</sup>

721. In September of 2011, the police captured three alleged perpetrators of the murder of journalist Pedro Flores Silva, which took place in Casma, department of Ancash, on September 8, 2011.<sup>1373</sup> The First National Criminal Court decided to open proceedings against 6 persons accused of the murder of the journalist.<sup>1374</sup>

<sup>1369</sup> Instituto Prensa y Sociedad (IPYS). April 24, 2013. [Corte absuelve a periodista querellado por alcalde](#).

<sup>1370</sup> Diario 16. April 27, 2013. [César Hildebrandt es absuelto de una querrela del presidente regional de Ancash](#); Justicia Viva. April 25, 2013. [César Hildebrandt absuelto](#); RSD. April 26, 2013. [César Hildebrandt es absuelto de querrela presentada por presidente regional de Ancash](#)

<sup>1371</sup> Diario 16. June 12, 2013. [Desestiman querrela presentada por Alan García contra director de diario16](#); Crónica Viva. June 12, 2013. [Juez desestima querrela contra matutino limeño](#).

<sup>1372</sup> Diario 16. June 12, 2013. [Desestiman querrela presentada por Alan García contra director de diario16](#). See also, Diario 16. April 26, 2013. [Alan García presenta querrela contra director de diario16](#); La República. April 26, 2013. [Alan García presenta querrela contra director de diario local](#)

<sup>1373</sup> Reporters Without Borders. September 20, 2011. [Three murder suspects arrested amid growing risk of pressure on investigators](#); IFEX/Instituto Prensa y Sociedad (IPYS). September 20, 2011. [Suspects arrested in journalist's murder](#); Crónica Viva. September 17, 2011. [Caen “El Viejo” y “Macuto”: asesinos de Pedro Flores Silva](#). See also, IACHR. Office of the Special



## B. Murders

722. On February 23, photojournalist Luis Choy, of the newspaper *El Comercio* in Lima, was murdered. Choy was attacked by an unknown assailant when leaving his home, who, after saying something to him, shot him.<sup>1375</sup> The president of Peru, Ollanta Humala, condemned the crime and demanded “results” from the police.<sup>1376</sup> In March, the authorities captured the perpetrator of the crime, who confessed.<sup>1377</sup> On June 12, 5 prisoners escaped during a transfer of convicts to the Lurigancho Correctional Establishment, including some of the main individuals implicated in the murder of Choy.<sup>1378</sup> On June 18, two of the implicated individuals were killed in a police operation and one of the fugitive prisoners was recaptured.<sup>1379</sup> The recaptured prisoner stated that the two people implicated in the case of Luis Choy (who had been killed by the police) had confessed to him that the motive for the murder was related to his journalistic work in a case of illicit drug trafficking that involved an “important politician.”<sup>1380</sup>

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

## C. Attacks and threats against media outlets and journalists

724. On January 14, journalist Nixon Solórzano Bernales, host of the program ‘Alerta Ciudadana’, which is broadcast on *Canal 25* and covers the security matters, was attacked by a knife-

Rapporteur for Freedom of Expression. September 13, 2011. [Press Release R101/11. Office of the Special Rapporteur for Freedom of Expression Condemns Murder of Journalist in Peru](#); Committee to Protect Journalists (CPJ). September 8, 2011. [Peruvian journalist dies after attack by gunman](#); *El Comercio*. September 8, 2011. [Periodista falleció tras ser baleado por desconocidos en Casma](#).

<sup>1374</sup> Instituto Prensa y Sociedad (IPYS). October 7, 2013. [Perú: Poder Judicial abre proceso por asesinato contra periodista](#); *La República*. October 7, 2013. [PJ abre proceso por asesinato contra periodista Pedro Flores Silva](#); *Justicia Viva*. September 26, 2013. [Asesinato de Pedro Flores Silva: un alcalde en la mira](#).

<sup>1375</sup> Perú 21. February 23, 2013. [Asesinan a Luis Choy, fotógrafo de El Comercio, en la puerta de su casa](#); Committee to Protect Journalists (CPJ). February 25, 2013. [Unidentified gunman kills Peruvian photographer in Lima](#); *El Comercio*. February 23, 2013. [El periodismo está de duelo: asesinaron a fotógrafo de El Comercio Luis Choy](#); Inter American Press Association (IAPA). February 26, 2013. [Murders in Brazil, Peru bring IAPA protest](#).

<sup>1376</sup> Perú 21. February 24, 2013. [Ollanta Humala: “Hemos exigido a Policía resultados sobre crimen de Luis Choy](#); *El Comercio*. February 24, 2013. [Humala sobre asesinato de Luis Choy: “Hemos exigido resultados a la Policía”](#).

<sup>1377</sup> Perú 21. March 13, 2013. [Video: Confesión del sicario ‘Puerto Rico’, asesino de Luis Choy](#).

<sup>1378</sup> Presidencia del Consejo de Ministros. June 12, 2013. [Comunicado PNP sobre fuga de internos de Penal de Lurigancho](#)

<sup>1379</sup> *El Comercio*. June 18, 2013. [‘Puerto Rico’ y otro cómplice prófugo de Lurigancho fueron abatidos en Comas](#); *El Comercio*. June 19, 2013. [Caso Luis Choy: un complejo crimen cuyo autor intelectual se desconoce](#).

<sup>1380</sup> *La República*. July 7, 2013. [Crimen Caso Luis Choy: Timaná indicó que investigación a político fue la causa del asesinato](#); *El Comercio*. July 8, 2013. [Un político habría ordenado asesinato de Luis Choy, reveló ‘Timaná’](#).

wielding individual when leaving the offices of the channel in Cajamarca, in an alleged reprisal for information disseminated by the journalist implicating him in a case of domestic violence.<sup>1381</sup>

725. On February 1, journalist Marco Antonio Uriarte Chávez, a correspondent for ATV, was assaulted by supposed relatives of a municipal alderman when covering the detention of that official for supposedly driving while intoxicated a vehicle in a state of inebriation, in the city of Cajamarca.<sup>1382</sup> On February 3, cameraman Robert Ascate del Águila, of the *Antares Televisión* TV station, was assaulted by the mayor of the region and two municipal workers, who also took his video camera and cellular phone.<sup>1383</sup> On February 6, journalist Juan Carlos Yaya Salcedo, host of the program 'Sin escape', on *Radio Max*, in the province of Cañete, region of Lima, was the victim of an attack when going to his work. According to information received, unknown individuals from a vehicle shot at him and the journalist was wounded.<sup>1384</sup>

726. On February 8, radio station *Paraíso 92.1 FM*, located in Olmos, department of Lambayeque, was the scene of a fire, supposedly set intentionally by unknown individuals, which destroyed the station's equipment. It was the second such attack over a period of 15 days. On January 23, unknown individuals broke the roof of the radio station and damaged one of its pieces of equipment.<sup>1385</sup> On February 8, the home of journalists Jaime Toledo Maldonado and Richard Toledo Maldonado, who host the news program 'La Verdad y Análisis', on *Elite* radio, was the target of an attack carried out by unknown individuals using explosive devices.<sup>1386</sup> On February 20, Ciro Severo Vargas Sánchez, a journalist for *Radio Melodía* and correspondent for the daily newspaper *Prensa Regional*, was attacked by a group of people, while covering repercussions stemming from the return by the mayor of the District of San Marcos to his job.<sup>1387</sup>

727. On March 9, the home of journalist Teobaldo Meléndez Fachín, director of the news program 'Ribereña Noticias', broadcast on radio and television *La Ribereña*, in the department of Loreto,

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<sup>1381</sup> Instituto Prensa y Sociedad (IPYS). January 21, 2013. [Apuñalan a periodista a la salida de canal de TV](#); Knight Center for Journalism in the Americas. January 29, 2013. [Peruvian journalist stabbed after leaving TV station](#).

<sup>1382</sup> Instituto Prensa y Sociedad (IPYS). February 4, 2013. [Familiares de funcionario público intervenido por conducir ebrio golpean a periodista](#); Oficina de los Derechos Humanos del Periodista (Office of Journalist's Human Rights). [Reporte estadístico de la situación de la prensa en Perú. Enero – abril 2013](#).

<sup>1383</sup> Asociación Nacional de Periodistas del Perú (ANP). February 18, 2013. [Alcalde y municipales golpean a periodista y le roban equipos de trabajo](#); Crónica Viva. February 18, 2013. [San Martín: alcalde y municipales golpean a periodista y le roban equipos de trabajo](#); Instituto Prensa y Sociedad (IPYS). February 5, 2013. [Alcalde y personal de su seguridad agreden a periodista](#).

<sup>1384</sup> RPP. February 6, 2013. [Desconocidos disparan a quemarropa a periodista en Cañete](#); Committee to Protect Journalists (CPJ). February 6, 2013. [Peruvian journalist shot after reporting on corruption](#); IFEX/Instituto Prensa y Sociedad (IPYS). February 8, 2013. [Journalist shot on his way to radio programme in Peru](#).

<sup>1385</sup> Instituto Prensa y Sociedad (IPYS). February 22, 2013. [Radioemisora sufre incendio que administrador vincula a alcalde](#); RPP. February 8, 2013. [Lambayeque: Lanzan bomba molotov a radio Paraíso en Olmos](#); Knight Center for Journalism in the Americas. February 27, 2013. [Peruvian broadcaster taken off air by fire, blames mayor](#).

<sup>1386</sup> Asociación Nacional de Periodistas del Perú (ANP). February 9, 2013. [Pronunciamiento de la ANP-Huaral: atentado a periodistas](#); Crónica Viva. February 12, 2013. [Huaral: desconocidos hacen detonar artefacto explosivo en vivienda de comunicadores](#); La República. February 12, 2013. [Huaral: Hacen detonar artefacto explosivo en vivienda de periodistas](#).

<sup>1387</sup> Huaraz Noticias. February 22, 2013. [Agreden a comunicador social en San Marcos](#); Instituto Prensa y Sociedad (IPYS). February 25, 2013. [Seguidores de alcalde vacado golpean a periodista](#); Oficina de los Derechos Humanos del Periodista (Office of Journalist's Human Rights). [Reporte estadístico de la situación de la prensa en Perú. Enero – abril 2013](#).

was set on fire by two people who threw a lighted fuse. The attack may be linked to reports by the journalist on supposed acts of corruption.<sup>1388</sup> Meléndez had previously received threats and faced lawsuits for his reports.<sup>1389</sup>

728. On April 1, cameraman Milton Vásquez Cruz, from the 'JC Noticias' program on *Julises TV*, Canal 7, was assaulted and detained against his will while covering a public assembly convoked to organize protests against two mining projects in the region of Cajamarca.<sup>1390</sup> On April 3, journalist Javier Nilo Poma Sotelo reported that he had been attacked by the former manager of the municipality of Huaraz. The ex official threw a glass at him, hitting the reporter in the face, after Pomelo Sotelo asked about his supposed links to people investigated by the Justice System.<sup>1391</sup> On April 6, journalist Gudelia Gálvez Tafur, from the *Radio Alpamayo* radio station and the digital newspaper *Huaraz Noticias*, was the victim of threatening messages and insults painted on her home and on the educational center where she works. Days before, the journalist was attacked by an unknown assailant, who made death threats against her and her family. The journalist believed that the intimidations may be linked to her journalistic reports criticizing the office of the governor of Huaraz.<sup>1392</sup>

729. On April 8, reporters Gudelia Gálvez Tafur, of the 'Huaraz Noticias' program on *Radio Alpamayo* and the digital newspaper *Huaraz Noticias*, Fortunato Guillermo Ibarra Méndez, of the 'Primera Edición' program on *Global TV*, and Juan Carlos Loayza Rivera, of the program 'Destapa Tus Oídos' on *Radio Melodía*, were threatened and assaulted by supposed members of the police when covering a student strike at the Universidad Santiago Antúnez de Mayolo de Huaraz, in the department of Ancash.<sup>1393</sup> Reporter Roberto Ramírez and cameramen Jorge López y Orlando Cánepa, from the program 'Punto Final' on *Frecuencia Latina TV*, received death threats following the broadcast of a report linking the provincial mayor's office of Talara to supposed acts of corruption. The situation was denounced by the program's director, Nicolás Lúcar, on April 21.<sup>1394</sup> On April 30, journalist Iván

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<sup>1388</sup> IFEX/Instituto Prensa y Sociedad (IPYS). March 15, 2013. [Molotov cocktail launched at home of Peruvian journalist](#); Federación Internacional de Periodistas/Asociación Nacional de Periodistas del Perú (ANP). March 14, 2013. [ANP: Incendian vivienda de periodista en represalia por su labor informativa en Perú](#); Enlace Nacional. March 12, 2013. [Yurimaquas: Incendian casa de periodista promotor de vacancia de alcaldía](#); Oficina de los Derechos Humanos del Periodista (Office of Journalist's Human Rights). [Reporte estadístico de la situación de la prensa en Perú. Enero – abril 2013](#).

<sup>1389</sup> IACHR. [Annual Report 2012. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. Para. 417.

<sup>1390</sup> Instituto Prensa y Sociedad (IPYS). April 2, 2013. [Manifestantes antimineros azotan a camarógrafo, lo despojan de equipos y lo retienen en asamblea](#); Panoramacajamarquino. April 2, 2013. [Antimineros inician campaña política en Cajabamba](#); Oficina de los Derechos Humanos del Periodista (Office of Journalist's Human Rights). [Reporte estadístico de la situación de la prensa en Perú. Enero – abril 2013](#).

<sup>1391</sup> Instituto Prensa y Sociedad (IPYS). April 4, 2013. [Ex funcionario de municipalidad agrade a periodista tras entrevista](#); Prensa Huaraz. April 4, 2013. [Censurable. Agraden a periodista mientras entrevistaba](#); Huaraz Noticias. April 4, 2013. [Agresión contra la libertad de prensa](#).

<sup>1392</sup> Instituto Prensa y Sociedad (IPYS). April 17, 2013. [Amenazan de muerte y pintan fachada de vivienda de periodista](#); Oficina de los Derechos Humanos del Periodista (Office of Journalist's Human Rights). [Reporte estadístico de la situación de la prensa en Perú. Enero – abril 2013](#).

<sup>1393</sup> Instituto Prensa y Sociedad (IPYS). April 10, 2013. [Policías agreden a reporteros que cubrían huelga de universitarios](#); Oficina de los Derechos Humanos del Periodista (Office of Journalist's Human Rights). [Reporte estadístico de la situación de la prensa en Perú. Enero – abril 2013](#).

<sup>1394</sup> IFEX/Instituto Prensa y Sociedad (IPYS). April 24, 2013. [TV crew in Peru threatened in attempt to stop broadcast of report on corruption](#); Notas de Prensa. April 24, 2013. [Perú: Alcalde quiere impedir que emitan reportaje que lo investiga por](#)

Fustamante Gálvez, director of a program on *Sudamérica* radio station, in the province of Cutervo, department of Cajamarca, was threatened by the presumed brothers of the mayor of that province, who warned him: “If you do not shut up we will shut you up.” The threat would be linked to reports by the journalist on the administration of the local government.<sup>1395</sup>

730. On May 3, journalists Iván de La Rosa Vives and Carlos Mestanza Coronado, from the journalistic program ‘#Es Noticia’, on the ATV channel were attacked by the sons of a congressman while filming images of the façade of *Canal 31* television channel in Chimbote, which belongs to the politician. According to information received, the program was working on a report involving the parliamentarian.<sup>1396</sup> On May 6, journalist Oswaldo Marcos Casazola Paredes, director of the program ‘Horas de Lucha’, on radio *La Ribereña*, was insulted and threatened by persons supposedly linked to the organization of a bullfighting event, which the journalists had criticized.<sup>1397</sup> For the same reasons, on May 7, three individuals broke into radio station *La Ribereña* and insulted and threatened journalist Juan Carlos Chuquilín Barrantes, director of the Huaral.pe News Agency, while he broadcast his program.<sup>1398</sup>

731. On May 18, journalist Mauro Cecilio Ccapa Zapana, correspondent for the daily newspaper *Los Andes* in the province of Lampa, was threatened with death supposedly by an official from the municipal mayor’s office, allegedly in reprisal for information published by the reporter about the administration of the municipality.<sup>1399</sup>

732. On May 23, journalist Evaristo Yangua Carhuapoma, correspondent for the daily newspaper *Ahora* and the weekly *Nor Oriente* was supposedly threatened by the director of the Local Educational Management Unit (UGEL) of Condorcanqui, department of Amazonas, for denunciations of supposed irregularities in the administration of the UGEL.<sup>1400</sup> The journalist had given this information to the Regional Council of the Regional Government of Amazonas. That agency, by means of agreement No. 151-2013, had requested information from the President of the Regional Government.<sup>1401</sup>

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[corrupción y equipo de reporteros recibe amenazas de muerte](#); Oficina de los Derechos Humanos del Periodista (Office of Journalist’s Human Rights). [Reporte estadístico de la situación de la prensa en Perú. Enero – abril 2013](#).

<sup>1395</sup> Panoramacajamarquino. May 3, 2013. [Hermanos de alcalde de Cutervo habrían amenazado a periodista](#); Instituto Prensa y Sociedad (IPYS). May 7, 2013. [Perú: Periodista es amenazado de muerte por hermanos de alcalde](#).

<sup>1396</sup> La República. May 4, 2013. [Hijos de Crisólogo agreden a periodistas en Chimbote](#); Diario 16. May 4, 2013. [Hijos del congresista Víctor Crisólogo agreden a periodistas de #EsNoticia](#); Oficina de los Derechos Humanos del Periodista (Office of Journalist’s Human Rights) (Ofip). May 13, 2013. [Hijos de legislador agreden a periodistas que investigan posibles hechos de corrupción](#); [Chimbote en Línea. May 3, 2013. Periodistas de ATV denuncian que fueron agredidos por hijos de congresista Víctor Crisólogo](#).

<sup>1397</sup> Federación Internacional de Periodistas/Asociación Nacional de Periodistas del Perú (ANP). May 16, 2013. [ANP: Amenazan a periodistas que criticaron realización de corridas de toros en estadio de Perú](#); El Altiplano. May 9, 2013. [En Huaral amenazan a dos periodistas por cuestionar corrida de toros en estadio](#).

<sup>1398</sup> Federación Internacional de Periodistas/Asociación Nacional de Periodistas del Perú (ANP). May 16, 2013. [ANP: Amenazan a periodistas que criticaron realización de corridas de toros en estadio de Perú](#); [Huaral en Línea. May 7, 2013. Amenazan a dos periodistas por cuestionar corrida de toros en estadio de Huaral](#).

<sup>1399</sup> IFEX/Instituto Prensa y Sociedad (IPYS). May 23, 2013. [Journalist threatened after reporting on cancelled municipal project in Peru](#); *Los Andes*. May 21, 2013. [IPYS respalda a periodista Mauro Ccapa y condena amenaza de muerte](#); La República. May 22, 2013. [Denuncian que secretaria de alcalde de Lampa genera división en municipio](#).

<sup>1400</sup> Federación Internacional de Periodistas/Asociación Nacional de Periodistas del Perú (ANP). June 24, 2013. [ANP: Funcionario de sector educación amenaza de muerte a periodista peruano](#); [Huaralaldia. June 23, 2013. Funcionario de sector educación amenaza de muerte a periodista](#).

<sup>1401</sup> Gobierno Regional del Amazonas. August 9, 2013. [Acuerdo de Consejo Regional No. 151-2013](#).

733. On May 24, journalist Jorge Moncada Mino, of the daily newspaper *El Ciclón* of Chiclayo and *Radio Caliente*, was attacked by two armed individuals in the province of Chiclayo, department of Lambayeque. The journalist was taken to a hospital due to the gravity of his wounds. According to information received, the attack may be linked to allegations raised by the journalist about a criminal known as alias “Viejo Paco.” Days prior to the attack, the journalist had received death threats.<sup>1402</sup>

734. On July 4, an explosive device was detonated at radio station *Tropicana* and caused serious damage to the building. The station’s program ‘Noticias Tropicana’ had reported alleged corruption acts.<sup>1403</sup> On July 19, journalist Fernando Valverde received death threats from people close to the governor of the district of Llumpa, province of Mariscal Luzuriaga, Ancash, stemming from a report on a series of denunciations that would linked the authority in alleged crimes of domestic violence.<sup>1404</sup>

735. On July 28, journalist César Estrada Chuquilín, of *Radio Coremarca* and a collaborator of *Radio Líder*, was insulted and struck by workers from a mining company and supposed members of the police armed with rifles in the province of Celendín, department of Cajamarca. The aggressors blocked the journalist’s path, insulted and struck him and took away his journalistic equipment.<sup>1405</sup>

736. On July 31, journalist José Manuel Pereira Rivas, host of the programs ‘Prensa Popular’, on radio *La Hechicera* and ‘Sin Mordaza’, on *Canal 43*, was brutally beaten and threatened with death by unknown individuals. In the opinion of Pereira Rivas, the attack was linked to certain journalistic investigations that he made about the administration of the president of the Regional Government of Tumbes.<sup>1406</sup>

737. On September 4 journalist Elqui Herrera Cabanillas requested personal guarantees for the protection of his life after receiving constant death threats by means of text messages and phone calls. He submitted his request before the governor of the province of Hualgayoc, department of Cajamarca. The journalist, director of the newscast ‘Bambamarca en la Noticia’, which is broadcast by radio *Bambamarca*, host of the program ‘Noticias en 60 minutos’ on *Canal 6* of *Genial TV* and a commentator for the weekly *Tribuna Libre*, had reported on supposed irregularities in the

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<sup>1402</sup> El Comercio. May 24, 2013. [FOTOS: agreden brutalmente a periodista que denunció tráfico de terrenos en Chiclayo](#); Instituto Prensa y Sociedad (IPYS). May 24, 2013. [Mafia agrede brutalmente a periodista que investigaba tráfico de tierras](#); Crónica Viva. May 25, 2013. [Desconocidos atacan brutalmente a periodista por denunciar a delincuente](#); Federación de Periodistas del Perú. May 24, 2013. [Chiclayo: Masacran a periodista que investiga al ‘Viejo Paco’](#).

<sup>1403</sup> Committee to Protect Journalists (CPJ). July 9, 2013. [Radio station attacked with explosives in Peru](#); El Comercio. July 4, 2013. [Satipo: un artefacto explosivo fue detonado en estación de radio](#); Perú 21. July 5, 2013. [Detonan explosivos en radio de Satipo](#); Federación Internacional de Periodistas/Asociación Nacional de Periodistas del Perú (ANP). July 4, 2013. [ANP: Desconocidos lanzan explosivo en radio Tropicana de Perú](#).

<sup>1404</sup> Instituto Prensa y Sociedad (IPYS). July 22, 2013. [Gobernador acusado de violencia familiar amenaza de muerte a periodista](#); Huaraz Noticias. July 8, 2013. [Gobernador amenaza de muerte a dos mujeres](#).

<sup>1405</sup> Asociación Nacional de Periodistas del Perú (ANP). August 12, 2013. [Trabajadores de minera golpean a periodista y le sustraen equipo de trabajo](#); Trujillo 2020. August 14, 2013. [Trabajadores de minera golpean a periodista y le sustraen equipo de trabajo](#); Crónica Viva. August 12, 2013. [Mineros golpean a periodista y roban equipo de trabajo](#).

<sup>1406</sup> Crónica Viva. August 3, 2013. [Golpean brutalmente a periodista y lo amenazan de muerte](#); Federación Internacional de Periodistas/Asociación Nacional de Periodistas del Perú (ANP). August 2, 2013. [ANP: Golpean brutalmente a periodista peruano y lo amenazan de muerte](#); Perú 21. August 3, 2013. [Tumbes: Golpean y amenazan de muerte a periodista](#).

administration of the mayor of the provincial municipality of Hualgayoc and on social protests by the population against the mining companies.<sup>1407</sup>

738. In October, journalists Consuelo Lezcano Ruiz and Eduardo Cabrera Urteaga, from the program 'Nuestra Voz', on *TV Canal 45*, were personally attacked through the municipal channel *TV Norte*, after having questioned the administration of the mayor of the provincial municipality of Cajamarca regarding denunciations of corruption.<sup>1408</sup>

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

#### D. Subsequent liabilities

740. On January 11, 2013, journalist José Luis Napoleón Márquez, editor of the weekly *El Búho* of Arequipa, was made to comply with a ruling issued against him for the crime of defamation. Napoleón Márquez was sentenced in February of 2012 to a one-year suspended sentence and payment of 6,000 news soles (some US\$ 2,100) as civil reparation on behalf of a university authority. The reporter published an interview with a student at the university who denounced that the academic had carried out acts of harassment against her and the academic had filed a criminal complaint because of that. Napoleón Márquez appealed the ruling and the case came before the Second Permanent Liquidating Criminal Chamber in Arequipa, but admission of the appeal required the payment of 1,600 new soles (some US\$ 630) under the heading of court costs. The reporter argued the unconstitutionality of that requirement. However, the chamber declared his appeal inadmissible because Napoleón Márquez had not been able to pay the court costs due to economic limitations. According to information received, the First Temporary Criminal Court required the journalist to pay the reparations within five days or he would have to go to prison for one year.<sup>1409</sup>

741. The Office of the Special Rapporteur observes that article 24 of the Organic Law of the Judicial Branch establishes: "The administration of justice is free of charge for people with scarce economic resources, and for all cases expressly provided for by law. The following are exonerated from the payment of court costs: [...] d) those involved in criminal trials, with the exception of lawsuits."<sup>1410</sup> On the other hand, Article 6 of the Court Costs Regulation would establish that the payment of court costs is a prior requirement for carrying out the corresponding judicial proceedings. The regulation

<sup>1407</sup> Instituto Prensa y Sociedad (IPYS). August 28, 2013. [Amenazan de muerte a periodista que denuncia corrupción en municipio](#); Crónica Viva. September 11, 2013. [Periodista solicita garantías personales por amenazas contra su vida](#); Noticias SER. September 12, 2013. [Cajamarca: Periodista solicita garantías por continuas amenazas contra su vida](#); Cajamarca Global. September 10, 2013. [Periodista pidió garantías para su vida por las amenazas de muerte que recibe](#).

<sup>1408</sup> Noticias SER. October 31, 2013. [Cajamarca: ANP rechaza ataques de canal municipal contra periodistas independientes](#); Asociación Nacional de Periodistas del Perú (ANP). October 30, 2013. [Comunicado - ANP exige respeto al trabajo de los periodistas en Cajamarca](#).

<sup>1409</sup> Instituto Prensa y Sociedad (IPYS). January 23, 2013. [Amenazan con cárcel a periodista impedido de impugnar sentencia en su contra](#); Prensa Trujillo. January 24, 2013. [Amenazan con cárcel a periodista impedido de impugnar sentencia en su contra](#).

<sup>1410</sup> [Ley Orgánica del Poder Judicial. Texto Único Ordenado](#).

provides that payment of court costs “is made considering the amount of the corresponding proceeding.”<sup>1411</sup>

742. The American Convention recognizes in article 8.2 that “[a]nyone accused of a crime has the right to the presumption of innocence as long as their guilt is not legally established. During the proceedings, everyone has the right, in total equality, to the following minimum guarantees: [...] h) the right to appeal the ruling before a higher judge or court.” In light of article 1.1, the States make the commitment to guarantee that, with respect to access to these guarantees, the parties in proceedings shall be treated without any discrimination whatsoever.

743. Based on their ruling in the case of *Herrera Ulloa v. Costa Rica*, the Inter-American Court has reiterated that the right to appeal rulings is a primordial guarantee that must be “respected in the framework of due legal process, to enable an adverse sentence to be reviewed by a different judge or court and of a higher organic hierarchy.”<sup>1412</sup> In the words of the Court, “it involves a guarantee for the individual vis-à-vis the State and not just a guide for the design of systems for challenges in the legal systems of the State Parties to the Convention.”<sup>1413</sup> The Court has held that article 8.2.h of the Convention guarantees an *accessible and effective* ordinary appeal.<sup>1414</sup> That an appeal be accessible implies that “it must not require greater complexities that make this right illusory.”<sup>1415</sup> In its recent decision in the case of *Mohamed v. Argentina*, the Court explained that “the formalities required for an appeal to be admitted must be minimal and must not constitute an obstacle for the appeal to fulfill its purpose of examining and resolving the grievances claimed by the appellant.”<sup>1416</sup> Similarly, in referring to the right to access to justice, in the case of *Cantos v. Argentina* the Court indicated that “[a]ny norm or measure of the internal order that imposes costs or creates difficulties in any other way for access by individuals to the courts, and which is not justified by the reasonable needs of the administration of justice itself, must be understood as contrary to the foregoing article 8.1 of the Convention.”<sup>1417</sup>

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<sup>1411</sup> [Diario Oficial “El Peruano”. N° 9213](http://www.justiciaviva.org.pe/nuevos/2005/septiembre/08/aranceles/reglamento.pdf). September 7, 2005. Consejo Ejecutivo del Poder Judicial aprueba el Reglamento de Aranceles Judiciales. Resolución Administrativa 159-2005-CE-PJ. July 20, 2005. Available for consultation at: <http://www.justiciaviva.org.pe/nuevos/2005/septiembre/08/aranceles/reglamento.pdf>, and at: [http://www.gacetajuridica.com.pe/boletin-nvnet/setiembre\\_05/img\\_set/rad\\_159.pdf](http://www.gacetajuridica.com.pe/boletin-nvnet/setiembre_05/img_set/rad_159.pdf)

<sup>1412</sup> I/A Court H.R. *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Para. 158; I/A Court H.R. *Case of Mohamed v. Argentina. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 23, 2012. Series C No. 255. Para. 97.

<sup>1413</sup> I/A Court H.R. *Case of Mohamed v. Argentina. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 23, 2012. Series C No. 255. Para. 92.

<sup>1414</sup> I/A Court H.R. *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Para. 161, 164, 165 and 167; I/A Court H.R. *Case of Barreto Leiva v. Venezuela. Merit, Reparations and Costs*. Judgment of November 17, 2009. Series C No. 206. Para. 88, 89 and 90; I/A Court H.R. *Case of Mohamed v. Argentina. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 23, 2012. Series C No. 255. Para. 99.

<sup>1415</sup> I/A Court H.R. *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Para. 164; I/A Court H.R. *Case of Barreto Leiva v. Venezuela. Merit, Reparations and Costs*. Judgment of November 17, 2009. Series C No. 206. Para. 90; I/A Court H.R. *Case of Mohamed v. Argentina. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 23, 2012. Series C No. 255. Para. 99.

<sup>1416</sup> I/A Court H.R. *Case of Mohamed v. Argentina. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 23, 2012. Series C No. 255. Para. 99.

<sup>1417</sup> I/A Court H.R. *Case of Cantos v. Argentina. Merit, Reparations and Costs*. Judgment of November 28, 2002. Series C No. 97. Para. 50.

744. In that respect, this office is concerned that legislation and judicial practice establish a rigid obligation to pay large amounts of money under the heading of court costs, as a prior requirement for carrying out a proceeding that the State has the obligation to guarantee, without discrimination, according to articles 8.2.h and 1.1 of the Convention, and that these limitations apply to criminal proceedings in which people's responsibility for disseminating information of public interest is determined.

745. On April 24, the Second Criminal Chamber for Trials involving prisoners in the Jail of the Superior Court of Justice of Lima Jail revoked a ruling by a lower court that ordered the definitive shelving of criminal proceedings against the editor of the economics page of the daily newspaper *Peru 21*, Gina Sandoval Cervantes, as the main accomplice in the crime of revealing national secrets sanctioned by article 330 of the Peruvian Penal Code. According to information received, Sandoval Cervantes was accused of having permitted, as editor, that secret information be published, such as the Draft Cotton Agreement between Peru and Venezuela, along with the digital file "Agenda Consejo de Ministros" (Council of Ministers Agenda), in which one of the topics addressed was a legislative resolution that authorized the entry of a foreign naval unit into state territory. If she had been convicted, Sandoval Cervantes could have been sentenced to five to fifteen years imprisonment.<sup>1418</sup>

746. The Office of the Special Rapporteur recalls that, pursuant to international standards in the field, everyone has the right to access to information under the control of the State. This right includes information relating to national security, except for the precise exceptions established by law, as long as these are necessary in a democratic society. Under no circumstance can journalists, members of the media or members of civil society who merely disseminate information classified as reserved, when they consider it of public interest, be subjected to subsequent liabilities for the mere fact of publication.

747. On May 21, journalist Alcides Peñaranda Oropeza, director of the daily newspaper and magazine *Integración*, was given a suspended sentence of two years imprisonment for the crime of defamation, in a suit brought by the president of the regional government of Ancash, César Álvarez Aguilar.<sup>1419</sup> The official had sued the journalist for publishing information on supposed acts of corruption in the administration of the regional government, in an article titled "El Misterioso Poder En Ancash", which also cited information published in the weekly *Hildebrandt en sus Trece*. The judge of the Single-judge Criminal Court of the Judicial District of Ancash had ruled in favor of the plaintiff, sentencing the journalist to two years imprisonment and payment of 10,000 new soles (some US\$ 3,500) under the heading of civil reparations. On May 13, after a hearing on the case, the journalist and manager of the

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<sup>1418</sup> Letter sent to the Office of Special Rapporteur for Freedom of Expression signed by Prensa Popular S.A.C. October 28, 2013. Annexes: Corte Superior de Justicia de Lima. Segunda Sala Penal para Procesos con reos en Cárcel. Colegiado "B". Resolution No. 697 of April 24, 2013. Expediente 1123-2012-4; Quincuagésimo Juzgado Penal de Lima. Resolution of September 7, 2012. Expediente 10263-2012. Available for consultation at: Archives of the Office of Special Rapporteur for Freedom of Expression.

<sup>1419</sup> Diario Integración. May 22, 2013. [Escandalosa sentencia condenatoria de juez contra director de Integración](#); Committee to Protect Journalists (CPJ). May 31, 2013. [Peruvian journalist convicted in criminal defamation case](#); Instituto Prensa y Sociedad (IPYS). May 22, 2013. [Jueza sentencia a director de diario que reprodujo extractos de una nota publicada en un medio nacional](#); Federación Internacional de Periodistas/Asociación Nacional de Periodistas del Perú (ANP). May 23, 2013. [ANP: Periodista es condenado a dos años de prisión suspendida en Perú](#).



daily newspaper *Integración*, Yolanda Quito Camones, was beaten by persons supposedly close to Álvarez Aguilar. The journalist denounced that she had also received threats.<sup>1420</sup>

748. On May 25, journalist and cartoonist Enzo Fidel Ruiz Ramírez, director of the blog *El Embeleco* and a collaborator on the daily newspaper *Ímpetu*, received a notarized letter in which an attorney, who supposedly represented the president of the regional government of Ucayali, warned him that the official would take legal action against him if he continued to publish content critical of the official's administration.<sup>1421</sup>

749. Journalist Pedro Yaranga Quispe, responsible for covering drug trafficking and terrorism matters, had been denounced by the Public Prosecutor of the Office of the President of the Council of Ministers for crimes against public faith and security in the modality of generic falsehood, for an interview he had given to a media outlet. The suit, filed with the 33<sup>rd</sup> Provincial Criminal Prosecutor's Office of Lima, involves information that the journalist disseminated over supposed wiretaps by intelligence units against terrorist groups. In the framework of the investigation, on April 13, the journalist was ordered to appear by the Division for Investigation of Crimes against State Security of the National Police of Peru, where he was interrogated about the identity of the sources that provided him with information on the supposed wiretaps.<sup>1422</sup>

750. On August 20, it was revealed that a complaint had been filed with the Third Single-judge Criminal Court of the Superior Court of Justice of El Santa, against journalists Miguel Alcántara Flores, of the newspaper *Correo*, César Quino Escudero, of the *El Observador* magazine, and Santos Paredes García and Noé García Vásquez, of *Canal 55*, in which they were sued for alleged defamation by the regional president of Ancash, César Álvarez Aguilar. The regional authority requested that each defendant pay one million new soles (some US\$ 360,000) under the heading of civil reparations.<sup>1423</sup>

751. Journalist Humberto Espinoza Maguiña was sentenced for defamation twice on two consecutive days in September by the First Single-judge Court of the Supreme Court of Justice of the department of Ancash. On September 18, he was given a suspended sentence of two years imprisonment, 120 days of community service and ordered to pay 5 thousand new soles (some US\$ 2,000) for the crime of defamation against regional president of Ancash, César Álvarez. The sentence stemmed from an article published in August of 2012 in the daily newspaper *Prensa Regional*, where

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<sup>1420</sup> Diario Integración. May 22, 2013. [Escandalosa sentencia condenatoria de juez contra director de Integración](#); Instituto Prensa y Sociedad (IPYS). May 22, 2013. [Jueza sentencia a director de diario que reprodujo extractos de una nota publicada en un medio nacional](#).

<sup>1421</sup> Diario Ímpetu. June 3, 2013. [Aseguran que Velásquez no es un conchudo ni caradura](#); Diario Ímpetu. June 10, 2013. [El Embeleco arremete en serio contra el intento de borrar el humor político](#); Federación Internacional de Periodistas/Asociación Nacional de Periodistas del Perú (ANP). June 11, 2013. [ANP: Presidente Regional de Perú intenta coartar Libertad de Expresión de caricaturista](#).

<sup>1422</sup> Asociación Nacional de Periodistas del Perú (ANP). April 23, 2013. [Alerta Perú \(LIMA\) - Procurador de consejo de ministros denuncia a periodista y le exige que revele su fuente informativa](#); Spacio Libre. April 25, 2013. [Pedro Yaranga es denunciado por opinar sobre interceptaciones telefónicas](#); Instituto Prensa y Sociedad (IPYS). April 25, 2013. [Presidencia del Consejo de Ministros denuncia a experto por opinar sobre interceptaciones telefónicas](#).

<sup>1423</sup> Instituto Prensa y Sociedad (IPYS). August 21, 2013. [Presidente regional querrela periodistas considerados de oposición a su gestión](#); RSD/Asociación Nacional de Periodistas del Perú (ANP). August 26, 2013. [Comité ejecutivo nacional de la ANP advierte intención del presidente de Ancash de silenciar las voces críticas](#); El Ferrol. August 20, 2013. [César Álvarez Aguilar querrela a periodistas críticos a su gestión](#); La República. August 27, 2013. [Periodistas protestan contra querrelas de presidente César Álvarez](#).

Espinoza was the director at that time, in which he denounced Álvarez for supposed acts of corruption. On September 19, that same chamber sentenced Espinoza for the crime of defamation against the same official, for an article published in October of 2012, in the daily newspaper *Prensa Regional*, in which he denounced the alleged interference of the regional government in closing the radio station *Radio Ancash*. Journalist Espinoza supposed stated that the sentences are part of a campaign against him because of the journalistic denunciations against the administration of César Álvarez.<sup>1424</sup>

752. On October 21, 2013, Esther Valenzuela Zorrilla, editor of the daily newspaper *La Calle de Ayacucho*, and Asencio Canchari Sulca, columnist for that same publication, were sentenced for defamation. Esther Valenzuela was sentenced for publications in 2010 in which she denounced supposed acts of corruption by Ernesto Molina Chávez, former president of the regional government of Ayacucho. She was given a two-year imprisonment suspended sentence, and made to pay 25,000 new soles (some US\$ 9,000) in civil reparations, along with a fine of 1,050 new soles (some US\$ 380) to the State. Asencio Canchari was sentenced for having criticized Magno Sosa Rojas, departmental dean of the college of journalists and former advisor to the president of the regional government of Ayacucho, to two years imprisonment and 3 thousand new soles (some US\$ 1,000) in civil reparations. Both appealed the sentences.<sup>1425</sup>

753. The Office of the Special Rapporteur considers it relevant to indicate that these cases have taken place in a context in which President Ollanta Humala has declared publicly and repeatedly that he will not use criminal proceedings to block debate on matters of public interest. At the same time, the Congress of the Republic has studied a number of reforms that would eliminate crimes of defamation, at the least for public officials, or substitute prison sentences for fines. Parallel to this, the Supreme Court of Justice has handed down directives on the subject, and in recent rulings has overturned criminal convictions for the crime of aggravated defamation<sup>1426</sup> and for defamation<sup>1427</sup> of public servants or former public servants.<sup>1428</sup>

754. 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

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<sup>1424</sup> IFEX/ Instituto Prensa y Sociedad (IPYS). September 23, 2013. [Peruvian journalist receives two sentences for defamation](#); El Ferrol. September 23, 2013. [Un periodista de Huaraz \(Ancash\) recibe dos sentencias por difamación en juicios contra César Álvarez](#); Committee to Protect Journalists (CPJ). September 26, 2013. [In Peru, journalist handed suspended jail term](#).

<sup>1425</sup> Instituto Prensa y Sociedad (IPYS). October 22, 2013. [Directora y colaborador de diario sentenciados el mismo día por distintos casos](#); Committee to Protect Journalists (CPJ). October 25, 2013. [In Peru, two journalists handed suspended jail terms](#); RPP. October 22, 2013. [Sentencian y multan a dos periodistas en Ayacucho](#).

<sup>1426</sup> The First Criminal Appeals Chamber of the Superior Court of Justice of Lambayeque acquitted journalist Daniel Chávez Huapaya and a judge of the Ninth Criminal Court of Free Defendants of Lima declared inadmissible the suit filed against journalist Fernando Valencia.

<sup>1427</sup> The judge of the 25th Criminal Court of Lima acquitted journalist César Hildebrandt and reporter Melissa Pérez.

<sup>1428</sup> 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](#).

falsity of such news.” Also, principle 11 of the Declaration establishes that, “[p]ublic officials are subject to greater scrutiny by society.”

755. Regarding the possible imposition of civil liability, the Inter-American Court has established that civil sanctions must be strictly proportionate in cases involving freedom of expression, so that they do not have an inhibiting effect over the exercise of this freedom, since, “the fear of a civil penalty, considering the claim [...] for a very steep civil reparation, may be, in any case, equally or more intimidating and inhibiting for the exercise of freedom of expression than a criminal punishment, since it has the potential to attain the personal and family life of an individual who accuses a public official, with the evident and very negative result of self-censorship both in the affected party and in other potential critics of the actions taken by a public official.”<sup>1429</sup>

### E. Legal reforms

756. On February 15, the Ombudsman’s Office of Peru filed an action of unconstitutionality<sup>1430</sup> against Article 12 of Legislative Decree 1129, approved on December 6, 2012, considering that it violated the right to access to public information.<sup>1431</sup> The article establishes the secret nature of all documentation or information regarding matters referring to national security and defense, along with the obligation of every person to maintain secret all information on such matters in their possession.<sup>1432</sup> In a hearing on freedom of expression in Peru held on March 11, in the framework of the 147 Period of Sessions of the Inter-American Commission on Human Rights (IACHR), the Office of the Special Rapporteur was informed of the above-mentioned decree.<sup>1433</sup> On October 11, the Constitutional Court held a public hearing in which the Ombudsman justified the suit.<sup>1434</sup>

757. Additionally, in the above-mentioned hearing, the Office of the Special Rapporteur received information on draft legislation No. 1464/2012-PE,<sup>1435</sup> which would modify the Criminal Code to add the crime of “negationism” to the crimes of terrorism. The petitioning organizations and

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<sup>1429</sup> 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.

<sup>1430</sup> Defensoría del Pueblo. February 15, 2013. [Demanda de inconstitucionalidad](#).

<sup>1431</sup> Defensoría del Pueblo. February 16, 2013. [Defensoría del Pueblo demandó la inconstitucionalidad del artículo 12° del Decreto Legislativo N° 1129](#); La República. February 17, 2013. [Defensoría: Decreto legislativo que limita transparencia en Defensa es inconstitucional](#); Perú 21. February 17, 2013. [Defensoría del Pueblo pide derecho a la información](#).

<sup>1432</sup> [Decreto Legislativo N° 1129](#). Article 12. Access to information: “Agreements, minutes, recordings, transcripts and, in general, any information or documentation generated in the scope of the issues pertaining to the National Security and Defense, and those containing the proceedings at the Council of National Security and Defense meetings, are secret.” [...] “Final Supplementary Provisions First. Obligation to provide information and maintain confidentiality [...] Any person who by reason of his/her position or function becomes aware of classified information secret, reserved or confidential, related to National Security and Defense, it is required to keep the reserve.”

<sup>1433</sup> IACHR. 147 Period of Sessions. Hearing on the Situation of the Right to Freedom of Expression in Peru. March 11, 2013. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=En&Session=131>

<sup>1434</sup> Tribunal Constitucional del Perú. October 11, 2013. [TC dejó al voto demandas de inconstitucionalidad contra la Ley De Reforma Magisterial y Decreto Legislativo N° 1129](#); Federación Iberoamericana del Ombudsman. October 10, 2013. [Perú: El Defensor del Pueblo sustentará demanda de inconstitucionalidad contra el artículo 12° del Decreto Legislativo N° 1129](#).

<sup>1435</sup> El Comercio. December 11, 2012. [Ley del Negacionismo aprobada hoy plantea pena de cárcel de 6 a 12 años](#); Andina. December 11, 2012. [Comisiones de Justicia y Constitución aprobaron proyecto de ley del negacionismo](#); Terra. December 11, 2013. [Comisiones aprueban proyecto de ley del negacionismo](#).

representatives of the State discussed the compatibility of the bill with Article 13 of the American Convention. On that occasion, the Office of the Special Rapporteur expressed its concern regarding the ambiguity of the formulation of Article 316-A incorporated into the above-mentioned bill.<sup>1436</sup>

758. In a communication dated March 27, the State forwarded information on the March 11 hearing to the Inter-American Commission.<sup>1437</sup> The information summarized the position of the State with respect to the draft legislation and indicated that it was aimed “[at] avoiding incitement of violence of new terrorist acts” pursuant to Article 44 of the Peruvian Constitution and Article 13 subsection 5 of the American Convention. It also affirmed that “it is seeking to employ clear terminology in order to be able to identify the type of discourse that is prohibited.”

759. In following up on the above-mentioned hearing, on April 16, the Office of the Special Rapporteur sent the State of Peru a letter requesting information. The communication pointed out certain aspects of the Inter-American legal framework that the Office of the Special Rapporteur viewed as relevant for the Government to take into account when debating the draft legislation.<sup>1438</sup> On April 26, the State sent the Office of the Special Rapporteur relevant information on the procedure of the bill and its legislative status “which is the same as what was observed in [...] [the] presentation during the development of the [...] hearing.”<sup>1439</sup>

760. On October 22, the Congress of the Republic published Law No. 30096 on Computer Crimes.<sup>1440</sup> The law aims “to prevent and punish illicit conducts that affect the computer systems and data and other legal properties of criminal relevance, committed through the use of technologies of the information [...].” The Office of the Special Rapporteur observes that civil society organizations have expressed concern over the broadness and vagueness of certain conducts and suppositions that, in practice, could lead to the application of severe punishments for the exercise of activities protected by the right to freedom of expression and access to information. Thus for example, the National Association of Peruvian Journalists affirmed that “simply because of its confusing and ambiguous wording, it could give rise to serious problems in the honest administration of justice, could constitute an attack on freedom of expression and, therefore, a worrisome restriction on freedom of the press.”<sup>1441</sup> And the Press and Society Institute of Peru (IPYS) regretted that the law had not been thoroughly reviewed by the Congress and the Executive Branch prior to its promulgation.<sup>1442</sup> According to IPYS, application of the law could lead to persecution of activities that use legal information and databases,

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<sup>1436</sup> IACHR. 147 Period of Sessions. Hearing on the Situation of the Right to Freedom of Expression in Peru. March 11, 2013. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=En&Session=131>

<sup>1437</sup> Communication from the State of Peru. March 27, 2013. Subject: Referral of information on the Hearing on the Situation of the “Right to Freedom of Expression in Peru”, held during the 147 Period of Sessions of the IACHR.

<sup>1438</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. April 16, 2013. Letter to the State of Peru. *Proyecto de Ley 1464/2012-PE. Solicitud de información conforme al artículo 41 de la CADH.*

<sup>1439</sup> Communication from the State of Peru. April 26, 2013. Subject: Answer to the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights.

<sup>1440</sup> Congreso de la República. October 22, 2013. [Ley 30096 de Delitos Informáticos.](#)

<sup>1441</sup> Asociación Nacional de Periodistas del Perú (ANP). October 24, 2013. [Pronunciamento ANP: se impone la cultura del secretismo.](#)

<sup>1442</sup> Instituto Prensa y Sociedad (IPYS). October 23, 2013. [Perú: Ley de Delitos Informáticos es grave riesgo para libertad de información.](#)

such as for example those using electronic platforms of the State.<sup>1443</sup> In the same sense, the law was criticized by the Peruvian Press Council for not having established safeguards to ensure that the dissemination of information of public interest will not be a target of investigation or criminal punishment. At the same time, the new law was criticized by civil society organizations for imposing ambiguous restrictions aimed at punishing discriminatory expressions using the Internet, which would receive punishments equivalent to those imposed for acts of violence for discriminatory reasons.<sup>1444</sup>

761. In this regard, the president of the Council of Ministers assured that the law does not violate freedom of expression because it punishes interception and that the objective is “to protect people’s information [...] that people have rights and these rights have a real content and not just content on paper.”<sup>1445</sup> The Office of the Special Rapporteur has been informed that the authorities are reviewing the new law in order to study possible modifications in accordance with the objections made by civil society organizations.<sup>1446</sup>

762. In diverse pronouncements, the Office of the Special Rapporteur has considered it is a matter of fundamental importance that States protect the rights to freedom of expression and access to information on the Internet and ensure that measures that affect this right have the objective of preserving the singular capacity of this medium to promote freedom of expression through the free, instantaneous and low-cost exchange of information and ideas, without consideration of borders.<sup>1447</sup> In this sense, the right to freedom of expression benefits when States protect the privacy of digital communications, as well as the confidentiality, completeness and availability of computer data and systems. The adoption of legislative frameworks to prevent and punish cyber crimes and punishable conducts that make use of computer media is an important measure to achieve those objectives.

763. In any case, in adopting a criminal policy in this field, States must ensure that it is in conformance with international obligations in the field of human rights and particularly avoid it disproportionately restricting the freedom to seek, receive and disseminate information and ideas of all kinds or generating dissuasive effects in the exercise of those rights. In this sense, the States must guarantee compliance with international standards that provide, among other things, that all restrictions on freedom of expression must be provided for by law under the clearest and most precise

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<sup>1443</sup> Instituto Prensa y Sociedad (IPYS). October 23, 2013. [Perú: Ley de Delitos Informáticos es grave riesgo para libertad de información.](#)

<sup>1444</sup> El Comercio. October 22, 2013. [Gobierno promulgó cuestionada Ley de Delitos Informáticos.](#)

<sup>1445</sup> RPP. October 23, 2013. [Jiménez: Ley de delitos informáticos nos sitúa en estándar internacional](#); Perú.com. October 23, 2013. [Juan Jiménez sobre ley de delitos informáticos: No viola para nada la libertad de expresión](#); La República. October 23, 2013. [Juan Jiménez: "Ley que condena cibercriminales no afecta libertad de expresión".](#)

<sup>1446</sup> See, Congreso de la República. Comisión de Justicia y Derechos Humanos. Predictamen de la Comisión de Justicia y Derechos Humanos recaído en los Proyectos de Ley 2991/2013-CR y 2999/2013-CR, mediante los cuales se propone la modificación de la Ley 30096, Ley de Delitos Informáticos. December 2, 2013. Available for consultation at: Archives of the Office of Special Rapporteur for Freedom of Expression.

<sup>1447</sup> The United Nations (UN) Special Rapporteur on the Promotion and Protection of the Right to 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](#); on the Promotion and Protection of the Right to Freedom of Opinion and Expression and the IACHR-OAS Special Rapporteur on Freedom of Expression. January 20, 2012. [Joint Declaration by the United Nations \(UN\) Special Rapporteur for Freedom of Opinion and the IACHR-OAS Special Rapporteur on Freedom of Expression.](#)

terms possible; pursue a legitimate objective recognized by international law and be necessary to achieve said objective (“tripartite test”). When limitations imposed by criminal norms are involved, the Inter-American Court has stated that additionally, the inherent demands of strict legality must be satisfied: “If the restriction or limitation stems from criminal law, the strict requirements characteristic of criminal classification must be observed in order to satisfy the principle of legality in this realm.”<sup>1448</sup> This leads to the need “to use strict and univocal terms that clearly delineate the punishable conducts,” which implies “a clear definition of the incriminated conduct, the determination of its elements and the demarcation of non-punishable behaviors or illicit conducts punishable with noncriminal measures.”<sup>1449</sup>

764. With respect to the above, the Office of the Special Rapporteur observes with concern that the broadness of the terms in some of the norms enshrined in Law No. 30096 can give rise to interpretations leading to the punishment of practices and activities that are regular or inherent to use of the Internet and of information and communications technologies in general. For example, article 3 imposes a punishment of 3 to 6 years imprisonment on whoever uses information and communications technologies to “introduce, erase, deteriorate, alter, delete or render inaccessible computer data.” Article 6 of the law imposes a punishment of 3 to 6 years imprisonment for illegal data trafficking, defined as the creation, uploading or improper use of “a database concerning a private individual or legal entity, identified or identifiable for commercializing, trafficking, selling, promoting, favoring or facilitating information regarding any realm of the personal, family, patrimonial, labor, financial or similar sphere, whether or not damage is thereby created [...]” In this sense, while it recognizes that the definition of this type of crimes is complex, given the dynamic character of technological developments, in taking initiatives to punish cyber crime, States must include explicit safeguards in the norm to ensure that legitimate conducts are not criminalized, such as the requirement that the defined acts cause damage and involve criminal intent.

765. Likewise, regulation in this field must make clear that under no circumstance, journalists, members of the media or members of civil society who merely disseminate public information classified as reserved, because they consider it to be of public interest, may be subjected to subsequent punishments for the mere fact of publication. Equally, confidential sources and materials relating to the dissemination of research information must be protected by law.

766. Regarding the modification adopted in article 323 of the Penal Code,<sup>1450</sup> the Office of the Special Rapporteur considers it relevant to mention that article 13.5 of the American Convention sets limits on the right to freedom of expression. In effect, to avoid the use of punitive law aimed at silencing uncomfortable or simply offensive ideas, it states that they must necessarily constitute “apology for hate” aimed not simply at expressing an idea but rather to incite violence.<sup>1451</sup> With this, the

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<sup>1448</sup> I/A Court H.R. *Case of Usón Ramírez v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 55.

<sup>1449</sup> I/A Court H.R. *Case of Usón Ramírez v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 55.

<sup>1450</sup> Congreso de la República. October 22, 2013. [Ley 30096 de Delitos Informáticos](#): “ADDITIONAL PROVISIONS AS AMENDED. FOURTH. Amendment of Articles 162, 183-A and 323 of the Penal Code. To amend Articles 162, 183-A and 323 of the Penal Code, approved by Legislative Decree 635, as follows [...] Article 323. Discrimination. [...] The same deprivation of liberty given in the preceding paragraph will be imposed if discrimination has materialized through acts of physical or mental violence, or if it is carried out through information and communication technologies.”

<sup>1451</sup> IACHR. [Annual Report 2004. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter VII (Hate Speech and the American Convention on Human Rights). OEA/Ser.L/V/II.122. Doc. 5 rev. 1. February 23, 2005.

Convention proscribed the so-called “crime of opinion.” By virtue of this provision, the offensive character of speech, in and of itself, is not a sufficient reason to restrict it. Speech that offends due to the intrinsic falsity of racist and discriminatory conduct must be refuted: those who promote those views need to be persuaded of their error in public debate. In the face of unfairness of opinions, there is no better response than the justice of the arguments and that requires more and better speech. This is the logic of the American Convention that was expressed by the Inter-American Court in the case of *“The Last Temptation of Christ”*, which maintained that freedom of expression protects not only expressions that are “favorably received or considered as inoffensive or indifferent, but also those that clash, disturb or offend the State or any fraction of the population. Such are the demands of pluralism, tolerance and the spirit of openness, without which a ‘democratic society’ does not exist.”<sup>1452</sup> In any case, with its Joint Declaration on Freedom of Expression and Internet, the Special Rapporteurs recall the importance of avoiding the establishment of special restrictions on the content of materials disseminated through the Internet.<sup>1453</sup> In accordance with this principle, the laws that establish subsequent liabilities for the abusive exercise of freedom of expression must be neutral in terms of technology and avoid, except with reasonable justification, increasing the penalties for the simple fact that the crimes are committed using the Internet or communications technologies in general.

767. The Office of the Special Rapporteur expresses its concern over Draft Legislation 2511/2012-CR,<sup>1454</sup> under which a state agency would be authorized to filter access to Internet servers, by means of filters at the level of Internet providers, in other words, at the national level, on pornographic contents, understood as “all visual or auditory representations, real or simulated, that imply sexually explicit contents or that, because of their obscene character, can greatly affect modesty, prematurely excite or pervert the sexual instinct of minors”(Art. 2).

768. The prohibition against inciting violence, the special and priority protection for boys, girls and adolescents and the fight against forms of discrimination are essential objectives of a State under the rule of law that honors its international commitments. Nonetheless, these goals cannot be reached by using just any means. In particular, it is a source of concern that the application of the legal tools mentioned in the previous paragraph could lead to the possibility of permanently filtering and monitoring contents that circulate on the Internet, thus endangering freedom of expression. Any activity of this nature, due to its impact on the exercise of freedom of expression, must be subject to strict judicial control and requires clear and precise legal definitions, transparent procedures and strict controls, according to international standards on the matter.

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<sup>1452</sup> I/A Court H.R. *Case of “The Last Temptation of Christ” (Olmedo-Bustos et al.) v. Chile. Merits, Reparations and Costs.* Judgment of February 5, 2001. Series C No. 73. Para. 69, quoting the European Court of Human Rights.

<sup>1453</sup> Joint Declaration on Freedom of Expression and the Internet adopted by the United Nations Special Rapporteur for Freedom of Opinion and Expression, the Representative on Freedom of the Media of the Organization for Security and Cooperation in Europe (OSCE), the Special Rapporteur of the Organization of American States (OAS) for Freedom of Expression and the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples’ Rights (CADHP). June 11, 2011. Principle 1 d). Available for consultation at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=849&IID=1>. See also, Council of Europe. Committee of Ministers. Declaration on freedom of communication on the Internet. Principle 1 “Member states should not subject content on the Internet to restrictions which go further than those applied to other means of content delivery”. Available for consultation at: <https://wcd.coe.int/ViewDoc.jsp?id=37031>

<sup>1454</sup> Congreso de la República. July 22, 2013. *Proyecto de Ley 2511/2012-CR*. Available for consultation at: <http://www2.congreso.gob.pe/Sicr/TraDocEstProc/CLProLey2011.nsf>

## 24. Dominican Republic

### A. Progress

769. On June 25, the Chamber of Deputies approved a bill to reform the Penal Code of the Dominican Republic. According to the information received, the bill eliminates imprisonment for the crimes of defamation [*difamación e injurias*], and establishes fines of up to six salaries as penalties. The modifications are under study by the Senate.<sup>1455</sup>

770. On May 20, the Fifth Division of the Civil and Commercial Chamber of the First Instance Court of the National District rejected an appeal for protection [*recurso de amparo*] brought by the Family and Life Pastoral Vicariate [*Vicaría Pastoral Familia y Vida*] and the Health Pastoral [*Pastoral de la Salud*] of the Archdiocese of Santo Domingo of the Catholic Church against a sex education campaign produced by the organization Profamilia, and disseminated through the media.<sup>1456</sup> The appeal requested that the Court adopt measures ordering the withdrawal of the campaign called “Promoting the Exercise of Sexual Rights and Reproductive Rights” from the media, arguing that it violated the Constitution and the laws on protection of children. In the ruling rejecting the appeal, Judge Eunice Minaya Pérez considered that the campaign “does not violate the fundamental rights invoked” and held that pursuant to jurisprudential doctrine in the matter, “recognition of freedom of expression also guarantees the maintenance of free public communication, without which the real content of other rights enshrined in the Constitution would be hollow and the representative institutions would be reduced to hollow forms and the principle of democratic representation, which is the basis for all legal – political organization, would be absolutely distorted.” [...] “The confrontation of opinions necessary for democratic debate to be robust requires the admission of expressions that ‘offend, worry or disturb’ the majority of public opinion [...]”<sup>1457</sup> The attorneys representing the church filed an appeal for constitutional review of the ruling before the Constitutional Court.<sup>1458</sup>

771. On February 26, the First Chamber of the National District Court of Appeals annulled a sentence of three months of imprisonment for defamation that had been imposed on journalist Melton Pineda. On September 13, 2012, Pineda was sentenced by the Fourth Criminal Chamber of the National District to three months imprisonment and payment of a compensation of 5 million pesos (some US\$

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<sup>1455</sup> Senado de la República Dominicana. [Proyecto de Ley del Código Penal Reformado](#). Iniciativa 01545-2013-PLO-SE of July 17, 2013; El Día. June 25, 2013. [Los diputados aprueban en dos lecturas el nuevo Código Penal](#); Diario Hispaniola. June 26, 2013. [El Proyecto de Ley de nuevo Código Penal es aprobado por la Cámara de Diputados](#); Hoy. June 25, 2013. [Cámara de Diputados aprueba de urgencia el Código Penal](#). See also, International Press Institute (IPI). March 12, 2013. [Penas de prisión por difamación fueron excluidas del proyecto del Código Penal de República Dominicana](#); Listín Diario. March 4, 2013. [Diputados excluyen prisión por el delito de difamación](#); Jornada Diaria. March 3, 2013. [Pena de prisión por difamación e injuria fue eliminada del proyecto de reforma del Código Penal](#); Noticias Sin. March 6, 2013. [CDP valora de positiva diputados despenalicen delitos de prensa en Código Penal](#).

<sup>1456</sup> Poder Judicial. Quinta Sala de la Cámara Civil y Comercial del Juzgado de Primera Instancia del Distrito Nacional. [Sentencia Nº 038-2013-00390](#). May 20, 2013. See also, Hoy. May 20, 2013. [Jueza falla a favor de Profamilia; rechaza recurso Iglesia Católica](#); Diario Libre. May 21, 2013. [Jueza rechaza amparo Iglesia Católica contra ProFamilia](#); Sin Cortapisa. [Profamilia “derrota” a la Iglesia Católica; tribunal rechaza recurso de amparo contra campaña](#).

<sup>1457</sup> Poder Judicial. Quinta Sala de la Cámara Civil y Comercial del Juzgado de Primera Instancia del Distrito Nacional. [Sentencia Nº 038-2013-00390](#). May 20, 2013.

<sup>1458</sup> Acento. June 3, 2013. [Iglesia recurre ante el Tribunal Constitucional fallo favoreció a Profamilia](#); El Siglo 21. June 4, 2013. [Iglesia recurre a TC contra campaña Profamilia](#).



120,000). Pineda was sued for defamation [*difamación e injuria*] for having accused the plaintiff of “fixing” alleged crimes by the police when the plaintiff worked as a spokesperson for that agency.<sup>1459</sup>

772. On April 17, the President of the Supreme Court of Justice declared null a law suit filed in July of 2012 by former president of the Dominican Republic, Hipólito Mejía, against the director of the newspaper *El Caribe*, Osvaldo Santana, and senator Wilton Guerrero, for alleged violation of articles 29 and 33 of Law 6132 on the Expression and Dissemination of Thought,<sup>1460</sup> which refers to the crimes of defamation [*difamación e injurias*].<sup>1461</sup> Former president Mejía filed the suit against Santana in his capacity as director of the daily newspaper *El Caribe*, where the article was published that in the plaintiff’s view contained defamatory affirmations, in application of the figure of “cascading liability” of those who participate in disseminating news by means of public information media, as enshrined in article 46 of Law 6132.<sup>1462</sup> In the ruling, the President of the Supreme Court of Justice considered that article 46 of Law 6132 was unconstitutional because it is contrary to the provisions contained in articles 6, 40 numeral 14 and 49 of the Constitution,<sup>1463</sup> and therefore decided “to declare the lawsuit

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<sup>1459</sup> Listín Diario. February 27, 2013. [Anulan condena contra el periodista Melton Pineda y ordenan nuevo juicio](#); Panorama. February 26, 2013. [Corte de Apelación D.N anula sentencia contra periodista Melton Pineda](#); *El Caribe*. February 27, 2013. [Corte anula la sentencia por difamación contra Melton Pineda](#); IFEX/International Press Institute. March 1, 2013. [Dominican court throws out defamation conviction of journalist](#). Ver también: Listín Diario. September 14, 2012. [Condenan a Melton Pineda a tres meses de prisión y al pago de RD\\$5 millones por difamación](#); Noticias Sin. September 13, 2012. [Condenan a Melton Pineda por difamar a Marino Zapete](#).

<sup>1460</sup> [Ley No. 6132, de Expresión y difusión del Pensamiento](#). “Article 29.- Defamation consists of all allegations or accusations of a fact that involve an attack on the honor or the consideration of a person or entity to whom the fact is imputed. The publication or broadcast, whether direct or for reproduction, of such an allegation or of such an accusation, is punishable, even when made in a doubtful manner or if it alludes to a person or entity not expressly mentioned, but whose identification is made possible by the terms of the speech, shouts, broadcast, motion pictures, threats, written or printed, posters or incriminating edicts. Defamation [*injuria*] consists of any insulting expression, term of disdain or invective that does not lead to accusation of a fact.” “Article 33.- Defamation committed against private parties by one of the means mentioned in articles 23 and 29 shall be punished by fifteen days to six months imprisonment and a fine of RD\$ 25.00 to RD\$ 200.00, or by just one of these two penalties. Defamation committed using those same means against a group of people, not designated by article 31 of the present law, but because of their origin or because they belong to a determined race or religion, shall be punished by one month to one year of imprisonment and a fine of RD\$ 25.00 to RD\$ 200.00, when its aim is to provoke feelings of hatred among the population.”

<sup>1461</sup> División de Comunicaciones del Poder Judicial. April 17, 2013. [Presidente de la Suprema Corte de Justicia declara inconstitucional el artículo 46 de la ley no. 6132, sobre Expresión y Difusión del Pensamiento, al emitir el fallo con relación a la acusación contra el director del periódico El Caribe y el Senador Wilton Guerrero Dumé](#); Suprema Corte de Justicia. April 17, 2013. Decisión Judicial sobre Excepciones e Incidentes No. 18-2013. Exp. No.: 2010-3051. Available for consultation at: <http://www.yumpu.com/es/document/view/12872337/datos-adjuntos-sentencia-2010-3051>. See also, *El Día*. April 17, 2013. [SCJ declara inconstitucional artículo ley penaliza a directores de medios](#); *Diario Libre*. April 17, 2013. [Declaran nula la demanda de Hipólito Mejía contra Wilton Guerrero](#); *Diario Horizonte*. April 17, 2013. [Declaran nula demanda ex presidente Mejía contra senador Guerrero y Osvaldo Santana; gana la libertad de expresión](#); *Mundo Visión*. April 30, 2013. [Hipólito presenta casación contra sentencia que exculpa a Wilton Guerrero](#).

<sup>1462</sup> [Ley No. 6132, de Expresión y Difusión del Pensamiento](#). “Article 46. The persons indicated in the following order shall be considered, as the main perpetrators, to be subject to the penalties that constitute repression of crimes committed through the press: 1.- The directors or editors of publications, whatever their professions or denominations, and in the cases provided for in the second paragraph of article 4, the substitutes for the directors. 2.- if directors, substitutes or editors are lacking, the authors; 3.- if the authors are lacking, then the printers; 4.- if the printers are lacking, then the salespersons, distributors, motion picture exhibitors, narrators and those who put up posters. [...]”

<sup>1463</sup> [Constitución de la República Dominicana](#). “Article 6.- Supremacy of the Constitution. All persons and entities that exercise public authority are subject to the Constitution, the supreme and fundamental norm of the legal organization of the State. All laws, decrees, resolutions, regulations or acts contrary to this Constitution are null and void.” “Article 40.- Right to personal liberty and security. Everyone has the right to personal liberty and security. Therefore: [...] 14) No one is criminally responsible for the acts of another [...]”. “Article 49.- Freedom of expression and information. Everyone has the right to freely

inadmissible.”<sup>1464</sup> After the ruling, the former president filed an appeal for cassation against the ruling.<sup>1465</sup>

773. Similarly, February 25, the directors of three printed media -Rafael Molina Morillo, director of *El Día*, Miguel Franjul, director of *Listín Diario*, and Osvaldo Santana, director of *El Caribe*- and the Press and Law Foundation [*Fundación Prensa y Derecho*], filed a motion of unconstitutionality with the Constitutional Court with regard to various articles of Law 6132 on Expression and Dissemination of Thought<sup>1466</sup> and the Penal Code,<sup>1467</sup> which provide for prison terms for the crimes of defamation [*difamación e injuria*], along with the system of special liability for crimes of defamation [*difamación e injuria*], known as “cascading liability,” which make it possible to criminally punish these crimes, even when they are committed by third parties.<sup>1468</sup> At the time of this report, the Constitutional Court had not issued a ruling on this appeal.<sup>1469</sup>

774. The Dominican State forwarded information to the Office of the Special Rapporteur on investigations by the national authorities into the murder of journalist José Agustín Silvestre de los Santos, which took place on August 2, 2011<sup>1470</sup>. Journalist Silvestre de los Santos had been forced into a vehicle by various individuals in La Romana and hours later his body was found with various gunshot wounds on a nearby road. Silvestre directed the magazine *La Voz de la Verdad* and was the host of a program of the same name at the television station *Caña TV*<sup>1471</sup>. In its letter, the State indicated that it had identified the possible mastermind of the crime, as well as the alleged perpetrators who were subjected to coercive measures and would be brought to trial.<sup>1472</sup> However, the alleged mastermind is a

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express their thoughts, ideas and opinions, using any medium, without the possibility of prior censorship being established [...]”.

<sup>1464</sup> Suprema Corte de Justicia. Decisión Judicial sobre Excepciones e Incidentes No. 18-2013. April 17, 2013. Exp. No.: 2010-3051. Available for consultation at: <http://www.yumpu.com/es/document/view/12872337/datos-adjuntos-sentencia-2010-3051>

<sup>1465</sup> Diario Libre. 30 de abril de 2013. [Hipólito Mejía eleva recurso de casación sobre demanda por difamación](#); Acento. 24 de julio de 2013. [Suprema admite recurso de Hipólito sobre sentencia favoreció a Wilton Guerrero](#).

<sup>1466</sup> [Ley No. 6132, de Expresión y Difusión del Pensamiento](#). Ver, *inter alia*, artículos 46 a 48.

<sup>1467</sup> [Código Penal de la República Dominicana](#). Ver, *inter alia*, artículos 367 a 372.

<sup>1468</sup> Cerigua. February 26, 2013. [Directores de medios presentan recurso de inconstitucionalidad contra delitos de infamia y calumnia](#); Knight Center for Journalism in the Americas. February 26, 2013. [Dominican newspapers say defamation law is unconstitutional](#); El Día. February 25, 2013. [Directores de medios presentan recurso de inconstitucionalidad](#).

<sup>1469</sup> Diario Libre. October 21, 2013. [Informan a la Sociedad Interamericana de Prensa sobre el recurso contra la Ley 6132](#); Listín Diario. October 21, 2013. [La SIP espera fallo del TC sobre recurso de inconstitucionalidad](#).

<sup>1470</sup> The Permanent Mission of the Dominican Republic to the Organization of American States. Letter to the Executive Secretary of the Inter-American Commission on Human Rights (IACHR). MP-RD-OEA 0288-12. March 6, 2012. Available for consultation at: Archives of the Special Rapporteur for Freedom of Expression.

<sup>1471</sup> IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Párr. 486.

<sup>1472</sup> The Permanent Mission of the Dominican Republic to the Organization of American States. Letter to the Executive Secretary of the Inter-American Commission on Human Rights (IACHR). MP-RD-OEA 0288-12. March 6, 2012. Available for consultation at: Archives of the Special Rapporteur for Freedom of Expression.

fugitive from justice. Available information indicates that in February of 2013, Interpol detained the alleged accused in Spain and that he could be subjected to an extradition process.<sup>1473</sup>

775. The Office of the Special Rapporteur particularly expresses its gratitude for the information provided by the State and stresses the importance of investigating acts of violence against journalists stemming from the exercise of their profession.

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

776. On January 9, unknown individuals fired shots at the home of journalist Justo María Cruz, producer of the news program 'Teve-Notas' on *Telever-Canal 12*, in the municipality of Jarabacoa, La Vega province. The attack did not cause injuries, although various shots impacted the vehicle and the walls of the house. According to information received, the journalist tends to report on alleged cases of corruption, which could be related to the attack.<sup>1474</sup>

777. On April 11, cameraman Marcelo Contreras, in the province of María Trinidad Sánchez, was assaulted, threatened and detained for several hours by an individual alleged to be a police officer, while covering an eviction in a community. The reporter had his camera taken away and was handcuffed and threatened with a firearm by a supposed police colonel.<sup>1475</sup>

778. On May 7, photojournalists Estherlin García and José Grullón were assaulted and threatened with firearms by supposed members of security forces while covering an eviction in the area around the Bragaña García Stadium, in the city of Moca, in the province of Espaillat.<sup>1476</sup>

779. On May 8, journalist Rafael Lara, a correspondent for *Noticias SIN* in the province of San Cristóbal, was beaten and had his camera taken away by supposed members of security forces, while covering an eviction of families in the community of Monte Adentro, in the municipality of Haina, in the province of San Cristóbal. Also, they had erased the images recorded on his camera.<sup>1477</sup>

780. On May 15, photojournalist Cándido Peralta of *Mao Cable Visión, Canal 12*, was threatened and detained for several hours by security personnel from a banana company, while

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<sup>1473</sup> Diario Libre. February 21, 2013. [Interpol apresa en España acusado de muerte periodista José Silvestre](#); El Viajero Digital. February 20, 2013. [Interpol apresa en España autor intelectual asesinato periodista Silvestre](#).

<sup>1474</sup> Hoy. January 11, 2013. [Desconocidos tirotearon vivienda periodista de Jarabacoa](#); El Nuevo Diario. January 11, 2013. [Desconocidos tirotean vivienda de periodista en Jarabacoa](#); Knight Center for Journalism in the Americas. January 11, 2013. [Disparan contra casa de periodista de televisión en República Dominicana conocido por denunciar actos de corrupción](#).

<sup>1475</sup> Inter-American Press Association (IAPA). General Assembly - Denver, United States. 2013. [Dominican Republic](#); El Caribe. September 13, 2013. [Demandan autoridades "detener" violencia de militares y policías contra periodistas](#).

<sup>1476</sup> La información. May 8, 2013. [SNTP condena agresión física a miembros](#); Con Certeza. May 7, 2013. [VIDEO: Guardias del Ministerio de Deportes secuestran camarógrafos en Moca](#); El Caribe. September, 13 2013. [Demandan autoridades "detener" violencia de militares y policías contra periodistas](#)

<sup>1477</sup> RNN. May 17, 2013. [Justicia requiere a oficial que agredió a periodista de SC](#); Inter-American Press Association (IAPA). General Assembly - Denver, United States. 2013. [Dominican Republic](#); El Caribe. September 13, 2013. [Demandan autoridades "detener" violencia de militares y policías contra periodistas](#).

covering a protest by company employees, in the community of Hato Nuevo, municipal district of Amina, in the province of Valverde<sup>1478</sup>.

781. In June Journalist Salvador Holguín had announced on his program ‘Hilando Fino’, which is broadcast by *Supercanal*, that he had information on meetings held with the purpose of creating a plan to murder journalist Fausto Rosario Adames, director of the digital newspaper *Acento*<sup>1479</sup>. The spokesperson for the national police reported the creation of a commission to investigate the alleged plan to murder the journalist.<sup>1480</sup> At a press conference, various journalists and communicators denounced the situation and called on the president and competent authorities to allocate all necessary resources to protect Rosario<sup>1481</sup>. Rosario had already been the victim of threats against his life in the past. In 2010, the Office of the Special Rapporteur expressed concern over threats received by the journalist, as well as the closure of the weekly *Clave*, of which he was the director, after having published articles about drug trafficking activities in that country. The president of the republic ordered that protective measures be taken immediately on behalf of the journalist.<sup>1482</sup>

782. On August 5, an agent of Prison Oversight and Treatment [*Vigilancia y Tratamiento Penitenciario*] (VTP) struck *Noticias SIN* cameraman, Rafael Silverio, while he covered a trial at a courthouse in Santo Domingo.<sup>1483</sup> Subsequently, the Office of the Public Prosecutor of the Republic apologized to the cameraman and suspended the agent while the corresponding investigations are carried out.<sup>1484</sup>

783. On September 6, reporter Julio Benzant, from the portal *Ciudadoriental.org*, was threatened with death and had his camera taken away by two supposed members of the Armed Forces, while photographing how they were assaulting an individual on a public thoroughfare.<sup>1485</sup>

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<sup>1478</sup> Caribbean Digital. [Seguridad de la empresa bananera GUIDOM secuestra camarógrafo en Mao](#); Noticias del Noroeste. April 16, 2013. [Medios de comunicación de Mao condenan secuestro de GUIDOM a camarógrafo](#); Vigilante Informativo. April 21, 2013. [Empresa bananera secuestra reportero gráfico en Mao](#).

<sup>1479</sup> Acento/EFE. June 19, 2013. [Denuncian presunta trama para matar a Fausto Rosario Adames, director de Acento](#); Listín Diario. June 28, 2013. [Un grupo de periodistas denuncia trama contra el comunicador Fausto Rosario](#); Hoy. June 25, 2013. [Rosario afirma es real trama; confía en que se investigue](#).

<sup>1480</sup> El Caribe. June 23, 2013. [Comisión de la PN investigarán supuesta trama para matar al periodista Fausto Rosario](#); Hoy. June 23, 2013. [PN investiga supuesta trama matar periodista](#); Apunte. June 23, 2013. [Comisión PN investigarán supuesta trama para matar al periodista Fausto Rosario](#).

<sup>1481</sup> Hoy. June 27, 2013. [Periodistas en alerta por amenaza a Fausto Rosario](#); Listín Diario. June 28, 2013. [Un grupo de periodistas denuncia trama contra el comunicador Fausto Rosario](#).

<sup>1482</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. August 10, 2010. [Press release. R80/10. Office of the Special Rapporteur for Freedom of Expression Concerned about Threats against Dominican Journalist](#); El Faro. August, 2010. [Presidente dispone protección periodista Fausto Rosario director periódico Clave](#).

<sup>1483</sup> El Caribe. August 5, 2013. [Policía le da trompada a camarógrafo cubría audiencia caso Moncada](#); Listín Diario. August 7, 2013. [Piden a Procurador cancelar agente penitenciario agredió camarógrafo de SIN](#).

<sup>1484</sup> Diario Libre. August 7, 2013. [Suspenden agente penitenciario acusado de agredir camarógrafo](#); Listín Diario. August 8, 2013. [Suspenden agente penitenciario que agredió camarógrafo durante juicio](#).

<sup>1485</sup> El Caribe. September 13, 2013. [Demandan autoridades “detener” violencia de militares y policías contra periodistas](#); Vida Dominicana/Ciudad Oriental. September 10, 2013. [CDP reclama sanción a militares atacaron periodista de Ciudad Oriental](#).

784. 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

785. The Office of the Special Rapporteur received information about the filing of a criminal complaint for defamation and a liability lawsuit by Senator Félix Bautista against journalist Juan Taveras Hernández of radio station Z101, as well as against the general director of the station, Willy Rodríguez, and its owner, Bienvenido Rodríguez. The complaint was founded in several remarks made by the journalist in one of the station's programs, in which the journalist linked the Senator with alleged misuse of public funds<sup>1486</sup>.

786. Additionally, the Office of the Special Rapporteur was informed that the leaders of the National Network for Sovereignty Defense had reportedly filed their own complaint with the Public Prosecutor of the National District requesting the investigation of journalists Luis Eduardo (Huchi) Lora and Juan Bolívar Díaz, as well as the representatives of the organization Citizen Participation, Roberto Álvarez and Rosalía Sosa, for "treason against the Homeland" and inciting contempt for Judgment 168/13 of the Constitutional Court. The organization reportedly stated that it was requesting the investigation of the journalists "for their dishonest and indecorous actions against the Homeland," and that "they are the first ones to be denounced, but there will be others."<sup>1487</sup>

787. The first week of December the Inter-American Commission on Human Rights made an *in loco* visit to the Dominican Republic. During the visit, the Inter-American Commission received troubling information concerning statements made against journalists, intellectuals, lawyers, politicians, legislators, human rights defenders, public figures, and even high-level public servants who have criticized ruling 168/13 of the Constitutional Court of September 23, 2013. These individuals have been characterized as "traitors to the homeland" and have been targets of threats. In addition, calls of "death to the traitors" have been made publicly. The Commission also expressed its concern that the intolerance and racist discourse creates an environment that could increase vulnerability to violence for persons of Haitian descent. At the end of the visit, the Commission called on the authorities to act

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<sup>1486</sup> Acento. October 27, 2013. [Félix Bautista demanda por supuesta difamación al periodista Juan TH](#); Hoy. October 27, 2013. [Félix Bautista demanda a Juan T.H. por difamación](#); Diario Libre. October 30, 2013. [Félix Bautista somete al director y propietario de la Z-101 por difamación](#). As of the closing of this report, the Office received information regarding a suit for ten million pesos filed by congressman Alfredo Martínez against Robert Vargas and Julio Benzant, editor and journalist from Ciudadoriental.org, respectively. Ciudad Oriental.org. November 18, 2013. [CDP califica atentado a libertad de prensa, demanda contra periodistas de Ciudadoriental.org](#).

<sup>1487</sup> 7 Días. November 20, 2013. [Neonacionalistas denuncian ante Fiscalía a Díaz y Lora, anuncian que vendrán más](#); Acento. November 19, 2013. [Nacionalistas se querellarán contra Huchi y Juan Bolívar porque no apoyan la TC 168](#); El Nuevo Diario. November 20, 2013. [Defensores de sentencia TC denuncian ante Fiscalía a Huchi, Juan Bolívar y a Álvarez de PC](#); Diario Digital RD. November 20, 2013. [Red pide fiscalía prohíba a Huchi y Juan Bolívar disentir de sentencia 168-13](#); Listín Diario. November 20, 2013. [Denuncian ante Fiscalía a Huchi, Juan Bolívar y PC por supuesta campaña contra sentencia TC](#).

resolutely to help build a climate of tolerance and respect in which everyone can express his or her thoughts and opinions without fear of being attacked, punished, or stigmatized for doing so<sup>1488</sup>.

## 25. Suriname

788. The Office of the Special Rapporteur received information indicating that during a mission conducted by the International Press Institute (IPI) from April 21-23, 2013, Surinamese government officials reportedly expressed their support for the revision of the country's existing defamation laws. They further indicated that this revision should include proper training for journalists and the establishment of appropriate mechanisms for citizens to channel discrepancies with the press. In this respect, National Assembly spokeswoman Dr. Jennifer Simons, a member of the party in government, reportedly stated that "journalists should not be jailed just for writing something that someone else doesn't like."<sup>1489</sup>

789. The Office of the Special Rapporteur received information about the lawsuit filed by former Government Minister Ramon Abrahams against the monthly investigative magazine *Parbode*, headed by publisher Jaap Hoogendam, for the publication of an article on alleged acts of corruption by the former minister prior to his removal from office. According to reports, the former minister requested the publication of a correction of the report, and 1 million Surinamese dollars (some US\$ 300,000) in compensation.<sup>1490</sup>

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

## 26. Trinidad and Tobago

791. During a press conference held on May 1, the Prime Minister of Trinidad and Tobago, Kamla Persad-Bissessar, announced his administration's intent to amend the Libel and Defamation

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<sup>1488</sup> IACHR. December 6, 2013. [Press Release 97/13 IACHR Wraps Up Visit to the Dominican Republic](#). See also, Tribunal Constitucional de la República Dominicana. [Sentencia TC/0168/13](#). 23 de septiembre de 2013.

<sup>1489</sup> International Press Institute (IPI). April 21-23, 2013. [Final Report on the 2013 IPI Mission to Suriname: Focus on Criminal Defamation](#); IFEX/International Press Institute (IPI). May 6, 2013. [Suriname to work on repealing criminal libel and insult laws](#); DevSur. July 30, 2013. [IPI "impressed" Suriname willing to revise defamation laws](#).

<sup>1490</sup> Reporters Without Borders. October 3, 2013. [Former minister seeks €230,000 in damages from magazine](#); International Press Institute (IPI). October 3, 2013. [Proceedings begin against Suriname magazine sued by former government minister](#); Devesur. September 6, 2013. [Ex-Minister Abrahams to court over Parbode feature](#).

Act<sup>1491</sup> to add a new clause that “would ensure that no journalist can be criminally charged and prosecuted under section 9 of the Libel and Defamation Act”<sup>1492</sup> for the publication of defamatory libel. The prime minister underscored the value and importance of freedom of the press, and the duty of democratic governments to respect and defend the right to freedom of expression.<sup>1493</sup>

## 27. Uruguay

### A. Progress

792. In February, the Uruguayan Government, by means of a public call, assigned six community radio frequencies in applying law 18,232<sup>1494</sup>, approved in 2007. The frequencies were assigned in the departments of Cerro Largo, Treinta y Tres and Lavalleja. Frequency assignments for community radio broadcasting services are made for a period of ten years, which can then be renewed for five year periods.<sup>1495</sup>

793. On May 9, the Uruguayan Government renewed its “call on those interested in obtaining authorization to provide open digital commercial television service” in the department of Montevideo, which had been temporarily suspended by decree 028 of January 23, 2013. Decree Nº 144/013 launched the call for assignment of as many as five commercial channels, with a time limit of 45 working days to submit proposals for exclusive or shared management of the channels.<sup>1496</sup> On August 8, the government published proposals that had been submitted for digital television.<sup>1497</sup> On October 23, the Minister of Industry announced the awarding of two private open digital television channels to a corporation that operates the VTV cable TV channel and another to the Consorcio Giro. A community channel was also awarded to the PIT-CNT trade union confederation, a public channel to *Televisión Nacional del Uruguay*, another to the Municipal Government of Montevideo *TV Ciudad*, and four regional channels to municipal governments in the interior of the country.<sup>1498</sup>

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<sup>1491</sup>Ministry of Legal Affairs. [Libel and Defamation Act, Chapter 11:16](#). Section 9. “If any person maliciously publishes any defamatory libel, upon conviction thereof he is liable to pay a fine and to imprisonment for one year.”

<sup>1492</sup>Government of the Republic of Trinidad and Tobago. May 1, 2013. [PM makes a statement on the Libel Defamation Act](#).

<sup>1493</sup>Government of the Republic of Trinidad and Tobago. May 1, 2013. [PM makes a statement on the Libel Defamation Act](#); Official Facebook Account of Prime Minister Kamla Persad Bissessar. May 3, 2013. [Prime Minister Kamla Persad Bissessar's Statement on World Press Freedom Day 2013: Proposed Amendment to Criminal Libel Laws Hailed As... "A Big Step for Trinidad and Tobago"](#); CNC 3. May 1, 2013. [PM's announcement for International Press Freedom day](#); The Gleaner. May 2, 2013. [Trinidad And Tobago Moves To Repeal Criminal Libel Legislation](#).

<sup>1494</sup>República Oriental del Uruguay. [Ley Nº 18.232. Servicio Radiodifusión Comunitaria](#). December 22, 2007.

<sup>1495</sup>Voces. February 26, 2013. [Gobierno asigna frecuencias a radios comunitarias](#); 180. February 25, 2013. [Gobierno asignó seis frecuencias de radio comunitaria](#); Knight Center for Journalism in the Americas. March 4, 2013. [Uruguayan government to offer six frequencies to community radio stations](#).

<sup>1496</sup>Presidencia de la República Oriental del Uruguay. May 9, 2013. [Ejecutivo reanudó llamado a interesados en prestar servicios de TV digital en Montevideo](#); Ministerio de Industria, Energía y Minería/Presidencia de la República Oriental del Uruguay. [Decreto Nº 144/013](#). May 9, 2013. *See also*, Ministerio de Industria, Energía y Minería/Presidencia de la República Oriental del Uruguay. [Decreto Nº 153/012](#). May 11, 2012.

<sup>1497</sup>Presidencia de la República Oriental del Uruguay. August 8, 2013. [Llamados públicos de URSEC para televisión digital y radiodifusión](#).

<sup>1498</sup>Semanario Búsqueda. October 24 to 30, 2013. No. 1736. [Vázquez y Xavier avalaron la decisión de otorgar canales a VTV y el Consorcio Giro](#). Available for consultation at: Archives of the Office of Special Rapporteur for Freedom of Expression;

## B. Act on Audiovisual Communication Services

794. On May 21, the Executive Branch sent a Draft Bill on Audiovisual Communication Services to the Parliament with the aim of “establishing basic regulation in the provision of services of Radio, Television and other Audiovisual Communication Services”.<sup>1499</sup> The original bill proposed the creation of an Audiovisual Communications Council as a decentralized body of the Executive Branch, to monitor and supervise the enforcement of the law. It also establishes, *inter alia*, the right of freedom of expression and information, the prohibition of prior censorship, the independence of the media and editorial freedom for providers of audiovisual communications services, while promoting the “ethical self-regulation” of the media. The bill sets limits to the ownership of audiovisual communication services and establishes a system of concessions with pre-determined duration (10 years for radio broadcasting and 15 years for television, with a possible renewal for 10 years) for the use of the radio spectrum. It extends the child-protection hours to the period between 6 am and 10 pm, prohibiting during these hours the transmission of “excessive violence”, “truculence”, “advocacy” [*apología*] of violence, “pornography”, “explicit and abusive drug consumption”, and contents that exalt or incite discrimination, among others. The bill also proposes the creation of a Register of Audiovisual Communication Services with the purpose of “securing transparency in the ownership of the audiovisual communication services,” which will be public and will “include information on the holders of authorizations, licenses or registers for providing these services.”<sup>1500</sup>

795. After the bill was presented, and in the wake of several recommendations by different civil society actors, the Executive Branch proposed to Parliament a number of modifications in the bill, to integrate of the criticism by civil society to the original proposal. The changes would grant additional autonomy to the Audiovisual Communications Council, by establishing that the President of the Council will be appointed by the President of the Republic, in agreement with the Council of Ministers, and that the other four members will be elected by the General Assembly, by a number of votes equivalent to two thirds of its members. Another clause was incorporated establishing incompatibilities with becoming a member of the Council, such as “political activity in a party, guild or union.” Several limitations previously imposed on advertising for children were eliminated, and the possibility that informative programs may broadcast images of excessive violence during the child-protection hours was included “when presenting situations with a notorious public interest in live broadcasts.”<sup>1501</sup>

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El Observador. October 23, 2013. [Gobierno concedió canales a VTV y Giro](#); Teledoce. October 23, 2013. [Gobierno otorgó canales a VTV y Giro \(La Diaria\)](#).

<sup>1499</sup> Ministerio de Industria, Energía y Minería/Presidencia de la República Oriental del Uruguay. [Proyecto de Ley de Servicios de Comunicación Audiovisual](#). May 20, 2013. Art. 1.

<sup>1500</sup> Ministerio de Industria, Energía y Minería/Presidencia de la República Oriental del Uruguay. [Proyecto de Ley de Servicios de Comunicación Audiovisual](#). May 20, 2013. Arts. 58, 13 *et seq*, 138 *et seq*, 44, 45, 117, 31 and 43; Presidencia de la República Oriental del Uruguay. May 21, 2013. [Ejecutivo remitió proyecto de ley sobre servicios de comunicación audiovisual](#); El País. May 21, 2013. [Ejecutivo remitió al Parlamento el proyecto de ley de medios](#); El Observador. May 21, 2013. [Claves para entender la ley de medios audiovisuales](#).

<sup>1501</sup> Info y Com/Búsqueda. October 3, 2013. [El gobierno propone cambios al proyecto de ley de servicios de comunicación audiovisual, intentando eliminar artículos “imprecisos” o “inconstitucionales”](#); Portal del Sur. September 12, 2013. [Evalúan cambios al proyecto de ley de Servicios Audiovisuales](#); Poder Legislativo – Cámara de Representantes. Comisión de Industria, Energía y Minería. Carpeta N° 2342 of 2013. Servicios de Comunicación Audiovisual. [Versión Taquigráfica N° 1840 de 2013](#). October 1, 2013. *See also*, Parlamento del Uruguay. [Ficha Proyecto de Ley Servicios de Comunicación Audiovisual](#). Asunto: 116989.



796. At the invitation of the Government of Uruguay, the Office of the Special Rapporteur issued a technical opinion on the bill in the light of international standards.<sup>1502</sup> In this opportunity, the Office of the Special Rapporteur highlighted the openness of the government to the debate and the search for achieving a bill that adjusts to the international standards in the issue of freedom of expression.<sup>1503</sup> It stressed the important guarantees contained in the draft bill, such as the prohibition of prior censorship or of interference, or direct or indirect pressure on any expression, opinion or information disseminated through the media, and the recognition that the media has the right to work in an independent way, while expressly prohibiting pressures or the use of State resources either to award or punish media outlets because of their editorial line. It also highlighted the measures adopted to prevent or limit the existence or emergence of monopolies and oligopolies in the audiovisual communication services, and the establishment of transparent and public procedures in the allocation of frequencies.

797. On the other hand, the Office of the Special Rapporteur made a remark on the importance of reviewing some norms in the light of the international standards for freedom of expression. It recalled that the Commission and the Inter-American Court have remarked that any restriction to freedom of expression must be defined in a formal and material law, and must be written in the clearest and most precise possible terms. In this sense, the language of the law must clearly establish the causal links of subsequent liability to which the exercise of freedom of expression must be subjected. As Inter-American Doctrine has indicated, “[v]ague, ambiguous, broad or open-ended laws, by their mere existence, discourage the dissemination of information and opinions out of fear of punishment, and can lead to broad judicial interpretations that unduly restrict freedom of expression.”<sup>1504</sup>

798. In face of the norms that seek to set limits to discriminatory expressions, the Office of the Special Rapporteur recalled that article 13.5 of the American Convention sets limits for prohibiting racist and discriminatory discourses. To avoid the use of the punitive law with the objective of silencing uncomfortable or simply offensive ideas, it added that it is necessary to characterize an “advocacy of hatred” aimed not only at manifesting an idea, but at inciting violence. As the Office of the Special Rapporteur has expressed, the offensive nature of a discourse is not, by itself, a sufficient reason to restrict it. A discourse that offends on account of the intrinsic falsehood of racist or discriminatory content, instead of silenced, must be refuted; those who promote such views need to be persuaded of their error in the public debate. In face of the inequity of the opinions, there is no better reply than the justice of reason, and this requires not less, but greater and better discourse. This is the logic of the American Convention, expressed by the Inter-American Court in the case of *The Last Temptation of Christ*, in which it established that freedom of expression protects not only the expressions “the information or ideas that are favorably received or considered inoffensive or indifferent, but also for those that shock, concern or offend the State or any sector of the population. Such are the requirements of pluralism, tolerance and the spirit of openness, without which no ‘democratic society’ can exist.” In all

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<sup>1502</sup> Presidencia de la República Oriental del Uruguay. October 2, 2013. [Gobierno convoca a opinión de expertos internacionales sobre proyecto de Ley de audiovisuales](#); Presidencia de la República Oriental del Uruguay. October 3, 2013. [Intensa agenda de expertos invitados por Gobierno a debatir sobre proyecto audiovisual](#).

<sup>1503</sup> Presidencia de la República Oriental del Uruguay. October 4, 2013. [Conferencia con expertos - Ley Audiovisual](#).

<sup>1504</sup> IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American legal framework of the right to freedom of expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 72.

cases, in order to enable a vigorous debate it is necessary to guarantee greater diversity and pluralism in access to the media.<sup>1505</sup>

799. On the other hand, the Office of the Rapporteur highlighted the bill's progress regarding the shape and the independence of the Audiovisual Communications Council. The Office of the Rapporteur recognized to the State the included changes, which seek to grant more autonomy to that body. The Office of the Special Rapporteur highlighted that after approving the creation of said body as proposed in the bill, it would be necessary to review the rest of the norms, so that its powers correspond to that of the main body of application of the law. The Office of the Rapporteur insisted in the importance of the fact that for a body to be autonomous in relation to the political and economic power, it must count with guarantees for independent operations, such as budgetary independence and stability in the work positions of its members.

800. On October 29, the Executive Branch sent a new draft bill to Parliament, incorporating some of the recommendations of the international experts. For instance, there was a change in the article on the right to non-discrimination. The new wording of the norm establishes that communication services cannot disseminate contents "that incite or advocate discrimination and national, racial or religious hate, which are incitements to violence, or any other similar illegal action against any person or group of persons, for reasons of race, ethnicity, sex, gender, sexual orientation, gender identity, age, disability, cultural identity, place of birth, creed or socio-economic condition." Article 28 clarifies that "in no case, these provisions can be interpreted as an impossibility of informing on the facts, or of analyzing and holding discussions on these issues, particularly during educational, informative and journalistic programs".<sup>1506</sup> As of the writing of this report, the Draft Bill was under discussion at the Parliament.

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

801. On February 21, photographer Francisco Flores and driver Julio Secondo, of the daily newspaper *El País*, were detained by supposed police officers guarding a judicial installation, when they took photos in front of the building. They were detained for about one hour without being informed of the reason for their detention, and were not permitted to use their cellular phones. Subsequently, they were informed that the detention had been ordered by the judge of the judicial seat.<sup>1507</sup>

802. On May 9, journalist Gabriela Ibarra and cameraman Martín Pérez of the *CV 10*, television channel in the city of Mercedes, department of Soriano, and photographer Carlos Techera, of the daily newspaper *Crónicas*, were attacked by individuals who hindered their journalistic work when covering a police procedure.<sup>1508</sup>

<sup>1505</sup> IACHR. [Annual Report 2010. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 49 and 50.

<sup>1506</sup> República Oriental del Uruguay Cámara de Representantes. [Proyecto de Ley de Servicios de Comunicación Audiovisual](#). October 29, 2013. Art. 28. *See also*, Ministerio de Industria, Energía y Minería/Presidencia de la República Oriental del Uruguay. [Proyecto de Ley de Servicios de Comunicación Audiovisual](#). May 20, 2013. Art. 27.

<sup>1507</sup> El País. February 22, 2013. [Periodistas detenidos durante una hora](#); Inter American Press Association (IAPA). [Assembly: 2013 – Midyear Meeting – Puebla, México, Reports. Country Report: Uruguay](#).

<sup>1508</sup> CV 10. May 11, 2013. [Agreden a móvil de CV 10 Noticias](#) (VIDEO); Asociación de la Prensa Uruguaya (APU). May 10, 2013. [Denuncia de APU Soriano por violencia contra trabajadores de medios](#); Asociación de la Prensa Uruguaya (APU). May 10, 2013. [Dirigentes de APU Filial Soriano concretaron denuncia judicial](#); Asociación de la Prensa Uruguaya (APU). [Denuncia ante el Juez Letrado de Primera Instancia de Primer Turno de Mercedes](#). May 10, 2013.

803. In May, the *Radio Agraciada* radio station in Mercedes, department of Soriano, was the target of an attack that took it off the air. Its owner, Néstor Graña, reported that unknown persons damaged the broadcasting equipment. He also said that the radio station had previously received threats.<sup>1509</sup>

804. Journalist Washington Fernández, of the weekly *EL ECO* in Colonia, was attacked physically and verbally by workers from a construction company, when he attempted to take photos of the work being carried out by the company in the city of Nueva Palmira.<sup>1510</sup>

805. On July 17, journalist Gustavo Guisulfo was assaulted by supposed police officers. The reporter had filmed the detention of a person in the Plaza de la Independencia. Despite having identified himself as a member of the press, he was handcuffed and taken to a police station, where he was temporarily held. Also, the recording of the events had been erased.<sup>1511</sup>

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

#### D. Subsequent liabilities

807. The co director of the weekly periodical *EL ECO*, in the department of Colonia, Daniel Roselli, was sued for defamation [*difamación* and *injurias*] following the publication on October 5, 2013, of an article on supposed irregularities in the transit fines archive of the Municipal Government of Colonia. According to the information received, the head of the Municipal Government Inspectors, Daniel Sánchez Torterolo, stated that the information reported was false and that its dissemination had been damaging to him, and so he had filed a lawsuit for defamation [*difamación* and *injurias*], which was being considered by the Lower Court of Carmelo [*Juzgado Letrado de Carmelo*].<sup>1512</sup>

808. The Office of the Special Rapporteur recalls that Principle 11 of the IACHR's Declaration of Principles on Freedom of Expression establishes that, "[p]ublic officials are subject to greater scrutiny

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<sup>1509</sup> Asociación de la Prensa Uruguaya (APU). May 28, 2013. [APU Soriano denuncia ataque contra radio Agraciada](#); Montevideo COMM. May 28, 2013. [Las invasiones bárbaras](#); @gresor. May 27, 2013. ["Acto de sabotaje o terrorismo"](#).

<sup>1510</sup> Asociación de la Prensa Uruguaya (APU). July 31, 2013. [APU denuncia nueva agresión contra colega en el interior del país. Comunicado a la opinión pública](#); El Eco digital. July 30, 2013. [Agresión al personal de El ECO por personal de Santa María](#).

<sup>1511</sup> Asociación de la Prensa del Uruguay (APU). July 18, 2013. [La APU denuncia abuso policial contra periodista de Radio Uruguay y pide reunión urgente con el ministro del Interior](#); U Noticias. July 18, 2013. [Periodista denuncia agresión de policías](#); Inter American Press Association (IAPA). October 18-22, 2013. [Assembly: 2013 – Midyear Meeting – Puebla, México, Reports. Country Report: Uruguay](#).

<sup>1512</sup> El Eco digital. October 22, 2013. [Primera audiencia en el Juzgado por irregularidades en la Dirección de Tránsito](#); El Telégrafo. November 1, 2013. [Denunciaron a periodista de El Eco de Colonia por informar irregularidades en la Intendencia](#); Sociedad Uruguaya. October 29, 2013. [Alerta GMS: Justicia de Colonia da trámite a juicio de difamación contra periodista de El ECO](#); 180. October 30, 2013. [Colonia: juicio por difamación contra periodistas](#).

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

#### **E. Other relevant situations**

809. On October 29, a journalist from a local radio station in the department of Durazno, Estela Apollonio, received a notification from the Durazno Police Station informing her that, by order of the Justice of the Peace of the 4<sup>th</sup> Section of Durazno, she should not “receive public complaints against the Local Polyclinic, and the Local Court and Police, under penalty of committing the crime of defamation [*difamación* and *injuria*] as a co-perpetrator.” The journalist had to go to police headquarters to sign the notification. As reported, the journalist received several complaints on her radio show regarding alleged shortcomings in the services at the local Polyclinic.<sup>1513</sup> On Wednesday, October 30, the justices of the Supreme Court of Justice (SCJ) requested a report of the events from the Justice of the Peace within 72 hours.<sup>1514</sup>

### **28. Venezuela<sup>1515</sup>**

#### **A. Detentions and destruction of material**

810. On February 20, photojournalist Jaime Manrique, with newspaper *La Voz*, was attacked and detained in a military vehicle while covering a demonstration of individuals protesting a lack of housing. Individuals presumed to be soldiers took his camera and broke the memory card.<sup>1516</sup>

811. On February 21, individuals presumed to be members of the National Bolivarian Militia detained and interrogated photographer Cristian Hernández and journalist Eliscartt Ramos, with local newspaper *2001*, and erased the photos they had in their possession while the reporters were investigating a supposed food shortage.<sup>1517</sup>

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<sup>1513</sup> “Local Justice of the Peace sent notification to journalist forbidding her from receiving complaints against inst.” Twitter Account Alternativa Durazno @alternativadura. [October 29, 2013 - 21:21](#); Subrayado. October 30, 2013. [Denuncian censura a periodista ante Instituto de Derechos Humanos](#); Asociación de la Prensa Uruguaya (APU). October 30, 2013. [APU condena pronunciamiento judicial que implica censura previa](#); Terra/Associated Press. October 30, 2013. [Uruguay: rechazan advertencia de juez a periodista](#); El País. October 30, 2013. [SCJ pide informes a juez por censura previa a periodista](#).

<sup>1514</sup> After the closing of this report, on October 31, 2013, the Office of the Rapporteur was informed that the Supreme Court of Justice decided to start an investigation of the judge on November 13. Búsqueda. November 14 to 20, 2013. [Inician sumario a un juez](#). Año 2013 N° 1739. Available for consultation at: Archives of the Office of Special Rapporteur for Freedom of Expression; Búsqueda. October 31 to November 6, 2013. [La SCJ pide informes a un juez de Durazno que prohibió a periodista recibir denuncias](#). Año 2013 N° 1737. Available for consultation at: Archives of the Office of Special Rapporteur for Freedom of Expression.

<sup>1515</sup> This section corresponds to the section on freedom of expression in Venezuela in Chapter IV, Volume I, of the IACHR 2013 Annual Report. This section was assigned to the Office of the Special Rapporteur for Freedom of Expression.

<sup>1516</sup> IFEX/Instituto Prensa y Sociedad (IPYS). February 28, 2013. [Militares venezolanos detuvieron a reportero gráfico](#).

<sup>1517</sup> Instituto Prensa y Sociedad (IPYS). February 21, 2013. [Milicia Bolivariana ordenó a reportero gráfico borrar](#)

812. On February 25, reporter Serge Boire, South American correspondent for *La Presse de Montreal*, was interrogated and detained by individuals presumed to be security officials while filming outside the Miraflores Presidential Palace. Minutes later, he was approached by two civilians who identified themselves as intelligence officials. They asked him about the images he had on his camera. Then, two individuals presumed to be officers with the National Bolivarian Police arrived and forced Boire to empty his pockets. They checked his cell phone and his documentation. When the journalist returned to the hotel where he was staying, he was approached in the reception area by individuals presumed to be intelligence officials, who interrogated him regarding the reasons for his visit to Venezuela and the images he had captured with his camera.<sup>1518</sup>

813. On March 1, the journalist Víctor Manuel García Hidalgo was detained. He is the editor and director of news website *Informe Cifras*, and as of the close of this report, he was being held prisoner in Yare III, a penitentiary for common criminals. According to the information received, the Office of the Attorney General of the Republic has charged him with the crime of "civil rebellion," after he expressed his opinion in the media following the April 2002 coup d'état. The charge was also based on the existence of photographs showing him in the facilities of the Army General Command. His defense team has stated that García Hidalgo was there together with other communicators reporting on what was happening.<sup>1519</sup>

814. On March 6, in Caracas, reporters Jesús Alberto Yajure, with *Últimas Noticias*, and Andrew Rosati, a correspondent with the *Miami Herald*, were detained and interrogated while performing their duties in the chapel of the Militar Hospital following the death of Hugo Chávez. The officials accuse the *Miami Herald* reporter of being "a spy," interrogated him, and searched his telephone and camera. As for the *Últimas Noticias* reporter, they erased a number of photographs that he had taken in recent days.<sup>1520</sup>

815. On April 14, the day of the presidential elections in Venezuela, reporter Ana María Paz, with the community radio station of Zulia *Azul FM*, was detained for more than an hour after denouncing alleged irregularities during the voting in a municipal electoral center called La Cañada de Urdaneta, in the state of Zulia.<sup>1521</sup>

816. On April 15, a team of journalists with the newspaper *La Verdad* was detained by individuals assumed to be officials with the San Francisco Police while they were covering the protests that took place following the April 14 presidential elections. Reporters Juan José Faría and Eduardo Méndez and driver Yolman Bejarano were held for 12 hours, and their telephones and equipment were

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[registro fotográfico.](#)

<sup>1518</sup> Instituto Prensa y Sociedad (IPYS). February 27, 2013. [Corresponsal extranjero fue retenido e interrogado por agentes de inteligencia militar.](#)

<sup>1519</sup> Inter American Press Association (IAPA). September 24, 2013. [La SIP exige al gobierno de Venezuela la liberación de Víctor Manuel García Hidalgo](#); Víctor Manuel García Hidalgo/WordPress. [Libertad para el periodista Víctor Manuel García](#); Venezuela Awareness Foundation. August 25, 2013. [Caso Victor Hidalgo: "Si Chávez viviera, mi esposo no estaría preso".](#)

<sup>1520</sup> Instituto Prensa y Sociedad (IPYS). March 6, 2013. [Funcionarios de contrainteligencia militar detuvieron e interrogaron a periodistas que cubrían la noticia del fallecimiento de Hugo Chávez.](#)

<sup>1521</sup> Instituto Prensa y Sociedad (IPYS). April 14, 2013. [Zulia: Detuvieron a periodista al denunciar voto asistido](#); Espacio Público. April 16, 2013. [Libertad de expresión en las elecciones presidenciales Venezuela 2013.](#)

taken.<sup>1522</sup>

817. On April 24, American film director Timothy Hallet Tracy was detained in the Maiquetía International Airport<sup>1523</sup> for his alleged connection with the acts of violence that took place following the presidential elections in Venezuela, held on April 14, 2013.<sup>1524</sup> He was later charged with “conspiracy, materially aiding, criminal conspiracy and the use of a false public document,” crimes established by and punished under the Penal Code and the Organic Law against Organized Crime and the Financing of Terrorism. He was ordered placed in preventative detention.<sup>1525</sup> Finally, on June 5, Tracy was freed and deported to Miami. The documentary filmmaker’s attorney told the press that Tracy had been freed due to lack of evidence.<sup>1526</sup>

818. On April 27, 2013, Antonio Rivero, a former general with the Venezuelan armed forces, was arrested, allegedly over public statements that, according to some officials, connect him to the events that took place following the April 14 election.<sup>1527</sup> On April 29, Rivero was charged with the crimes of instigation of hate and criminal conspiracy.<sup>1528</sup> On May 17, Rivero was ordered released, but he is not allowed to leave the country and must appear before the court periodically.<sup>1529</sup> On June 12, the Office of the Special Rapporteur sent the State of Venezuela a letter asking for information on the detention of retired General Antonio Rivero, among other issues.

819. On May 18, a Social Communication student with the Universidad de los Andes was detained by individuals presumed to be officials with the National Bolivarian Intelligence Service (SEBIN) in La Fría, García de Hevia municipality, Táchira. Leonardo Sánchez Cárdenas was taking photographs in front of the headquarters of the intelligence agency for a news report on the arrest of a number of individuals when the presumed SEBIN officials detained him and forced him to erase the photographs he had taken.<sup>1530</sup>

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<sup>1522</sup> El Mundo. April 16, 2013. [Varios periodistas detenidos y heridos en las últimas horas en Venezuela](#); La Verdad. April 16, 2013. [Liberan al equipo periodístico de La Verdad](#); Reporters Without Borders. April 16, 2013. [Safety of journalists at risk in post-election clashes](#); La Prensa Gráfica. April 20, 2013. [SIP pide respeto a la libertad de expresión](#).

<sup>1523</sup> BBC. April 25, 2013. [US 'spy' Timothy Hallet Tracy detained in Venezuela](#); Opera Mundi. April 26, 2013. [Venezuela prende norte-americano acusado de incitar violencia pós-eleitoral](#); Venezolana de Televisión (VTV)/YouTube. April 25, 2013. [Gobierno Nacional captura a un estadounidense vinculado con violencia fascista en el país](#).

<sup>1524</sup> Venezolana de Televisión (VTV)/YouTube. April 25, 2013. [Gobierno Nacional captura a un estadounidense vinculado con violencia fascista en el país](#).

<sup>1525</sup> Venezolana de Televisión (VTV)/ Sistema Bolivariano de Comunicación e Información. [Fiscalía imputó a estadounidense detenido por conspiración y asociación para delinquir](#); El Nuevo Herald/AFP. April 29, 2013. [Estadounidense arrestado en Venezuela es un documentalista](#).

<sup>1526</sup> Tele Sur TV. June 5, 2013. [Expulsan de Venezuela a cineasta de EE.UU. acusado de espionaje](#); Committee to Protect Journalists (CPJ). June 5, 2013. [Venezuela releases jailed US filmmaker, deports him](#).

<sup>1527</sup> Sistema Bolivariano de Información y Comunicación. April 27, 2013. [Sebin detiene a Antonio Rivero y será presentado en tribunales](#); Notitarde. April 27, 2013. [Sebin detiene a dirigente de Voluntad Popular Antonio Rivero](#).

<sup>1528</sup> El Nacional. April 30, 2013. [Ratifican privativa de libertad a Rivero y le exoneran delito de conspiración](#); La Nación. April 30, 2013. [Privan de libertad al general \(r\) Rivero por el delito de instigación a delinquir](#).

<sup>1529</sup> Noticias 24. May 17, 2013. [Antonio Rivero fue liberado sujeto a una medida cautelar: ahora a “luchar y seguir trabajando”](#); El Universal. May 18, 2013. [Antonio Rivero en libertad pero sujeto a medida cautelar](#); Martín Noticias. May 18, 2013. [Liberan en Venezuela al general en retiro Antonio Rivero](#).

<sup>1530</sup> Instituto Prensa y Sociedad (IPYS). May 18, 2013. [Táchira: Detuvieron a estudiante de periodismo por tomar fotografías](#); El Universal. May 20, 2013. [Una cacerola llevó a Carlos Parra del balcón a comisaría](#).

820. On July 18, individuals presumed to be members of the Bolivarian National Guard prevented journalists with *Últimas Noticias* from accessing the shelter where families who had lost their homes to the rains were staying. The officials also took their camera and erased the images.<sup>1531</sup>

821. On November 7, Venezuelan authorities detained *Miami Herald* journalist Jim Wyss while he was gathering information on the upcoming municipal elections and on supposed shortages of certain basic products in Venezuela. The journalist, who is the Miami Herald's bureau chief for the Andean region, was detained by the National Guard in the city of San Cristóbal and then transferred to the custody of Venezuelan military intelligence.<sup>1532</sup> On November 9 the journalist was released.<sup>1533</sup>

## B. Attacks and threats

822. On January 10, journalist Eleonora Delgado, a correspondent in the state of Táchira with newspaper *El Nacional*, was physically and verbally assaulted by individuals presumed to be members of the Bolivarian National Guard (GNB) while covering a demonstration by students from a number of different universities in the city of San Cristóbal.<sup>1534</sup>

823. On January 23, a team of journalists with State broadcaster *Venezolana de Televisión* (VTV) was physically assaulted during an event of the Mesa de la Unidad Democrática (MUD).<sup>1535</sup>

824. On February 7, journalist Carlos Páez and photo journalist Eduardo Molina, with the newspaper *Frontera*, were intimidated by individuals assumed to be Mérida state police officers after recording video of an officer riding a motorcycle with three passengers on board. The presumed police officer went to the newspaper's office and demanded that the recorded material be erased. When his demands were denied, he returned accompanied by a group of other officers. Reports indicate that the Mérida state police have launched an administrative investigation into the officers involved in the incident.<sup>1536</sup>

825. On February 20, individuals assumed to be members of the National Bolivarian Militia assaulted journalists Gabriela Salcedo and Felipe Lugo, with *Globovisión*, while they were in the Miguel

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<sup>1531</sup> Instituto Prensa y Sociedad (IPYS). July 15, 2013. [Miranda: Militares impidieron a equipo reporteril cubrir situación de damnificados](#); Espacio público. July 19, 2013. [Guardia Nacional agrede a periodistas de Últimas Noticias](#).

<sup>1532</sup> Miami Herald. November 9, 2013. [Miami Herald reporter detained in Venezuela expected to be released soon](#); Inter American Press Association (IAPA). November 9, 2013. [La SIP exige a Venezuela inmediata liberación de corresponsal extranjero](#).

<sup>1533</sup> El Nuevo Herald. November 9, de 2013. [Liberan a corresponsal del Miami Herald detenido en Venezuela](#).

<sup>1534</sup> El Nacional. January 11, 2013. [Estudiantes rechazaron la visita de presidentes](#); Instituto Prensa y Sociedad (IPYS). January 10, 2013. [Militares agredieron a reportera cuando cubría una protesta en Táchira](#).

<sup>1535</sup> Sistema Bolivariano de Información y Comunicación. January 23, 2013. [Camarógrafo de VTV con politraumatismos tras fuerte agresión en evento de la MUD](#); Agencia Venezolana de Noticias (AVN). January 23, 2013. [Villegas lamentó agresión a periodistas de VTV y llamó a la reflexión a dirigentes de oposición](#); Instituto Prensa y Sociedad (IPYS). January 23, 2013. [Agredieron a equipo reporteril de VTV en actividad de partidos políticos de oposición](#); Colegio Nacional de Periodistas. January 25, 2013. [Comunicado: El CNP Caracas se pronuncia por agresiones a equipo de VTV](#).

<sup>1536</sup> El Universal. February 8, 2013. [Diario Frontera de Mérida fue "visitado" por la policía](#); Instituto Prensa y Sociedad (IPYS). February 7, 2013. [Policías amedrentaron a periodista y reportero gráfico en Mérida](#); El Nacional. February 8, 2013. [Allanada sede del diario Frontera](#).

Pérez Carreño Hospital, in Caracas, covering a demonstration by workers there. The militia members also prevented reporter Félix Pirela and cameraman Rogelio Coronado, with *Televen*, from entering the hospital.<sup>1537</sup>

826. On November 24, Rocío San Miguel, the president of human rights NGO Control Ciudadano, received death threats in an anonymous phone call, as well as intimidating and insulting messages through social networking site Twitter. San Miguel indicated that starting in September 2011, she has been the victim of acts of intimidation and aggression through social networks and has received death threats against her and her family. On January 18, 2012, the Inter-American Commission on Human Rights granted the activist precautionary measures and ordered the Venezuelan State to take the necessary measures to protect the life and safety of San Miguel and her daughter.<sup>1538</sup>

827. The Inter-American Commission learned of a number of situations of violence faced by journalists in the exercise of their profession covering events linked to the health and death of Venezuelan President Hugo Chávez. On February 5, a *Televen* news team was intimidated and threatened by individuals presumed to be supporters of the current administration while it was covering the announcement of Hugo Chávez' death at the Carlos Arvelo Military Hospital.<sup>1539</sup> On February 7, individuals identified as supporters of the current administration intimidated and threatened cameraman Alberto Porras and journalist Luis Alfonso Fernández, with *América Noticias*, a TV channel based in Miami, United States. The incident took place in Caracas nearby the Military Academy where the funeral of former president of the Republic Hugo Chávez took place. According to the information received, Fernández was recording a news brief when individuals presumed to be supporters of the current administration surrounded him and prevented him from doing his work, all the while insulting them.<sup>1540</sup> On February 14, individuals presumed to be members of the Bolivarian National Guard assaulted *Televen* reporter Olivier Fernández and photographers Esaúd Olivares, with *El Universal*, and Juan Camacho, with international agency *News Report*, preventing them from doing their work while they were covering a demonstration by students from a number of universities throughout the country at the Cuban Embassy in Venezuela, in Caracas. The demonstration was to demand information on the health of then-President Hugo Chavez. In addition, *Globovisión* reporter Daniel Guillermo Colina was ordered to leave that place.<sup>1541</sup> On March 5, Colombian journalist Carmen Andrea Rengifo, a correspondent with *RCN Noticias* in Venezuela, and cameraman Samuel Sotomayor were attacked by a group of people outside the Military Hospital as they were covering the death of president Hugo Chávez. According to the information received, the demonstrators struck the journalist and insulted her and the

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<sup>1537</sup> Globovisión. February 20, 2013. [Milicianos arremeten contra manifestantes y equipo de Globovisión en el Hospital Pérez Carreño](#); Diario La Voz. February 20, 2013. [Trabajadores se amotinaron en el Hospital Pérez Carreño](#).

<sup>1538</sup> Instituto Prensa y Sociedad (IPYS). February 24, 2013. [Amenazan de muerte a activista de DDHH](#); IACHR. 2012 Annual Report. Chapter III (The Petition and Case System). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. para. 43. Available for consultation at: <http://www.oas.org/en/iachr/docs/annual/2012/TOC.asp>

<sup>1539</sup> Instituto Prensa y Sociedad (IPYS). March 5, 2013. [Intimidaron a equipo reporterial cuando cubría el fallecimiento del Presidente](#).

<sup>1540</sup> Instituto Prensa y Sociedad (IPYS). March 7, 2013. [Intimidaron a equipo de televisora extranjera durante funeral del Presidente](#); Miami Diario. March 7, 2013. [Agreden a otro corresponsal en Venezuela](#); La Nación. March 8, 2013. [Agredieron en Venezuela a periodistas que informaban sobre la muerte de Chávez](#).

<sup>1541</sup> Agencia Caribeña de Noticias. February 14, 2013. [CNP condena represión y agresión a periodistas durante protesta frente a embajada de Cuba](#); Instituto Prensa y Sociedad (IPYS). February 14, 2013. [Militares agredieron a reporteros cuando cubrían una protesta estudiantil](#).



cameraman.<sup>1542</sup> That same day, reporter David De Matteis and cameraman César Fuentes, who work in Caracas for the Spanish-language US news network *Univisión*, were physically assaulted in the Bolívar Plaza in Caracas by individuals identified as supporters of the current administration. Fuentes had his camera and equipment taken away. The incident took place while the journalists were covering citizen gatherings following the announcement of President Chávez' death.<sup>1543</sup> Also on March 5, individuals identified as "chavistas" surrounded the headquarters of *Globovisión*, in Caracas, and used firearms to threaten a team of journalists that was arriving there. The incident took place a half hour before Nicolás Maduro, then the vice president of the Republic, announced the death of Hugo Chavez. During the demonstration, one of the participants told *Globovisión* reporters that the purpose of the action was to peacefully reject the campaign of "harassment and demonization" in reports on the health of President Chávez.<sup>1544</sup> On March 6, in Caracas, alleged supporters of the current administration assaulted journalist Francho Barón, a correspondent with *Canal Sur* in Spain and *Televisión Nacional de Uruguay* (TNU). The incident took place when the journalist began recording images of crowds of citizens attending the funeral of President of the Republic Hugo Chávez.<sup>1545</sup>

828. Also on March 5, broadcasters *Radio Fe y Alegría* 103.1 and *Pentagrama* 107.3 were victims of a robbery perpetrated by six armed individuals. They damaged the facilities and took part of the stations' cable, leaving the broadcasters temporarily off the air. The host of the program "Public and Confidential," which began broadcasting the previous day, stated that the vandalism may have been intended to take him off the air due to his criticism.<sup>1546</sup>

829. The Inter-American Commission was informed that cartoonists, journalists, writers and artists have been subjected to death threats, insults and denigrating comments through phone calls, text messages to their mobile telephones, and through social network Twitter. The assaults began on March 15 and are linked to criticisms the communicators have voiced with regard to the country's political situation. According to the information received, the victims of the assaults include cartoonist Rayma Suprani, writer Leonardo Padrón, humorist Laureano Márquez, television host Mariela Celis and journalists Francisco Bautista, Ibeyise Pacheco, Ana Beatriz (Nitu) Pérez Osuna, Mary Montes, Milagros Socorro, Berenice Gómez and Alfredo Federico Ravell.<sup>1547</sup> Likewise, starting on March 20, blogger

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<sup>1542</sup> NTN24. March 5, 2013. [Corresponsal de RCN narra detalles de agresión que recibió frente a Hospital Militar en Caracas](#); Espacio Público. March 6, 2013. [Agredida periodista corresponsal de RCN y su camarógrafo frente al hospital militar](#); Perfil. March 8, 2013. [Chavistas agredieron a periodistas no alineados al Gobierno](#).

<sup>1543</sup> Espacio Público. March 6, 2013. [Atacan, agreden y despojan de sus equipos a periodistas en la Plaza Bolívar de Caracas](#); Instituto Prensa y Sociedad (IPYS). March 5, 2013. [Simpatizantes del oficialismo agredieron a equipo reportero de canal extranjero](#); Perfil. March 8, 2013. [Chavistas agredieron a periodistas no alineados al Gobierno](#).

<sup>1544</sup> Instituto Prensa y Sociedad (IPYS). March 5, 2013. [Simpatizantes oficialistas amenazaron con armas de fuego a equipo de televisora](#); Globovisión. March 8, 2013. [Motorizados vestidos de rojo se presentaron en Globovisión](#).

<sup>1545</sup> Instituto Prensa y Sociedad (IPYS). March 6, 2013. [Simpatizantes oficialistas atacaron a corresponsal de TV española durante funeral del Presidente](#); Last night dozens of Chavez supporters attacked me and my driver. We are miraculously unharmed, but the car has been badly damaged. Original text: "Anoche decenas d chavistas nos agredieron a mi y a mi chofer. Milagrosamente estamos ilesos, pero el coche ha quedado mal parado". Twitter Account of Francho Barón @FranchoBaron. [March 7, 2013- 5: 21](#).

<sup>1546</sup> Instituto Prensa y Sociedad (IPYS). March 5, 2013. [Robo dejó fuera del aire a dos emisoras en Guayana](#).

<sup>1547</sup> Instituto Prensa y Sociedad (IPYS). March 22, 2013. [Venezuela: Caricaturistas, periodistas y escritores venezolanos reciben amenazas anónimas](#); El Universal. March 22, 2013. [Rayma denuncia en Fiscalía ser víctima de amenazas por sus caricaturas](#); Noticias 24. March 19, 2013. [Artistas y periodistas venezolanos denuncian en Twitter que reciben amenazas vía telefónica](#).

Guillermo Baena began receiving threatening phone calls. The communicator has been critical on his blog of the country's political situation.<sup>1548</sup>

830. On April 2, in the context of a campaign event, a group presumed to be supporters of the Partido Socialista Unido de Venezuela (PSUV) attacked photographer David Puertas, with local newspaper *El Informador*, and cameraman Ángel López and reporter Rafael Riera, both with television station *Promar TV*, in Barquisimeto, Lara state.<sup>1549</sup>

831. On April 3, a news team with *Agencia Venezolana de Noticias* (AVN) was attacked by individuals assumed to be security guards with the Simón Bolívar opposition campaign headquarters during a presidential campaign event in Caracas.<sup>1550</sup>

832. On April 8, a number of students with an organization called Operación Soberanía were attacked with rocks, bottles, blows and gunfire in La Castellana Plaza, where starting on April 5 and for a number of days afterward they went on a hunger strike to demand answers from the National Electoral Council to petitions that they submitted demanding "just, democratic and free elections."<sup>1551</sup>

833. On April 9, the headquarters of newspaper *Ciudad Valencia* and radio broadcaster *Ciudad Valencia 89.9 FM* in Carabobo state were attacked with rocks. The incident led to injuries for two of the radio station's employees.<sup>1552</sup>

834. On April 10, journalist José Gerardo Lozada Rojas, director of newspaper *La Opinión*, was physically assaulted by an individual presumed to be an official with Plan República while he was covering the installation of voting machines in a voting center in the city of San Carlos.<sup>1553</sup>

835. On April 12, unidentified individuals burned the vehicle of journalist Lilia Giménez, a correspondent with the newspaper *El Anaquense* in the Aragua de Barcelona municipality, Anzoátegui

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<sup>1548</sup> Venezuela en Caída Libre. April 12, 2013. [Por escribir este blog y decir la verdad, me he convertido en blanco de instigación](#); Espacio Público. May 7, 2013. [Bloquero recibe amenazas telefónicas](#); Leonor Torres/YouTube. July 19, 2013. [Llamada de Amenaza persecucion política](#).

<sup>1549</sup> Instituto Prensa y Sociedad (IPYS). April 2, 2013. [Lara: Grupo oficialista agredió a reporteros que cubrían marcha en campaña electoral](#).

<sup>1550</sup> Noticias24. April 9, 2013. [VTV repudia "el veto aplicado por el comando antichavista a los periodistas" del Snmp](#); Instituto Prensa y Sociedad (IPYS). April 3, 2013. [Agredieron a equipo reporteril de medio estatal en acto de campaña electoral](#).

<sup>1551</sup> Confirmado. April 8, 2013. [Reportan que Oficialistas agreden a Jóvenes de Operación Soberanía en la Castellana](#); Espacio Público. April 9, 2013. [Atacados estudiantes que protestaban haciendo una huelga de hambre](#); El Mundo. April 8, 2013. [Agredidos estudiantes de la Operación Soberanía por presuntos activistas del chavismo](#); El Nacional. April 8, 2013. [A tiros y con botellas atacaron a jóvenes de la Operación Soberanía](#); El Nacional. April 9, 2013. [Atacaron a jóvenes de Operación Soberanía](#); Noticias 24. April 8, 2013. [En fotos: siete heridos tras hechos violentos contra protestantes de "Operación Soberanía" en Chacao](#).

<sup>1552</sup> Venezolana de Televisión (VTV)/Sistema Bolivariano de Comunicación e Información. April 9, 2013. [Agreden sede de diario Ciudad Valencia](#); Espacio Público. April 10, 2013. [Atacan la sede del diario Ciudad Valencia](#); El Carabobeño. April 9, 2013. [Heridos dos trabajadores de Ciudad Valencia tras ataques a su sede](#); Noticias24. April 9, 2013. [Atacan sede del diario Ciudad Valencia en "ola de violencia promovida por la oposición"- en Carabobo](#); Ciudad Caracas. April 10, 2013. [Opositores atacaron sede del diario Ciudad Valencia](#).

<sup>1553</sup> Globovisión. April 11, 2013. [CNP rechaza agresión a periodista en Cojedes y exige al Plan República garantizar la seguridad el 14A](#); Instituto Prensa y Sociedad (IPYS). April 10, 2013. [Funcionario del Plan República agredió a periodista en Cojedes](#).

state. According to reports, the newspaper is critical of governmental authorities.<sup>1554</sup>

836. The Commission was also informed that in the context of the April 14 election, and especially over in the days following it, polarization in Venezuela intensified, accompanied by a substantial increase in violence against journalists. The Inter-American Commission received information on a number of incidents that limited the freedom of expression and exercise of journalism during the days following the election, including the detention of reporters by police, destruction of material, bans on covering certain information, and threats and physical attacks on journalists and the headquarters of media outlets by demonstrators belonging to a variety of political movements, among other incidents.

837. On April 14, Emir Fernández, a cameraman with community television network *Barrio TV* in El Valle and an employee of community radio station *Alí Primera*, in Caracas, was shot in the chest and the arm while interviewing members of a communal council during the election.<sup>1555</sup> Also, Raúl Galindo, a photographer with newspaper *Notitarde*, in Valencia, Carabobo state, was threatened by an individual assumed to be a member of the Bolivarian National Guard (GNB), a State security agency. The individual also confiscated his camera, press credential provided by the National Electoral Council (CNE), and his identification card issued by the media organization for which he works.<sup>1556</sup> A news team with radio broadcaster *Fe y Alegría* and a reporter with *Globovisión* were robbed of their belongings and equipment in Maracaibo, Zulia state.<sup>1557</sup> Additionally, journalist Daniel Cáceres, a host with radio station *La Mega* 102.1 FM, in San Cristóbal, Táchira state, was chased down and intimidated by a group of individuals riding motorcycles, identified as supporters of the candidate of the party in power, Nicolás Maduro.<sup>1558</sup>

838. On April 15, Joel Páez, a producer with *Globovisión* in Barinas, accused an individual assumed to be a member of the National Guard (GNB) of preventing him from doing his work while he was covering a post-electoral protest.<sup>1559</sup> Alejandro Ledo, a cameraman with *Globovisión*, was struck by a vehicle while covering a demonstration near the headquarters of the National Electoral Council in Aragua. Ledo was using his camera to capture images of demonstrators when he was struck by the vehicle.<sup>1560</sup>

839. Likewise, two photojournalists were assaulted on April 15: Carlos Barrios, with

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<sup>1554</sup> El Universal. April 26, 2013. [Exigen investigar explosión de vehículo de periodista](#); La Patilla. April 25, 2013. [Explota camioneta en atentado contra periodista de Anzoátegui](#).

<sup>1555</sup> Telesur. April 16, 2013. [Violencia opositora en Venezuela deja siete muertos y 61 heridos](#).

<sup>1556</sup> Instituto Prensa y Sociedad (IPYS). April 14, 2013. [Carabobo: Militar le arrebató la cámara a reportero gráfico](#); Espacio Público. April 16, 2013. [Libertad de expresión en las elecciones presidenciales Venezuela 2013](#); Transparencia Venezuela. [Alerta Electoral. Elecciones Venezuela 2012](#). P. 5.

<sup>1557</sup> La Verdad. April 15, 2013. [Atracan a equipos de prensa](#); Instituto Prensa y Sociedad (IPYS). April 14, 2013. [Zulia: Roban y restringen trabajo a periodistas de distintos medios durante cobertura electoral](#); Transparencia Venezuela. [Alerta Electoral. Elecciones Venezuela 2012](#). P. 6.

<sup>1558</sup> El Impulso. April 15, 2013. [Amedrentamiento oficialista se sintió en redes sociales](#); Infobae. April 14, 2013. [Las redes sociales, colmadas de denuncias](#); Instituto Prensa y Sociedad (IPYS). April 14, 2013. [Táchira: Grupo de motorizados agredieron a locutor en cobertura electoral](#).

<sup>1559</sup> Instituto Prensa y Sociedad (IPYS). April 15, 2013. [Barinas: Efectivo militar impide a productor de Globovisión realizar trabajo informativo](#).

<sup>1560</sup> Instituto Prensa y Sociedad (IPYS). April 15, 2013. [Aragua: Vehículo golpea a camarógrafo cuando realizaba trabajo informativo](#).

newspaper *El Periódico* in Mongas, who was struck in the back with a rock; and Alberto González, of *Diario El Sol*, in Maturín, Monagas state.<sup>1561</sup> Also on April 15, Rosana Villa, a journalist with newspaper *Los Andes de Mérida*, was attacked by a group of individuals identified as belonging to the Movimiento Revolucionario Tupamaro as she was photographing a group of citizens in front of the National Electoral Council.<sup>1562</sup> Also that day, a number of reporters were injured while covering a citizen demonstration at the headquarters of the regional directorate of the National Electoral Council (CNE) in Barquisimeto, Lara state. The attack was perpetrated by individuals presumed to be members of the National Bolivarian Guard (GNB). Photojournalists Ricardo Marapacuto and Juan Carlos Leal, with local newspaper *El Impulso*; independent journalist Héctor Andrés Segura, and Héctor Azuaje, with *Diario de Lara*, were injured. Also, Richard Lameda, a reporter with *El Impulso*, and Marla Prato, a Lara state correspondent for newspaper *El Universal*, accused individuals presumed to be members of the National Bolivarian Guard (GNB) of firing at them. None of the reporters were struck by the bullets. Lameda accused one guardsman of firing at him even though he identified himself as a journalist.<sup>1563</sup> The following individuals were also assaulted while covering a demonstration in front of the headquarters of the National Electoral Council (CNE) in Mérida: reporters Saíd Rivas, Johana Briceño and Ramón Fajardo with broadcaster *YVKE Mundial los Andes*, journalist Adalberto González, with *Agencia Venezolana de Noticias* (AVN), and Annel Mejías, journalist with *Correo del Orinoco*.<sup>1564</sup>

840. On April 15, there were protests at the headquarters of *Venezolana de Televisión* (VTV) and *Telesur* by persons beating on pans and carrying signs and insignias showing support for the opposition candidate.<sup>1565</sup> That same day, individuals riding motorcycles and carrying signs for the opposition candidate appeared at the headquarters of the National Telecommunications Commission (Conatel) shouting intimidating slogans. One of the demonstrators threw a blunt object at agency's headquarters.<sup>1566</sup>

841. On April 15, eight radio broadcasters and one community television channel were attacked by groups presumed to be armed and opposed to the current administration. The attacks took place in the municipalities of Maracaibo, San Francisco and La Cañada de Urdaneta, in Zulia state.<sup>1567</sup> Attacks on community media outlets were also reported in the states of Amazonas, Táchira, Yaracuy and

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<sup>1561</sup> Instituto Prensa y Sociedad (IPYS). April 15, 2013. [Agredieron a reporteros gráficos en ente electoral de Monagas](#).

<sup>1562</sup> Instituto Prensa y Sociedad (IPYS). April 15, 2013. [Reportera fue amedrentada en Mérida](#).

<sup>1563</sup> El Impulso. April 24, 2013. [Periodistas de Lara denunciaron agresiones en el MP](#); Provea. May 13, 2013. [Testimonio de reportero gráfico herido por funcionarios de la Guardia Nacional en el estado Lara](#); Telecentro. [Gremio de periodistas consignó denuncias de agresiones ante el ministerio público](#); Instituto Prensa y Sociedad (IPYS). April 15, 2013. [Heridos reporteros gráficos durante manifestación en el CNE en Lara](#).

<sup>1564</sup> Radio Mundial. April 16, 2013. [Simpatizantes de Capriles agreden a periodistas del Sibci en Mérida](#); Colegio Nacional de Periodistas (CNP) de Zulia. April 17, 2013. [Comunicado del CNP ante crisis política actual de Venezuela](#); Aporrea/YVKE Mundial Los Andes. April 15, 2013. [Mérida: Simpatizantes de Capriles agreden a periodistas del SIBCI](#).

<sup>1565</sup> Telesur. April 15, 2013. [Antichavistas rodearon sede de teleSUR y amenazaron a sus trabajadores](#); Espacio Público. April 16, 2013. [Motorizados rodearon sede de VTV, TeleSur y Conatel](#).

<sup>1566</sup> Telesur. April 15, 2013. [Antichavistas rodearon sede de teleSUR y amenazaron a sus trabajadores](#); Instituto Prensa y Sociedad (IPYS). April 15, 2013. [Simpatizantes opositores protestaron en la sede de organismo de telecomunicaciones y canales oficialistas](#).

<sup>1567</sup> Instituto Prensa y Sociedad (IPYS). April 15, 2013. [Zulia: Emisoras comunitarias denunciaron ataques de grupos armados posterior a las elecciones presidenciales](#); Espacio Público. April 17, 2013. [Medios de comunicación oficialistas denuncian ataques](#).

Lara.<sup>1568</sup>

842. On April 16, two photojournalists with newspaper *El Carabobeño*, in Valencia, were threatened by an individual presumed to be a police officer while covering the unrest that took place following a gathering of the opposition outside the National Electoral Council to demand that the electoral body conduct an audit of all the votes from the April 14 presidential elections.<sup>1569</sup> Likewise, individuals presumed to be members of the Bolivarian National Guard (GNB) tried to block journalist Ana Isabel Rodríguez, with newspaper *Sol de Monagas* and a correspondent for IPYS Venezuela in Monagas, from doing her work by covering a citizen demonstration at the regional headquarters of the National Electoral Council (CNE).<sup>1570</sup> Individuals presumed to be members of the Bolivarian National Guard (GNB) also fired at the journalist Eduard Martínez, with newspaper *La Prensa* in Lara, while he was covering the protests.<sup>1571</sup>

843. On April 16, a mobile unit transporting a reporting team with TV channel *Telecentro*, in Barquisimeto, was damaged during a confrontation between individuals presumed to be members of the Bolivarian National Guard (GNB) and groups in opposition to the elected administration of President Nicolás Maduro.<sup>1572</sup>

844. On April 16, reporter Mariha Morales and cameraman Moisés Vargas, with community television station *LaraTvec*, in Barquisimeto, Lara state, were attacked by a group of individuals identified as supporters of the opposition presidential candidate who were participating in a protest.<sup>1573</sup>

845. Also on April 16, a group of individuals riding motorcycles, presumed to be supporters of the government, used Molotov cocktails to attack the headquarters of newspaper *La Región*, in Los Teques, and threatened to burn down the offices. The journalists who were in the building were evacuated by the police.<sup>1574</sup> There was also an attack on the headquarters of newspaper *El Avance*, in which attackers fired at the building, and threw rocks and bottles of gasoline.<sup>1575</sup>

846. On April 17, a group of cameramen and reporters in the state of Aragua, belonging to

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<sup>1568</sup> Venezolana de Televisión (VTV)/Sistema Bolivariano de Comunicación e Información. [Grupos violentos mantienen ataques contra medios comunitarios.](#)

<sup>1569</sup> Instituto Prensa y Sociedad (IPYS). April 16, 2013. [Carabobo: Amenazados dos reporteros gráficos en Valencia.](#)

<sup>1570</sup> Instituto Prensa y Sociedad (IPYS). April 16, 2013. [Monagas: Militares intentaron impedir trabajo a reportera en manifestación en el ente electoral.](#)

<sup>1571</sup> La Prensa. April 16, 2013. [Herido reportero gráfico de La Prensa](#); Instituto Prensa y Sociedad (IPYS). April 16, 2013. [Lara: Militar disparó a quemarropa a reportero gráfico.](#)

<sup>1572</sup> Instituto Prensa y Sociedad (IPYS). April 16, 2013. [Lara: Atacaron a unidad móvil de televisora regional en protesta postelectoral.](#)

<sup>1573</sup> Instituto Prensa y Sociedad (IPYS). April 16, 2013. [Lara: Equipo reporteril de televisora comunitaria fueron agredidos en protesta postelectoral](#); El Mundo. April 16, 2013. [Denuncian ataques a medios en Los Teques.](#)

<sup>1574</sup> Globovisión. April 16, 2013. [Periodistas del diario La Región en Los Teques fueron desalojados](#); El Universal. April 16, 2013. [Chavistas arman barricadas y atacan a sedes periodísticas de Los Teques](#); El Nacional. April 16, 2013. [Oficialistas atacan diarios en Los Teques](#); El Mundo. April 16, 2013. [Denuncian ataques a medios en Los Teques.](#)

<sup>1575</sup> Globovisión. April 16, 2013. [Periodistas del diario La Región en Los Teques fueron desalojados](#); El Universal. April 16, 2013. [Chavistas arman barricadas y atacan a sedes periodísticas de Los Teques](#); El Nacional. April 16, 2013. [Oficialistas atacan diarios en Los Teques](#); El Mundo. April 16, 2013. [Denuncian ataques a medios en Los Teques.](#)

*Venevisión*, *Globovisión* and *Dat TV* news teams, were subjected to verbal and physical assault by individuals presumed to be members of a Communal Brigade.<sup>1576</sup>

847. Starting on April 17, journalist and parliamentary assistant Richard Sayago was the victim of surveillance and threats perpetrated by unknown individuals.<sup>1577</sup>

848. On April 20, Idania Chirinos, Venezuelan journalist and director of *NTN24*, a news channel in Colombia, accused individuals presumed to be officials with the Scientific, Criminal, and Forensic Investigation Corps (CICPC) of spying on her while she was boarding a plane in the Maiquetía International Airport. The journalist returned to Bogotá after having spent two weeks in Caracas working and broadcasting her program 'The Afternoon,' distributed by *NTN24*, in which she addressed the sociopolitical situation in Venezuela during the election and the days following it.<sup>1578</sup>

849. On April 29, group of individuals identified as supporters of the current administration threw bottles and intimidated a group of journalists who were in the Palace of Justice in Caracas covering the arraignment hearing of Antonio Rivero, a retired general of the Armed Forces and leader of opposition party *Voluntad Popular*. He was arrested on April 27 and charged by the Office of the Public Prosecutor with the crimes of criminal conspiracy and instigation of hate.<sup>1579</sup>

850. On May 1, journalist María Gabriela Rondón, a correspondent for *Venevisión*, was verbally assaulted while covering a Labor Day march in the city of Barcelona, Anzoátegui state.<sup>1580</sup>

851. On May 15, unidentified individuals threw a homemade explosive at a *Ciudad TV* vehicle. The channel operates out of Ojeda City, Zulia.<sup>1581</sup>

852. On May 22, Isayen Herrera, a reporter with newspaper *2001*, was struck in the face by an unidentified individual during a march of university students and professors in the city of Caracas.<sup>1582</sup>

853. On May 27, unidentified individuals threw an explosive from a moving vehicle at the offices of newspaper *Panorama*, in the city of Maracaibo, Zulia state. According to a report from the media outlet, the explosive was thrown together with leaflets from a group calling itself the *Fuerzas*

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<sup>1576</sup> Notitarde. April 17, 2013. [Grupo de reporteros y camarógrafos agredidos en el Hospital Central de Maracay](#); El Aragueño. April 17, 2013. [Grupo de reporteros y camarógrafos agredidos en el Hospital Central de Maracay](#); Starlitephi/YouTube. April 18, 2013. [Agreden a equipo de Globovisión en Hospital Central de Maracay en Venezuela](#).

<sup>1577</sup> IFEX/Instituto Prensa y Sociedad (IPYS). May 16, 2013. [Venezuelan parliamentary journalist reports being followed](#); Colegio Nacional de Periodistas. May 9, 2013. [Periodista parlamentario denuncia ser víctima de seguimiento](#).

<sup>1578</sup> NTN24. April 21, 2013. [Autoridades solicitaron información de la Directora de Contenidos de NTN24 Idania Chirinos](#); Venezuela al día. April 21, 2013. [Idania Chirinos ya se encuentra en Bogotá](#).

<sup>1579</sup> IFEX/Instituto Prensa y Sociedad (IPYS). May 2, 2013. [Lazaron botellas contra reporteros en Palacio de Justicia en Venezuela](#).

<sup>1580</sup> Espacio Público. May 3, 2013. [Agredida periodista de Venevisión en Anzoátegui](#); ElTiempo.com. May 2, 2013. [CNP-Anzoátegui rechaza agresión contra periodista de Venevisión](#); Noticias de aquí. May 1, 2013. [Periodista María Gabriela Rondón fue agredida mientras cubría marcha en Barcelona](#).

<sup>1581</sup> El Nacional. May 16, 2013. [Incendiaron carro de prensa de Ciudad TV](#); Instituto Prensa y Sociedad (IPYS). May 15, 2013. [Zulia: Incendiaron vehículo de canal de televisión](#); Espacio Público. May 15, 2013. [Incendian vehículo de Ciudad TV](#).

<sup>1582</sup> Instituto Prensa y Sociedad (IPYS). May 22, 2013. [Agredieron a reportera en manifestación de gremios universitarios](#).

Bolivarianas de Liberación (FBL) Bolívar Vive (Bolivarian Liberation Forces, Bolívar Lives).<sup>1583</sup>

854. Journalist Lisbeth de Cambra, general secretary of the Caracas branch of the Colegio Nacional de Periodistas (CNP), alleged that individuals presumed to be members of the intelligence police force were following her during June and July of 2013. The journalist suspected that the surveillance was in response to statements she often makes on behalf of the CNP regarding the problems facing communicators in the country.<sup>1584</sup>

855. On July 16, journalist Eduardo Galindo, a correspondent with *Globovisión* and *El Nacional* and secretary of the regional branch of the Colegio Nacional de Periodistas (CNP), filed a complaint with the Office of the Superior Public Prosecutor of San Fernando de Apure indicating that he was being accused in a video circulating via social networks of being a "destabilizer" and "psychological operator of the Empire," something that could endanger his physical integrity and that of his family.<sup>1585</sup> Later, on July 30, individuals presumed to be members of the police force assaulted the journalist while he was covering a refugee protest in the city of San Fernando de Apure, Apure state.<sup>1586</sup>

856. On July 27, 28 and 29, unidentified individuals attacked the servers of news website *Correo del Caroní*. The attack saturated the website with visits, blocking the server.<sup>1587</sup> The server was changed and service reestablished on September 2, but the cyber attacks continued, according to the media organization's president. During the second week of September, there were 95 attempts to take the site down again.<sup>1588</sup>

857. On August 23, journalist Gonzalo Albano, reporter with broadcaster *Class 98.7 FM*, in San Carlos, Cojedes state, received a death threat from unknown individuals. An individual forced him into a car, where they pointed a gun at his head and warned him to "stop talking shit [*pendejadas*] on the radio." They told him that the threat extended to the radio station's editorial chief, Germán Lozano. "This is a warning, the next time you'll pay with your life," said the attacker, who was accompanied by two other individuals. According to the reporter, the threat followed the broadcasting of information on allegations of corruption in the regional government.<sup>1589</sup>

858. On August 28, reporters with the website *Aporrea* and community television channel

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<sup>1583</sup> Panorama. May 27, 2013. [Lanzan explosivo contra sede de PANORAMA](#); Espacio Público. May 28, 2013. [Atacan con bomba la sede del diario Panorama](#); La Patilla. May 27, 2013. [Lanzan explosivo contra sede del diario Panorama](#); Instituto Prensa y Sociedad (IPYS). May 27, 2013. [Zulia: Lanzaron artefacto sonoro contra la sede de un periódico](#).

<sup>1584</sup> Instituto Prensa y Sociedad (IPYS). July 30, 2013. [Caracas: Periodista denunció posible seguimiento policial](#); El Horizonte. June 11, 2013. [Lisbeth de Cambra: Claro y Raspado](#).

<sup>1585</sup> Senderos de Apure. July 16, 2013. [Denunciado caso contra Periodista Eduardo Galindo en Fiscalía Superior de San Fernando](#); Instituto Prensa y Sociedad (IPYS). July 15, 2013. [Apure: Periodista es intimidado en las redes sociales por personas desconocidas](#).

<sup>1586</sup> Instituto Prensa y Sociedad (IPYS). July 30, 2013. [Apure: Agredieron a reportero en protesta de damnificados](#); Senderos de Apure. July 30, 2013. [Eduardo Galindo Peña denunció en Fiscalía Superior agresión por Policía Regional en cobertura periodística de protesta](#).

<sup>1587</sup> Instituto Prensa y Sociedad (IPYS). July 27, 2013. [Bolívar: Desconocidos intervinieron portal de medio local](#).

<sup>1588</sup> Instituto Prensa y Sociedad (IPYS). September 18, 2013. [Bolívar: continúan ciberagresiones al portal del diario Correo del Caroní](#).

<sup>1589</sup> IFEX/Instituto Prensa y Sociedad (IPYS). August 29, 2013. [Radio journalist pushed into car, threatened at gunpoint in Venezuela](#); Espacio Público. August 26, 2013. [Secuestran y amenazan de muerte a periodista Gonzalo Albano](#).

*Barrio TV* were threatened by Casa Militar officers in charge of security for the Presidency of the Republic and by the National Police while they were in the Miraflores Presidential Palace, in Caracas, covering a protest by public-sector employees.<sup>1590</sup>

859. On October 29, journalist Karolina Olivo and cameramen Rodolfo Urbina, with *HCTV*, were assaulted by individuals presumed to be supporters of the current administration while they were covering a campaign event for the opposition party mayoral candidate in the municipality of Páez, in Alto Apure.<sup>1591</sup>

860. On November 1, Eliscart Ramos, Jorge Leonardo Santos, and Diana Escalona, journalists with the newspaper *2001*, were beaten and detained by individuals presumed to be soldiers while they were covering a Christmas Fair in Los Próceres, Caracas.<sup>1592</sup>

861. On January 14, the organizations Espacio Público, Colegio Nacional de Periodistas (CNP) and Sindicato Nacional de Trabajadores de la Prensa (SNTP) of Venezuela presented a writ of abstention before the Contentious Administrative Court against the Office of the Public Prosecutor for "lack of timely and adequate response to the request for information on investigations in cases of attacks against journalists," filed in July of 2012.<sup>1593</sup>

862. As of the closing of this report, there was no information on any progress in the investigations into the assaults, detentions and threats against journalists.

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

### **C. Mandatory presidential broadcasts and government interference in informative spaces**

864. In 2013, the government of Venezuela has continued to use obligatory national radio and television broadcasts to transmit government messages. According to information received by the Inter-American Commission, the use of obligatory national broadcasts intensified during the campaign

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<sup>1590</sup> Aporrea. August 28, 2013. [Trabajadores de PDVAL protestan en Miraflores por reivindicaciones salariales y hostigamiento laboral](#); Instituto Prensa y Sociedad (IPYS). August 28, 2013. [Caracas: Militares amenazaron a reporteros de medios comunitarios](#).

<sup>1591</sup> Espacio Público. October 30, 2013. [Agredido camarógrafo y periodista en Alto Apure](#); Instituto Prensa y Sociedad (IPYS). November 6, 2013. [Apure: Agreden a equipo reporteril durante actividad de campaña electoral](#).

<sup>1592</sup> Espacio Público. November 1, 2013. [Agredidos y detenidos por efectivos militares periodistas del diario 2001](#); Noticiero Digital. November 1, 2013. [Periodistas de Diario 2001 fueron detenidos mientras cubrían Feria Navideña en Los Próceres](#).

<sup>1593</sup> Espacio Público. January 15, 2013. [Espacio Público, CNP y SNTP demandan al Ministerio Público](#); Notitarde. January 15, 2013. [Demandan a la Fiscalía por no dar información oportuna](#); Knight Center for Journalism in the Americas. January 17, 2013. [Venezuelan journalists organizations file lawsuit against prosecutor's office for failure to respond to information requests](#).



and in the days following the April 14 presidential elections, on a number of occasions interrupting speeches or press conferences given by leaders of groups in opposition to the government. According to various organizations that monitor the issuance of obligatory national broadcasts in the country, during 2013 the Venezuelan government reportedly ordered dozens of obligatory national broadcasts.<sup>1594</sup> Additionally, according to Cadenómetro, a project of the nongovernmental organization (NGO) Monitoreo Ciudadano, from June 3, 2013 to September 19, 2013, Maduro appeared on the state channel VTV for 182 hours over 114 broadcasts, an average of 1 hour and 40 minutes each day.<sup>1595</sup>

865. For example, on January 3, then-Vice President Nicolas Maduro gave an official address during an obligatory national broadcast criticizing the way the media and journalists were covering Hugo Chavez's health.<sup>1596</sup> Also on January 3, Ernesto Villegas, Minister of communication and information, read an official press release during an obligatory national radio and television broadcast warning the Venezuelan people about "the psychological war" supposedly being waged by the media regarding Chavez's health.<sup>1597</sup> On April 16, after the presidential elections, the government ordered three obligatory national radio and television broadcasts showing government authorities at official events. One of them interrupted the broadcast of a press conference by opposition candidate Henrique Capriles.<sup>1598</sup> On April 18, president Nicolás Maduro appeared on an obligatory national radio and television broadcast, accusing *Televen* of having "responsibility" for the incidents of violence that took place following the presidential election because it had broadcast a press conference of the opposition candidate. He also accused *Globovisión* of being a "fascist" television channel.<sup>1599</sup> On April 24, an obligatory national radio and television broadcast interrupted a speech by the opposition candidate in which he was calling for a recount of the votes from the presidential election.<sup>1600</sup> On May 2, another obligatory national radio and television broadcast interrupted a press conference by the opposition candidate in which he was explaining the reasons for which he was challenging the results of the

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<sup>1594</sup> According Cadenómetro a project of the nongovernmental organization (NGO) Monitoreo Ciudadano, which keeps track of the number of obligatory national broadcasts ordered by the Venezuelan government, from March 5 through October 31, 137 national radio and television broadcasts were ordered. Monitoreo ciudadano. [Contador de horas de Nicolás Maduro en Cadena Nacional de Radio y Televisión](#). Furthermore, according to the count kept by NGO Espacio Público (Public Space), from January 1 through October 31, 2013, the Venezuelan government ordered 192 obligatory broadcasts, for a total of 137 broadcast hours. Espacio Público. *Horas en cadena obligatoria por año*. Available in: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1595</sup> Monitoreo ciudadano. [Contador de horas de Nicolás Maduro en Cadena Nacional de Radio y Televisión](#). Accessed on October 31, 2013.

<sup>1596</sup> Sucreranda Hugo Chávez Venezuela/YouTube. January 4, 2013. [Nicolás Maduro: ABC, escoria española franquista](#); ABC. January 4, 2013. [Maduro: «El diario ABC falta al respeto a Chávez y sus hijas todos los días»](#).

<sup>1597</sup> Sistema Bolivariano de Comunicación e Información. January 3, 2013. [Gobierno informa sobre insuficiencia respiratoria de Chávez y denuncia guerra psicológica en torno a su salud](#); Partido Socialista Unido de Venezuela (PSUV). January 3, 2013. [Gobierno denuncia guerra psicológica trasnacional sobre salud de Chávez para desestabilizar al país](#); Correo del Orinoco. January 3, 2013. [Gobierno Nacional advierte sobre guerra psicológica impulsada por la derecha venezolana](#).

<sup>1598</sup> El Aragueño. April 16, 2013. [La cadena de Maduro corta transmisión de conferencia de Capriles](#); CNN. April 16, 2013. [Maduro amenaza con "radicalizar" la revolución en Venezuela](#); El Mundo. April 16, 2013. [Maduro denuncia un 'golpe de estado' y llama Hitler a Capriles](#).

<sup>1599</sup> Ministerio de Comunicación e Información. April 18, 2013. [Maduro: Le cabe responsabilidad a Televen por encadenarse con llamados a violencia](#); Sucreranda Hugo Chávez Venezuela/YouTube. April 19, 2013. [Nicolás Maduro. Juramentación. Unasur. Globovisión fascista. Televen golpista. S-300 desfile](#).

<sup>1600</sup> Clarín. April 24, 2013. [Interrumpen con una cadena nacional un discurso en el que Capriles denunciaba fraude](#); El Mundo. April 24, 2013. [Cadena interrumpe declaraciones de Capriles R. sobre auditoría](#); TN. May 2, 2013. [Maduro volvió a interrumpir a Capriles con una cadena](#).

presidential election.<sup>1601</sup>

866. On January 3, the National Telecommunication Commission (Conatel) launched three administrative proceedings against television channel *La Tele* and radio broadcasters *Candela Pura* 91.9 FM and *Es 96.9* FM for having failed to broadcast or having delayed the broadcast of a statement from Ernesto Villegas, Minister of Communication and Information, regarding the health of former president Hugo Chavez. Article 10 of the Law on Social Responsibility in Radio Television and Electronic Media makes it obligatory for public- and private-sector audiovisual media outlets to broadcast official statements.<sup>1602</sup> On April 1, the National Telecommunications Commission (Conatel) reported that an administrative sanction procedure had begun against *Globovisión* for "alleged interference with a statement" during an official radio and television broadcast by Nicholas Maduro on April 1. According to Conatel, the obligatory radio and television broadcast had no audio for more than 6 minutes.<sup>1603</sup> *Globovisión's* legal counsel stated that there was an "involuntary" technical problem with the audio during Maduro's obligatory national broadcast and explained that minutes prior to the start of his statements, a communication had been sent to Conatel informing it of the technical problems that had been detected in the original transmission of the Venezolana de Televisión (VTV, a State audio-visual media outlet) signal. According to available information, this would be the tenth administrative procedure Conatel has launched against *Globovisión* in recent years.<sup>1604</sup>

867. On September 10, President Nicolas Maduro announced that as part of a new communication strategy, he was going to create *Noticiero de la Verdad*, which would be transmitted in an obligatory national broadcast, in order to provide information on the activities of his administration, as he believes that private media outlets do not report on official acts and conceal his administration's achievements.<sup>1605</sup>

868. On May 13, the creation of the "Joint Chiefs of Communications" was announced in the state of Mérida. The body was to be made up of university professors, social communicators and writers in order to "counteract" the "twisted" information distributed by private-sector media outlets.<sup>1606</sup> Mérida's governor indicated that the agency emerged from concern over the way private-sector media were handling information, stating that they are used "as weapons against the people, fomenting lies and aiding economic groups." He added that the agency would seek measures allowing for "the

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<sup>1601</sup> TN. May 2, 2013. [Maduro volvió a interrumpir a Capriles con una cadena](#); CNN. May 2, 2013. [Henrique Capriles impugna toda la elección presidencial de Venezuela](#); NTN24. May 3, 2013. [Maduro interrumpe rueda de prensa de Capriles en la que anunciaba impugnación de las elecciones](#).

<sup>1602</sup> Venezolana de Televisión (VTV)/Sistema Bolivariano de Comunicación e Información. January 4, 2013. [Conatel anuncia procedimiento administrativo a tres emisoras por no transmitir cadena](#); Aporrea/Prensa Conatel. January 5, 2013. [Conatel abrió procedimiento administrativo a medios por violación del artículo 10 de la Ley Resorte](#); Instituto Prensa y Sociedad (IPYS). January 3, 2013. [Comisión Nacional de Telecomunicaciones investiga a 3 medios audiovisuales por no transmitir alocución oficial](#); Espacio Público. January 14, 2013. [Conatel abre investigación contra tres medios por no difundir una cadena](#).

<sup>1603</sup> República Bolivariana de Venezuela/Scribd. Published by Pedro Pérez. April 1, 2013. [Providencia Administrativa](#).

<sup>1604</sup> El Universal. April 2, 2013. [Conatel abre décimo procedimiento contra Globovisión](#); Globovisión. April 2, 2013. [Conatel abre décimo procedimiento administrativo a Globovisión](#).

<sup>1605</sup> Instituto Prensa y Sociedad (IPYS). September 13, 2013. [Venezuela: imposición de espacios informáticos afectan la libertad informativa](#); El Mundo. October 9, 2013. [El "Noticiero de la verdad" el nuevo informativo obligatorio del gobierno venezolano](#); Informe 21. September 10, 2013. [Maduro: Crearemos el Noticiero de la verdad para las cadenas](#).

<sup>1606</sup> Agencia Venezolana de Noticias (AVN). May 13, 2013. [Conforman Estado Mayor Comunicacional en Mérida](#); Correo del Orinoco. May 14, 2013. [Crearon estado mayor comunicacional en Mérida para rebatir la canalla mediática](#).

incorporation of and articulation with alternative media in order to confront the media outlets that twist the truth." The Colegio Nacional de Periodistas of Mérida rejected the creation of the agency, calling it an "anti-democratic review that violates constitutional principles" and that "corrupts the free exercise of journalism and the right to work."<sup>1607</sup> Likewise, on May 23, the "Joint Chiefs of Communications" was set up in the state of Yaracuy, made up of 350 of the state's community media outlets. According to reports, the agency's objective is to respond to "the media attacks of destabilizing groups against the Government" and keep "the people informed of everything that the Bolivarian Revolution is doing for the well-being of everyone."<sup>1608</sup>

869. The Inter-American Commission has recognized the authority of the President of the Republic and high-ranking government officials to use the media for purposes of informing the public of prevailing matters of public interest; nevertheless, the exercise of this power is not absolute. The information that governments convey to the public through the presidential broadcasts must be strictly necessary to meet the urgent need for information on issues that are clearly and genuinely in the public interest, and for the length of time strictly necessary for the conveyance of that information. In this respect, both the IACHR and its Office of the Special Rapporteur,<sup>1609</sup> 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."<sup>1610</sup> 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."

870. Public servants must also bear in mind that they have a position as guarantors of the fundamental rights of individuals; as such, their statements cannot deny those rights.<sup>1611</sup> This special duty of care is heightened particularly in situations involving social conflict, breaches of the peace, or social or political polarization precisely because of the risks such situations might pose for specific

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<sup>1607</sup> El Universal. May 16, 2013. [Rechazan creación del "Estado Mayor de la Comunicación"](#); Instituto Prensa y Sociedad (IPYS). May 13, 2013. [Mérida: Constituyen "Estado Mayor Comunicacional" para controlar a los medios y a sus periodistas.](#)

<sup>1608</sup> Bolívar TV. May 24, 2013. [Activan el Estado Mayor Comunicacional](#); Correo del Orinoco. May 23, 2013. [Activado Estado Mayor Comunicacional en Yaracuy](#); La Hojilla en TV. May 24, 2013. [Activado Estado Mayor Comunicacional en Yaracuy.](#)

<sup>1609</sup> IACHR. [Report on the Situation of Human Rights in Venezuela](#). OEA/Ser.L/V/II.118. Doc. 4 rev. 1. 2 December 29, 2003. Para. 487.

<sup>1610</sup> IACHR. [Annual Report 2012. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. Para.232; IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 199; IACHR. [Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para.226.

<sup>1611</sup> 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.

individuals or groups at a given time.<sup>1612</sup> The Inter-American Court has also held that situations of risk can be exacerbated if they are “[the subject of government speeches] that may [provoke], suggest actions, or be interpreted by public officials or sectors of the society as instructions, instigations, or any form of authorization or support for the commission of acts that may put at risk or violate the life, personal safety, or other rights of people who exercise [...] freedom of expression.”<sup>1613</sup>

#### D. Access to public officials and public places

871. In its articles 56 and 66, the Rules of Procedure for the Floor and Debates of the National Assembly of Venezuela prohibits journalists who are not with ANTV (the National Assembly’s TV channel) or *Venezolana de Televisión* (VTV) from entering the sessions. On March 26, the Constitutional Chamber of the Supreme Tribunal of Justice (TSJ) admitted a suit of nullity filed by members of the organizations Espacio Público, the Sindicato Nacional de Trabajadores de la Prensa (SNTP), and the Colegio Nacional de Periodistas (CNP) alleging that the aforementioned articles were unconstitutional. In addition, the requested a precautionary injunction suspending the rules restricting the entrance of all media outlets to National Assembly sessions. The remedy was declared “inadmissible” by the court, as it did not demonstrate “*prima facie*, the violation of the rights alleged to have been violated.”<sup>1614</sup> In addition, on May 28, the president of the National Assembly, Diosdado Cabello, rejected a request from opposition deputies to include a discussion on the daily agenda regarding the amendment of articles 56 and 66 of the rules of procedure and parliamentary debate to allow the media access to the National Assembly. The opposition deputies had requested amendment of the aforementioned articles, but Cabello argued that the request must be presented in writing before the leadership of the National Assembly in order for the body to be able to consider it.<sup>1615</sup>

872. In addition to the ban on independent media covering the sessions of the National Assembly, assembly officials blocked the media from entering the administrative headquarters to cover other public events.<sup>1616</sup>

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<sup>1612</sup> I/A Court H.R. *Case of Perero et al. v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of January 28, 2009. Series C No. 195 Para. 151.

<sup>1613</sup> 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.

<sup>1614</sup> Nota de prensa del Tribunal Supremo de Justicia. April 8, 2013. [Sala Constitucional admite demanda de nulidad contra dos artículos del Reglamento de Interior y Debates de la AN](#); Tribunal Supremo de Justicia. [Sentencia de la Sala Constitucional del Tribunal Supremo de Justicia No. 159 de 26 de marzo de 2013](#); Espacio Público. April 10, 2013. [Admitida solicitud de nulidad del Reglamento de la Asamblea Nacional](#); Monitoreo Ciudadano/YouTube. July 18, de 2013. [Periodista Maru Morales relata como limitan acceso a la Asamblea](#). [9:20].

<sup>1615</sup> Sistema Bolivariano de Comunicación e Información. May 22, 2013. [Subcomisión de medios de AN venezolana recibe al Colegio Nacional de Periodistas](#); Instituto Prensa y Sociedad (IPYS). May 28, 2013. [Caracas: Negaron solicitud de reforma de reglamento parlamentario para levantar restricciones a la cobertura periodística](#).

<sup>1616</sup> On February 5, security personnel of the National Assembly prevented a number of journalists from covering an event in Venezuela’s legislative chamber. Colegio Nacional de Periodistas (CNP). February 5, 2013. [Impiden a los diarios Últimas Noticias y Tal Cual cubrir pauta en la AN](#); Globovisión. February 5, 2013. [Periodistas protestaron por limitación de cobertura en la Asamblea Nacional](#); Tal Cual. February 5. [¿Libertad de prensa?](#). On May 14, individuals presumed to be security personnel with the National Assembly’s administrative building denied access to journalist Jeanelie Briceño, with *Globovisión*, who was there to cover a press conference by an opposition deputy. Instituto Prensa y Sociedad (IPYS). May 14, 2013. [Caracas: Prohibieron acceso de periodistas a sede administrativa del parlamento](#); Reporters Without Borders. June 13, 2013. [Venezuela. Dos Meses después de las elecciones, perdura la tensión mediáticas](#); Cuba Net. June 11, 2013. [Reporters without Borders. Report on Venezuela](#). On May 21, press officials of the National Assembly refused to grant journalist María Eugenia Morales, a reporter with *El Nacional*, access to Assembly headquarters. Instituto Prensa y Sociedad (IPYS). May 21, 2013. [Caracas: Vetaron a](#)

873. The Inter-American Commission has also received information indicating that the journalists of private sector media outlets are systematically prevented from covering or accessing public events, press conferences and official acts.<sup>1617</sup>

874. Journalists from a number of media outlets reported that they faced restrictions at a number of electoral centers while covering the April 14 vote. Some obstructions were put in place by officials with the Plan República, the military organization in charge of security during the presidential elections. It prevented journalists from accessing voting centers or made access more difficult.<sup>1618</sup> Also, the journalists covering the elections had difficulty in getting statements from the officials working in the voting centers. They had supposedly been ordered not to comment to the press.<sup>1619</sup> Reporter Keren Torres, with newspaper *El Impulso*, had a difficult time doing her job because in only one of the five voting centers she visited was her photographer allowed to take pictures inside.<sup>1620</sup> Natalia Urdaneta, a reporter with *Diario Primicia*, was removed from a voting center in Puerto Ordaz, Bolívar state, supposedly on the orders of officials with Plan República.<sup>1621</sup> Likewise, reporter Eunice Gamero, with

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[reportera en el parlamento](#); *El Universal*. June 1, 2013. [Solicitan a TSJ que proteja derechos de una periodista](#).

<sup>1617</sup> On January 7, a *Globovisión* news team was not informed of an official event of the vice president of the Republic at the time, Nicolás Maduro. When the news team went to cover the event, a press official informed them that credentials had already been assigned. *Globovisión* representatives have alleged on a number of occasions that they have not received press invitations to government events. Instituto Prensa y Sociedad (IPYS). January 7, 2013. [Impidieron cobertura de equipo reporteril de canal privado en actividad dirigida por el Vicepresidente de la República](#); On January 15, the Legislative Committee of the state of Miranda prevented journalists and media outlets from covering the swearing-in of Enrique Capriles as the re-elected governor of the state of Miranda. Only the press team of the Miranda government had access. Instituto Prensa y Sociedad (IPYS). January 15, 2013. [Impidieron a la prensa cubrir juramentación del Gobernador del estado Miranda](#). On April 1, reporters from state broadcasters *Radio Nacional de Venezuela* (RNV) and *Venezolana de Televisión* (VTV) were prevented from attending a press event on the beginning of the campaign of opposition presidential candidate Henrique Capriles. *Venezolana de Televisión* (VTV)/Sistema Bolivariano de Comunicación e Información. [Impiden acceso a periodistas de VTV y RNV a rueda de prensa de Capriles](#). DailyMotion. April 1, 2013. [Impiden acceso a periodistas de VTV y RNV a rueda de prensa de Capriles](#); On January 21, a number of media outlets were prevented from attending the State of the Judiciary of the Supreme Tribunal of Justice, where a report was to be presented on the judicial body's performance during 2012. Instituto Prensa y Sociedad (IPYS). January 21, 2013. [Poder judicial impide a los equipos reporteriles presenciar la rendición de cuentas de su gestión pública](#). On May 24, the press director of the Ministry of the Interior and Justice prevented journalist Danielle Guillermo Colina, with *Globovisión*, from covering an event to honor posthumously five National Police officers in Caracas. Instituto Prensa y Sociedad (IPYS). May 24, 2013. [Caracas: Ministro negó acceso a medios privados en acto oficial](#); *Globovisión*. May 24, 2013. [Rindieron honores a oficiales de la PNB fallecidos en helicóptero siniestrado](#). On June 3, officials with State company *Corporación Eléctrica de Venezuela* (Corpoelec) prevented journalists from newspaper *La Verdad* from attending a press conference called by the Environment Ministry. Instituto Prensa y Sociedad (IPYS). July 1, 2013. [Zulia: "Corpoelec limitó el acceso de equipo periódico privado](#). Reporters Without Borders. June 16, 2013. [Venezuela | Dos meses después de las elecciones, perdura tensión mediática](#). On June 25, officials with the Supreme Tribunal of Justice denied the press access to a public oral hearing of a deputy of the National Assembly over allegations of corruption. Instituto Prensa y Sociedad (IPYS). June 25, 2013. [Caracas: Negaron acceso a la prensa en audiencia oral y pública](#). Notitarde. June 25, 2013. [Termina audiencia de antejuicio de mérito contra Richard Mardo](#).

<sup>1618</sup> Instituto Prensa y Sociedad (IPYS). April 14, 2013. [Lara: Obstaculizaron labor de la prensa en centros electorales](#); Espacio Público. April 30, 2013. [Ataques a la Libertad de Expresión entre el 14 y el 26 de abril. Presidenciales 2013](#).

<sup>1619</sup> Instituto Prensa y Sociedad (IPYS). April 14, 2013. [Portuguesa: Coordinadora de centro electoral negó información a la prensa](#); Espacio Público. April 30, 2013. [Ataques a la Libertad de Expresión entre el 14 y el 26 de abril. Presidenciales 2013](#).

<sup>1620</sup> Knight Center for Journalism in the Americas. April 17, 2013. [Journalists denounce restrictions on election coverage in Venezuela](#); Instituto Prensa y Sociedad (IPYS). April 14, 2013. [Lara: Obstaculizaron labor de la prensa en centros electorales](#).

<sup>1621</sup> Instituto Prensa y Sociedad (IPYS). April 14, 2013. [Bolívar: Plan República desalojó a periodista de centro de votación](#).

newspaper *Correo del Caroní*, was verbally assaulted and prevented from doing her work by an individual presumed to be an official with the National Elections Council (CNE).<sup>1622</sup> Gladyscar Guzmán, a reporter with newspaper *Nuevo Día*, alleged that officials presumed to be members of Plan República denied her access to the voting center located in the Diego León Zuniaga school in Coro.<sup>1623</sup> Journalists Cintia González and Elier Galicia, also with *Nuevo Día*, were prevented from entering and taking photographs in a number of voting centers.<sup>1624</sup> José Barrios Díaz, a photographer with *El Tiempo*, was assaulted by an individual presumed to be a soldier while he was covering allegations of irregularities in a voting center in the city of Puerto La Cruz, Anzoátegui state.<sup>1625</sup> Individuals presumed to be officials with the National Electoral Council (CNE) and Plan República blocked journalists with the newspaper *La Verdad* - Ana Carolina Mendoza and Sheyla Urdaneta - access to voting centers in the city of Maracaibo.<sup>1626</sup> Members of Plan República prevented or slowed the work of new teams from the newspaper *El Siglo* and radio broadcaster *Universitaria* 104.5 FM, in Maracay, Aragua state.<sup>1627</sup> Members of Plan República also prevented reporters with the newspaper *Las Noticias* from entering voting centers in Cojedes state.<sup>1628</sup>

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

#### E. Subsequent liability

876. Over the last decade, Venezuela has been going through a process of structural reforms to the legal and public policy application framework that has weakened guarantees of the right to freedom of expression in the country, as the IACHR has maintained in previous reports.<sup>1629</sup> The IACHR has repeatedly pointed to the need to revise the legal framework in which Venezuelan media operate. Specifically, the IACHR has called the authorities' attention to the existence of ambiguous or

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<sup>1622</sup> Instituto Prensa y Sociedad (IPYS). April 14, 2013. [Bolívar: Funcionario del poder electoral ordenó a reportera a abandonar el centro electoral.](#)

<sup>1623</sup> Instituto Prensa y Sociedad (IPYS). April 14, 2013. [Falcón: Prevalcieron limitaciones a acceso a la prensa en centros electorales.](#)

<sup>1624</sup> Instituto Prensa y Sociedad (IPYS). April 14, 2013. [Falcón: Prevalcieron limitaciones a acceso a la prensa en centros electorales.](#)

<sup>1625</sup> Instituto Prensa y Sociedad (IPYS). April 14, 2013. [Anzoátegui: Militar agredió e intentó arrebatar equipo a reportero gráfico.](#)

<sup>1626</sup> Instituto Prensa y Sociedad (IPYS). April 14, 2013. [Zulia: Impiden acceso a centros de votación a periodistas del diario La Verdad.](#)

<sup>1627</sup> Instituto Prensa y Sociedad (IPYS). April 14, 2013. [Arauca: Militares obstaculizan trabajo a periodista durante elecciones presidenciales](#); Espacio Público. April 30, 2013. [Ataques a la Libertad de Expresión entre el 14 y el 26 de abril. Presidenciales 2013.](#)

<sup>1628</sup> Instituto Prensa y Sociedad (IPYS). April 14, 2013. [Cojedes: Impidieron acceso a la prensa en dos centros de votación.](#)

<sup>1629</sup> IACHR. [Annual Report 2010. Annual Report of the Office of the Special Rapporteur for Freedom of Expression.](#) Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 412 to 524.

disproportionate sanctioning rules that allow for discretionary opening of judicial and administrative processes and that do not offer sufficient guarantees for ensuring the full exercise of freedom of expression without fear of retaliation.<sup>1630</sup> The Inter-American Commission has received information indicating that the government of Venezuela continues to apply the provisions of the Law on Social Responsibility in Radio, Television and Electronic Media [*Ley de Responsabilidad Social en Radio, Televisión y Medios Electrónicos*] (Resorte Law) regarding incitement of hate, intolerance, and calls to violence to initiate legal or administrative proceedings against media outlets and journalists who distribute information that runs contrary to the government's interests.<sup>1631</sup>

877. As the Inter-American Commission has indicated on previous occasions, law including the Penal Code of Venezuela, the Organic Code of Military Justice, and the Law on Social Responsibility in Radio, Television and Electronic Media (Resorte Law) all have sections that are not compatible with Inter-American standards on freedom of expression. In previous reports, the IACHR and its Office of the Special Rapporteur for Freedom of Expression have expressed concern at the existence of these laws and urged the government of Venezuela to change them to meet international standards on the subject.<sup>1632</sup>

878. In December of 2012 and January 2013, television channel *Globovisión* broadcast four messages transcribing the text of Article 231<sup>1633</sup> and the articles of the Constitution of Bolivarian Republic of Venezuela related to the inauguration of the president. On January 9, National Assembly president Diosdado Cabello and Energy and Petroleum Minister Rafael Ramírez asked the National Telecommunications Commission (Conatel) to launch an investigation into *Globovisión*, a private-sector news channel, on allegations of manipulation of information. Cabello stated that *Globovisión* explains only the part of Article 231 of the Constitution "that suits them because they are irresponsible and manipulative. I hope Conatel follows the appropriate procedure and applies sanctions for the manipulation of the truth, for being manipulative, for trying to sow unease in the population, just because they are full of hate - a sick hatred, too - for a human being, Hugo Chávez, and toward [...] the people of Venezuela." The statements were backed by Ramírez, who during an event with the workers of state company *Petróleos de Venezuela (PDVSA)* stated: "[w]e agree with the president of the National Assembly; Conatel has to act to sanction [*Globovisión*]."<sup>1634</sup> That same day, the National Telecommunications Commission of Venezuela (Conatel) launched an administrative sanction

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<sup>1630</sup> IACHR. [Annual Report 2010. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 412 to 524. Espacio Público. October 25, 2013. [Modificaron decreto que crea el Cesppa](#).

<sup>1631</sup> IACHR. [Annual Report 2012. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. Para. 510-514.

<sup>1632</sup> IACHR. [Annual Report 2010. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 412 to 524.

<sup>1633</sup> Consejo Nacional Electoral (CNE). [Constitución de la República Bolivariana de Venezuela](#). "Article 231. The candidate-elect will take up the position of President of the Republic on January 10 of the first year of his or her constitutional term by being sworn in before the National Assembly. If for some unforeseen reason, the President of the Republic cannot take possession before the National Assembly, he or she shall do so before the Supreme Tribunal of Justice."

<sup>1634</sup> *Globovisión*. January 9, 2013. [Diosdado Cabello y ministro Ramírez piden a Conatel investigar a Globovisión por difundir artículo 231](#); Instituto Prensa y Sociedad (IPYS). January 9, 2013. [Presidente del parlamento solicitó sanción contra planta televisiva por interpretaciones a la Constitución Nacional](#).

proceeding against Corpomedios GV Inversiones, C.A. (*Globovisión*) for the alleged violation of Article 27 of the Law on Social Responsibility in Radio, Television and Electronic Media (Resorte Law)<sup>1635</sup> through the broadcasting of the messages. According to the measure, “the messages [...] could incite or promote hatred or intolerance for political reasons, defending or inciting subversion of the public order, fomenting unease in the citizenry or disrupting public order or failing to recognize legitimate authorities, which, should it be proven in this administrative proceeding, would lead to the imposition of administrative sanctions established in the [Resorte] Law.”<sup>1636</sup> Through the measure, the General Director of the National Telecommunications Commission of Venezuela (Conatel) issued an injunction ordering *Globovisión* to abstain from broadcasting the four messages identified, as well as any other message with similar content. On January 16, *Globovisión* went to Conatel to file a “brief to challenge” the administrative proceeding, alleging that “the injunction clearly represents prior censorship, blocks the free debate of ideas and opinions on a matter of constitutional relevance, and therefore unjustly, disproportionately and illegitimately restricts freedom of expression and limits the effective development of the democratic process.” In the document, the media outlet states that Conatel’s administrative action “does not explain how short informational segments could incite what it is suggesting, nor does it provide any serious indication that there has been in Venezuela any demonstration of hate, intolerance, disruption of the public order or failure to recognize authorities as a result of the broadcasting of the short informational segments. The act is based on a simple individual assumption by the official, purely subjective, that is not based on any evidence that the stated effects could be or have been observed in Venezuela.” *Globovisión* representatives demanded that the regulator revoke “the injunction, restore the right to disseminate and receive information and opinions on the interpretation of Article 231 of the Constitution, and permit the free circulation of information, ideas and opinions regarding this matter.”<sup>1637</sup> On January 11, the Office of the Special Rapporteur sent a letter to the government of Venezuela, pursuant to Article 41 of the American Convention on Human Rights, requesting information regarding the administrative sanction procedure launched against *Globovisión* and recalling the standards on the subject.

879. According to information received by the Inter-American Commission, the Scientific, Criminal and Forensic Investigation Corps (CICPC) of the state of Zulia, called and interrogated Juan José Faría [or Farías], a journalist with the newspaper *La Verdad* and correspondent with the organization IPYS Venezuela because of his articles about the murder of a criminal leader in a prison in the city of Maracaibo. On January 28, the reporter received a summons from the CICPC, and when he appeared on

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<sup>1635</sup> Ley Resorte/Sistema Bolivariano de Comunicación e Información. [Ley de Responsabilidad Social en Radio, Televisión y Medios Electrónicos](#). Gaceta Oficial No 39.610. February 7, 2011. “Article 27: Distribution through radio, television and electronic media is not permitted of messages that: 1. Incite or promote hatred and intolerance for reasons of religion, politics, gender difference, racism or xenophobia. 2. Incite or promote and/or defend crime. 3. Constitute war propaganda. 4. Foment unease in the citizenry or upset public order. 5. Do not recognize legitimate authorities. 6. Encourage murder. 7. Incite or promote a failure to comply with in-force legislation (...).”

<sup>1636</sup> Comisión Nacional de Telecomunicaciones de Venezuela (Conatel). January 9, 2013. [Providencia Administrativa](#); Comisión Nacional de Telecomunicaciones de Venezuela (Conatel). January 9, 2013. [CONATEL notificó a Globovisión el inicio de procedimiento administrativo sancionatorio](#); *Globovisión*. January 9, 2013. [Conatel inicia nuevo procedimiento contra Globovisión por difundir artículos de la Constitución](#); Committee to Protect Journalists (CPJ). January 9, 2013. [Globovisión probed over Chávez inauguration reports](#); IACHR. Office of the Special Rapporteur for Freedom of Expression. January 11, 2013. Letter to the State of Venezuela. Request for information regarding the disciplinary administrative proceedings initiated against *Globovisión*.

<sup>1637</sup> *Globovisión*. January 16, 2013. [Globovisión presenta ante Conatel su oposición a la medida que prohibió difusión de micros](#); Instituto Prensa y Sociedad (IPYS). January 16, 2013. [Globovisión presentó sus alegatos y rechazó el procedimiento sancionatorio iniciado por Conatel](#).



January 30, he was interrogated for more than four hours without counsel. The officials tried to get information from him about his sources and mentioned the possibility of charging him with the crimes of instigation and criminal conspiracy. Later, they summoned the heads of the newsroom at *La Verdad* over their alleged responsibility for the authorization of the publication of the articles by Faría.<sup>1638</sup> Later, on April 2, the former director of the El Marite prison threatened Faría with filing a criminal complaint against him with the justice system after the journalist published articles on controversies and accusations of corruption in that prison.<sup>1639</sup> On July 17, the reporter filed a complaint with the Office of the Superior Public Prosecutor of Maracaibo, Zulia state, over the repeated threats he had received from State security agents and individuals presumed to be members of criminal gangs in the region.<sup>1640</sup>

880. On January 30, the general secretary of the government of Carabobo filed a criminal complaint against journalists Francisco Pérez, a columnist with the newspaper *El Carabobeño*, accusing him of defamation and aggravated defamation [*difamación* and *injuria agravada*],<sup>1641</sup> after Pérez published a column on January 14 accusing members of the PSUV of being responsible for a January 1 fire in a garbage dump.<sup>1642</sup>

881. On February 7, representatives of the permanent security and defense committee of the national assembly announced that they would ask the National Telecommunications Commission (Conatel) to launch an investigation into media outlets that distributed the results of the report "Government Defense Anti-Corruption Index," prepared by NGO Transparency International. The legislators accused the organization of carrying out a "media campaign" to hurt the image of the National Bolivarian Armed Forces [*Fuerza Armada Nacional Bolivariana*] (FANB) and destabilize the country politically.<sup>1643</sup> The accusations arose after Transparency International presented the results of its report on corruption, in which 82 countries were evaluated. In its conclusions, the report indicates that Venezuela has "a very high risk of corruption," and demonstrates "a serious lack of transparency and poor application of existing laws, leading to poor results in all risk categories."<sup>1644</sup>

882. On April 10, the minister of Energy and Petroleum and president of the state-owned

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<sup>1638</sup> Consejo Nacional de Periodistas de Zulia. February 3, 2013. [CNP Zulia sobre caso La Verdad: "El secreto de la fuente es un derecho constitucional"](#); Tal Cual. February 4, 2013. [Periodista en la mira](#); La Verdad. February 3, 2013. [CNP Zulia defiende a La Verdad y su derecho a proteger la fuente](#); Instituto Prensa y Sociedad (IPYS). January 30, 2013. [Cuerpo policial acusa a corresponsal de IPYS Venezuela por supuestamente instigar al delito](#).

<sup>1639</sup> IFEX/Instituto Prensa y Sociedad (IPYS). April 4, 2013. [Ex director policial amenazó con demandar a periodista en Venezuela](#); Espacio Público. April 8, 2013. [Exdirector del retén El Marite Amenaza a periodista de sucesos](#); La Verdad. April 3, 2013. [Exdirector de El Marite amenaza a periodista de La Verdad](#).

<sup>1640</sup> Instituto Prensa y Sociedad (IPYS). July 17, 2013. [Zulia: Reportero denunció en Fiscalía amenazas que ha recibido por su labor periodística](#). Últimas Noticias. July 22, 2013. [Periodistas de UN denunció amenazas por su labor periodística](#).

<sup>1641</sup> Notitarde. February 4, 2013. [El periodista "Pancho" Pérez es demandado por difamación e injuria](#); Noticias24. April 30, 2013. [Admitida acusación en contra del periodista Francisco "Pancho" Pérez por difamación agravada e injuria agravada](#).

<sup>1642</sup> Noticias24. April 30, 2013. [Admitida acusación en contra del periodista Francisco "Pancho" Pérez por difamación agravada e injuria agravada](#); Instituto Prensa y Sociedad (IPYS). February 4, 2013. [Funcionario regional solicitó una investigación penal contra periodista por presunta difamación](#).

<sup>1643</sup> Sistema Bolivariano de Comunicación e Información. [AN investigará guerra sucia de ONG Transparencia Internacional contra la FANB](#).

<sup>1644</sup> Transparencia Venezuela. [70 por ciento de los gobiernos no establecen controles anti-corrupción en materia de Defensa](#); Notitarde. February 9, 2013. [Venezuela entre países con "alto riesgo" de corrupción en Defensa](#).

company Petróleos de Venezuela (PDVSA), Rafael Ramírez, announced a legal action against Rayma Suprani, cartoonist of the *El Universal* newspaper, and Nelson Bocaranda, radio host with the radio station *Éxitos FM* and director of the *Runrun.es* portal, for supposedly damaging the reputation of the State company. The warning was issued after the cartoonist and journalist expressed opinions about a supposed link of PDVSA officials in the case of a scandal that took place on March 30, 2012.<sup>1645</sup>

883. The Attorney General of Venezuela, Luisa Ortega, announced on April 24 that her office was investigating messages published on the Twitter Social network to determine if they contained hidden calls to generate violence in the days following the elections of April 14. “There are direct and subliminal calls. Review the Twitter networks to see the calls made there, that is what we are investigating,” said the Attorney General.<sup>1646</sup>

884. According to information received, on Wednesday, April 24, a Commission was set up in the General Assembly to investigate possible responsibility for the violence that took place after the presidential elections of April 14.<sup>1647</sup> The people to be investigated by the Commission included journalist Nelson Bocaranda, a columnist for the *El Universal* daily newspaper, host of the program ‘La cola feliz’ at the *Éxitos 99.9 FM* radio station and director of the *Runrun.es* news site, for alleged responsibility for attacks, according to the government, on the facilities of certain Integrated Diagnostic Centers [*Centros de Diagnóstico Integral*] (CDI).<sup>1648</sup> The allegations were based on the journalist’s publication of a message on his Twitter social network account alleging the presence of boxes with votes from the presidential elections at an Integrated Diagnostic Center (CDI) in Gallo Verde, Maracaibo.<sup>1649</sup> Based on this publication, the National Assembly representative for the United Socialist Party of Venezuela (PSUV), Pedro Carreño, on April 16 published the following in his Twitter account: “@NelsonBocaranda is responsible for damage to the CDIs. Today in the National Assembly we urge the Public Prosecutor to hold him criminally responsible”<sup>1650</sup>. Regarding this matter, on June 12, the Special Rapporteur sent the State a letter requesting information about the investigation of journalist Nelson Bocaranda.

885. On July 4, the Public Prosecutor subpoenaed Bocaranda as a witness in the context of

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<sup>1645</sup> Últimas Noticias. April 10, 2013. [Pdvsá ejercerá acciones legales en caso Los Juanes](#); Espacio Público. May 6, 2013. [Caricaturista Rayma Suprani denuncia querrela en su contra](#).

<sup>1646</sup> Noticias24. April 24, 2013. [Fiscalía General de la República investiga mensajes en Twitter emitidos tras elecciones](#); Últimas Noticias. April 24, 2013. [Fiscalía investiga mensajes en Twitter emitidos tras elecciones](#).

<sup>1647</sup> Agencia Venezolana de Noticias (AVN). April 29, 2013. [Solicitarán a Fiscalía y TSJ evacuación de pruebas de daños causados el 15 y 16 de abril](#); NTN24. April 24, 2013. [Asamblea Nacional instalará comisión para investigar hechos violentos luego de comicios en Venezuela](#); CNN. April 24, 2013. [Venezuela crea una comisión para investigar agresiones poselectorales](#).

<sup>1648</sup> Agencia Venezolana de Noticias (AVN). May 15, 2013. [Comisión de la AN se trasladará al Táchira y La Limonera para investigar violencia antichavista](#); Notitarde. April 18, 2013. [Asamblea Nacional investigará a Nelson Bocaranda por ataques contra CDI](#); Sistema Bolivariano de Comunicación e Información. [Salud y alimentación del pueblo fueron el blanco de la ultraderecha](#).

<sup>1649</sup> “Reports are that in the CDI of La Paz in Gallo Verde, Maracaibo, ballot boxes are hidden away and the Cubans are not letting them get out.” Original text: “Informan que en el CDI de La Paz en Gallo Verde, Maracaibo, hay urnas electorales escondidas y los cubanos de allí no las dejan sacar.” Twitter account of Nelson Bocaranda @NelsonBocaranda. [April 15, 2013- 12:24 PM](#); Instituto Prensa y Sociedad (IPYS). April 16, 2013. [Diputado amenaza a periodista con acciones penales por mensaje publicado en Twitter](#).

<sup>1650</sup> Cuenta de Twitter del diputado Pedro Carreño @PedroCarreno\_e. [April 16, 2013 - 7:10 AM](#); 6toPoderNoticias/YouTube. April 24, 2013. [Carreño sobre Nelson Bocaranda](#).

investigations carried out by that agency into the violent events that took place after the presidential elections of April 14.<sup>1651</sup> On July 11, Bocaranda testified in response to a second subpoena from the Public Prosecutor. Upon leaving, a group of people supposedly identified as government supporters shouted insults at the journalist.<sup>1652</sup> On September 26, the president of Venezuela, Nicolás Maduro, accused Bocaranda of working for the United States Central Intelligence Agency (CIA) and warned him that his “treason” would face “justice”. The president stated that his Government would present “evidence to show that Bocaranda worked for the CIA and the US State Department”.<sup>1653</sup>

886. On May 24, Héctor Horacio Contreras, a journalist and announcer at *Studio 102.7 FM*, received a copy of a lawsuit filed against him by the governor of Mérida state, for supposedly inciting violence during events that took place in the days following the presidential elections of April 14.<sup>1654</sup> On May 13 and 15, the governor of Mérida state announced in press conferences that he would sue the journalist for allegedly inciting violence. On April 15, groups of armed individuals used firearms and blunt objects to attack medical personnel, patients and people at the Health Center at the Universidad de Los Andes (Camiula). As a result, Contreras issued a call to the state governor, reminding him of his duty to guarantee the security of the citizenry. Contreras received two death threats on his cellular phone.<sup>1655</sup> Additionally, on May 15, the governor announced that he would also file suit against journalist Leonardo León, of *ULA 107.7 FM*, the radio station of the Universidad de Los Andes and correspondent for *El Nacional*.<sup>1656</sup>

887. On the second week of July, the First Court for Mediation, Prosecution, Enforcement and Transitory Rules of Procedure of the Judicial Circuit for the Protection of Boys, Girls and Adolescents of the Judiciary the State of Falcón prohibited the daily newspaper *La Mañana* from publishing photographs of “events” until a lawsuit against the newspaper is resolved by the Ombudsman’s Office, stemming from the publishing of photographs in 2012 that, according to that agency, endangered the integrity of children and adolescents.<sup>1657</sup> On July 17, a parliamentary hearing was held in the case, in which it was decided to begin a trial against the newspaper after the parties were unable to reach an agreement.<sup>1658</sup>

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<sup>1651</sup> Ministerio Público. July 4, 2013. [MP citó a Nelson Bocaranda por hechos de violencia ocurridos luego de la reciente elección presidencial. Deberá presentarse el próximo martes 9 de julio de 2013.](#) Últimas Noticias. July 4, 2013. [Nelson Bocaranda es citado a la Fiscalía.](#)

<sup>1652</sup> Ministerio Público. July 9, 2013. [MP citara por segunda vez a Nelson Bocaranda por hechos de violencia postelectoral.](#)

<sup>1653</sup> Sistema Bolivariano de Comunicación e Información. Correo del Orinoco. September 26, 2013. [Maduro: Anótalo Nelson Bucaranda tu y tus traiciones se van a ver con la justicia;](#) Noticias24. September 26, 2013. [Maduro sobre Bocaranda: da vergüenza como un periodista se arrastra ante EEUU \(+video\)](#)

<sup>1654</sup> Instituto Prensa y Sociedad (IPYS). May 24, 2013. [Mérida: Gobernador demandó a periodista por difamación.](#)

<sup>1655</sup> Instituto Prensa y Sociedad (IPYS). May 13, 2013. [Mérida: Amenazan con demandar a periodista y atentar contra su integridad física.](#)

<sup>1656</sup> El Popularla. May 15, 2013. [Gobernador de Mérida insiste en denunciar en la fiscalía a 2 comunicadores sociales;](#) Instituto Prensa y Sociedad (IPYS). May 15, 2013. [Mérida: Gobernador anunció que demandaría a periodista.](#)

<sup>1657</sup> Instituto Prensa y Sociedad (IPYS). June 25, 2013. [Falcón: Defensoría del Pueblo demandó a periódico local.](#) Espacio Público. June 28, 2013. [Defensoría del Pueblo demanda a diario La Mañana.](#)

<sup>1658</sup> Instituto Prensa y Sociedad (IPYS). July 17, 2013. [Falcón: Tribunal emitió orden de censura e imputó a periódico regional;](#) 25 Segundos. July 12, 2013. [Prohíben a diario de Falcón publicar imágenes de sucesos.](#)

888. Representatives of the Ombudsman’s Office filed a lawsuit against the daily newspaper *La Mañana*, stemming from the publication of photographs in 2012 that, according to that agency, endangered the integrity of children and adolescents. On June 20, the directors of that medium received a subpoena for the preliminary hearing.<sup>1659</sup>

889. On June 22, the Minister of Penitentiary Services requested the Public Prosecutor to investigate the journalistic team at the ‘Sucesos’ section of the daily newspaper *La Verdad*, for holding conversations with prison inmates, after the medium published an article on the profile of three prisoners, presumably “leaders” at a penitentiary center in Maracaibo, and an interview with an inmate.<sup>1660</sup>

890. On July 23, supposed agents of the Scientific, Criminal and Criminalistics Investigations Corps (CICPC) raided the home of an official from the Ministry of Housing and Habitat, and confiscated his personal computer and mobile phone. Presumably, the official had been detained under suspicion of having committed computer crimes by placing a video on the YouTube platform showing the minister of Housing and Habitat threatening to fire workers who are government opponents. The official was transferred to the Computer Crimes Division, where he was detained throughout the day. He was finally freed without being charged.<sup>1661</sup>

891. On July 23, the First Trial Court of the State of Bolívar partially admitted a criminal lawsuit filed on July 15 by an entrepreneur against the president of the daily newspaper *Correo del Caroní*, David Natera, for the alleged crimes of defamation [*difamación* and *injuria*].<sup>1662</sup> The Court also ordered precautionary measures, prohibiting the newspaper from reporting on investigations against the entrepreneur, charged by the Public Prosecutor for his alleged links to episodes of corruption at a State company.<sup>1663</sup> According to what was reported, on July 24, *Correo del Caroní* received notification from the Court ordering it “to abstain from publishing or permitting the publication of subjective or prejudicial information issued directly or indirectly, simulated or presumed relating to citizen Yamal Mustafá, as well as referring to any other criminal proceeding that could be brought against him, that could be interpreted as damaging to his constitutional rights, such as due process, presumption of innocence, the right to honor and reputation and the right to integrity of people and families, and to objectively publish information in accordance with journalistic ethics.” On July 18, he was charged by the Public Prosecutor as “immediate cooperator in the crime of embezzlement [*peculado doloso propio*], collusion of a government official with a contractor [*concertación de funcionario público con contratista*] and criminal conspiracy [*asociación para delinquir*].”<sup>1664</sup>

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<sup>1659</sup> Instituto Prensa y Sociedad (IPYS). June 25, 2013. [Falcón: Defensoría del Pueblo demandó a periódico local](#). Espacio Público. June 28, 2013. [Defensoría del Pueblo demanda a diario La Mañana](#).

<sup>1660</sup> Instituto Prensa y Sociedad (IPYS). June 22, 2013. [Zulia: Ministra pidió investigar a periodista de diario local](#).

<sup>1661</sup> El País. July 25, 2013. [La policía de Venezuela detiene a un joven al publicar el video de un ministro](#); El Universal. July 23, 2013. [Detienen a internacionalista acusado de difundir video de Ministro Molina](#); Globovisión. July 23, 2013. [Detienen a joven que difundió video del ministro Molina amenazando a trabajadores que apoyan a Capriles](#).

<sup>1662</sup> Primicia. July 23, 2013. [Tribunales admitieron querrela penal contra David Natera](#).

<sup>1663</sup> Instituto Prensa y Sociedad (IPYS). July 23, 2013. [Bolívar: Tribunal ordenó a periódico local censurar informaciones de procesos judiciales por supuesta corrupción](#); Noticiero Digital. July 25, 2013. [Correo del Caroní: Juez ordena no informar de manera “subjetiva o prejuiciosa” sobre Yamal Mustafá](#).

<sup>1664</sup> Ministerio Público. July 21, 2013. [Privan de libertad a empresario y tres exdirectivos de la CVG Ferrominera Orinoco por hechos de corrupción](#).

892. On August 8, the 3rd Trial Court of the Caracas Metropolitan Area fined daily newspapers *El Nacional* and *Tal Cual* in the amount of 1% of their gross revenues of 2009, due to the publication of a photograph on August 13, 2010 on the front page of *El Nacional*, and which was reproduced on August 16, 2010, in the daily newspaper *Tal Cual*, which showed images of cadavers at a morgue in Caracas.<sup>1665</sup> The Court also ordered both media to abstain from publishing images “of violent content, weapons, physical assault and bloody and nude cadavers.” Both media announced that they will appeal the decision.<sup>1666</sup>

893. On September 28, President Nicolás Maduro accused the private media of having published “war propaganda” with its coverage of shortages of certain basic products in Venezuela. Maduro had ordered the Attorney General of the Republic and the Judicial Branch to take action against private media that report on the subject: “I want to publicly request the Attorney General to evaluate special measures [...] along with the Judicial Branch so that we may punish the psychological war being carried out by the written press, television and radio against the people’s food security and the economic life of the nation,” stated Maduro.<sup>1667</sup>

894. On September 30, the National Telecommunications Council (Conatel) began a new administrative procedure against *Globovisión*, this time for having disseminated a report on supposed shortages of basic goods in Venezuela. The President of Conatel, Pedro Maldonado, reported in statements to media outlets that the agency had begun an administrative sanction proceeding against the private news channel for allegedly having disseminated content fomenting unrest among the citizenry.<sup>1668</sup>

895. On October 10, officials presumed to be with from the Scientific, Criminal and Criminalistics Investigations Body [*Cuerpo de Investigaciones Científicas, Penales y Criminalísticas*] (CICPC) detained journalist Víctor Hugo Donaire, host and director at radio station *Morros 89.7 FM*, in San Juan de Los Morros, Guárico state, for the alleged crime of “insulting officials.” As reported, the journalist was broadcasting his radio program ‘De frente,’ when individuals presumed to be security officials detained him, without a court order, and moved him to the agency headquarters. According to the journalist’s attorney, when Donaire was detained, he was denouncing the supposed use of luxury automobiles by officials from the CICPC.<sup>1669</sup> The journalist was freed 48 hours after being detained and reported that he had been threatened with a criminal lawsuit in addition to being pressured about his

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<sup>1665</sup> Ministerio Público. August 8, 2013. [Ministerio Público logró multas para El Nacional y Tal Cual por publicar imágenes violentas](#); Tal Cual. August 9, 2013. [Multado otra vez](#); El Nacional. August 8, 2013. [Multan y censuran a El Nacional](#).

<sup>1666</sup> Instituto Prensa y Sociedad (IPYS). August 8, 2013. [Caracas: Tribunal ratificó medida de censura y multa contra dos periódicos](#).

<sup>1667</sup> Instituto Prensa y Sociedad (IPYS). September 28, 2013. [Presidente de Venezuela pide a Fiscalía investigar a medios privados por difundir noticias sobre desabastecimiento de alimentos](#); Reporters Without Borders. October 2, 2013. [Government likens media coverage of shortages to “war propaganda”](#); Ministerio del Poder Popular para la Información y la Comunicación. September 30, 2013. [Guerra económica: fórmula para atacar revoluciones](#); La Prensa/AFP. September 28, 2013. [Maduro pide a fiscal “castigar” a medios que promuevan “guerra psicológica”](#).

<sup>1668</sup> Agencia Venezolana de Noticias (AVN). September 30, 2013. [Conatel abre proceso administrativo sancionatorio contra Globovisión](#).

<sup>1669</sup> NTN24. October 11, 2013. [Hijo de Víctor Hugo Donaire expresa que detención de su padre respondería a motivos políticos](#); Últimas Noticias. October 11, 2013. [Detienen a periodista durante programa de radio](#); Globovisión. October 10, 2013. [Cicpc-Guárico detiene a director de emisora local durante su programa de radio en vivo](#).

journalistic activity.<sup>1670</sup>

896. On October 10, the daily newspaper *2001* published an article on supposed fuel shortages in Caracas.<sup>1671</sup> That day, Attorney General Luisa Ortega, announced the launch of an investigation against the newspaper.<sup>1672</sup> According to the Attorney General, the information reported was “false” and sought to create “chaos, worry and anxiety in the collectivity.”<sup>1673</sup> Similarly, president Nicolás Maduro affirmed that the report in *2001* constituted a “crime,” whose objective was to “sabotage the country’s system for distribution of gasoline and hydrocarbons.” Maduro referred to the owners of the media outlet as “unpatriotic and parasitic bourgeoisie against national interests,” and affirmed that “if when applying the law it becomes necessary to resort to more severe punishment, whatever that punishment may signify, let it be so. But this cannot be permitted. Society must be defended against these bandits, these criminals [...]”<sup>1674</sup>

897. 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. Stigmatizing statements

898. The Inter-American Commission received information about the persistent use of stigmatizing declarations by public officials to discredit journalists, communicators and members of the opposition who express ideas, opinions or disseminate information contrary to the interests of the Venezuelan Government.<sup>1675</sup>

899. The Inter-American Commission was informed that on March 6 employees of the *Globovisión* Channel filed a complaint with the Public Prosecutor regarding supposed threats by representatives of the Executive Branch against the media. “Statements by senior officials constitute an

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<sup>1670</sup> Instituto Prensa y Sociedad (IPYS). October 16, 2013 [Guárico: Funcionarios policiales amenazaron con acciones penales a director de emisora y luego lo dejaron en libertad plena.](#)

<sup>1671</sup> 2001. October 10, 2013. [La gasolina la echan con gotero.](#)

<sup>1672</sup> Ministerio Público. October 17, 2013. [Ministerio Público libró citaciones para directivos del Diario 2001](#); Radio Uno. October 17, 2013. [Fiscal libra cuatro citaciones para el diario 2001 por reportaje.](#)

<sup>1673</sup> Noticias24/YouTube. October 10, 2013. [Luisa Ortega ordena el inicio de una investigación al Diario 2001](#); CNP Zulia. October 11, 2013. [Fiscal Ortega Díaz ordenó investigar al diario 2001](#); Noticias24. October 10, 2013. [Luisa Ortega ordena el inicio de una investigación al Diario 2001: “Tendremos que actuar con severidad”.](#)

<sup>1674</sup> Noticias Venezuela/YouTube. October 10, 2013. [Maduro sobre Diario 2001.](#)

<sup>1675</sup> Detailed information on stigmatizing statements by Venezuelan Government officials are addressed in Chapter IV, Volume I, of the IACHR 2013 Annual Report.

official discourse that incites physical and verbal attacks on the employees of *Globovisión*, and guarantees impunity for the aggressors”, expressed the employees in their complaint.<sup>1676</sup>

900. The Commission learned of a series of pronouncements in the course of the news reports related to the health and death of then-President Hugo Chávez. For example, in January 2013, President Nicolás Maduro, who at the time was Vice President, made a series of accusations on nationwide broadcasts (required) in which he referred to “ultra-rightwing” sectors who “have an absolutely wretched soul, absolutely wretched, and answer to anti-patriotic plans. [...] There is a very venomous minority of that ultra-right that never stops in its attack against President Chávez [...] they answer to plans from elsewhere; they are not plans to help, nor are they accompanied by any wishes for the health and life of Commander Chávez, or the wish that there be tranquility among Venezuelans. [...]”<sup>1677</sup> The Minister of Communication and Information, Ernesto Villegas, spoke in similar terms on a national radio and television broadcast (required) in an official press release that warned the Venezuelan people “about the psychological war that the translational media network has unleashed around the health of the Head of State the ultimate purpose being to destabilize the Bolivarian Republic of Venezuela [...] to bring an end to the Bolivarian Revolution led by Chávez [,] purposes at odds with the iron unity of the Bolivarian Government and the people organized, and the Bolivarian National Armed Force around the leadership and political thought of Commander Hugo Chávez.”<sup>1678</sup> In subsequent statements Minister Villegas reiterated that various sectors not supportive of the national government were carrying out “a psychological operation deployed to bring about intranquility in the Venezuelan people.”<sup>1679</sup>

901. On March 2, Maduro accused the daily newspapers *El Universal* and *El Nacional* of carrying out a “media terrorism” strategy and a “psychological war,” after one of the above-mentioned media re-published information on the supposed transfer of then president Hugo Chávez to the presidential residence on the island of La Orchila, due to a relapse in his health.<sup>1680</sup>

902. The President of the National Assembly, Diosdado Cabello, was reported to have made statements to a group of students who in early March 2013 had chained themselves in a sign of protest near the Office of the Executive Director of the Judiciary, warning: “Don’t even think of coming to the Military Hospital because we are not going to allow absolutely any activity of that type.” On that occasion he was also reported to have said that the private media are “the enemies of the homeland, of

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<sup>1676</sup> IFEX/Instituto Prensa y Sociedad (IPYS). March 20, 2013. [Venezuela's executive tells private station to change its reporting.](#)

<sup>1677</sup> Etcétera. January 4, 2013. [Con "alma miserable", los periodistas de ultraderecha, dice vicepresidente de Venezuela;](#) Diario El Carabobeño. January 4, 2013. [CNP Caracas rechazó descalificaciones de Nicolás Maduro;](#) Panamericanavideos/YouTube. January 3, 2013. [Nicolás Maduro: periodistas de ultraderecha tienen un alma miserable.](#)

<sup>1678</sup> Venezolana de Televisión (VTV). January 3, 2013. [Gobierno informa sobre insuficiencia respiratoria de Chávez y denuncia guerra psicológica en torno a su salud;](#) Partido Socialista Unido de Venezuela (PSUV). January 3, 2013. [Gobierno denuncia guerra psicológica trasnacional sobre salud de Chávez para desestabilizar al país;](#) Bolivarian Communication and Information System. March 1, 2013. [Maduro llama a derrotar campaña de rumores que pretende desestabilizar al país.](#)

<sup>1679</sup> Bolivarian Communication and Information System. March 1, 2013. [Ministro Villegas pide respeto para familia del presidente Chávez.](#)

<sup>1680</sup> Instituto Prensa y Sociedad (IPYS). March 2, 2013. [Vicepresidente de la República acusó a periódicos de promover el terrorismo mediático;](#) Sucreranda Hugo Chávez Venezuela/YouTube. March 3, 2013. [Vicepresidente Nicolás Maduro critica a los periódicos privados fascistas, El Universal y El Nacional de Venezuela, por publicar las mentiras del diario franquista ABC del régimen de España.](#)

the people, of the Revolution, of the Constitution” and that they should not be “[...] encouraging activities of this type because it might backfire [...] and in the face of these media who are going with the ruin of the peace in this country, with the destruction of the peace of this country, I’m going to tell them: the day that something happens here, the people know what they are going to grab on to – and I’m almost certain that the rightwing media are not going to go without visits from the people. And this is not threats, I am just trying to interpret the reality of a people that is tired, that is sick and tired of being subjected and harassed, every day, to a thousand pressures by the rightwing media with their lies [...].”<sup>1681</sup>

903. The IACHR also observes with concern the pronouncements made after the announcement of the electoral results of April 14 and the incriminating statements by President Nicolás Maduro and other State authorities. For example, on April 16, 2013, President Maduro announced publicly that “the time for definitions [had come] in Venezuela,” in particular encouraging the media to define their political affiliation and decide “who they are with [...] with the homeland, with peace, with the people, or are they going to be on the side of fascism once again [...]?”<sup>1682</sup> In subsequent months, the President of the Republic had made similar statements on several occasions, asserting for example that the media “are sadists of journalism and communication,” that “they celebrate [with] the feast of death,”<sup>1683</sup> and that “one of the challenges of the resolution is to denounce these economic groups that exercise a dictatorship complacent and complicit with corruption and with the mismanagement of the regional governments.”<sup>1684</sup> The National Assembly President Diosdado Cabello has made various statements in which he refers to certain opposition leaders as “fascists” and alleges they answer to the interests of other governments.<sup>1685</sup> In October and November 2013, insinuations continued to be made against three of the leading spokespersons of the opposition, who are depicted as a “trilogy of evil [...] who are heading up the fascist script against Venezuela, inside and outside the country.”<sup>1686</sup>

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<sup>1681</sup> Noticiero Digital. March 2, 2013. [Cabello a medios privados: El día que ocurra aquí algo, el pueblo sabe para dónde va a agarrar](#); Globovisión. March 2, 2013. [Diosdado Cabello hizo advertencias a estudiantes y medios privados de comunicación](#).

<sup>1682</sup> Notitarde. April 16, 2013. [Maduro a Venevisión y Televen: “Definanse con quien están”](#); Espacio Público. April 16, 2013. [Maduro insta a los medios a definir su tendencia política](#); El Mundo/EFE. April 19, 2013. [Maduro convoca una ‘gran movilización’ para su investidura este viernes](#); Ministerio del Poder Popular para la Comunicación y la Información. April 18, 2013. [Maduro: Le cabe responsabilidad a Televen por encadenarse con llamados a violencia](#); Sucre randa Hugo Chávez Venezuela/YouTube. April 19, 2013. [Nicolás Maduro. Juramentación. Unasur. Globovisión fascista, Televen golpista. S-300 desfile](#).

<sup>1683</sup> Globovisión. May 17, 2013. [Maduro califica a medios de comunicación como “sádicos del periodismo”](#); El Universal. May 18, 2013. [Maduro: “Las televisoras de este país tienen que cambiar”](#); Noticiero Digital. May 17, 2013. [Maduro fustiga a los “sádicos del periodismo y las comunicaciones”](#).

<sup>1684</sup> Agencia Venezolana de Noticias (AVN). September 19, 2013. [Maduro llama a candidatos socialistas a construir lazos de comunicación con el pueblo](#); El Nacional. September 19, 2013. [Nicolás Maduro pide “desenmascarar a los jefes de la dictadura mediática”](#).

<sup>1685</sup> El Nacional. September 16, 2013. [Cabello: el asesino fascista de Capriles fue a EEUU a rendirle cuenta a sus amos](#); Sistema Bolivariano de Comunicación e Información (SIBICI). October 29, 2013. [Diosdado Cabello asegura que Capriles actúa como un cobarde por no ir a la marcha que convocó](#).

<sup>1686</sup> Fundación Televisora de la Asamblea Nacional (ANTV). November 4, 2013. [“Trilogía del mal” López-Machado-Capriles es la cara del fascismo en Venezuela](#); Partido Socialista Unido de Venezuela (PSUV). November 4, 2013. [El rostro del fascismo en Venezuela es la Trilogía del Mal: Machado, Capriles y López](#). These statements were made at the same time as posters appeared in various zones of the city of Caracas showing “the trilogy of evil,” with the photographs of Henrique Capriles, Leopoldo López, and National Assembly legislator María Corina Machado, in which they are accused of “taking away electricity, food, and peace.” El Nacional. [Afiches de la Trilogía del Mal cubren las paredes de la ciudad capital](#).



904. The IACHR highlights the accusations made by high-level authorities of the Government against the organization PROVEA. According to the available information, during the protests in Venezuela in the days following the election various authorities alleged that different Comprehensive Diagnostic Centers [Centros de Diagnóstico Integral] (CDIs)<sup>1687</sup> were said to have been subject to violence by the demonstrators identified with the opposition sectors.<sup>1688</sup> According to the official information, by April 17, 2013, at least eight CDIs had been set ablaze and others had been pillaged and vandalized.<sup>1689</sup>

905. On April 18, 2013, PROVEA issued a press release in which it reported “after an exhaustive search in digital media and state bulletins [...] it did not obtain any evidence concerning the Comprehensive Diagnostic Centers (CDIs) that had allegedly been set on fire by opposition partisans [...]”<sup>1690</sup> On April 19, PROVEA reported through its website that Minister of Communication and Information Ernesto Villegas had asked the organization about the information it had published.<sup>1691</sup> That same day, PROVEA issued another press release in which it reported that on the afternoon of April 19, Minister Villegas had disseminated “through his Twitter account several messages discrediting and inciting hatred” against the organization.<sup>1692</sup> PROVEA denounced that such messages criminalized the organization’s work on behalf of human rights and instigated “public hatred,” which is particularly serious in the context of polarization and “crisis marked by lawless expressions of violence, fanaticism, and intolerance.”<sup>1693</sup>

906. On April 25, 2013, the organization received a communication from the Minister of Communication and Information, which it published at its website at the request of the Minister in response to a right to reply requested by PROVEA, in which he indicated:

[...] You supported, with your weak Report, the fascists who attacked the CDIs, Mercal centers, housing of the Great Mission Housing Venezuela [...] and the poor people who are the

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<sup>1687</sup> The CDIs are care centers that are part of the social program Inside the Neighborhood Mission aimed at offering health services to the population.

<sup>1688</sup> Correo del Orinoco. April 16, 2013. [Twitter de Nelsón Bocaranda desata violencia contra CDI y médicos cubanos](#); Agencia Venezolana de Noticias. April 19, 2013 [Grupos Antichavistas intentaron quemar CDI en Delta Amacuro](#); Correo del Orinoco. April 27, 2013. [Venezuela seguirá denunciando ante el mundo campaña fascista contra Cuba y Colombia](#).

<sup>1689</sup> Embassy of the Bolivarian Republic of Venezuela in the United States. April 2013. [17 de abril – Actualización Post-Electoral](#).

<sup>1690</sup> Programa Venezolano de Educación – Acción en Derechos Humanos (PROVEA). April 18, 2013. [Provea corrobora falsedad en la denuncia de CDIs quemados en el país](#).

<sup>1691</sup> Programa Venezolano de Educación – Acción en Derechos Humanos (PROVEA). April 19, 2013. [Ministro de comunicación llama a PROVEA acerca de información sobre CDIs](#).

<sup>1692</sup> One of the messages published through the account @VillegasPoljakE stated the following: “It’s a shame that Provea acts like the rearguard for fascism, certifying that ‘there is no evidence’ of the excesses by the bands that attacked the people.” Ernesto Villegas P.’s Twitter account @VillegasPoljakE [April 19, 2013-2:18 PM](#).

<sup>1693</sup> Programa Venezolano de Educación – Acción en Derechos Humanos (PROVEA). April 19, 2013. [Provea responsabiliza a Ministro de Comunicación e Información, Ernesto Villegas, de cualquier violación a la vida e integridad de nuestro equipo de trabajo](#). According to the information available at PROVEA’s website, on April 22, 2013, the organization sent a communication to the Office of the Minister requesting the right to reply in view of the statements he had made on a program broadcast by Venezolana de Televisión (VTV), rejecting the press release on the CDIs. PROVEA. April 22, 2013. [Comunicación enviada al Ministro de Comunicación e Información, Ernesto Villegas, sobre derecho a réplica a Provea](#).

protagonists of this Revolution. One who attacks places that guarantee social rights [...] and murders persons who peacefully defend their social rights is no more than a fascist. And those who do not condemn those deaths, but who attempt (with a very poor Report) to downplay such acts, are accomplices of that fascist. The action of Provea helps render invisible the crimes committed by violent elements of their same political stripes, thereby favoring impunity for those crimes and constituting a form of symbolic violence against the direct victims and their family members[...].<sup>1694</sup>

907. The Inter-American Commission took note of the declaration by the Minister of Popular Power for Penitentiary Services [*Poder Popular para los Servicios Penitenciarios*], Iris Varela, on January 25, according to which the acts of violence that took place in the Penitentiary Center of the Central Western Region of Uribana were the result of reports transmitted by *Globovisión* and by the web page of newspaper *El Impulso* about a search of the center planned by the authorities for that same day. In a press release, the minister stated: “[W]e were surprised at the announcement of the search by the privately held *Globovisión* network, the social networks and the webpage of newspaper *El Impulso*, which undoubtedly constituted a detonator for the violence, as shown by the beginning of a mutiny within the Penitentiary Center hours later, during which the gang leaders attacked members of the National Guard, resulting in an unfortunate number of casualties.”<sup>1695</sup> As reported, the search had previously been announced by officials from the Ministry of Popular Power for Penitentiary Services. The accusation against the media was reiterated by the minister at a press conference on January 26, where she announced the clearing out of the Penitentiary Center of the Central Western Region.<sup>1696</sup>

908. On May 27, the president of Venezuela, Nicolás Maduro, affirmed during a broadcast by Venezolana de Televisión (VTV) that *CNN en Español*, based in Atlanta, United States, was promoting “a *coup d’état* in Venezuela.” Maduro accused the media of being a channel “at the service of destabilization,” that calls “openly for a *coup d’état* in Venezuela.” According to Maduro, *CNN en Español* had become “the spearhead for promoting intervention against our homeland.”<sup>1697</sup> After the president’s statements, *CNN en Español* issued a press release rejecting the accusations.<sup>1698</sup>

909. On September 25, Nicolás Maduro stated, with regard to journalists from the *El Nacional* daily newspaper: “Or they are ignorant or misinformed or perverse, manipulators, or all three things, ignorant, perverse and manipulators”. He also referred to the newspaper as “*El Nazi – onal*” and affirmed: “Buying *El Nacional* is like buying muriatic acid and breakfasting on muriatic acid every day. That’s right, it’s poison! I don’t buy it, I don’t recommend that anyone buy it either, really; not even the

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<sup>1694</sup> On that occasion the organization indicated that “the response sent by Minister Villegas does not respond to what was requested...” Programa Venezolano de Educación – Acción en Derechos Humanos (PROVEA). April 25, 2013. [Ministro Ernesto Villegas responde a exigencias de Provea para cumplir con el derecho a réplica.](#)

<sup>1695</sup> Venezolana de Televisión/Sistema Bolivariano de Comunicación e información. January 25, 2013. [Ministra Varela informa sobre situación de violencia en penitenciaría de Uribana en Lara.](#)

<sup>1696</sup> Sucreranda Hugo Chávez Venezuela/YouTube. January 26, 2013. [Ministra Iris Varela: Gobierno ordena desalojo total del Centro Penitenciario de Uribana](#); IFEX/Instituto Prensa y Sociedad (IPYS). February 7, 2013. [Ministra responsabiliza a dos medios por violencia en un cárcel venezolana](#); IACHR. Office of the Special Rapporteur for Freedom of Expression. April 10, 2013. Letter to the Bolivarian Republic of Venezuela: Request for information about the procedure for administrative investigation [*averiguación administrativa*] against Ciudadanía Activa.

<sup>1697</sup> El Universal. May 27, 2013. [Maduro afirma que CNN en Español conspira contra el país](#); CNN en Español. May 27, 2013. [CNN responde a las acusaciones del presidente de Venezuela Nicolás Maduro.](#)

<sup>1698</sup> CNN en Español. May 27, 2013. [CNN responde a las acusaciones del presidente de Venezuela Nicolás Maduro.](#)

people of the opposition because if they do they will make a bad impression.”<sup>1699</sup>

910. The Inter-American Commission reiterates the importance of “creating a climate of respect and tolerance for all ideas and opinions.” The Inter-American Commission recalls that “diversity, pluralism, and respect for the dissemination of all ideas and opinions are essential conditions for the proper functioning of any democratic society. Accordingly, the authorities must contribute decisively to the building of a climate of tolerance and respect in which all people can express their thoughts and opinions without fear of being attacked, punished, or stigmatized for doing so. In addition, the State’s duty to create the conditions for all ideas and opinions to be freely disseminated includes the obligation to properly investigate and punish those who use violence to silence journalists or the media.”<sup>1700</sup> The Inter-American Commission additionally recalls that freedom of expression must be guaranteed not only with respect to the dissemination of ideas and information that are received favorably or considered inoffensive or indifferent but also in cases of speech that is offensive, shocking, unsettling, unpleasant, or disturbing to the State or to any segment of the population.<sup>1701</sup>

911. The Inter-American Commission additionally recalls that public servants have the duty to ensure that their statements do not infringe upon the rights of those who contribute to the public discourse through the expression and dissemination of their thoughts, such as journalists, media outlets, and human rights organizations. They must bear in mind the context in which they express themselves, in order to ensure that their expressions are not, in the words of the Court, “forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute [to] public deliberation through the expression and [dissemination] of their thoughts.”<sup>1702</sup>

### G. Access to public information

912. Venezuela does not have a law on access to public information, and judicial and administrative appeals that could serve the purpose of gaining access to such information have proven ineffective. In a hearing on the Situation of the Right to Freedom of Expression and Access to Information in Venezuela, held on October 31 in the framework of the 149th period of Sessions of the

<sup>1699</sup> Sucreranda Hugo Chávez Venezuela/YouTube. September 25, 2013. [Nicolás Maduro sobre basura El Nazional, manipulación y desinformación de oposición a Venezuela](#); Agencia Venezolana de Noticias (AVN). September 26, 2013. [Venezuela concretó alianza con China para desarrollarse como potencia latinoamericana](#); Instituto Prensa y Sociedad (IPYS). September 17, 2013. [Se intensifica campaña en contra de medios de comunicación del país](#).

<sup>1700</sup> IACHR. [Annual Report 2012. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. Para.214; IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 156 and 206; IACHR. [Annual Report 2010. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 206-207.

<sup>1701</sup> IACHR. [Annual Report 2012. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. Para.214; IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 32.

<sup>1702</sup> 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.

IACHR, the petitioning organizations pointed to difficulties that exist in the country for gaining access to public information. PROVEA reported that government agencies do not disseminate information that they have the legal obligation to publish. For example, the organization monitored all of the webpages of the country's ministries and found that only three have published their reports and account information which by law must be published.

913. Similarly, to prepare its annual report, Provea submitted 21 requests for information to state agencies, only three of which were answered. The Espacio Público organization submitted 84 requests for information from the State, and obtained only three answers, all of them denials. The organizations emphasized the difficulties that limited access to public information represents for monitoring government administration and compliance with human rights in the country.<sup>1703</sup>

914. On October 7, through Decree 458, the Government of Venezuela created the Strategic Center of Security and Protection of the Homeland [*Centro Estratégico de Seguridad y Protección de la Patria*] (CESPPA),<sup>1704</sup> a body with the functions of requesting, organizing, compiling and evaluating “information in the interest of the strategic level of the Nation, in connection with internal and external enemy activities, provided by all security and intelligence bodies of the State, and by other public and private institutions, in accordance with the requirements of the Political-Military Direction of the Bolivarian Revolution.” In a subsequent modification, published in Official Gazette 40,279 on October 24, the expression “in connection with internal and external enemy activities” was eliminated, and the words “Political-Military Direction of the Bolivarian Republic” were replaced by “President of the Republic.”<sup>1705</sup> The Decree establishes that the CESPPA “will be the guiding and articulating body of the working policies of the institutions responsible for Security, Defense, Intelligence, Internal Order, External Relations and any other bodies with an impact on the Security of the Nation, in order to provide timely and quality information to facilitate the making of strategic decisions by the President of the Republic and to neutralize potential threats to national interests [...]”<sup>1706</sup> The Center will be “a decentralized body of the Ministry of Popular Power of the Office of the Presidency and Oversight on the Governmental Administration [*Ministerio del Poder Popular del Despacho de la Presidencia y Seguimiento de la Gestión de Gobierno*]”, and will be under the Head of State. In the amendments published on October 24, the obligation of private institutions to provide information at the request of the CESPPA was removed from articles 8 and 10.<sup>1707</sup> Civil organizations have rejected the creation of the CESPPA due to the negative effects that it could have in terms of access to public information,<sup>1708</sup>

<sup>1703</sup> IACHR. 149 Period of Sessions. Hearing on the Right to Freedom of Expression and Access to Information in Venezuela. October 31, 2013. Available for consultation at: <http://www.oas.org/es/cidh/multimedia/sesiones/149/3jueves31b.asp>

<sup>1704</sup> Gaceta Oficial de la República Bolivariana de Venezuela Nº 40.266. October 7, 2013. [Decreto Nº 458 que crea el Centro Estratégico de Seguridad y Protección de la Patria \(Cesppa\)](#).

<sup>1705</sup> Gaceta Oficial de la República Bolivariana de Venezuela Nº 40.279. October 24, 2013. [Decreto Nº 458 que crea el Centro Estratégico de Seguridad y Protección de la Patria \(Cesppa\)](#).

<sup>1706</sup> Gaceta Oficial de la República Bolivariana de Venezuela Nº 40.279. October 24, 2013. [Decreto Nº 458 que crea el Centro Estratégico de Seguridad y Protección de la Patria \(Cesppa\)](#).

<sup>1707</sup> Gaceta Oficial de la República Bolivariana de Venezuela Nº 40.279. October 24, 2013. [Decreto Nº 458 que crea el Centro Estratégico de Seguridad y Protección de la Patria \(Cesppa\)](#).

<sup>1708</sup> Espacio Público. October 25, 2013. [Modificaron decreto que crea el Cesppa](#); Reporters Without Borders. October 11, 2013. [Access to information threatened by decree creating new intelligence agency](#); Colegio Nacional de Periodistas (CNP). October 14, 2013. [CNP Caracas denuncia y rechaza contundentemente la creación del Cesppa](#); Instituto Prensa y Sociedad (IPYS). October 7, 2013. [Venezuela: Ejecutivo constituye mecanismos de restricción a la información pública](#).

particularly, Article 9 of the Decree,<sup>1709</sup> which grants the director of the CESPPA the authority to declare “any fact or circumstance being processed [by CESPPA] to be ‘secret’, ‘classified’ or ‘partially redacted’”.<sup>1710</sup>

915. Principle 4 of the IACHR’s Declaration of Principles of Freedom of Expression provides that “[a]ccess to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.” Furthermore, Principle 5 establishes that “[p]rior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”

#### H. Impact on the media and confiscation of equipment

916. The Inter-American Commission was informed that on May 13, private TV channel *Globovisión* was sold. On March 11, in a letter to the employees of the channel, the executive vice-president of that media and one of its main shareholders, Guillermo Zuloaga, explained that the decision of selling it was partly due to the fact that “the political situation and the polarization had led the attacks to *Globovisión* to be increasingly stronger.”<sup>1711</sup> The businessman explained that *Globovisión* had converted itself into an “unfeasible” outlet, in financial, political and legal terms. “We are economically unfeasible, because our income no longer covers our cash needs. We are not even capable of sufficiently raising the salaries in order to compensate for inflation, and even less to compensate for depreciation. We are politically unfeasible, because we are in a completely polarized country and stand on the opposite side of an all-powerful government that wishes to see us fail. And we are legally unfeasible because we have a license that is about to expire, and no indication it will be renewed,” the former director of the channel said in the letter.<sup>1712</sup> Previously, on February 20, *Globovisión* issued a press release accusing the government of sentencing the channel “to death” by presumably excluding it from the new system of Open Digital Television [*Televisión Digital Abierta*] (TDA).<sup>1713</sup> The TDA project means that the television channels must change their broadcasts from analog to digital technology. According to *Globovisión*, on not being a part of the project and left out of the technological transition, the channel would end up compelled “to end its free to air broadcast transmissions whenever the government should declare the extinction of the analog signal. *Globovisión* is not capable of digital broadcasting, as it

<sup>1709</sup> Gaceta Oficial de la República Bolivariana de Venezuela Nº 40.279. October 24, 2013. [Decreto Nº 458 que crea el Centro Estratégico de Seguridad y Protección de la Patria \(Cesppa\)](#).

<sup>1710</sup> Espacio Público. October 25, 2013. [Modificaron decreto que crea el Cesppa](#).

<sup>1711</sup> Globovisión. March 11, 2013. [Carta de Guillermo Zuloaga a los trabajadores de Globovisión: "Son mi mayor preocupación"](#).

<sup>1712</sup> Globovisión. May 13, 2013. [Carlos Zuloaga: La venta de Globovisión ya se cerró](#); Infobae. May 13, 2013. [Se concretó la venta de Globovisión en Venezuela](#); IFEX/Instituto Prensa y Sociedad (IPYS). March 18, 2013. [Owner of private TV station in Venezuela says it will be sold](#).

<sup>1713</sup> Telesur. February 20, 2013. [Venezuela pone en marcha la Televisión Digital Abierta](#); IFEX/Reporters Without Borders. February 22, 2013. [Digital TV system excludes station critical of Venezuelan government](#); Globovisión. February 20, 2013. [Comunicado: Gobierno de Venezuela sentencia la muerte de Globovisión](#).

was discriminated against and excluded from the official process.”<sup>1714</sup> According to the available information, *Globovisión* was involved in at least eleven administrative proceedings that had been filed against it.<sup>1715</sup>

917. A consequence of the sale of the television station *Globovisión* was the termination of opinion shows and the departure of journalists who were independent of the government, and who directed or hosted shows critical of the government such as journalist Ana Beatriz (Nitu) Pérez Osuna.<sup>1716</sup> Before she had to leave the TV station, journalist Pérez Osuna had urged the TV station continue to do investigations into corruption of persons close to the government and the new owners of the TV station.<sup>1717</sup> Regarding these facts, the attorney who represents Corpomedios GV inversiones, C.A. (*Globovisión*) presented a communication to the Office of the Special Rapporteur in which he expressed the “profound, absolute and categorical rejection of the false accusations” made by the journalist Pérez Osuna. Further, he indicated that the media outlet “continues being an independent channel committed to the correct exercise of freedom of expression.”<sup>1718</sup>

918. In May, the cable signal of channel *ATEL Televisión* de Venezuela was suspended for some TV services. According to the information received, the suspension of the signal was linked to pressure allegedly exerted by employees of the National Commission of Telecommunications (CONATEL). These pressures are said to be related to *ATEL TV* negotiations with Grupo Sexto Poder, which was interested in buying shares in the channel.<sup>1719</sup> At the root of this situation, on June 6, the president and editor of Grupo Sexto Poder, Leocenis García, began a hunger strike in front of the CONATEL office as a protest against the suspension of the signal. Presumably, officials of the Bolivarian National Guard detained him and transferred him to a detention center.<sup>1720</sup> On June 7, the journalist was allowed conditioned release and restarted the hunger strike, which lasted for several days, at the office of the Organization of American States in Caracas.<sup>1721</sup> On June 12, the Special Rapporteur’s Office

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<sup>1714</sup> *Globovisión*. February 20, 2013. [Comunicado: Gobierno de Venezuela sentencia la muerte de Globovisión](#).

<sup>1715</sup> *Globovisión*. April 2, 2013. [Conatel abre décimo procedimiento administrativo a Globovisión](#); Agencia Venezolana de Noticias (AVN). September 30, 2013. [Conatel abre proceso administrativo sancionatorio contra Globovisión](#). See also, IACHR. [Annual Report 2012. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013.

<sup>1716</sup> *El Universal*. June 13, 2013. [Globovisión prescinde de Nitu Pérez Osuna](#); *El Nacional*. June 13, 2013. [Nitu Pérez Osuna fue despedida de Globovisión](#); *Correo del Orinoco*. June 13, 2013. [Periodista Nitu Pérez Osuna fue despedida de Globovisión](#); *Miami Diario*. November 19, 2013. [Periodista Nitu Pérez Osuna denuncia el caso Globovisión ante la CIDH](#); *El País*. August 17, 2013. [Rebelión en la granja de Globovisión](#); *El Nuevo Herald*. June 18, 2013. [Globovisión se consolida como arma de propaganda chavista en Venezuela](#).

<sup>1717</sup> Information presented by journalist Ana Beatriz Pérez Osuna to the Office of the Special Rapporteur.

<sup>1718</sup> Communication presented to the Office of the Special Rapporteur for Freedom of Expression, from Erick Boscán Arrieta, accredited attorney of Corpomedios GV inversiones, C.A. (*Globovisión*). December 27, 2013. Available in: Archives of the Office of the Special Rapporteur.

<sup>1719</sup> Colegio Nacional de Periodistas de Zulia. May 24, 2013. [Asociación Internacional de Radiodifusión denuncia procedimientos arbitrarios contra ATEL TV](#); *El Mundo*. May 22, 2013. [Grupo 6to Poder denuncia que Conatel quiere frenar compra de Atel Televisión](#); Inter American Press Association (IAPA). May 23, 2013. [Acto de coacción contra canal y empresas cable operadoras venezolanas](#).

<sup>1720</sup> *La Verdad*. June 6, 2013. [Detienen a Leocenis García al intentar hacer huelga de hambre](#); *El Nacional*. June 6, 2013. [Funcionarios de la Guardia Nacional detienen a Leocenis García](#).

<sup>1721</sup> *El Universal*. June 10, 2013. [Denunciarán a efectivos que detuvieron al presidente de 6to Poder](#); *El Nacional*. June 9, 2013. [Leocenis García mantendrá huelga de hambre hasta que Atel TV sea restituida](#).

sent a letter to the State of Venezuela requesting information on the suspension of the signal of the channel *ATEL Televisión de Venezuela* for some cable TV services, and on the detention of journalist Leocenis García.

919. Since early August, the newspapers of Venezuela, particularly local newspapers, have faced difficulties obtaining newsprint in order to print their papers, and the situation affected their circulation. The scarcity was due to the fact that for many months newsprint suppliers had not received the “non-national production” certification issued by the Ministry of Light Industry and Trade [*Ministerio de Industrias Ligeras y Comercio*] (Milco), which ended up preventing them from importing paper.<sup>1722</sup>

920. According to the accounts of the press media, the periodicals *El Sol* from Maturín (state of Monagas) and *Antorcha* from El Tigre (state of Anzoátegui) were among the daily newspapers that had to pause their circulation due to the lack of newsprint.<sup>1723</sup> The newspaper *Versión Final*, from Zulia state, was not published from July 27 to August 11, due to difficulties in purchasing newsprint.<sup>1724</sup> According to Rogelio Díaz, spokesman of the Regional Press Block of Venezuela, by late August, five other newspapers were out of print due to the lack of paper: *El Caribazo*, *La Hora* and *El Caribe* from Nueva Esparta, and *Los Llanos* and *El Espacio* from Barinas.<sup>1725</sup> On September 4, at least 12 employees of the newspaper *El Sol* from Maturín were fired after the newspaper had to make cuts in its staff because it stopped circulating in printed form.<sup>1726</sup> On September 8, the newspaper *La Nación*, based on San Cristóbal, state of Táchira, reported the difficulties it was facing to obtain newsprint from its suppliers, and said that it was about to make cuts in its printed edition. The *Diario Católico* also reported difficulties to obtain paper and other materials for its production.<sup>1727</sup> The *Diario de Sucre*, based on Cumaná, state of Sucre, also faced difficulties to obtaining newsprint and other materials, and did not go on to print on September 11 and 12.<sup>1728</sup> On September 29, the newspaper *El Impulso* published an editorial informing its readers that starting on October 1, the format of its publication would change due to the difficulties obtaining paper. It explained in its editorial: “[i]t has been very difficult to meet the Ministry of Industry requirements to activate the currency exchange request in CADIVI. One of the steps, which are still pending, consists in obtaining a certification that the newsprint is not produced domestically. Although this is obvious, the process is taking months – wasted, costly months. The deadlines run out and commitments persist, but there is no response from the government.”<sup>1729</sup> On October 27, the newspaper *El Nacional* announced that it would stop printing the Sunday supplement *Papel Literario*, which could henceforth be accessed through the web, due to the lack of hard currency

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<sup>1722</sup> El Nacional. August 24, 2013. [Cinco diarios están fuera de circulación por falta de papel](#); Inter American Press Association (IAPA). October 1, 2013. [La SIP denuncia “doble moral” del gobierno de Venezuela](#); Instituto Prensa y Sociedad (IPYS). August 29, 2013. [Barinas: Medios locales presentan inconvenientes para la adquisición del papel periódico](#).

<sup>1723</sup> Instituto Prensa y Sociedad (IPYS). August 31, 2013. [Anzoátegui: Diario regional cerró operaciones por falta de insumos](#); Instituto Prensa y Sociedad (IPYS). August 24, 2013. [Monagas: Medios locales enfrentan dificultades con el suministro de papel periódico](#); El País. September 3, 2013. [La falta de papel obliga al cierre de periódicos en Venezuela](#)

<sup>1724</sup> Instituto Prensa y Sociedad (IPYS). August 11, 2013. [Zulia: Periódico local dejó de circular durante dos semanas](#).

<sup>1725</sup> El Nacional. August 24, 2013. [Cinco diarios están fuera de circulación por falta de papel](#).

<sup>1726</sup> Instituto Prensa y Sociedad (IPYS). September 4, 2013. [Monagas: Por falta de insumos despidieron a reporteros en diario local](#).

<sup>1727</sup> Instituto Prensa y Sociedad (IPYS). September 8, 2013. [Táchira: Periódicos locales presentan inconvenientes con materiales para imprimir](#).

<sup>1728</sup> Instituto Prensa y Sociedad (IPYS). September 12, 2013. [Sucre: Dejó de circular diario local temporalmente](#).

<sup>1729</sup> El Impulso. September 29, 2013. [Editorial: A prueba de despotismos](#).

to purchase paper.<sup>1730</sup> On October 28, the private newspaper *De Frente*, based on the state of Barinas, stopped circulating due to the lack of newsprint.<sup>1731</sup>

921. In September, four radio stations of the state of Amazonas were taken off the air by the National Commission of Telecommunications (CONATEL). On September 12, the station *La Voz del Orinoco 98.5 FM* was closed.<sup>1732</sup> The Minister of Tourism of Venezuela is reported to have stated in a public event that the station was “openly calling for a rebellion,” and that it was “an illegal radio station without any type of permission, without a license, without the right to use the radio spectrum and even less to call for confrontations among the Venezuelans.”<sup>1733</sup> Likewise, on September 13, the stations *Chamanika 101.1 FM* and *Deportiva del Sur 99.9 FM* were closed, allegedly due to the lack of permission to operate during the day. On September 21, the equipment of radio station *Impacto 97.5 FM* was confiscated.<sup>1734</sup> Employees of the stations alleged that the operations were due to the station’s editorial stance, and to the coverage they had made of conflicts in the region. In particular, the closings took place when the stations were covering a conflict between the national Government and the state Government regarding the management of Gran Hotel Amazonas.<sup>1735</sup>

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

#### I. Internet and freedom of expression

923. The online newspaper *Diario de Cuba* informed on its website that since January 14, the users of CANTV, a State telecommunications company of Venezuela, were having difficulties accessing it. Customers of other private Internet providers also warned the publication about problems of accessing it.<sup>1736</sup>

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<sup>1730</sup> Espacio Público. October 28, 2013. [Diario El Nacional afectado por escasez de papel prensa](#); El Nacional. October 27, 2013. [El Papel Literario pasa a formato digital](#).

<sup>1731</sup> Instituto Prensa y Sociedad (IPYS). October 30, 2013. [Barinas: Por falta de papel dejó de circular diario local](#).

<sup>1732</sup> Instituto Prensa y Sociedad (IPYS). September 13, 2013. [Conatel incauta equipos y saca del aire a tres emisoras en el estado Amazonas](#).

<sup>1733</sup> Reportero 24. September 14, 2013. [AMAZONAS: Gobierno la cierra emisora de radio por llamar “a la rebelión”](#); La Patilla/EFE. September 13, 2013. [Gobierno cierra emisora Voz del Orinoco por “llamar a la rebelión”](#).

<sup>1734</sup> Instituto Prensa y Sociedad (IPYS). September 13, 2013. [Conatel incauta equipos y saca del aire a tres emisoras en el estado Amazonas](#); Espacio Público. September 30, 2013. [Cierran y confiscan equipos de tres emisoras en el estado Amazonas](#).

<sup>1735</sup> Espacio Público. September 30, 2013. [Cierran y confiscan equipos de tres emisoras en el estado Amazonas](#); La Patilla/EFE. September 13, 2013. [Gobierno cierra emisora Voz del Orinoco por “llamar a la rebelión”](#).

<sup>1736</sup> Espacio Público. January 22, 2013. [Imposibilitado acceso a página web del Diario de Cuba](#); Inter American Press Association (IAPA). January 25, 2013. [La SIP considera como acto censura bloqueo a periódico digital en Venezuela](#).



924. Starting on March 10, the web portal *Radionexx*, an internet radio station based in Miami, USA, lost access to the Venezuelan users of the CANTV Internet service, the State phone company and main provider of internet services of the country.<sup>1737</sup>

925. On April 14, there was a nationwide momentary interruption of Broadband Internet Access (BIA), which is provided by the State telecommunications company CANTV, the main provider of the country. Furthermore, starting on that date, access from abroad was blocked to the web page of the National Electoral Council (CNE), the country's main electoral body. The Vice-President of the Republic and Minister of Science and Technology, Jorge Arreaza, explained that the measures were taken to protect the webpage of the National Electoral Council immediately after receiving threats of hackers from abroad: "A group of hackers from abroad announces a possible hack of the CNE webpage. The coordination with the CNE is immediately taking place, and to protect the webpage, it is decided to prevent the access from abroad; while national access remains. Any Venezuelan may have access to the CNE webpage after the issuance of the bulletin, and will have access to the electoral results."<sup>1738</sup>

#### J. Other relevant situations

926. On January 6, employees presumed to be part of the National Bolivarian Intelligence Service [*Servicio Nacional de Inteligencia Bolivariano*] (Sebin) burst into a house and confiscated the computers of a citizen accused of publishing information on the health of the President on Twitter.<sup>1739</sup>

927. The Inter-American Commission became aware of the decision of the National Electoral Council of April 5, 2013, to file an administrative inquiry procedure on electoral propaganda against the organization A.C. Ciudadanía Activa.<sup>1740</sup> The inquiry was about the dissemination, on April 4, of a message entitled "Vote as You Please" [*"Vota Como Quieras"*], promoting voting during the presidential elections scheduled for April 14.<sup>1741</sup> The investigation aimed at determining "those potentially responsible for the unlawful administrative act pursuant to Article 75, item 6<sup>1742</sup> of the Organic Act of Electoral Processes, and Article 204 item 6<sup>1743</sup> of the General Regulation of the Organic Act of Electoral

<sup>1737</sup> Instituto Prensa y Sociedad (IPYS). March 10, 2013. [Venezuela: Bloquearon acceso a portal de estación de radio por Internet.](#)

<sup>1738</sup> Luigino Bracci Roa/YouTube. April 14, 2013. [Jorge Arreaza: suspensión momentánea de Internet se hizo para proteger de hackers a web del CNE](#); Instituto Prensa y Sociedad (IPYS). April 14, 2013. [Gobierno nacional interrumpió temporalmente servicio de internet y bloqueó acceso desde el exterior a página web del Consejo Nacional Electoral](#); La Verdad. April 14, 2013. [Gobierno tumba internet ante ataques de hackers.](#)

<sup>1739</sup> Clases de Periodismo. January 9, 2013. [Allanan casa de tuitero que difundió rumor sobre la salud de Chávez](#); Inteldig. January 9, 2013. [En Venezuela allanan casa de usuario que difunde rumores vía Twitter sobre salud de Chávez](#); Noticias 24. January 9, 2013. [Entrevistan a tuitero al que le allanaron la casa: "Estoy en el proceso de solicitar asilo político en los EE UU".](#)

<sup>1740</sup> Consejo Nacional Electoral. April 5, 2013. [CNE aprobó averiguaciones administrativas por violación a normativa electoral](#); IACHR. Office of the Special Rapporteur for Freedom of Expression. April 10, 2013. Carta a la República Bolivariana de Venezuela: Solicitud de información acerca del procedimiento de averiguación administrativa contra Ciudadanía Activa.

<sup>1741</sup> Ciudadanía Activa. April 4, 2013. [Vota Como Quieras](#); Ciudadanía Activa. April 4, 2013. [Tu voto es tu Secreto. Vota como quieras.](#)

<sup>1742</sup> Consejo Nacional Electoral. [Ley Orgánica de Procesos Electorales](#) ["Organic Act of Electoral Processes"]. "Article 75. Electoral advertising will not be allowed that: [...] 6. Is contracted or undertaken by private individuals or legal entities other than those authorized by the candidates"

<sup>1743</sup> Consejo Nacional Electoral. [Reglamento General de la Ley Orgánica de Procesos Electorales](#) ["General Regulation of the Organic Act of Electoral Processes"]. "Article 204. Electoral propaganda is not allowed that: [...] 6. Is contract or undertaken by private individuals or legal entities other than those authorized in conformity with the present Regulation."

Processes, regarding the prohibition of electoral advertising contracted or undertaken by private individuals or juridical entities, other than the advertising authorized by the candidates (...).” Within the context of the administrative procedure, the National Electoral Council prescribed a preventive measure to suspend the dissemination of the message in the social media while the administrative inquiry was being solved. According to the letter of notification sent on April 5 to *Globovisión*, the preventive measure was prescribed pursuant to Article 90 of the Organic Act<sup>1744</sup> and to Article 227 of its Regulations,<sup>1745</sup> and orders “the express prohibition of its subsequent dissemination in any other media outlets, while the present Administrative Inquiry is being definitively resolved.”<sup>1746</sup> For its part, the organization Ciudadanía Activa indicated that the institutional messages comply with the Organic Act of Electoral Processes inasmuch as they “promote participation and reinforce in the citizens their right to the full exercise of voting without any fear that might encroach upon their free elections.” They do not call for voting on any particular candidate. The organization announced its intention to present an appeal of constitutional protection and an interim protective measure to the Supreme Court of Justice.<sup>1747</sup> On April 10, 2013, the Special Rapporteur’s Office sent a letter to the Government of Venezuela, in conformity with article 41 of the American Convention on Human Rights, requesting information on the procedure of administrative inquiry filed against the organization Ciudadanía Activa. On April 19, the Special Rapporteur’s Office accepted a request of deadline extension from the Government of Venezuela for answering its initial request.

928. In its observations on this Report, sent to the IACHR in a communication dated December 20, 2013, the State of Venezuela indicated that the Commission “engages in generalization” and “from 1998 to the present has not been able to demonstrate that there exists even a single case of violation of freedom of expression before the Inter-American Court of Human Rights”. According to the State, “the demonstration that there in fact exists full freedom of expression in Venezuela is that no newspaper has been closed or censored, not even during the days of the *coup* of April 11, 2002, and not one single journalist has been detained for having exercised his or her right. Such freedom of expression

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<sup>1744</sup> Consejo Nacional Electoral. [Ley Orgánica de Procesos Electorales](#) [“Organic Act of Electoral Processes”]. “Article 90: The National Electoral Council, in the course of the administrative procedure, including its initial act, in the fulfillment of its functions or at the request of a party, may prescribe the following preventive measure: Order the media outlet, in accordance with the case, to suspend or immediately withdraw electoral advertising that violates the obligations established by this Act.

Once the preventive measure is agreed on, the alleged violator and other parties involved in the procedure that may be directly affected by the measures, may oppose them orally or in writing within five working days after the date of its notification. In the case of an appeal, a period of five working days will be granted for bringing any elements they consider pertinent for their defense, along with a period of five working days for presenting the proofs. After this period, the decision will be reached through a well founded decision within the next five working days.”

<sup>1745</sup> Consejo Nacional Electoral. [Reglamento General de la Ley Orgánica de Procesos Electorales](#) [“General Regulation of the Organic Act of Electoral Processes”]. “Article 227. The National Electoral Council, in the course of an administrative procedure, including its initial act, in the fulfillment of its functions or under the request of a party, may agree, among other preventive measures, to suspend or withdraw electoral advertising from social media outlets that would presumably violate the obligations established by the Law.

The Commission of Political Participation and Funding may order the suspension or withdrawal of electoral advertising that presumably violates the obligations established by this Regulation, when they are regional social media outlets.”

<sup>1746</sup> Comunicación de Xavier Antonio Moreno Reyes, Secretario General del Poder Electoral, dirigida a María Fernanda Flores, Vicepresidenta de la Corporación GV Inversiones, C.A. (*Globovisión*). Oficio No. SG/64368/2013. April 5, 2013. *Globovisión*. April 5, 2013. [CNE notifica a Globovisión de averiguación administrativa](#).

<sup>1747</sup> Ciudadanía Activa. April 6, 2013. [Pronunciamiento de Ciudadanía Activa sobre Prohibición del Consejo Nacional Electoral del Micro Vota Como Quieras](#).

exists in Venezuela that the complaints that the Commission receives are all based on reports that have appeared in the Venezuelan press.”<sup>1748</sup>

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<sup>1748</sup> Observations of the Venezuelan State to the Draft Report on the General Situation of Human Rights in the Bolivarian Republic of Venezuela corresponding to the year 2013 (AGEV/000374) of December 20, 2013, pages 76-77.

**CHAPTER III**  
**VIOLENCE AGAINST JOURNALISTS AND MEDIA WORKERS:**  
**INTER-AMERICAN STANDARDS AND NATIONAL PRACTICES ON PREVENTION, PROTECTION AND**  
**PROSECUTION OF PERPETRATORS**

**I. Introduction**

1. The murder of journalists and members of the media is the most extreme form of censorship<sup>1</sup>. As the Inter-American Court of Human Rights (“Inter-American Court” or “Court”) has observed, “journalism can only be exercised freely when those who carry out this work are not victims of threats or physical, mental or moral attacks or other acts of harassment.”<sup>2</sup> Such actions infringe, in a particularly radical way, not only the affected person’s individual freedom of thought and expression, but also the collective dimension of this right. Acts of violence against journalists (term that should be understood broadly, from a functional perspective<sup>3</sup>) or media workers for reasons connected to their professional activity<sup>4</sup> violate both the individual’s right to express and impart ideas, opinions and information, as well as the rights of citizens and societies as a whole to seek and receive information and ideas of any nature.<sup>5</sup>

2. Regarding this, as the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression has stated, an attack on a journalist is “an attack against the principles of transparency and accountability, as well as the right to hold opinions and

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<sup>1</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Presentation; IACHR. Report No. 37/10. March 17, 2010. Case 12,308. Manoel Leal de Oliveira (Brazil). Para. 97; United Nations. General Assembly. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns. A/HRC/20/22. April 10, 2012. Para. 21. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96)

<sup>2</sup> I/A Court H.R. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248. Para. 209.

<sup>3</sup> The term “journalists” in this report should be understood from a functional perspective; journalists are those individuals who observe and describe events, document and analyze events, statements, policies, and any propositions that can affect society, with the purpose of systematizing such information and gathering facts and analyses to inform sectors of society or society as a whole. Such a definition of journalists includes all media workers and support staff, as well as community media workers and so-called “citizen journalists” when they momentarily play this role. Such definition also includes persons who might be using new communications media as a tool to reach the public, as well as opinion makers who are targeted for the exercise of their right to freedom of expression. See, United Nations. General Assembly. Report of the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/20/17. June 4, 2012. Para. 4. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85); United Nations. Human Rights Committee. [General Comment No. 34](#). CCPR/C/GC/34. September 12, 2011. Para. 44; United Nations. General Assembly. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns. A/HRC/20/22. April 10, 2012. Para. 26. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96); United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). International Programme for the Development of Communication. [United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity](#). Point 1(5).

<sup>4</sup> The term “violence against journalists” in this report should be understood to refer to acts of violence related to, or at least possibly related to, the victim’s exercise of their right to freedom of expression.

<sup>5</sup> I/A Court H.R. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248. Para. 142-149; IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 67.

to participate in public debates, which are essential for democracy”.<sup>6</sup> When these crimes are committed with impunity, it encourages the commission of similar violent acts and can result in communicators being silenced or self censoring.<sup>7</sup> As will be shown later on, impunity has a strong chilling effect on the exercise of freedom of expression, and its consequences for democracy - which depends on the free, open and dynamic exchange of ideas and information - are particularly serious. As the Inter-American Court has found on a number of occasions, freedom of expression is the cornerstone of the very existence of a democratic society; consequently, it can be said that a society that is not well informed is not a society that is truly free.<sup>8</sup>

3. Since its creation, the Office of the Special Rapporteur for Freedom of Expression (“Office of the Special Rapporteur”) of the Inter-American Commission on Human Rights (IACHR or “Commission”) has made violence against journalists a priority and paid special attention to the status of the investigation of these crimes.<sup>9</sup> In its Special Study on the Status of Investigations into the Murder of Journalists, published in 2008, the Office of the Special Rapporteur found that from 1995 to 2005, 157 journalists and media employees were murdered in 19 Member States of the Organization of American States (OAS) for reasons possibly related to their journalism work.<sup>10</sup> The Office of the Special Rapporteur verified that the majority of the investigations in those cases had never been completed, that only in a few cases were the perpetrators identified, and that in almost none of the cases had the masterminds been identified. A conviction of any kind was only handed down in 32 out of the 157 cases,<sup>11</sup> and only in four of those cases were the masterminds convicted.<sup>12</sup>

4. Although it is true that some States have improved legal guarantees for the exercise of journalism over the last few decades - including the incorporation of provisional measures and the creation of special protection programs; the strengthening of the independence and technical capacity of courts; and the creation of specialized investigative bodies and judges - such guarantees in other

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<sup>6</sup> United Nations. General Assembly. Report of the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/20/17. June 4, 2012. Para. 54. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>7</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 129.

<sup>8</sup> I/A Court H.R. *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 OC-5/85 of November 13, 1985. Series A No. 5. Para. 70.

<sup>9</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 2; IACHR. [Annual Report 2008. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (A Hemispheric Agenda for the Defense of Freedom of Expression). OEA/Ser.L/V/II.134 Doc. 5 rev. 1. February 25, 2009. Para. 43-52.

<sup>10</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 139.

<sup>11</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 96, 127 and 141.

<sup>12</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 125 (footnote 160).

countries have been seriously compromised. Effectively, in many places of the region, murders and serious attacks on journalists continue to be particularly concerning, and sufficient and adequate measures do not seem to be in place for definitively addressing the debt of justice owed to victims. Likewise, phenomena such as the increase in highly violent organized criminal groups (which attack not only the population but also have the ability to terrorize and infiltrate the authorities themselves) has threatened the exercise of journalism in a way that has been extremely concerning.<sup>13</sup> In this sense, as the media has become a crucial element in the struggle against corruption and abuse of authority, violence against journalists has noticeably increased. Indeed, the information collected by the Office of the Special Rapporteur indicates that the situation of violence and impunity has worsened in recent years in some places of the region. According to reported data, from January 1, 2010, to November 1, 2013, at least 78 journalists and media workers were murdered throughout the region for motives that could be related to the exercise of their profession. Dozens more have been disappeared or displaced from their places of work, while hundreds of others received threats or were harassed or attacked in response to their professional activities.<sup>14</sup>

5. The purpose of this report is to document and raise the alarm regarding the worrying situation of violence against journalists that exists in the region, while at the same time contributing to the search for solutions by identifying inter-American standards and domestic practices on protection of journalists, prevention of crimes committed against them and prosecution of those responsible. The Office of the Special Rapporteur believes that this problem deserves special attention, specifically because acts of violence in response to the exercise of journalism have a profoundly negative effect on the collective aspect of freedom of expression. Violence against journalists and media workers that is committed as a result of the exercise of their professions not only affects the voices of these individuals - in particular by violating their right to freedom of expression - but also violates the right of societies generally to seek and receive all types of information and ideas, peacefully and freely.<sup>15</sup> In this regard, the Inter-American Court has found that “it is essential that journalists who work in the media should enjoy the necessary protection and independence to exercise their functions to the fullest, because it is they who keep society informed, an indispensable requirement to enable society to enjoy full freedom and for public discourse to become stronger.”<sup>16</sup> Similarly, as the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions stated recently:

Journalists deserve special concern not primarily because they perform heroic acts in the face of danger—although that is often the case—but because the social role they play is so important. [...] [A]n attack on a journalist represents an assault on the foundations of the human rights

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<sup>13</sup> IACHR. [Annual Report 2008. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (A Hemispheric Agenda for the Defense of Freedom of Expression). OEA/Ser.L/V/II.134 Doc. 5 rev. 1. February 25, 2009. Para. 46 and 51.

<sup>14</sup> In this sense, see: Committee to Protect Journalists (CPJ). [Journalists Killed Since 1992](#).

<sup>15</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 9.

<sup>16</sup> I/A Court H.R. *Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. Para. 150; I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Para. 119.

project and on informed society as a whole. Violence against a journalist is not only an attack on one particular victim, but on all members of the society.<sup>17</sup>

6. Based on this reasoning, over the last decade a variety of United Nations bodies and agencies have repeatedly condemned violence against journalists and urged States to prevent such crimes, protect journalists who are at risk, and investigate, try and punish those responsible.<sup>18</sup> In line with this, in its General Comment No. 34, the Human Rights Committee noted that:

States parties should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression. [...] Nor, under any circumstance, can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing, be compatible with article 19. Journalists are frequently subjected to such threats, intimidation and attacks because of their activities. So too are persons who engage in the gathering and analysis of information on the human rights situation and who publish human rights-related reports, including judges and lawyers. All such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted, and the victims, or, in the case of killings, their representatives, be in receipt of appropriate forms of redress.<sup>19</sup>

7. Likewise, considering the magnitude of violence committed against journalists and media workers in recent years, and recognizing the need for United Nations bodies to develop a coordinated strategic focus on the issue of the safety of journalists and impunity, the United Nations Educational, Scientific and Cultural Organization (UNESCO) elaborated the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity, which was adopted in 2012.<sup>20</sup> Similarly, in July 2013, UNESCO produced security indicators, which could be used to evaluate the advances in

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<sup>17</sup> United Nations. General Assembly. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns. A/HRC/20/22. April 10, 2012. Para. 24. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96)

<sup>18</sup> United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). International Programme for the Development of Communication. March 27, 2008. [Decision on the safety of journalists and the issue of impunity adopted by the IPDC Intergovernmental Council at its 26<sup>th</sup> session](#); United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). International Programme for the Development of Communication. March 24-26, 2010. [Decision on the safety of journalists and the issue of impunity adopted by the IPDC Intergovernmental Council at its 27<sup>th</sup> session](#); United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). International Programme for the Development of Communication. March 22-23, 2012. [Decision on the safety of journalists and the issue of impunity adopted by the IPDC Intergovernmental Council at its 28<sup>th</sup> Session](#); United Nations. General Assembly. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns. A/HRC/20/22. April 10, 2012. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96); United Nations. General Assembly. Report of the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/20/17. June 4, 2012. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85); United Nations. Human Rights Council. [Resolution 21/12 Safety of Journalists](#). A/HRC/21/L.6. September 21, 2012; United Nations. Human Rights Council. [Resolution 12/16 Freedom of Opinion and Expression](#). A/HRC/RES/12/16. October 12, 2009; United Nations Educational, Scientific and Cultural Organization (UNESCO). [Medellin Declaration. Securing the Safety of Journalists and Combating Impunity](#). 2007.

<sup>19</sup> United Nations. Human Rights Committee. [General Comment No. 34](#). CCPR/C/GC/34. September 12, 2011. Para. 23.

<sup>20</sup> United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). International Programme for the Development of Communication. [United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity](#).

connection with the UN Plan of Action on the Safety of Journalists and the Issue of Impunity.<sup>21</sup> Also during 2013, the United Nations Security Council held open debates with the participation of experts regarding the safety of journalists.<sup>22</sup> On November 26, 2013, the Third Committee of the United Nations General Assembly passed a resolution condemning the attacks and assaults perpetrated against journalists and media workers, and declared November 2 the “International Day to End Impunity for Crimes Against Journalists.”<sup>23</sup> Similarly, the Committee of Ministers of the Council of Europe is considering the adoption of a declaration on the “protection of journalism and the safety of journalists and other media actors.”<sup>24</sup>

8. This report focuses on addressing State obligations with regard to physical and psychological violence committed against journalists through attacks, assaults and threats. However, it should be noted that violence against communicators also includes violence of an institutional nature. This means that violence can also be committed against journalists through the use of criminal law - the State’s main coercive power - to punish, suppress and discourage expression that is critical of the actions of State authorities or on issues that are in the public interest. In particular, the threat or imposition of a prison sentence based on *desacato* or criminal defamation laws could have a chilling effect not only for communicators but for society as a whole.<sup>25</sup> Effectively, the development of a democratic and activist citizenry requires designing institutions that allow for - and do not inhibit or complicate - deliberation on all matters and phenomena that are relevant to the public. The use of the coercive power of the State to impose a single world view or discourage vigorous and open deliberation on matters that are relevant to the public is not compatible with the guiding principles of democratic systems of governance, specifically the right to freedom of expression. In consideration of this, the Office of the Special Rapporteur identified the need to eliminate laws that criminalize expression as one of the five central persistent challenges facing the region.<sup>26</sup>

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<sup>21</sup> United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). July 25, 2013. [Journalists' Safety Indicators-International Level](#); United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). July 25, 2013. [Journalists' Safety Indicators-National Level](#); United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). July 25, 2013. [Journalists' Safety Indicators Guidebook](#).

<sup>22</sup> United Nations. Security Council. July 17, 2013. 7003<sup>rd</sup> meeting. [Protection stressed as speakers in Security Council sound alarm over number of journalists targeted in conflict zones, impunity enjoyed by perpetrators](#); United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). July 18, 2013. [UN Security Council debates journalists' safety](#); United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). [Irina Bokova advocates for freedom of expression and journalists' safety at the UN Security Council](#); United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). [Informal Meeting of the Security Council on "Protecting Journalists"](#); United Nations. UN News Centre. December 13, 2013. [Security Council must pay more attention to attacks on journalists, UN expert warns](#).

<sup>23</sup> United Nations. November 26, 2013. Sixty-eighth General Assembly. Third Committee. 51st & 52nd meetings. [Third Committee approves text titles 'Right to Privacy in the Digital Age', as it takes action on 18 draft resolutions](#).

<sup>24</sup> Council of Europe. December 2, 2013. 5th meeting. December 3-6, 2013. CDMSI(2013)OJ3Rev. [Draft Annotated Agenda](#); Council of Europe. Committee of Ministers. [Draft Declaration of the Committee of Ministers on the protection of journalism and safety of journalists and other media actors](#). CDMSI(2013)007rev2. September 22, 2013.

<sup>25</sup> IACHR. [Annual Report 2008. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (A Hemispheric Agenda for the Defense of Freedom of Expression). OEA/Ser.L/V/II.134 Doc. 5 rev. 1. February 25, 2009. Para. 58; IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The Inter-American Legal Framework Regarding the Right to Freedom of Expression). OEA/Ser.L/V/II.Doc 51. December 30, 2009. Para. 110 and 111.

<sup>26</sup> IACHR. [Annual Report 2008. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (A Hemispheric Agenda for the Defense of Freedom of Expression). OEA/Ser.L/V/II.134 Doc. 5 rev. 1. February 25, 2009. Para. 55.



9. Similarly, the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression observed that the total number of journalists imprisoned throughout the world in 2011 was the highest in 15 years. At that time, the Rapporteur observed that the State's obligation to guarantee the ability of journalists to carry out their work "means not only preventing attacks against journalists and prosecuting those responsible, but also creating an environment where independent, free and pluralistic media can flourish and journalists are not placed at risk of imprisonment".<sup>27</sup> Hence, the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity calls on member States to ensure that defamation become a civil and not a criminal violation.<sup>28</sup>

10. On this point, the Office of the Special Rapporteur recalls that 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." Likewise, Principle 11 establishes that "[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as 'desacato laws,' restrict freedom of expression and the right to information".

11. This report begins with an updated analysis on the scope of violence against journalists in the region and the factors that contribute to it. It then goes on to describe State obligations with regard to these facts. The report focuses on the positive obligations of States to prevent these crimes, protect journalists at risk, and criminally try those who use violence to silence journalists. With regard to each of these obligations, the report identifies the domestic practices developed by the countries in the hemisphere. Finally, the report presents a series of conclusions and recommendations.

## **II. Violence against journalists in the Americas: an increasingly urgent challenge**

12. As noted previously, in recent decades, some States in the region have made important legal progress to protect the exercise of journalism and the right to freedom of expression, including the creation of mechanisms for protecting journalists and adopting legal reforms in order to abolish criminal prosecution of crimes committed in response to the exercise of freedom of expression. However, while the press has become fundamental for fighting against corruption and abuse of authority, the evidence collected by the Office of the Special Rapporteur indicates that in recent years, the problem of violence against journalists in the Americas has become more serious, connected in many cases to a rise in organized crime, as will be seen.

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<sup>27</sup> United Nations. General Assembly. Report of the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/20/17. June 4, 2012. Para. 78. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>28</sup> United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). International Programme for the Development of Communication. [United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity](#). Point 5(9).

13. The Office of the Special Rapporteur found in its Special Study on the Status of Investigations into the Murder of Journalists that from 1995 to 2005, 157 journalists and media employees were murdered in 19 Member States of the Organization of American States for reasons possibly related to their journalism work.<sup>29</sup> According to reported data, between January 1, 2006, and November 1, 2013, at least 138 journalists, communicators and media workers were murdered in 17 countries for reasons that could be related to the exercise of their profession. Likewise, the Office of the Special Rapporteur has learned of a number of cases of murders of journalists and media employees that took place during that period of time in which there is no clear connection to their work. The Office of the Special Rapporteur exhorts States to diligently investigate these facts and urges authorities not to dismiss the hypothesis the victims could have been murdered in response to the exercise of their right to freedom of expression. States should exhaust all lines of investigation into this angle.<sup>30</sup>

14. Of the countries in the region, several that reported an increase in the number of murders of journalists related to the exercise of their profession deserve to be singled out. Over the last decade, the State of Mexico has reported worrying levels of violence against journalists.<sup>31</sup> From 2006 to 2013, 55 journalists were murdered in the country. Honduras has also suffered a drastic increase in the number of journalist deaths. Only 4 journalists were murdered in the country between 1995 and 2009, but from 2010 and 2013, the number rose to 15, a figure that is particularly alarming considering that Honduras is a small country with a sparse population compared to other countries. In the case of Brazil, the Office of the Special Rapporteur found that 26 journalists were murdered between 1995 and 2010. However, over the last three years, at least 15 journalists were murdered in the country. In Colombia, meanwhile, the journalist murder rate fallen considerably. From 1995 to 2005, 75 journalists were murdered in that country. From 2006 to 2013, 14 murders took place.<sup>32</sup>

15. These statistics tell only one part of the story, which is doubtlessly the most serious one. Although the murder of journalists constitutes the most extreme form of violence against and censorship of the press, every year the Annual Report of the Office of the Special Rapporteur documents hundreds of other threats and attacks on journalists throughout the region. However, these reports cannot reflect the true seriousness of the situation, since it is often difficult to track the measures taken by journalists to self censor in order to avoid becoming a tragic statistic.<sup>33</sup> In these cases, those who attack journalists in order to silence them accomplish their future goals without need of violence, since the threat of violence is in itself so serious that journalists opt for silence. Regarding this, in the report *Impunity, Self-censorship and Armed Internal Conflict: An Analysis of the State of Freedom of Expression*

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<sup>29</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 139.

<sup>30</sup> In this sense, see: Committee to Protect Journalists (CPJ). [Journalists Killed Since 1992](#).

<sup>31</sup> IACHR. [Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 536.

<sup>32</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. In this sense, see: Committee to Protect Journalists (CPJ). [Journalists Killed Since 1992](#).

<sup>33</sup> IACHR. [Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 699-705; IACHR. Office of the Special Rapporteur for Freedom of Expression. [Impunity, Self-Censorship and Armed Conflict: An Analysis of the State of the Freedom of Expression in Colombia](#). OEA/Ser.L/V/II Doc.51. August 31, 2005. Para. 88 to 102.

in Colombia (2005), the Office of the Special Rapporteur expressed particular concern at the “climate of self-censorship that continues for journalists” and noted a correlation between self-censorship and a decrease in reported cases of murders and attacks.<sup>34</sup> The Office of the Special Rapporteur found that the fear resulting from threats and crimes against other journalists “engenders self-censorship by both journalists and the media for whom they work, and even the closure of media outlets and the abandonment of the profession.”<sup>35</sup>

16. As has been mentioned, in light of the magnitude of the violence committed against journalists and media workers in recent years, in 2012 the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity was adopted. The Plan was developed after an inter-institutional meeting of UN bodies and after meetings with other actors organized by UNESCO at the request of the International Programme for the Development of Communication (IPDC). The Plan of Action proposes a series of measures to be adopted by United Nations bodies before Member States and other organizations and institutions, as well as measures for raising awareness and encouraging safety initiatives, among other things. In this sense, the Plan’s objective is to work “toward the creation of a free and safe environment for journalists and media workers in both conflict and non-conflict situations, with a view to strengthening peace, democracy and development worldwide.”<sup>36</sup> For its part, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions stated that “journalists are among the persons who receive the most death threats” noting that around 8% of communications sent between 2003 and 2011 in connection with its mandate were related with murders of journalists or death threats sent to journalists.<sup>37</sup>

17. In this context, a valid question is: why do the Americas have such high rates of violence against journalists? The 2008 Special Study on the Status of Investigations into the Murder of Journalists identified some of the factors leading to this violence. Regarding Colombia, for example, the report made special reference to the country's armed conflict, as well as to drug trafficking, corruption and the extra-legal conduct of the State security services.<sup>38</sup> In the case of Brazil, violence was associated with research into death squads and organized crime, human rights violations committed by State security forces, corruption, and the conduct of some local officials.<sup>39</sup> As far as Mexico, the report made reference

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<sup>34</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Impunity, Self-Censorship and Armed Conflict: An Analysis of the State of the Freedom of Expression in Colombia](#). OEA/Ser.L/V/II Doc.51. August 31, 2005. Para. 9 and 10.

<sup>35</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Impunity, Self-Censorship and Armed Conflict: An Analysis of the State of the Freedom of Expression in Colombia](#). OEA/Ser.L/V/II Doc.51. August 31, 2005. Para. 99.

<sup>36</sup> United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). International Programme for the Development of Communication. [United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity](#). Point 4(1).

<sup>37</sup> United Nations. General Assembly. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns. A/HRC/20/22. April 10, 2012. Para. 25. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96)

<sup>38</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 85 and 86.

<sup>39</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 85 and 86.

to the strong presence of drug trafficking cartels and other forms of organized crime.<sup>40</sup> In Guatemala, meanwhile, there were a number of cases of violent deaths that may be linked to journalistic investigations into cases of corruption and the distribution of information on criminal gangs.<sup>41</sup>

18. More recent investigations by the Office of the Special Rapporteur have provided additional insight. In its 2010 Special Report on Freedom of Expression in Mexico, for example, the Office of the Special Rapporteur concluded that “the majority of murders, disappearances and kidnappings of journalists are concentrated in states that suffer from a strong presence of organized crime [...] in these regions organized crime represents the greatest threat to the life and physical integrity of journalists, especially those who report on local issues of corruption, drug trafficking, organized crime, public security and related matters.”<sup>42</sup> At the same time, the report noted that in some regions of Mexico, violence and intimidation against journalists appears to be carried out by armed groups with presumed links to political factions.<sup>43</sup> In addition, the Office reported numerous allegations of harassment and acts of violence carried out by members of the police and armed forces against journalists who attempt to report on public security issues.<sup>44</sup>

19. Additionally, the recent increase in the number of homicides, threats and acts of harassment against journalists in Honduras was exacerbated starting in 2009.<sup>45</sup> As the IACHR indicated in its report Honduras Human Rights and the *Coup d'état*, the violations of the right to life and freedom of expression, among other abuses, that took place starting in 2009 were accompanied by an absence of institutions with the ability to process complaints, investigate incidents, punish those responsible and grant reparations to victims, all of which contributed to creating an environment that lent itself to the commission of acts of violence.<sup>46</sup> In this context, the Commission found “serious and multiple assaults on journalists for reasons associated with their news coverage,” along with a number of cases of detentions, destruction of reporter equipment, violent attacks against media outlets, and death threats against journalists.<sup>47</sup> Many of the journalists who suffered acts of violence in this context have expressed repudiation of the coup d'état.<sup>48</sup> Others have published news items on land conflicts or

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<sup>40</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 85 and 86.

<sup>41</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 85 and 86.

<sup>42</sup> IACHR. [Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 538.

<sup>43</sup> IACHR. [Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 539.

<sup>44</sup> IACHR. [Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 540.

<sup>45</sup> IACHR. [Annual Report 2010. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 298.

<sup>46</sup> IACHR. [Honduras: Human Rights and Coup d'Etat](#). OEA/Ser.L/V/II. Doc. 55. December 30, 2009. Para. 558.

<sup>47</sup> IACHR. [Honduras: Human Rights and Coup d'Etat](#). OEA/Ser.L/V/II. Doc. 55. December 30, 2009. Para. 411, 447-459, 472 and 479.

<sup>48</sup> IACHR. [Honduras: Human Rights and Coup d'Etat](#). OEA/Ser.L/V/II. Doc. 55. December 30, 2009. Para. 558.

organized crime.<sup>49</sup> Regarding this, in its July 2011 report, the Commission on Truth and Reconciliation of Honduras found that during that period, journalists suffered “harassment, threats, intimidation, illegal detentions, mistreatment, torture, the closure of media outlets, attacks, and illegal confiscation of their property.”<sup>50</sup> Likewise, the Truth Commission indicated that “in the capital and other departments throughout the country, the repression was aimed only at those who were identified as members of the left, ‘*zelayistas*,’ who called what happened on June 28, 2009 a ‘*coup d’état*.’”<sup>51</sup> In its conclusions, the Commission recommended that the State “conclude as soon as possible the investigations in progress into crimes that have been alleged against journalists, especially the violent deaths that have occurred (...), in order to prevent impunity.”<sup>52</sup> Similarly, a Truth Commission created by civil society organizations identified journalists as one of the groups of people particularly affected after the 2009 *coup d’état*.<sup>53</sup> The Commission concluded that this violence “makes the exercise of the profession vulnerable and encourages self-censorship,”<sup>54</sup> noting that Honduras had become “one of the most dangerous countries in which to practice journalism.”<sup>55</sup>

20. In sum, violence against journalists in the region is the result of a complex series of causes. In general, in some cases this type of violence continues to be exercised by State actors, especially in the context of public safety operations and public demonstrations, or in cases involving allegations of corruption and illegality committed by local State officials. Nevertheless, in recent years, the number and size of organized criminal groups has increased, including drug trafficking cartels and other organized criminal groups. These currently represent the main threat to the lives and personal integrity of journalists. This situation presents a series of challenges for the protection of journalists and media workers in the hemisphere.

21. In a 2011 report, the UN Special Rapporteur on the Situation of Human Rights Defenders observed that journalists and media workers in the Americas are mainly targeted due to their work on environmental issues, human rights violations committed by the State, corruption, demonstrations, drug dealing and mafia groups, and denouncing impunity.<sup>56</sup> Of the communications sent to the UN

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<sup>49</sup> IACHR. [Annual Report 2010. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 303 and 305; IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 320

<sup>50</sup> Estado de Honduras. Comisión de la Verdad y la Reconciliación. [Para que los hechos no se repitan: Informe de la Comisión de la Verdad y la Reconciliación](#). July 2011. P. 346.

<sup>51</sup> Estado de Honduras. Comisión de la Verdad y la Reconciliación. [Para que los hechos no se repitan: Informe de la Comisión de la Verdad y la Reconciliación](#). July 2011. P. 366.

<sup>52</sup> Estado de Honduras. Comisión de la Verdad y la Reconciliación. [Para que los hechos no se repitan: Informe de la Comisión de la Verdad y la Reconciliación](#). July 2011. P. 420.

<sup>53</sup> Comisión de Verdad: Sin verdad no hay justicia. [Informe de la Comisión de Verdad: La voz más autorizada es la de las víctimas](#). October 2012. P. 280.

<sup>54</sup> Comisión de Verdad: Sin verdad no hay justicia. [Informe de la Comisión de Verdad: La voz más autorizada es la de las víctimas](#). October 2012. P. 180.

<sup>55</sup> Comisión de Verdad: Sin verdad no hay justicia. [Informe de la Comisión de Verdad: La voz más autorizada es la de las víctimas](#). October 2012. P. 180.

<sup>56</sup> United Nations. General Assembly. Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya. A/HRC/19/55. December 21, 2011. Para. 56. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=70&m=166](http://ap.ohchr.org/documents/dpage_e.aspx?m=70&m=166). See also, United Nations. General Assembly. Report of the

rapporteur regarding violence against journalists, 30.5% of those from countries in the Americas alleged that the perpetrators were State actors.<sup>57</sup> Meanwhile, the Americas were the subject of the greatest number of communications by the UN special rapporteur regarding allegations of violence by non-State actors.<sup>58</sup>

22. In some regions, State institutions are too weak to respond effectively to threats from organized crime. The weakness of State institutions leaves journalists without effective protection from attacks perpetrated by organized crime, resulting in self-censorship as an immediate consequence.

23. In its Special Report on Freedom of Expression in Mexico (2010), the Office of the Special Rapporteur observed, on the influence of organized crime in self-censorship:

There are now areas of Mexico in which journalists are subject to serious intimidation originating principally from criminal groups who seek to suppress certain information in the media and promote the dissemination of that which furthers their criminal interests. In this high-risk situation, it is extremely difficult for journalists to carry out research and publish material on issues such as organized crime, corruption, public security and similar matters.<sup>59</sup>

24. A second challenge for protecting journalists from organized crime can be found in regions where local institutions themselves are infiltrated or captured by criminal structures. In that context, journalists are threatened both by organized crime and by co-opted institutional officials, which places them in a serious situation of vulnerability.<sup>60</sup>

25. A third situation that presents an obstacle to protecting journalists from organized crime can be found when state officials fight organized crime through institutions that do not have adequate protocols or that act within a “war” mentality (friend or foe), in which critical media are identified as the enemy they are fighting. Thus, for example, as reported previously by the Office of the Special Rapporteur, from 2002 to 2008, some officials of the since-defunct Administrative Security Department [*Departamento Administrativo de Seguridad*] (DAS) implemented a systematic and sustained persecution policy in Colombia aimed at spying on, defaming and intimidating a number of public figures, including human rights defenders and journalists who were critical of the administration

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United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/20/17. June 4, 2012. Para. 93. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>57</sup> United Nations. General Assembly. Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya. A/HRC/19/55. December 21, 2011. Para. 51. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=70&m=166](http://ap.ohchr.org/documents/dpage_e.aspx?m=70&m=166)

<sup>58</sup> United Nations. General Assembly. Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya. A/HRC/19/55. December 21, 2011. Para. 53. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=70&m=166](http://ap.ohchr.org/documents/dpage_e.aspx?m=70&m=166)

<sup>59</sup> IACHR. [Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 700.

<sup>60</sup> Thus for example, the Supreme Court of Justice of Colombia found that the former director of the now-dissolved intelligence agency of the Colombian State, the Departamento Administrativo de Seguridad (Administrative Security Department, DAS) abused his position and power to promote and facilitate the criminal activities of paramilitary groups. Estado de Colombia. Corte Suprema de Justicia. Sala de Casación Penal. [Única instancia 32000 P/Jorge Aurelio Noguera Cotes](#). Acta No. 331. September 14, 2011.

President Álvaro Uribe Vélez.<sup>61</sup> According to the information available, in 2009, the Office of the Attorney General of the Nation launched an investigation to determine the involvement of officials from the DAS and other areas of the administration in the wiretaps and surveillance of public figures, including the journalists.<sup>62</sup> The initial investigation has implicated 52 officials,<sup>63</sup> and at least 16 people have been criminally convicted, six of them for spying on and wiretapping journalists.<sup>64</sup> In their

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<sup>61</sup> IACHR. [Annual Report 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). OEA/Ser.L/V/II. Doc. 51, December 30, 2009. Para. 139 to 148; IACHR. [Annual Report 2010. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II. (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/SER.L/V/II. Doc 5. March 7, 2011. Para. 140 to 162.

<sup>62</sup> Fundación para la Libertad de Prensa (FLIP). December 3, 2010. [Informe. Espionaje contra periodistas: la justicia tiene la palabra.](#)

<sup>63</sup> Fundación para la Libertad de Prensa (FLIP). December 3, 2010. [Informe. Espionaje contra periodistas: la justicia tiene la palabra.](#)

<sup>64</sup> According to the information received, the Office of the General Public Prosecutor of the Nation obtained the confessions of a number of individuals under investigation, and intervened to bring an early end to some court proceedings by negotiating plea bargains with the involved DAS officials who, in exchange, received prison sentences of between six and eight years. Accordingly, on March 7, 2011, the Bogotá Fourteenth Judicial Circuit Criminal Court [*Juzgado 14 Penal del Circuito de Conocimiento de Bogotá*] sentenced the former DAS Chief, Fernando Alonso Tabares Molina, to an 8-year and two months term of imprisonment, and Deputy Chief of Counterintelligence, Jorge Alberto Lagos León, to an 8-year term of imprisonment. *Juzgado 14 Penal del Circuito de Conocimiento, Bogotá. Sentencia N.I. 131.374. March 7, 2011.* Available for consultation at: <http://www.scribd.com/doc/50480547/Sentencia-Lagos-y-Tabares>. The Bogotá Fourteenth Judicial Circuit Criminal Court sentenced, former DAS Deputy Director of Analysis, Gustavo Sierra Prieto, to 8-year and four months term of imprisonment. *El País. August 6, 2011. Ex subdirector del DAS recibe 8 años de cárcel;* La información. August 6, 2011. [Condenado a ocho años de cárcel un exsubdirector del espionaje colombiano por el caso de las 'chuzadas';](#) El Nuevo Día. August 5, 2011. [Condenado a ocho años por 'chuzadas' exsubdirector de análisis del DAS.](#) The Sixth Bogotá Specialized Criminal Court sentenced to six-year and one month term of imprisonment to former DAS officials, Fabio Duarte Traslaviña and Germán Enrique Villalba Chávez. *El Espectador. August 11, 2011. Seis años de cárcel a ex funcionarios del DAS por 'chuzadas';* El Tiempo. August 10, 2011. [Cárcel para dos ex funcionarios del DAS por 'chuzadas';](#) WRadio. August 10, 2011. [Condenados dos exfuncionarios del DAS por "chuzadas".](#) The IACHR was also informed of the judgment issued on September 2011 by the Supreme Court of Justice that sentenced Jorge Noguera Cotes, former DAS Director, to 25 years of imprisonment as mastermind for the crimes of homicide and “destruction, suppression or hiding a public document,” and as the author of aggravated conspiracy and “disclosure of classified information.” These crimes are reportedly related to the surveillance of public figures. *State of Colombia. Corte Suprema de Justicia. Sala de Casación Penal. Única instancia 32000 P/Jorge Aurelio Noguera Cotes. Acta No. 331. September 14, 2011.* The Commission also took note of the judgment handed down on June 8, 2012 by the Bogotá Fourteenth Judicial Circuit Criminal Court [*Juzgado 14 Penal del Circuito de Conocimiento de Bogotá*], sentencing former DAS Operations Director, Luz Marina Rodríguez, and the former DAS Anti-corruption Chief, Bernardo Murillo Cajamarca, for their roles in these crimes. The former DAS officials received a 6-year prison sentence for their roles in phone-tapping and surveillance activities on magistrates of the Supreme Court and senators of the Colombian Congress. *El Tiempo. June 8, 2012. Condenados dos funcionarios del DAS por seguimiento a magistrados;* *Semana. June 8, 2012. Condenados dos ex funcionarios del DAS por chuzadas;* *El País. June 8, 2012. Por chuzadas condenan a 6 años de cárcel a ex funcionarios del DAS.* On November 30, 2012, the Third Bogotá Criminal Court of the Specialized Circuit in Clearing Backlogs [*Juzgado Tercero Penal del Circuito Especializado de Descongestión de Bogotá*] handed down 105-month prison sentences to former DAS intelligence director general, Enrique Alberto Ariza Rivas; former coordinator of the DAS technological development group, Jorge Armando Rubiano; former DAS deputy director of operations, Hugo Daney Ortiz; former DAS director general of operations, Jackeline Sandoval Salazar; and former DAS deputy director of analysis, Martha Inés Leal Llanos, for the crime of criminal conspiracy [*delito de concierto para delinquir*] and as co-perpetrators [*coautores impropios*] in the crimes of illegal interception of communications, illegal use of transmitting and receiving equipment, and arbitrary or unjust abuse of authority. The Court also convicted the former coordinator of the DAS “GRUVE” verifications group, José Alexander Velásquez Sánchez. The Court disqualified him from holding employment in the public service upon finding him guilty of multiple counts of arbitrary and unjust abuse of authority [*abuso de autoridad por acto arbitrario e injusto en concurso sucesivo y homogéneo*]. *Juzgado Tercero Penal de Circuito Especializado de Descongestión de Bogotá. Radicación 2010-00020. Judgement of November 30, 2012.* Available for consultation at: <http://www.derechos.org/nizkor/colombia/doc/das299.html>; Fundación para la Libertad de Prensa (FLIP). 2013. [De las balas a](#)

testimonies, some of those convicted argued that they were acting with the DAS “for the benefit of the country,” fighting against drug traffickers, guerrillas and the self-defense forces “constantly and committed, dedicated, responsible.”<sup>65</sup>

26. On the other hand, the high (and rising) levels of violence against journalists in the region can be explained at least in part by the impunity that the perpetrators of such violence have often enjoyed.<sup>66</sup> Indeed, the Inter-American Court has repeatedly observed that impunity—the “total lack of investigation, prosecution, capture, trial and conviction”<sup>67</sup>—fosters the chronic repetition of human rights violations.<sup>68</sup> Such impunity has been the rule rather than the exception with regard to violence against journalists in the Americas; the region has an alarming, lingering history of impunity with regard to crimes committed against journalists.<sup>69</sup>

27. As mentioned previously, the study done by the Office of the Special Rapporteur on the 157 murders of journalists committed from 1995 to 2005 found that in only 32 of the 157 cases had any type of conviction been handed down, and in only four of those cases where the masterminds of the crime convicted.<sup>70</sup> As alarming as this statistic is, the report’s detailed conclusions paint an even more troubling and “deplorable” situation of impunity in the region.<sup>71</sup> The study found that the vast majority of investigations proceeded at an excessively slow pace, and showed substantial deficiencies in the adequate and timely gathering of relevant evidence, in the focus on logical lines of investigation, and in the investigation of possible patterns. Several of the investigations came up against obstacles and obstructions that adversely affected the diligence and effectiveness with which they were carried out. The vast majority of investigations were not completed. In very few of them had the facts been clarified, at least fully, and as a result, in only a few of the cases had the circumstances of the murder been determined and the motive of the crime established. Similarly, in only a few of the cases had any of the perpetrators been identified, and only in very exceptional cases had the masterminds been determined.

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[los expedientes. Informe sobre el estado de la libertad de prensa en Colombia, 2012](#). Pp. 62-63; La Patria. December 15, 2012. [Condenan a tres exfuncionarios del DAS por chuzadas](#).

<sup>65</sup> Juzgado Tercero Penal de Circuito Especializado de Descongestión de Bogotá. Radicación 2010-00020. Judgment of November 30, 2012. Available for consultation at: <http://www.derechos.org/nizkor/colombia/doc/das299.html>

<sup>66</sup> United Nations. General Assembly. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns. A/HRC/20/22. April 10, 2012. Para. 43. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96)

<sup>67</sup> I/A Court H.R. *Case of the “White Van” (Paniagua Morales et al.) v. Guatemala. Merits*. Judgment of March 8, 1998. Series C No. 37. Para. 173.

<sup>68</sup> I/A Court H.R. *Case of Bámaca Velásquez v. Guatemala. Merits*. Judgment of November 25, 2000. Series C No. 70. Para. 211.

<sup>69</sup> IACHR. [Annual Report 2008. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (A Hemispheric Agenda for the Defense of Freedom of Expression). OEA/Ser.L/V/II.134 Doc. 5 rev. 1. February 25, 2009. Para. 42-51.

<sup>70</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 120 and 125 (footnote 160).

<sup>71</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 128.



Very few of the investigations led to convictions, and in several of the cases in which some type of conviction had been achieved, the sentences had yet to take effect.<sup>72</sup>

28. With this brief overview of violence against journalists and impunity for such crimes as background, this report now turns to an analysis of the ways in which States can confront these challenges through effective policies of prevention, protection and prosecution of perpetrators.

### III. Violence against journalists: international standards and national practices

29. Violence against journalists compromises the rights to personal integrity, life, and freedom of thought and expression. Likewise, the lack of due diligence in the investigation, pursuit and punishment of all those responsible can result in an additional violation to the rights to access to justice and judicial guarantees of those affected and their family members. The American Convention on Human Rights (“American Convention” or “Convention”) guarantees these rights in articles 4, 5, 13, 8 and 25.<sup>73</sup> Likewise, the American Declaration of the Rights and Duties of Man, on its turn, states that “[e]very human being has the right to life, liberty and the security of his person” and that “[e]very person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever.” Similarly, the American Declaration guarantees the rights to petition and to justice.<sup>74</sup> The effective exercise of these rights includes both positive and negative obligations. It can be said that those subjected to the jurisdiction of a State can have their fundamental rights affected due to the actions of State agents or as a result of conduct committed by third parties, which when not investigated, result in State responsibility due to a failure to comply with the obligation to guarantee judicial protection. In the case of people facing situations of particular vulnerability, States can also be held responsible when measures are not taken to prevent actions that affect the enjoyment of these rights.<sup>75</sup>

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<sup>72</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 127.

<sup>73</sup> American Convention on Human Rights: “Article 4. Right to Life: 1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life. [...] Article 5. Right to Humane Treatment 1. Every person has the right to have his physical, mental, and moral integrity respected. 2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person. 3. Punishment shall not be extended to any person other than the criminal. 4. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons. 5. Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors. 6. Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners. [...] 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 [...]”

<sup>74</sup> American Declaration of the Rights and Duties of Man: “Article XVIII: Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights. (...) Article XXIV: Every person has the right to submit respectful petitions to any competent authority, for reasons of either general or private interest, and the right to obtain a prompt decision thereon.”

<sup>75</sup> IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II Doc. 57. December 31, 2009. Para. 38.

30. With regard to *negative* obligations, pursuant to the principles of international law, the State is responsible for all the acts and omissions in which its agents take part in the exercise of their duties, including when they surpass the limits of their authority.<sup>76</sup> OAS Member States are required to ensure that their agents do not interfere with the rights to life and personal integrity. That is to say, States have the obligation to refrain from carrying out actions that could violate these rights directly, such as acts of violence against their own citizens. Cases continue to arise in the region of State agents committing acts of violence against journalists, especially in the context of police or military action intended to combat crime or control demonstrations, as well as in cases of allegations of corruption or illegalities committed by local authorities. For this reason, it is important to place special emphasis on the aforementioned negative obligations. Likewise, as has been noted, the allegations received demonstrate that, in general terms, many of the most serious acts of violence against journalists in the Americas - homicides, disappearances, kidnappings and armed attacks on media outlets, among others - are currently committed by non-state actors, especially powerful criminal groups. Because of this, it is crucial for States to also fulfill their *positive* obligations, as derived from the rights to life, personal integrity, and freedom of expression, among others. On this regard, the Inter-American Court has observed:

Said international responsibility may also be generated by acts of private individuals not attributable in principle to the State. The States Party to the Convention have *erga omnes* obligations to respect protective provisions and to ensure the effectiveness of the rights set forth therein under any circumstances and regarding all persons. The effect of these obligations of the State goes beyond the relationship between its agents and the persons under its jurisdiction, as it is also reflected in the positive obligation of the State to take such steps as may be necessary to ensure effective protection of human rights in relations amongst individuals. The State may be found responsible for acts by private individuals in cases in which, through actions or omissions by its agents when they are in the position of guarantors, the State does not fulfill these *erga omnes* obligations embodied in Articles 1(1) and 2 of the Convention.<sup>77</sup>

31. With regard to violence against journalists and other persons based on the exercise of freedom of expression, the Office of the Special Rapporteur has highlighted, based on Inter-American scholarship and case law, the importance of three positive obligations that emanate from the rights to

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<sup>76</sup> I/A Court H.R. *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134. Para. 108; I/A Court H.R. *Case of the "Pueblo Bello Massacre" v. Colombia*. Judgment of January 31, 2006. Series C No. 140. Para. 111.

<sup>77</sup> I/A Court H.R. *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Serie C No. 134. Para. 111 and 112; I/A Court H.R. *Case of Moiwana Community v. Surinam. Preliminary Objections, Merits, Reparations and Costs*. Judgment of June 15, 2005. Series C No. 124. Para. 211; I/A Court H.R. *Case of Brothers Gómez Paquiyauri v. Peru. Merits, Reparations and Costs*. Judgment of July 8, 2004. Series C No. 110. Para. 91; I/A Court H.R. *Case of 19 Merchants v. Colombia. Merits, Reparations and Costs*. Judgment of July 5, 2004. Serie C No. 109. Para. 183; I/A Court H.R. *Case of Maritza Urrutia v. Guatemala. Merits, Reparations and Costs*. Judgment of November 27, 2003. Serie C No. 103. Para. 71; I/A Court H.R. *Case of Bulacio v. Argentina. Merits, Reparations and Costs*. Judgment of September 18, 2003. Serie C No. 100. Para. 111. Also, in its Advisory Opinion on the Juridical Condition and Rights of Undocumented Migrants the Court established that "[...] the obligation to respect human rights between individuals should be taken into consideration. That is, the positive obligation of the State to ensure the effectiveness of the protected human rights gives rise to effects in relation to third parties (*erga omnes*). This obligation has been developed in legal writings, and particularly by the *Drittwirkung* theory, according to which fundamental rights must be respected by both the public authorities and by individuals with regard to other individuals". I/A Court H.R. *Juridical Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003, Series A No. 18. Para. 140. The Court took into account similar considerations when issuing provisional measures to protect groups and communities from acts of violence or threats by State agents and third parties.

life, personal integrity, and freedom of expression. To wit: the obligation to prevent, the obligation to protect and the obligation to investigate, try and criminally punish those responsible for these crimes.<sup>78</sup> As the Office of the Special Rapporteur has indicated, these obligations are complementary to each other: in order for free, robust and unrestricted democratic debate to exist, violence against journalists must be combated through a comprehensive policy of prevention, protection and procurement of justice.<sup>79</sup>

32. The remainder of this chapter will analyze each of these positive obligations in turn, summarizing the relevant inter-American legal standards while identifying national practices adopted with the aim of furthering States' compliance with the aforementioned obligations.

#### A. The obligation to prevent

33. States have an obligation to adopt measures to prevent violence against journalists and media workers. This obligation is particularly important in countries in which there is a risk of these incidents taking place and in specific situations in which authorities know or should know that there is a real and immediate risk of such crimes being committed.<sup>80</sup> In the countries or regions in which journalists face a situation of special vulnerability due to a context of violence directed at them, the State's responsibility to prevent and protect is reinforced. In these situations, the absence of a general public policy of prevention can mean the State has failed to comply with its duty to prevent.<sup>81</sup> Regarding this, the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity states that "promoting the safety of journalists and fighting impunity must not be constrained to after-the-fact action. Instead, it requires prevention mechanisms and actions to address some of the root causes of violence against journalists and impunity."<sup>82</sup> Certain specific State obligations are particularly important, as will be shown hereinafter.

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<sup>78</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 25, 2012. [Joint Declaration on Crimes Against Freedom of Expression](#).

<sup>79</sup> IACHR. [Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 541; IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 472.

<sup>80</sup> I/A Court H.R. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248. Para. 194; United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 25, 2012. [Joint Declaration on Crimes Against Freedom of Expression](#).

<sup>81</sup> I/A Court H.R. *Case of González et al. ("Cotton Field") v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 16, 2009. Series C No. 205. Para. 282.

<sup>82</sup> United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). International Programme for the Development of Communication. [United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity](#). Point 1(6)

**1. The obligation to maintain public discourse that contributes to preventing violence against journalists**

34. The Inter-American Court has held that the obligation of State Parties to guarantee the rights enshrined in the Convention implies the duty of States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of legally ensuring the free and full enjoyment of human rights.<sup>83</sup> The Court has emphasized that the duty to guarantee the rights to freedom of expression and humane treatment obligates public officials to refrain from making statements that place journalists and media workers at greater risk of violence.

35. In the case of *Perozo et al. v. Venezuela*, the Inter-American Court considered a series of violent actions by private individuals against the television station *Globovisión* and its workers, including physical attacks on reporters while they covered public events, damage to the station's equipment, and an attack on the station's premises with fragmentation grenades.<sup>84</sup> The attacks took place in the context of declarations by high-ranking public officials referring to *Globovisión* and its owners and executives as "enemies of the revolution", "enemies of the people of Venezuela", "fascist", and participants in the 2002 *coup d'état* against President Hugo Chávez.<sup>85</sup>

36. The Court, in finding the Venezuelan State responsible for violations of articles 5 (humane treatment) and 13 (freedom of thought and expression) of the American Convention, emphasized that the content of the statements made by high-ranking public officials placed *Globovisión's* employees in a position of greater relative vulnerability *vis-à-vis* the State and certain sectors of society. The repetition of said statements contributed to aggravating an environment of hostility, intolerance or animosity toward the victims among certain sections of the population.<sup>86</sup> The Court stressed that public officials enjoy freedom of expression, but must exercise this freedom with particular discretion in contexts of social unrest, lest their statements place individuals at greater risk of violence. In the words of the Court:

in a democratic society it is not just legitimate but also, sometimes, a duty of the state authorities to make statements about issues of the public interest. Nevertheless, when doing so they have to verify reasonably, though not necessarily in an exhaustive manner, the truthfulness of the facts supporting their opinions, and this verification should be performed subject to a higher standard than that used by private parties, given the high level of credibility the authorities enjoy, the broad scope and possible effects their sayings may produce on certain sectors of the society and with a view to keeping citizens from receiving a distorted version of the facts. Furthermore, they should bear in mind that, as public officials, they are in a position of guarantors of the fundamental rights of the individual and, therefore, their statements cannot

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<sup>83</sup> I/A Court H.R. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. Para. 166; I/A Court H.R. *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.) v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2006. Series C No. 158. Para. 92.

<sup>84</sup> 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. 141-142.

<sup>85</sup> 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. 139.

<sup>86</sup> 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. 360.

be such that they disregard said rights so that they must not amount to a form of interference with or pressure impairing the rights of those who intend to contribute to public deliberation by means of expression and dissemination of its thought. This duty of special care is particularly emphasized in those situations of greater social conflict, disorderly conducts or social and political bias, precisely because of the risks entailed for certain people or groups at a given time.<sup>87</sup>

37. The Office of the Special Rapporteur has similarly emphasized the responsibility of government officials to maintain a public discourse that does not place journalists at increased risk of violence. The Office of the Special Rapporteur has recalled, among other things, that a simple but highly effective protective measure consists of the highest authorities of the State recognizing in a consistent, clear, public and firm manner the legitimacy and value of the journalistic profession, even when the information disseminated may prove critical of, inconvenient to or inopportune for the interests of the government. Similarly, it is essential that the authorities vigorously condemn attacks committed against media workers and encourage the competent authorities to act with due diligence and speed to investigate such events and punish those responsible.<sup>88</sup>

38. In 2009 the Office of the Special Rapporteur and its UN counterpart expressed their concern regarding statements made by then-Colombian President Álvaro Uribe regarding journalist Hollman Morris. The President had stated in a news conference that Morris had “shielded himself by his condition as a journalist to be a permissive accomplice to terrorism.” The journalist, a beneficiary of precautionary measures from the IACHR who had previously been forced to leave the country due to threats against his life, received threatening phone calls following the President’s remarks. In their statement, the rapporteurs “remind[ed] the Colombian State once more that high government officials must abstain from making public statements that stigmatize journalists who are critical of the government and generate an environment of intimidation that gravely affects freedom of expression in the country. This obligation is particularly important in a context of polarization and internal armed conflict, such as Colombia’s.”<sup>89</sup>

39. Likewise, the Office of the Special Rapporteur has observed with concern the stigmatizing statements made against journalists, media outlets and human rights organizations by officials with the government of Ecuador since the year 2008. Regarding this, in its annual report, the Office of the special Rapporteur has reported on the statements made frequently by the President of the Republic of Ecuador against institutions and individuals critical of his administration. In particular, the Office of the Special Rapporteur noted that the president has repeatedly referred to journalists and the media with epithets such as: “ink hit men,” “corrupt press”, “mercantilist press,” “scoundrels,” “shameless,” “unethical,” “amoral,” and “worst press in the world,” among others. At these times, the Office of the Special Rapporteur has reiterated in its reports the importance of “creating a climate of

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<sup>87</sup> 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. *See also*, I/A Court H.R. *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Serie C No.194. Para. 139.

<sup>88</sup> IACHR. [Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 713.

<sup>89</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. February 9, 2009. [Press Release R05/09. The UN Rapporteur for Freedom of Opinion and Expression and the Special Rapporteur for Freedom of Expression of IAHR of the OAS, expressed their concern over statements made by high authority officials of the Colombian government against the journalist Hollman Morris.](#)

respect and tolerance for all ideas and opinions” and has recalled that public officials have a duty to ensure that their statements are not damaging the rights of those who contribute to the public debate through the expression and circulation of their thoughts, such as journalists, media outlets, and human rights organizations, and must pay attention to the context in which they express themselves in order to ensure that their expressions do not constitute “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.”<sup>90</sup>

40. A similar opinion was expressed by the United Nations (UN) Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, the Organization for Security and Cooperation in Europe’s (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 in their 2012 Joint Declaration, in which they ratified that State officials must unequivocally repudiate attacks carried out in retaliation for the exercise of freedom of expression and must abstain from making statements that could increase the vulnerability of those who are under attack for exercising this right.<sup>91</sup>

41. The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions recommended in his 2012 report to the Human Rights Council that a “clear public stand should be taken at the highest level of Government to condemn extrajudicial, summary or arbitrary executions of journalists and threats to their lives, and to reemphasize the important role of journalists in society.”<sup>92</sup> The Commissioner for Human Rights for the Council of Europe has also stressed that public officials have a duty to prevent violence against journalists by both speaking out against such violence and responding in a “mature and non-violent” way to criticism from the media.<sup>93</sup>

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<sup>90</sup> IACHR. [Annual Report 2012. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. Para. 198-215. *See also*, IACHR. [Annual Report 2008. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Situation of freedom of expression in Member States). OEA/Ser.L/V/II.134 Doc. 5 rev. 1. February 25, 2009. Para. 108; IACHR. [Annual Report 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). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 206-208; IACHR. [Annual Report 2010. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 224-226; IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 202-206.

<sup>91</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Cooperation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 25, 2012. [Joint Declaration on Crimes Against Freedom of Expression](#); United Nations. General Assembly. Report of the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/20/17. June 4, 2012. Para. 103. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>92</sup> United Nations. General Assembly. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns. A/HRC/20/22. April 10, 2012. Para. 110. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96)

<sup>93</sup> European Council. Human Rights Commissioner. October 4, 2011. [Protection of Journalists from Violence](#).

42. At the domestic level of the countries of the region, it is worth mentioning two important judgments from the Constitutional Court of Colombia that are relevant to the issue at hand. In judgment T-1037/08, the Constitutional Court considered a *tutela* action by journalist Claudia Julieta Duque, whose State-assigned protection scheme had been withdrawn by the government in spite of repeated, credible threats to her personal safety. The Constitutional Court, citing the jurisprudence of the Inter-American Court, stressed that:

the exercise of freedom of expression by public servants can have a much greater impact on the collective imagination, on people's beliefs, and even on their conduct, given the enormous amount of faith people often have in the statements of those who occupy public office. For this reason, with the aim of protecting those who are in a weaker position to defend themselves against the statements of high-ranking public officials, and to safeguard the faith that the public has a right to have in the statements of such officials, constitutional, comparative and international law have established a clear obligation to abstain from making unfounded statements that can compromise the rights of individuals, such as the right to personal security, due process, honor, privacy and reputation.<sup>94</sup>

43. In reference to the fact that the government had denied the threats suffered by Duque as a result of her reporting on human rights violations and the armed conflict, the Constitutional Court observed that “[i]n a country as complex as Colombia, the public denial by the State, without sufficient proof, of a crime, a threat or persecution against a person or group who, as independent journalists or human rights defenders, investigate or question the State [...] can come to constitute a direct violation of the right to personal security and connected rights of such persons.”<sup>95</sup>

44. The Constitutional Court of Colombia reached similar conclusions in judgment, T-956/06, in which it analyzed a complaint, brought in response to an advertisement by the campaign of President Álvaro Uribe. As the Constitutional Court observed, the advertisement in question accused the members of the Unión Patriótica political movement of killing civilians, without providing proof of such accusations, a particularly dangerous allegation given the systematic violence to which members of this political movement had been subjected.<sup>96</sup> The Court stated that while differences should be expressed in clear and even radical terms in the context of a political campaign, “it is no less true that promoters and leaders have a minimum of responsibility for the content that they disseminate, which, as in the case under consideration, cannot constitute an unfounded imputation of criminal conduct against a generic group of persons, especially when in the context of the political violence present in the country the situation of such persons and those close to them is particularly sensitive.”<sup>97</sup> The Constitutional Court ordered President Uribe’s campaign manager to publicly retract the statements in question.<sup>98</sup>

45. Finally, it is worth noting that in analyzing the situation of human rights defenders, the IACHR has emphasized a similar State duty to publicly and unequivocally acknowledge that engaging in

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<sup>94</sup> Corte Constitucional de Colombia. [Sentencia T-1037/08](#). October 23, 2008. P. 40.

<sup>95</sup> Corte Constitucional de Colombia. [Sentencia T-1037/08](#). October 23, 2008. P. 41.

<sup>96</sup> Corte Constitucional de Colombia. [Sentencia T-956/06](#). November 17, 2006. P. 24. *See also*, I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of May 26, 2010. Series C No.213. Para. 76-77 and 206-207.

<sup>97</sup> Corte Constitucional de Colombia. [Sentencia T-956/06](#). November 17, 2006. P. 27.

<sup>98</sup> Corte Constitucional de Colombia. [Sentencia T-956/06](#). November 17, 2006. P. 30.

protection and promotion of human rights is a worthy mission.<sup>99</sup> In its Second Report on the Situation of Human Rights Defenders in the Americas, the Commission alluded to a number of measures taken in recent years by Bolivia, Chile, Colombia, El Salvador, Guatemala, Mexico and Peru in order to foster an appreciation of the work of human rights defenders. These measures included: informative brochures on human rights defenders, their work and their rights; presidential directives and public statements; workshops for police personnel and other public servants; radio programs and newsletters; and the granting of awards.<sup>100</sup>

46. The Office of the Special Rapporteur considers that, in addition to refraining from making statements that can aggravate situations of risk faced by journalists, affirmative actions such as those undertaken by a number of States with regard to human rights defenders can be an important component of a comprehensive policy to build public respect for the media and prevent violence against journalists.

## 2. The obligation to instruct security forces on respect for the media

47. Appropriate instruction of State security forces on the role of the press in a democratic society constitutes an important step in preventing violence against journalists and media workers. For this reason, the Office of the Special Rapporteur has recommended that States adopt adequate preventive mechanisms in order to avert violence against media workers, including 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 of freedom of expression.<sup>101</sup> This is particularly important in relation to forces that carry out public security tasks which regularly bring them into direct contact with the members of the press who cover their activities, especially if the force in question was not originally trained for such public security tasks.<sup>102</sup> In its aforementioned special report on Mexico, the Office of the Special Rapporteur documented multiple instances of alleged harassment and violence against media workers attempting to report on the activities of police or military personnel,<sup>103</sup> and recommended to Mexico that it “provide training to members of the security forces on the subject of freedom of expression.”<sup>104</sup>

<sup>99</sup> IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 474.

<sup>100</sup> IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 476.

<sup>101</sup> IACHR. [Annual Report 2012. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter V (Conclusions and recommendations). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. Para. 4. *See also*, IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter VII (Conclusions and recommendations). OEA/SER.L/V/II. Doc. 51. December 30, 2009. Para. 4; IACHR. [Annual Report 2010. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Capítulo VI (Conclusions and recommendations). OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 4; IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter V (Conclusions and recommendations). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 4.

<sup>102</sup> The IACHR has repeatedly observed that the armed forces are not properly trained to deal with citizen security; hence the need for an efficient civilian police force, respectful of human rights and able to combat citizen insecurity, crime and violence on the domestic front. IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II Doc. 57, December 31, 2009. Para. 100.

<sup>103</sup> IACHR. [Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 574-618.

<sup>104</sup> IACHR. [Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 821.



48. Likewise, in *Vélez Restrepo and Family v. Colombia*, the Inter-American Court analyzed the case of a cameraman who was beaten by members of the National Army after filming soldiers attacking demonstrators. The Court recognized “the measures taken by Colombia [...] through directives that seek to raise awareness within the Armed Forces about the work of journalists and social communicators and the danger they face, especially during armed conflicts, and also about the necessary respect they must exercise so that the latter can exercise their profession without obstacles.”<sup>105</sup> Nevertheless, the Court ordered the Colombian State, as a guarantee of non-repetition, to “incorporate into its human rights education programs for the Armed Forces, a specific module on the protection of the right to freedom of thought and expression and on the work of journalists and social communicators.”<sup>106</sup>

49. The call to train security services on freedom of expression and the role played by journalists and media workers has been echoed by other international bodies. In their 2012 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 stressed that “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.”<sup>107</sup> Likewise, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has stated that “[l]aw enforcement officials and the armed forces should receive training, as part of standard procedure, on the legitimacy of the presence of journalists during non-armed and armed conflict and the legal protection for their safety.”<sup>108</sup>

50. As an example of such training, it is worth mentioning Directive No. 19/2010, issued by the Commander of the National Army of Colombia. The directive, regarding “Command Policies for the Strengthening of Respect for Journalists and Media Workers”, issues a series of orders within the Army with the objective of ensuring respect for the press. The directive includes a summary of the State’s obligations toward journalists under national, international human rights, and international humanitarian law, including the duty to “provide special protection to those who exercise the profession” in areas with greater presence of illegal armed groups, and the duty to treat media workers as “civilians” under international humanitarian law, even when the person “has favorable opinions toward some of the parties to the conflict.” The directive also issues specific orders to various units of

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<sup>105</sup> I/A Court H.R. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248. Para. 277.

<sup>106</sup> I/A Court H.R., *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 3, 2012, Series C No. 248. Para. 277.

<sup>107</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 25, 2012. [Joint Declaration on Crimes Against Freedom of Expression](#).

<sup>108</sup> United Nations. General Assembly. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns. A/HRC/20/22. April 10, 2012. Para. 118. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96). See also, United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). [San José Declaration](#). May 2-4, 2013.

the Army on implementing the policy expressed in the directive. The Chief of Education and Doctrine is ordered, for example, to “develop instructional programs and curricular training, at all levels of the command, on the issue of protection and respect for journalists and media workers.”<sup>109</sup>

51. Another example of good instructional practice is a memorandum issued by the New York City Police Department (NYPD) in the United States in November 2011. During the “Occupy Wall Street” protests that took place in that city beginning in September 2011, a number of journalists and media workers were arrested and some were the victims of violence at the hands of New York City police officers.<sup>110</sup> In this context, the NYPD issued a memorandum “to remind members of the service of their obligations to cooperate with media representatives acting in a news-gathering capacity at the scene of police incidents.” The memorandum recalled some of the most relevant components of the NYPD’s “Patrol Guide”, including “the commitment of the Department to upholding the principles of a free press and informed citizenry”, and the rules that “members of the service will not interfere with the videotaping or the photographing of incidents in public places”, “the media’s access to demonstrations on private property will not be impeded by the Department”, “the media will be given access as close to the activity as possible,” and “when incidents spill over or occur on private property, members of the media will not be arrested for criminal trespass, unless an owner or representative expressly indicates that the press is not to be permitted to enter or remain on the property.”<sup>111</sup>

### **3. The obligation to respect the right of journalists to keep their sources, notes, and personal and professional archives confidential**

52. The IACHR’s “Declaration of Principles on Freedom of Expression,” adopted in October 2000, establishes that “[e]very social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential.” The European Court of Human Rights (“European Court”) has similarly stated that “[p]rotection of journalistic sources is one of the basic conditions for press freedom.”<sup>112</sup> In the case of *Goodwin v. the United Kingdom*, the European Court further observed that:

Without such protection, sources may be deterred from assisting the press in informing the public on matters of public interest. As a result the vital public-watchdog role of the press may be undermined and the ability of the press to provide accurate and reliable information may be adversely affected. Having regard to the importance of the protection of journalistic sources for press freedom in a democratic society and the potentially chilling effect an order of source disclosure has on the exercise of that freedom, such a measure cannot be compatible with

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<sup>109</sup> Pamphelt “Respeto, atención, reconocimiento, protección, prevención, promoción, aplicación y difusión de los derechos humanos y DIH de los grupos especiales.” Directiva Permanente No. 19/2010 de la Jefatura de Derechos Humanos y DIH del Ejército Nacional. Ejército Nacional, Fuerzas Militares de Colombia. Document Attached to the answer to the application, annex 2, file on the merits, volume I, pages 455 a 463. I/A Court H.R. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs.* Judgment of September 3, 2012. Series C No. 248. Para. 276.

<sup>110</sup> IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression.](#) Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/SER.L/V/II. Doc. 69. December 30, 2011. Para. 250-261.

<sup>111</sup> NYPD. [Memorandum.](#) November 2011. See also, Knight Center for Journalism in the Americas. November 28, 2011. [New York police ordered not to interfere with journalists covering Occupy Wall Street protests.](#)

<sup>112</sup> European Court of Human Rights. *Case of Goodwin v. Reino Unido.* Application No. 17488/90. Judgment March 27, 1996. Para. 39.

Article 10 of the Convention unless it is justified by an overriding requirement in the public interest.<sup>113</sup>

53. The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has indicated that the right of journalists to keep their sources confidential contributes to ensuring that attempts are not made on their lives for being potential witnesses<sup>114</sup>. In this regard, the International Criminal Tribunal for the former Yugoslavia found, on hearing a case in which a journalist was threatened by a Public Prosecutor and told to reveal his sources, that:

In order to do their jobs effectively, war correspondents must be perceived as independent observers rather than as potential witnesses for the Prosecution. Otherwise, they may face more frequent and grievous threats to their safety and to the safety of their sources. [...] What really matters is the perception that war correspondents can be forced to become witnesses against their interviewees. Indeed, the legal differences between confidential sources and other forms of evidence are likely to be lost on the average person in a war zone who must decide whether to trust a war correspondent with information. To publish the information obtained from an interviewee is one thing -- it is often the very purpose for which the interviewee gave the interview -- but to testify against the interviewed person on the basis of that interview is quite another. The consequences for the interviewed persons are much worse in the latter case, as they may be found guilty in a war crimes trial and deprived of their liberty. If war correspondents were to be perceived as potential witnesses for the Prosecution, two consequences may follow. First, they may have difficulties in gathering significant information because the interviewed persons, particularly those committing human rights violations, may talk less freely with them and may deny access to conflict zones. Second, war correspondents may shift from being observers of those committing human rights violations to being their targets, thereby putting their own lives at risk."<sup>115</sup>

54. The Office of the Special Rapporteur observes that the conclusions of the International Criminal Court for the former Yugoslavia could apply not only to situations of armed conflict but also to situations of social unrest (*infra*) and to journalists covering sensitive topics, such as corruption and the activities of security forces and organized crime. In this regard, the Office of the Special Rapporteur indicates that the protection of confidential sources not only contributes to the press's fundamental role as watchdog but also helps to prevent journalists from becoming victims of violence.

#### **4. The obligation to punish violence against journalists**

55. In order to prevent violence against journalists and media workers, it is indispensable for legal systems to punish this conduct in a manner that is proportional to the damage committed.<sup>116</sup> In

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<sup>113</sup> European Court of Human Rights. *Case of Goodwin v. Reino Unido*. Application No. 17488/90. Judgment March 27, 1996. Para. 39.

<sup>114</sup> United Nations. General Assembly. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns. A/HRC/20/22. April 10, 2012. Para. 59. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96)

<sup>115</sup> International Criminal Tribunal for the former Yugoslavia. *Prosecutor v. Radoslav Brdjanin Momir Talic*. Decision on Interlocutory Appeal. Case No.: IT-99-36-AR73.9. December 11, 2002. Para. 42- 43.

<sup>116</sup> I/A Court H.R. *Case of the Rochela Massacre v. Colombia. Merits, Reparations and Costs*. Judgment of May 11, 2007. Series C No. 163. Para. 193. As stated by the Inter-American Commission, States have the primary obligation pursuant to

a more general sense, Article 2 of the American Convention requires States to adopt legislative or whatever other measures that may be necessary to make the rights and freedoms recognized in the treaty effective.

56. In their Joint Declaration on Crimes against Freedom of Expression from 2012, 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 indicated that criminal law must establish a specific category for crimes against freedom of expression - to wit, attacks committed in retaliation for the exercise of freedom of expression - whether explicitly or as an aggravating circumstance that would allow for the imposition of more severe punishments for those crimes because of their seriousness.<sup>117</sup> Following the same logic, Resolution No. 29 of the UNESCO General Conference calls on member States to guarantee by law the ability to try and punish those who instigate the murder of people because of their exercise of the right to freedom of expression.<sup>118</sup>

57. Some countries in the region have adopted provisions that move in this direction. Thus for example, the Criminal Code of Colombia establishes the murder of journalists as an aggravating circumstance, increasing the punishment for simple homicide from a sentence of 208 to 450 months in prison to a sentence of 400 to 600 months in prison.<sup>119</sup> Other crimes that are aggravated when committed against journalists in connection with their professional activities include kidnapping to extort,<sup>120</sup> extortion,<sup>121</sup> torture,<sup>122</sup> forced displacement,<sup>123</sup> and threats.<sup>124</sup> The Colombian Criminal Code also includes the crime of "homicide of a protected person," which occurs when a person protected by international humanitarian law is murdered due to and as part of the armed conflict, including "journalists on assignment or accredited war correspondents."<sup>125</sup>

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international law to ensure the right to life, by the establishment of effective provisions in their criminal law and by creating the necessary enforcement mechanisms. IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II Doc. 57. December 31, 2009. Para. 44. *See also*, European Court of Human Rights. *Case of Kılıç v. Turkey*. Application no. 22492/93. Judgment 28 March 2000. Para. 63.

<sup>117</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 25, 2012. [Joint Declaration on Crimes Against Freedom of Expression](#).

<sup>118</sup> United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). [Resolution 29 "Condemnation of violence against journalists."](#) November, 1997.

<sup>119</sup> Estado de Colombia. [Código Penal. Ley 599 de 2000](#). Article 104, subparagraph 10.

<sup>120</sup> Estado de Colombia. [Código Penal. Ley 599 de 2000](#). Article 170, subparagraph 11.

<sup>121</sup> Estado de Colombia. [Código Penal. Ley 599 de 2000](#). Article 245, subparagraph 7.

<sup>122</sup> Estado de Colombia. [Código Penal. Ley 599 de 2000](#). Article 179, subparagraph 4.

<sup>123</sup> Estado de Colombia. [Código Penal. Ley 599 de 2000](#). Article 181, subparagraph 3.

<sup>124</sup> Estado de Colombia. [Código Penal. Ley 599 de 2000](#). Article 347.

<sup>125</sup> Estado de Colombia. [Código Penal. Ley 599 de 2000](#). Article 135, subparagraph 5.

58. Similarly, a recent amendment to the Mexican Federal Criminal Code changed its general rules for the application of punishments of aggravated crimes committed against a “journalist, person or installation with the purpose of affecting, limiting or diminishing the right to information or the freedoms of expression or the press” to increase sentences by up to a third of the established sentence.<sup>126</sup> The Federal Criminal Code also establishes that in these cases, the sentence will increase by up to a half when the crime is committed “by a public servant in the exercise of their duties” or when “the victim is a woman and gender is part of the motive for the commission of the crime.”<sup>127</sup>

## 5. The obligation to maintain accurate statistics on violence against journalists

59. Understanding the magnitude and shape of violence against journalists and media workers is fundamental to implement effective policies of prevention, such as, for example, the design of trustworthy risk maps. In general, the IACHR has emphasized that State authorities must produce high-quality data that can be used to adequately plan the different operations of the police forces, so as to favor preventative actions as opposed to repressive ones. The design and up-to-date maintenance of trustworthy statistics and indicators on the different factors that contribute to violent or criminal acts constitute an irreplaceable tool for the implementation of an adequate process of strategic planning, which is a key piece of any public policy.<sup>128</sup> Currently, despite the increase in violence against journalists, the majority of States in the region do not produce this type of statistics. As a consequence, it is not easy to design an adequate policy for preventing violence of this kind.

60. In the context of violence against journalists, the Office of the Special Rapporteur has stressed the importance of compiling detailed, disaggregated statistics as an essential prerequisite for designing, implementing and evaluating effective public policies of prevention, protection and criminal prosecution of violence against members of the media. In its 2010 Special Report on Freedom of Expression in Mexico, the Office of the Special Rapporteur observed “with concern the absence of an institution charged with collecting and maintaining up-to-date documented records on violence against journalists in Mexico, and on the legal and administrative proceedings carried out in these cases.”<sup>129</sup> Among its recommendations to the State in the aforementioned report, the Office of the Special Rapporteur urged Mexico to “compile detailed, disaggregated criminal statistics on violence against journalists and the criminal prosecution of these crimes.”<sup>130</sup> At a minimum, these statistics should include: the type of crime committed (murder, assault, etc.), the name, employer and gender of the victim, the location and date of the attack, the suspected person and/or group responsible (if known), the investigating authority and relevant investigation reference number or code, and the current status of the investigation and/or prosecution.

61. The duty to maintain accurate statistics on violence against journalists was also stressed by 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

<sup>126</sup> Estado Unidos de México. [Código Penal Federal](#). Article 51.

<sup>127</sup> Estado Unidos de México. [Código Penal Federal](#). Article 51.

<sup>128</sup> IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II Doc. 57. December 31, 2009. Para. 187.

<sup>129</sup> IACHR. [Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 537.

<sup>130</sup> IACHR. [Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 821.

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 in their 2012 Joint Declaration, in which they observed that "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 activities."<sup>131</sup> Likewise, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has called on governments, intergovernmental organizations and NGOs to "gather further information and data on these killings and threats [against journalists] and to analyze the trends and developments, including in a gender-sensitive way."<sup>132</sup>

## **B. The obligation to protect**

### **1. The obligation to protect at-risk journalists and media workers**

62. Pursuant to the inter-American system legal human rights framework, States have an obligation to protect those who face special risk to their fundamental rights. As will be developed in greater detail subsequently, the obligation to adopt specific measures of protection is dependent on the knowledge that there is a situation of real or imminent risk to a particular individual or group of individuals and reasonable possibility of preventing or avoiding harm.<sup>133</sup> In this regard, the obligation to protect an at-risk journalist can be satisfied through the individual application of the measures necessary to ensure, among other things, the beneficiaries' right to life, to personal integrity and to freedom of expression. However, as will be seen later on, when a particular country faces a systematic and serious structural situation of violence against journalists and media workers, States must establish special protection programs in order to serve these groups. At all times, the measures adopted must be adequate to the individual circumstances of the person at risk, including the person's gender, the need or desire to continue carrying out the same professional activities, and the person's social and economic circumstances.<sup>134</sup>

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<sup>131</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 25, 2012. [Joint Declaration on Crimes Against Freedom of Expression](#).

<sup>132</sup> United Nations. General Assembly. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns. A/HRC/20/22. April 10, 2012. Para. 107. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96)

<sup>133</sup> I/A Court H.R. *Case of the "Pueblo Bello Massacre" v. Colombia*. Judgment of January 31, 2006. Series C No. 140. Para. 123; I/A Court H.R. *Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, Reparations and Costs*. Judgment of March 29, 2006. Series C No. 146. Para. 155; I/A Court H.R. *Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs*. Judgment of November 27, 2008. Series C No. 192. Para. 78; I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 16, 2009. Series C No. 205. Para. 280. See also, IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II Doc. 57. December 31, 2009. Para. 42.

<sup>134</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 25, 2012. [Joint Declaration on Crimes Against Freedom of Expression](#).

63. The scope of the State's positive obligation to protect individuals exposed to special risk was defined by the Inter-American Court in the case of the *Pueblo Bello Massacre v. Colombia*,<sup>135</sup> where it found that "[f]or a positive obligation to arise, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate danger to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that danger."<sup>136</sup>

64. The obligation to protect discussed by the Inter-American Court in the *Pueblo Bello* case was applied by the IACHR in the case of a journalist and his family who were forced to flee the country after failing to receive adequate protection from the State in light of threats provoked by his complaints of human rights abuses by the Colombian armed forces. In the case of *Luis Gonzalo "Richard" Vélez and Family*, the Commission found that camera operator Richard Vélez was beaten by soldiers after filming them abusing protesters. Vélez received increasingly serious threats following the dissemination of the images he had captured and his decision to press charges against the soldiers who beat him. The Commission found the State responsible for failing to protect him and his family against the urgent risk of harm posed by the threats which eventually forced him into exile. The IACHR cited the *Pueblo Bello* precedent as well as the jurisprudence of Colombia's own Constitutional Court regarding the "right to personal security"<sup>137</sup> in finding that the State's failure to "adopt in a diligent manner and in good time the necessary measures to protect Mr. Vélez and his family from the threats and attacks brought to the attention of the authorities" constituted a violation of article 5 of the Convention.<sup>138</sup> The IACHR concluded that, given the background and context of the threats in the particular case, a risk assessment should have been conducted and appropriate protective measures adopted at the moment Vélez first reported to State authorities that unknown individuals had appeared at his residence inquiring about his whereabouts and movements.<sup>139</sup>

65. In its judgment, the Inter-American Court ratified the IACHR's conclusions. As mentioned, the Court stressed that "journalism can only be exercised freely when those who carry out this work are not victims of threats or physical, mental or moral attacks or other acts of harassment."<sup>140</sup> As such, States "have the obligation to adopt special measures of prevention and protection for journalists subject to special risk."<sup>141</sup> For the Court, this special risk should be evaluated in light of the

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<sup>135</sup> I/A Court H. R. *Case of the "Pueblo Bello Massacre" v. Colombia*. Judgment of January 31, 2006. Series C No. 140. Para. 119-141.

<sup>136</sup> I/A Court H. R. *Case of the "Pueblo Bello Massacre" v. Colombia*. Judgment of January 31, 2006. Series C No. 140. Para. 124, citing European Court of Human Rights. *Case of Kılıç v. Turkey*. Application no. 22492/93. Judgment 28 March 2000. Para. 63.

<sup>137</sup> IACHR. Report No. 136/10. Case 12,858. Merits. Luis Gonzalo "Richard" Vélez Restrepo and Family. Colombia. October 23, 2010. Para. 119.

<sup>138</sup> IACHR. Report No. 136/10. Case 12.658. Merits. Luis Gonzalo "Richard" Vélez Restrepo and Family. Colombia. October 23, 2010. Para. 119.

<sup>139</sup> IACHR. Report No. 136/10. Case 12.658. Merits. Luis Gonzalo "Richard" Vélez Restrepo and Family. Colombia. October 23, 2010. Para. 118.

<sup>140</sup> I/A Court H.R. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248. Para. 209.

<sup>141</sup> I/A Court H. R. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248. Para. 194.

existing context in the country, and may result “from factors such as the type of issues covered by journalists, the public interest nature of the information they cover, or the areas they must enter in order to do their work, as well the dissemination of such information or the decision to denounce or seek investigations of violations they suffered directly or came across in the course of their work.”<sup>142</sup> In the specific case of journalist Richard Vélez, the Court concluded that he “clearly faced real and immediate risk to his personal integrity”<sup>143</sup> and that the State, despite being aware of this situation, failed to act diligently to adopt the necessary protection measures for the journalist and his family in a timely manner.<sup>144</sup> The Court underscored that “it corresponds to the State authorities to get to know the situation of special risk in order to determine or assess whether the person who is the target of threats and harassment requires measures of protection or to refer the case to the competent authority to do this, and also to offer the person at risk timely information on the measures available.”<sup>145</sup>

66. The European Court of Human Rights reached a similar conclusion on the case of *Dink v. Turkey*.<sup>146</sup> Dink was the publisher and editor-in-chief of a weekly Turkish-Armenian newspaper. In 2003 and 2004, he published a series of articles for the newspaper in which he expressed his opinion on the identity of Turkish citizens of Armenian origin. The articles provoked a number of protests and threats from nationalist extremist groups. On October 7, 2005, Dink was convicted and sentenced to six months in prison for the crime of “denigration of Turkish identity” [*dénigrement de la turcité*] because of the content of one of the articles. The ruling was upheld on May 1, 2006, by a cassation court. While he was waiting for the results of a remedy requested from a correctional court, on January 19, 2007, Dink was murdered. The European Court determined that the Turkish State had violated Dink’s right to life on not providing him with protection in response to a real and imminent threat of murder. According to the Court, it was reasonable to expect security forces to be aware of the intense hostility expressed toward the journalist by ultranationalist groups. Likewise, apparently two police delegations and a gendarmerie unit had been informed of the possibility that there would be a murder attempt, and they were even informed of the identity of the alleged instigators. Although the journalist had not requested extra security measures, the European Court found that he could not know that there was a plan to murder him and that therefore, it was up to the authorities to adopt the reasonable measures available in order to prevent real and immediate risk to the life of the journalist. Likewise, the European Court found that the conviction of the journalist for the crime of “denigration of Turkish identity” [*dénigrement de la turcité*] presented the journalist to public opinion - and especially to ultranationalist circles, from which the alleged murders of the journalist emerged - as someone committing offenses against all the Turkish people. The Court concluded that the conviction, added to the failure to adopt measures to protect Dink’s life from attacks by militant ultranationalists, represented a failure to comply with the State’s positive obligations with regard to the guarantee of the journalist’s right to freedom of expression.<sup>147</sup>

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<sup>142</sup> I/A Court H. R. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248. Para. 194.

<sup>143</sup> I/A Court H. R. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248. Para. 195.

<sup>144</sup> I/A Court H. R. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248. Para. 197 and 203.

<sup>145</sup> I/A Court H. R. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248. Para. 201.

<sup>146</sup> European Court of Human Rights. *Affaire Dink c. Turquie*. Requêtes Nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09. Arrêt 14 septembre 2010.

<sup>147</sup> European Court of Human Rights. *Affaire Dink c. Turquie*. Requêtes Nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09. Arrêt 14 septembre 2010. Para. 64-75, 106-108, 137-138.



67. The European Court ruled similarly in other cases on the murder of journalists in Turkey who were working for the newspaper *Özgür Gündem*, a publication reflecting the opinions of persons of Kurdo-Turkish origin.<sup>148</sup> Toward the beginning of the 90s, the newspaper went through a number of court proceedings and was accused of promoting separatist propaganda. During that period, its journalists, delivery people, and even vendors were victims of numerous attacks, threats, incidents of harassment, and murders. In these cases, the State argued that the newspaper was functioning as a propaganda tool for extremist group *Partiya Karkerên Kurdistan* (PKK). Nevertheless, the European Court established that the State's obligation to effectively investigate those attacks and, where necessary, provide protection to people at risk existed regardless of the media outlet's editorial stance.<sup>149</sup> So for example, in the case of the murder of journalist Kemal Kılıç, a correspondent with the newspaper, the European Court found that the authorities were aware that the people involved in the publication and distribution of the newspaper *Özgür Gündem* feared becoming victims of a campaign tolerated or approved by public officials, and that therefore, Kılıç was at particular risk of falling victim to an illegal attack. During the two months prior to his death, the journalist published two press releases alerting the government to the attacks perpetrated against the newspaper's facilities and requesting protective measures. However, the State denied that the journalist was at risk and did not put in place any measure of protection for Kılıç or his colleagues. Based on this, the Court concluded that the State violated the journalist's rights to life on failing to take the available reasonable measures to prevent the real and immediate risk to his life.<sup>150</sup>

68. Likewise, in the case of *Gongadze v. Ukraine*, the European Court found that the State failed to comply with its obligation to protect journalist Guéorgui Gongadze, who disappeared on September 16, 2000, and whose body was found on November 10, 2000. The journalist was the editor-in-chief of an online newspaper who often criticized persons in positions of power and exposed freedom of expression problems in the country. Two months before his murder, Gongadze wrote an open letter to the Attorney General alleging that he was being followed by unknown individuals and that police officers had interrogated persons who were close to him. The journalist asked the Office of the Public Prosecutor to take the necessary protective measures to prevent this harassment and punish those responsible. On September 1, 2000, two weeks prior to the journalist's disappearance, the Attorney General answered the open letter, stating that there was no basis on which to make a decision regarding the issue. Based on these facts, the European Court found that the Office of the Attorney General had acted negligently in its response to Gongadze's allegations of harassment, especially considering its obligation to supervise police actions. Likewise, the Court found that State authorities should have taken into account the context in which the allegations were made. The Court noted that 18 journalists had been murdered in Ukraine since 1991, and that Gongadze was in a position of vulnerability because he was reporting on politically sensitive issues involving powerful people. The Court also highlighted that the authorities had not acted diligently in their investigation of the facts despite indications that State

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<sup>148</sup> European Court of Human Rights. *Case of Özgür Gündem v. Turkey*. Application No. 23144/93. Judgment 16 March 2000; European Court of Human Rights. *Case of Kılıç v. Turkey*. Application No. 22492/93. Judgment 28 March 2000.

<sup>149</sup> European Court of Human Rights. *Case of Özgür Gündem v. Turkey*. Application No. 23144/93. Judgment 16 March 2000.

<sup>150</sup> European Court of Human Rights. *Case of Kılıç v. Turkey*. Application No. 22492/93. Judgment 28 March 2000. Para. 62-77.

agents had been the ones responsible for the journalist's disappearance and death. Thus, the European Court concluded that the State violated the journalist's right to life.<sup>151</sup>

69. Domestic courts in countries in the region have also ruled on the State's duty to protect at-risk journalists. Thus, as previously mentioned, the Constitutional Court of Colombia has defined in its settled case law the scope and content of the right to personal safety and the State's corresponding obligations to guarantee it. The Court has found that the right to personal safety "gives individuals the right to receive adequate protection from the authorities whenever they are exposed to exceptional risks that they do not have the legal duty to tolerate because they surpass the bearable levels that are part of life in society."<sup>152</sup> In order to better define the situations in which the State has the duty to take specific protective measures, the Court established a "risk scale," and identified, based on the degree of intensity and level of legal risk tolerance, five risk levels in society: (i) minimum risk, where the individual is only threatened by individual and biological factors; (ii) ordinary risk, shared equally by those who live in a society; (iii) extraordinary risk, which people are not required to bear; (iv) extreme risk, which threatens life or personal integrity, and; (v) consummated risk, which is risk that has borne itself out.<sup>153</sup>

70. The Colombian Court defined ordinary risks as risks that "people must tolerate in order to belong to a particular society," and that "can originate from [...] State action, living together with other people, natural disasters - or the persons themselves."<sup>154</sup> In response to this type of risk, the State has the duty to take general measures to protect society as a whole, such as by providing effective policing services, essential public services, and building public infrastructure, among other actions. Extraordinary risk is defined as risk that "people are not legally required to bear, for which reason they have a right to receive special protection from authorities." According to the Constitutional Court, in order for risk to be extraordinary, it must involve a specific situation with the following characteristics: (i) be concrete and identifiable; (ii) be specific; (iii) be present; (iv) be significant - that is, threaten damage to legal interests valuable to the person; (v) be serious and likely to materialize; (vi) be clear and discernible; (vii) be exceptional; (viii) be disproportionate in contrast to the benefits that the person in the situation giving rise to the risk receives. Thus, "the greater the number of confluent characteristics, the greater shall be the level of protection provided by the authorities." Given these factors, the Court defined extreme risk as risk that includes not only some but all of the characteristics taken into account to determine the existence of extraordinary risk, with this risk also needing to be: (i) serious and imminent, and; (ii) directed against life and integrity of persons.<sup>155</sup>

<sup>151</sup> European Court of Human Rights. *Case of Gongadze v. Ukraine*. Application No. 34056/02. Judgment 8 November 2005.

<sup>152</sup> Corte Constitucional de Colombia. [Sentencia T-719/03](#). August 20, 2003.

<sup>153</sup> Corte Constitucional de Colombia. [Sentencia T-719/03](#). August 20, 2003. In judgment T339-10, the Constitutional Court indicated that when the constitutional jurisprudence mentions the levels of exceptional and extreme risks "one refers more precisely to the concept of threat, since it is not enough that the contingency of a possible damage exists, but also that there must be a type of manifestation, some signal, to indicate that the integrity of the person is in danger." The Court considered necessary to differentiate between risk and threat, in order to determine under which scope it is necessary for the State to activate special protective measures. In this regard, the court affirmed: "One must not speak only about a scale of risks, but instead about a scale of risks and threats, since the first levels of the scale refer to the concept of risk inasmuch as, in these levels, there is an abstract and random possibility that damage may take place. On their turn, in the two final levels of the scale, there is no longer merely a risk, but, instead, a threat, inasmuch as there are real facts that, due to their mere existence, imply in a change in the pacific use of the attacked right and make suppose that the integrity of an individual is in danger." Corte Constitucional de Colombia. [Sentencia T-339-10](#). May 11, 2010.

<sup>154</sup> Corte Constitucional de Colombia. [Sentencia T-719/03](#). August 20, 2003.

<sup>155</sup> Corte Constitucional de Colombia. [Sentencia T-719/03](#). August 20, 2003.

71. In this sense, the Constitutional Court of Colombia identified the obligations of State authorities should they learn of persons potentially facing extraordinary risk. Among those obligations, the Court indicated the duty to identify the extraordinary risk and warn affected individuals of its existence; weigh, through examination of the specific case, the characteristics and origin of the risk; define and adopt in a timely fashion the measures that are specific, adequate and sufficient for preventing the risk from materializing; and periodically evaluate the development of the risk, effectively respond to signs that it may materialize, and act to mitigate its effects. Likewise, authorities have the negative obligation to abstain from taking decisions that could create an extraordinary risk. Additionally, the Court highlighted the need for affected persons to prove, summarily, “the facts that point to the existence of an extraordinary risk” and their characteristics, and “the situation of vulnerability or special exposure to the risk in which they find themselves in.” On this latter point, the Court identified journalists as one of the certain categories of persons that, because of the type of activities they do, “are exposed to risks of such an intensity that is highly possible that they meet all or the majority of the characteristics [of an extraordinary risk],” and that therefore they should be the subject of special attention from State authorities.<sup>156</sup>

72. As mentioned previously, States have an obligation not only to protect at-risk journalists, but also to guarantee that the protective measures adopted are effective and adequate. In this sense, when measures are adopted to protect journalists from the credible threat of damage to their physical integrity, the measures must take into account the needs specific to the profession of the beneficiary, the beneficiary’s gender, and other individual circumstances. In their 2012 Joint Declaration, the United Nations (UN) Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, the Organization for Security and Cooperation in Europe’s (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 stated that protective measures “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.”<sup>157</sup>

73. In the same way, on ratifying the provisional measures ordered in response to acts of violence against employees of television channel *Globovisión*, in Venezuela, the Inter-American Court highlighted the importance of providing protection measures that facilitate, rather than obstruct, the professional activities of those who work in the media. The Court stated that “the State must continue to adopt the appropriate and necessary measures to safeguard and protect the life, personal integrity, and freedom of expression of the beneficiaries of these provisional measures, especially when they carry out journalistic activities outside the station’s offices [...] The means and coverage of this protection must respond to the requirements of the circumstances.”<sup>158</sup> Likewise, on ratifying the provisional measures ordered for the protection of the employees of *Radio Caracas Televisión* (RCTV) in

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<sup>156</sup> Corte Constitucional de Colombia. [Sentencia T-719/03](#). August 20, 2003.

<sup>157</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Cooperation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 25, 2012. [Joint Declaration on Crimes Against Freedom of Expression](#).

<sup>158</sup> I/A Court H.R. *Provisional Measures, Matter of "Globovisión" Television Station regarding Venezuela*. Order of the Inter-American Court of Human Rights. November 21, 2007. Considering 11.

Venezuela, the Inter-American Court ordered the State to allow the beneficiaries or their representatives to participate in the “planning and implementation of the protection measures.”<sup>159</sup> The IACHR has also ruled similarly with regard to protection measures intended to protect human rights defenders.<sup>160</sup>

74. Likewise, the Constitutional Court of Colombia recognized in the aforementioned judgment T-1037/08 that journalists have a right to participate in the design of a program for protection that would allow for the continuation of their professional activities. The ruling was handed down in a writ of protection filed by journalist Claudia Julieta Duque, who had her protective measures assigned by the State canceled - despite having been subjected to repeated threats - after she used a State armored vehicle to continue with her journalism activities without an official driver. In its ruling, the Constitutional Court found that the State must guarantee not only the right to personal security for individuals being threatened, but also “the least collateral restrictions possible resulting from the protection measures adopted.”<sup>161</sup> Regarding this point, the Court reiterated that the protection of the person must be performed such that it guarantees the person’s other fundamental rights, such as the right to work and to privacy. Thus, the protected person, being fully aware of the risks, “has the right to submit specialized arrangements to the agencies with authority over the matter that would better allow the person to try to survive with dignity the threats and risks that they unfortunately face.”<sup>162</sup> Specifically with regard to journalism, the Court found that:

When what is at issue is a journalist who, despite threats, decides to continue their investigations, that person will likely require special provisions that take into account the totality of the rights involved. In particular, it is obvious that journalists 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 arrangements designed to guarantee both the journalist’s safety and their 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 to the confidentiality of sources.<sup>163</sup>

75. In the specific case in question, the Constitutional Court found that allowing the journalist herself to drive the vehicle, as long as she was aware of the circumstances and the risks involved in her case, cannot be rejected out of hand by state authorities as a potential measure. The Court concluded that the State agency in charge of providing protection to the journalist had the obligation, with the active participation of the beneficiary, to study the specific situation and adapt protective measures “in order to satisfy as well as possible the majority of the fundamental rights involved in this case.”<sup>164</sup>

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<sup>159</sup> I/A Court H.R. *Provisional Measures, Matter of Luisiana Ríos et al. regarding Venezuela*. Order of the Inter-American Court of Human Rights. September 12, 2005. Fifth operative paragraph.

<sup>160</sup> IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 522- 524.

<sup>161</sup> Corte Constitucional de Colombia. [Sentencia T-1037/08](#). October 23, 2008. Considering 21.

<sup>162</sup> Corte Constitucional de Colombia. [Sentencia T-1037/08](#). October 23, 2008. Considering 21.

<sup>163</sup> Corte Constitucional de Colombia. [Sentencia T-1037/08](#). October 23, 2008. Considering 21.

<sup>164</sup> Corte Constitucional de Colombia. [Sentencia T-1037/08](#). October 23, 2008. Considering 21.

76. Likewise, the protection measures for journalists and persons who work for the media must also consider a gender perspective that takes into account both the specific forms of violence suffered by women and the specific ways in which the protective measures are implemented that may be necessary or adequate for women journalists. In its analysis of the situation of human rights defenders in Colombia, for example, the IACHR cited the recommendation of the United Nations High Commissioner of Human Rights, according to which Colombia should “strengthen programs for the protection of human rights advocates,” as well as its observation that “it is fundamental for [such] programs and mechanisms to respond adequately to the needs of organizations that defend the rights of women and the needs of their members, so they may continue working to promote and defend their rights.”<sup>165</sup> In this sense, as explained in a subsection of this report, when designing and implementing plans for protection, including components of prevention and access to justice, States must attend to the needs and risks that are gender specific.

77. Finally, States have the obligation to 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, 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 profession and their family lives.<sup>166</sup>

78. The previous paragraphs have addressed the State’s obligations to adopt special protective measures designed for individual journalists who face risk from doing their jobs. However, in situations in which violence against journalists and media workers is particularly widespread, States’ obligation to protect them could require the creation of permanent and specialized protection programs. Thus, for example, in its 2005 report *Impunity, Self-censorship and Armed Internal Conflict: an Analysis of the State of Freedom of Expression in Colombia*, the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission recognized the efforts made by the Colombian State with the creation of the Program to Protect Journalists and Social Communicators, which “have allowed for the physical protection of an important number of Colombian journalists.”<sup>167</sup> At the same time, in its report following the *in loco* visit to Honduras in 2010, the IACHR concluded that “[t]he State must (...) adopt permanent protective mechanisms to ensure the lives and personal integrity of the journalists and social communicators who are at risk.”<sup>168</sup> Similarly, at the conclusion of an *in loco* visit to Mexico made in 2010, this Office and the UN Special Rapporteur on the Promotion and

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<sup>165</sup> IACHR. [Violence and Discrimination Against Women in the Armed Conflict in Colombia](#). OEA/SER.L/V/II. Doc. 67. October 18, 2006. Para. 227.

<sup>166</sup> IACHR. [Annual Report 2012. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter V (Conclusions and recommendations). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. Para. 4 e). *See also*, IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter VII (Conclusions and recommendations). OEA/SER.L/V/II. Doc. 51. December 30, 2009. Para. 4 e); IACHR. [Annual Report 2010. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter VI (Conclusions and recommendations). OEA/SER.L/V/II. Doc. 5. March 7, 2011. Para. 4 e); IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter V (Conclusions and recommendations). OEA/SER.L/V/II. Doc. 69. December 30, 2011. Para. 4 e); United Nations. General Assembly. Report of the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/20/17. June 4, 2012. Para. 102. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>167</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Impunity, Self-Censorship and Armed Conflict: An Analysis of the State of the Freedom of Expression in Colombia](#). OEA/Ser.L/V/II Doc.51. August 31, 2005. Para. 107.

<sup>168</sup> IACHR. [Preliminary Observations of the IACHR on its Visit to Honduras, May 15 to 18, 2010](#). OEA/SER.L/V/II. Doc. 68. June 3, 2010. Para. 26.

Protection of the Right to Freedom of Opinion and Expression indicated that since 2000, Mexico has become the most dangerous region in the Americas in which to practice journalism. They also highlighted the “urgent need” to create a program to protect journalists as soon as possible.<sup>169</sup> Later, in the 2010 Special Report on Freedom of Expression in Mexico, the Office of the Special Rapporteur viewed positively the adoption of a Coordination Agreement for the Implementation of Preventative and Protective Actions for Journalists as a national mechanism for protecting journalists and communicators. It urged that the agreement be implemented.<sup>170</sup> Regarding this, the Office of the Special Rapporteur congratulated the Mexican State for the 2012 passage of the “Law to Protect Human Rights Defenders and Journalists,”<sup>171</sup> which created a “mechanism to protect human rights defenders and journalists” and urged the authorities to implement it adequately and pursuant to the international standards that will be examined *infra*.

79. The Inter-American Court, for its part, has also addressed the importance of programs to provide special protection for journalists. In the *Case of Vélez Restrepo and Family v. Colombia*, the Court took note of the programs implemented and actions taken by the Colombian State to protect at-risk journalists, mainly the Protection Program of the Ministry of the Interior and Justice at the time (see *infra*).<sup>172</sup> The Court urged Colombia to “continue taking all necessary measures to adopt and strengthen the special programs designed to protect journalists at risk [...]”<sup>173</sup>

80. Other international mechanisms have also highlighted the importance of specialized protection programs. The United Nations (UN) Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Organization for Security and Cooperation in Europe’s (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 expressed in their 2012 Joint Declaration that “[s]pecialized 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.”<sup>174</sup> The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has also stated that “[i]n countries where high incidences of attacks against journalists are reported, States should seriously consider establishing special protection programmes in consultation with civil society,

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<sup>169</sup> OAS Office of the Special Rapporteur for Freedom of Expression and Special Rapporteur for Freedom of Opinion and Expression. August 24, 2010. [Joint Official Visit to Mexico - Preliminary Observations \(In Spanish\)](#). P. 6

<sup>170</sup> IACHR. [Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 818 and 821.

<sup>171</sup> Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012.

<sup>172</sup> I/A Court H.R. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 3, 2012, Series C No. 248. Para. 289 and 290.

<sup>173</sup> I/A Court H.R. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 3, 2012, Series C No. 248. Para. 290.

<sup>174</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Cooperation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 25, 2012. [Joint Declaration on Crimes Against Freedom of Expression](#).

journalists and other stakeholders.”<sup>175</sup> Similarly, the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity highlights how important it is for States to “take an active role in the prevention of attacks against journalists, and take prompt action in response to attacks by establishing national emergency mechanisms, which different stakeholders can adopt.”<sup>176</sup>

81. When States decide to establish specialized protection programs, it is crucial that they be implemented adequately. In its analysis of programs to protect human rights defenders, the IACHR found that these programs “can enable a State to comply with its obligation of protection”, but that some of the existing programs in the region “tend to have efficacy and design problems.”<sup>177</sup> The IACHR and its Office of the Special Rapporteur have defined some of the requirements for protective mechanisms to be effective. For example, the Office of the Special Rapporteur has recommended placing emphasis on: 1) the importance of guaranteeing the necessary personnel and financial resources for the adequate implementation of the mechanism; 2) the need to ensure effective coordination among the entities responsible for the implementation of measures of prevention, protection and procurement of justice; 3) the need to adequately define protective measures called for in the mechanism and the procedure for their adoption; 4) the need to guarantee the full participation of journalists, civil society and beneficiaries in the implementation and operation of the mechanism; and 5) the benefits of seeking support from the international community for the mechanism’s operation.<sup>178</sup>

82. Similarly, in its Second Report on the Situation of Human Rights Defenders in the Americas, the IACHR details a series of elements that are necessary for specialized protection programs. These elements are likewise applicable to protective mechanisms aimed at journalists and media workers. The first element is political commitment from the State, which must include an adequate legal framework, effective administration carried out by suitable personnel, sufficient resources and personnel, and coordination between the central government and regional or federal entities.<sup>179</sup> The second element is the adequate identification of the potential beneficiaries.<sup>180</sup> The third element is an adequate recognition of the grounds on which a potential beneficiary can seek protection; specifically, such protection should be available in response to threats or violence related to one’s professional activity, and should not be confused with the criteria applicable to witness and victim protection programs.<sup>181</sup> The fourth element is a proper risk assessment procedure that enables the State to determine the best way to fulfill its obligation to protect, taking into account contextual and specific

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<sup>175</sup> United Nations. General Assembly. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns. A/HRC/20/22. April 10, 2012. Para. 116. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96)

<sup>176</sup> United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). International Programme for the Development of Communication. [United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity](#). Point 5(8).

<sup>177</sup> IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 484-486.

<sup>178</sup> IACHR. [Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 712.

<sup>179</sup> IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 487 and 495.

<sup>180</sup> IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 496 and 497.

<sup>181</sup> IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 498-504.

circumstances and providing for the active participation of the beneficiary.<sup>182</sup> The fifth element is the provision of suitable and effective protection measures that are tailored to both protect beneficiaries' life and integrity and allow them to continue their professional activities.<sup>183</sup> Finally, clear criteria and procedures should exist for monitoring the danger to a beneficiary and eventually lifting protection measures—which are fundamentally provisional and temporary in nature—once the risk to life and integrity ceases.<sup>184</sup>

83. In addition, States must take into account that journalists and human rights defenders form two populations with certain distinct characteristics whose particular needs for protection must be taken into account when the protection program is designed and implemented, especially when the programs benefit both groups.

84. Finally, as previously mentioned, the Office of the Special Rapporteur notes that it is important for the protection programs to take into account the need to guarantee that media workers are able to continue to perform their journalistic activities, as well as the specific needs of the profession (such as the privacy necessary to meet with sources) when designing the protective measures available, taking into consideration the circumstances of each specific case and in consultation with the potential beneficiary. Likewise, it is crucial for risk assessment studies and decisions on the adoption of protective measures to be carried out taking into account the content of the journalistic work and the investigations that the potential beneficiary or the media outlet to which they belong is carrying out and those investigations' possible connection with the alleged situation of risk under examination.

## **2. Special protection mechanisms for journalists and media workers in place throughout the region**

85. Throughout the region, certain countries - like Colombia and Mexico - have established special programs for the protection of journalists. In the case of Colombia, the program for the protection of journalists, which has been in place since 2000, is the oldest and best established in the region. For its part, the Mexican protective program was legally established in 2012 and is in the early stages of operation and implementation. Likewise, other countries have taken measures to include journalists and media workers as beneficiaries of pre-existing programs for protection. Such was the case in Brazil. For their part, countries like Guatemala and Honduras had expressed interest in establishing programs to protect journalists. This chapter will examine existing protective programs in the region and the recent measures taken to establish them where they do not yet exist. Additionally, best practices in the creation and implementation of existing programs will be highlighted, along with the main challenges currently facing those programs.

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<sup>182</sup> IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 505-520.

<sup>183</sup> IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 521-528.

<sup>184</sup> IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 529-531.



## Colombia

86. Of all the programs to protect at-risk journalists that currently exist in the region, the best established has been set up in Colombia. The passage of Law 418 in 1997 created a protection program under the Ministry of the Interior aimed at people facing situations of risk “due to causes having to do with political or ideological violence, or with the armed internal conflict” and belonging to particular groups, such as leaders or activists with political groups, social organizations and human rights organizations.<sup>185</sup> In 2000, through Decree 1592, journalists and social communicators were for the first time recognized as a special at-risk population with the creation of the “Program for the Protection of Journalists and Social Communicators,” run by the General Directorate of Human Rights of the Ministry of the Interior.<sup>186</sup> Decree 1592 also established the Committee for Regulation and the Evaluation of Risks [*Comité de Reglamentación y Evaluación de Riesgos*] (CRER), an inter-institutional body made up of representatives of the State and civil society whose purpose was to evaluate specific cases and recommend the adoption of protective measures.<sup>187</sup>

87. In 2011, with the passage of Decrees 4065 and 4912, structural changes were made throughout Colombia’s system for the protection of persons at risk, including journalists and social communicators. Likewise, in June of 2012, Decree 1225 was issued to “restructure and define some of the concepts and procedures described in Decree 4912 of 2011.”<sup>188</sup> Under this new legal framework, the “program for the prevention and protection of the rights to life, liberty, integrity and safety of persons, groups and communities” for “persons, groups and communities facing situations of extraordinary or extreme risk as a direct result of the exercise of their political, public, social or humanitarian activities or functions, or as a result of the exercise of their duties,”<sup>189</sup> was created, unifying all the existing specific programs for the protection of individuals in situations of extraordinary or extreme risk. Among the 16 groups subject to protection due to risk included in the Program for Prevention and Protection are journalists and social communicators.<sup>190</sup>

88. The legal framework creates the National Protection Unit [*Unidad Nacional de Protección*] (UNP), a legal body with administrative and financial autonomy and its own budget, under the Ministry of the Interior, with the purpose of “articulating, coordinating and executing the provision of protective services” to those persons facing situations of extraordinary or extreme risk in Colombia.<sup>191</sup> Among its principal duties, the UNP is responsible for dealing and processing requests for protection; carrying out risk assessments; implementing approved measures of protection; following up on the measures of protection granted; and communicating reported threats to the Office of the Attorney General of the Nation.<sup>192</sup> The Program for Protection also has a Technical Body for the Collection and Analysis of Information [*Cuerpo Técnico de Recopilación y Análisis de Información*] (CTRAI), an inter-institutional body made up of UNP and National Police officials. Among other things, it is responsible for

<sup>185</sup> Congreso Nacional. [Ley No. 418 de 26 de diciembre de 1997](#). Article 81.

<sup>186</sup> Presidencia de la República. [Decreto No. 1592 de 24 de agosto de 2000](#). Article 1.

<sup>187</sup> Presidencia de la República. [Decreto No. 1592 de 24 de agosto de 2000](#). Article 2.

<sup>188</sup> Presidencia de la República. [Decreto No. 1225 de 11 de junio de 2012](#).

<sup>189</sup> Presidencia de la República. [Decreto No. 4912 de 26 de diciembre de 2011](#). Article 1.

<sup>190</sup> Presidencia de la República. [Decreto No. 4912 de 26 de diciembre de 2011](#). Article 6.

<sup>191</sup> Presidencia de la República. [Decreto No. 4065 de 31 de octubre de 2011](#). Articles 1 and 3.

<sup>192</sup> Presidencia de la República. [Decreto No. 4912 de 26 de diciembre de 2011](#). Article 28.

collecting and analyzing *in situ* information following a request for protection and reporting new threats to the Protection Program<sup>193</sup>. For its part, the Preliminary Evaluation Group [*Grupo de Valoración Preliminar*] (GVP) is the body responsible for carrying out risk assessments based on the information provided by the CTRAI and indicating the protective measures that would be suitable in a specific case within a period of 30 days upon receiving consent from the applicant.<sup>194</sup>

89. The most senior deliberative body of the Colombian Protection Program is the Risk Assessment and Measure Recommendation Committee [*Comité de Evaluación de Riesgo y Recomendación de Medidas*] (CERREM), which replaces the defunct CRER in the analysis of requests and ordering of protective measures that should be granted in each case, as well as their duration. In its analysis, the CERREM must take into account the recommendations of the Preliminary Evaluation Group and the information provided by the entities participating in the Committee in order to validate the risk level determination made by the GVP. Additionally, the CERREM has the authority to recommend the adjustment, suspension or cancellation of preventative and protective measures based on the results of risk re-assessments. The CERREM is a permanent body comprising five senior public officials with voice and vote.<sup>195</sup> It is presided over by the Director of the Human Right Directorate of the Ministry of the Interior. Four delegates of each of the populations subjected to the program (including journalists) also participate in the CERREM meetings as permanent guests, among other persons. The delegates participate exclusively in the analysis of the cases of the groups they represent and can provide any information they may have on the requests under consideration as material for the adoption of protective measures. However, they do not have the right to vote.<sup>196</sup>

90. In order for at-risk journalists and social communicators to gain access to the protective measures granted by the program, Decree 4912 establishes an ordinary procedure, composed of the following steps: (i) receipt of the request for protection and initial processing of the applicant's claim by the UNP; (ii) analysis and verification that the applicant belongs to the population subject to the protection program and existence of the causal link between the risk and the activity being performed; (iii) transfer of the request to the Technical Information Collection and Analysis Group to collect and analyze the information *in situ*; (iv) presentation of the CTRAI fieldwork to the Preliminary Evaluation Group; (v) analysis of the case by the Preliminary Evaluation Group, which establishes the level of risk (ordinary, extraordinary or extreme) and makes recommendations; (vi) evaluation of the case and decision by the CERREM regarding the protective measures that should be implemented; (vii) adoption of the preventative and protective measures by the Director of the UNP through administrative decree;

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<sup>193</sup> Presidencia de la República. [Decreto No. 4912 de 26 de diciembre de 2011](#). Article 33

<sup>194</sup> Presidencia de la República. [Decreto No. 4912 de 26 de diciembre de 2011](#). Articles 34 and 35. The Preliminary Evaluation Group is coordinated by a delegate of the National Protection Unit and includes a delegate of the Ministry of National Defense, a delegate from the National Police, a delegate from the Presidential Program for the Protection and Vigilance of the Human Rights and of the International Humanitarian Law, and a delegate from the Special Administrative Unit of Assistance and Comprehensive Compensation to the Victims. The Preliminary Evaluation Group also counts with the participation, as permanent special guests, of a representative of the General Prosecutor's Office of the Nation, a representative of the General Attorney of the Nation, a representative of the People's Defender, and a delegate of the Technical Secretariat of the Intersectoral Commission of Early Warnings.

<sup>195</sup> They are: the Director of the Human Rights Program of the Presidency and IHL, the National Police Director of Protection and Special Services, the Director of the Special Administrative Unit of Integral Reparation and Attention to Victims, and the Coordinator of the Human Rights Office of the Police Inspector General. Presidencia de la República. [Decreto No. 4912](#). December 26, 2011. Article 36.

<sup>196</sup> Presidencia de la República. [Decreto No. 4912 de 26 de diciembre de 2011](#). Articles 36-37.

(viii) notification of the protected individual of the decision made; (ix) implementation of the protective measures, for which a document is drawn up indicating that the measures have been delivered to the individual protected; (x) monitoring of implementation; (xi) reevaluation.<sup>197</sup> In addition to this ordinary proceeding, in cases of imminent and exceptional risk, the Director of the UNP may adopt provisional measures of protection without the need for risk assessment.<sup>198</sup>

91. The preventative and protective measures that can be assigned by the CERREM according to the situation of the potential beneficiary following the risk assessment analysis include contingency plan; self-defense courses; police patrols and monitoring; arrangements for individual protection (including armored vehicles, driver and bodyguard); journeys via land, river, ocean or air to another place; temporary relocation, including economic assistance and the transportation of personal items; communication devices that allow for rapid contact with State agencies; and fortification and installation of security systems in the beneficiary's workplace and/or residence.<sup>199</sup> Other measures of protection different from the ones set forth in the Decree may also be adopted, "taking into account a differential approach, the risk level, and location factors."<sup>200</sup> Protective measures can be suspended should they be used improperly or at the request of the protected individual following consultation with and authorization by the CERREM. The measures are concluded following the recommendation of this agency should any of these situations provided for in current law be found to be in effect. In this regard, Decree 4912 establishes that protective measures can be lifted when the risk assessment concludes that the measure is no longer necessary; at the request of the person being protected; or upon the expiration of the time period granted for the measure, among other reasons.<sup>201</sup> Current law also identifies the responsibilities of local and national governmental entities with regard to the implementation of protective measures.<sup>202</sup>

92. Since the creation of the Protection Program of the Ministry of the Interior in 1997, Colombia's Constitutional Court has ruled on a number of occasions regarding a variety of aspects of the law, ruling that the State must take a series of measures in order to guarantee effective protection of the beneficiaries. In this sense, as mentioned in other sections of this report, the Constitutional Court has developed the concept of the right to personal security and defined the different levels of risk under which a person may demand the adoption of specific protective measures by the State.<sup>203</sup> This understanding was later incorporated into Decree 4912, which divides the different types of risk into the categories of ordinary, extraordinary, and extreme. In this sense, pursuant to the case law of the Constitutional Court, ordinary risk is defined under current law as risk to which "all persons are subjected, under equal conditions" and that "does not bear an obligation to adopt measures of protection."<sup>204</sup> Extraordinary risk is defined as risk that "on being a direct consequence of political, public, social or humanitarian activities or duties [...] people are not required to bear, and includes the

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<sup>197</sup> Presidencia de la República. [Decreto No. 4912 de 26 de diciembre de 2011](#). Article 40; [Decreto No. 1225](#). June 11, 2012. Article 7.

<sup>198</sup> Presidencia de la República. [Decreto No. 4912 de 26 de diciembre de 2011](#). Article 9.

<sup>199</sup> Presidencia de la República. [Decreto No. 4912 de 26 de diciembre de 2011](#). Artículo 11.

<sup>200</sup> Presidencia de la República. [Decreto No. 4912 de 26 de diciembre de 2011](#). Article 11, para. 2.

<sup>201</sup> Presidencia de la República. [Decreto No. 4912 de 26 de diciembre de 2011](#). Articles 44-46.

<sup>202</sup> Presidencia de la República. [Decreto No. 4912 de 26 de diciembre de 2011](#). Articles 25-32.

<sup>203</sup> Corte Constitucional de Colombia. [Sentencia T-719/03](#). August 20, 2003.

<sup>204</sup> Presidencia de la República. [Decreto No. 4912 de 26 de diciembre de 2011](#). Article 3, subparagraph 18.

right to receive special protection from the State through the Program.”<sup>205</sup> To define that risk, the Decree establishes that the risk must be specific and personalized, concrete, present, significant, serious, clear and discernible, exceptional, and disproportionate. Likewise, Decree 4912 establishes that when the extraordinary risk is serious and imminent, it represents an extreme risk.<sup>206</sup>

93. The Constitutional Court has also evaluated the Protection Program in a number of rulings on compliance with judgment T-025 of 2004, which established the State’s obligations with regard to the population of internally displaced people, including measures to guarantee their right to personal security.<sup>207</sup> Although this judgment makes reference specifically to the population of displaced persons, in its rulings on monitoring of compliance the Constitutional Court identified certain general weaknesses and challenges facing the Protection Program, such as the delay in carrying out risk studies, the centralization of the program in the country’s capital, and the inadequacy of the measures implemented in response to risk.

94. The Constitutional Court indicated that one of the challenges facing the protection program is the need to adopt “a differentiated focus that promotes the rights of those specially protected under the Constitution.” In that sense, the Court established that authorities have a duty to “pay special attention to cases in which those requesting protection are provided special protection under the Constitution, such as indigenous persons, Afro-Colombians, senior citizens, single mothers, minors, threatened teachers, persons with disabilities, persons of diverse sexual orientations, and human rights defenders, among others.”<sup>208</sup>

95. Along these lines, in Ruling 092 of 2008, the Constitutional Court ordered the adoption of special measures for the protection of the rights of displaced women on identifying a number of factors of vulnerability to which they are exposed in the context of the armed conflict. These factors have a disproportionate impact on displaced women, including the risk of sexual violence. The Court also found that the State has a constitutional and international obligation to adopt a strictly differentiated focus on the prevention of internal displacement and its disproportionate impact on women.<sup>209</sup> Likewise, in previous rulings the Court has developed the obligations of the State with regard to the need to adopt a differential approach in order to guarantee the rights of children and adolescents (Ruling 251 of 2008),<sup>210</sup> indigenous peoples and individuals (Ruling 044 of 2009),<sup>211</sup> the Afro-descendant population (Ruling 005 of 2009)<sup>212</sup> and people with disabilities (Ruling 006 of 2009)<sup>213</sup> who are part the population that has fallen victim to forced displacement.

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<sup>205</sup> Presidencia de la República. [Decreto No. 4912 de 26 de diciembre de 2011](#). Article 3, subparagraph 16.

<sup>206</sup> Presidencia de la República. [Decreto No. 4912 de 26 de diciembre de 2011](#). Article 3, subparagraph 17.

<sup>207</sup> Corte Constitucional de Colombia. [Sentencia T-025/04](#). January 22, 2004

<sup>208</sup> Corte Constitucional de Colombia. [Auto No. 200/07](#). August 13, 2007

<sup>209</sup> Corte Constitucional de Colombia. [Auto No. 092/08](#). April 14, 2008.

<sup>210</sup> Corte Constitucional de Colombia. [Auto No. 251/08](#). October 6, 2008.

<sup>211</sup> Corte Constitucional de Colombia. [Auto No. 004/09](#). January 26, 2009.

<sup>212</sup> Corte Constitucional de Colombia. [Auto No. 005/09](#). January 26, 2009.

<sup>213</sup> Corte Constitucional de Colombia. [Auto No. 006/09](#). January 26, 2009.

96. As a result of these rulings, Decree 4912 establishes as part of the guiding principles for measures of prevention and protection the “differential approach,” not only for the population that has been forcibly displaced but also for all groups subject to programs of protection, journalists among them. As a consequence, “for the Risk Assessment and for the recommendation and adoption of measures of protection, specific characteristics and vulnerabilities of age, ethnicity, gender, disability, sexual orientation, and the urban or rural origins of the individuals being protected must be taken into account.”<sup>214</sup> In addition, the Decree gives to the Ministry of the Interior authority for regulating its application through the adoption of protocols and specific rules “for each group subject to protection, taking into account a differential approach”.<sup>215</sup>

97. Thus, Resolution No. 0805 of May 14, 2012, sets forth the “Specific protocol focusing on gender and the rights of women,” adopting, among other things, principles of preferential and special attention for women and the participation of women's organizations in the program. The Protocol establishes the creation of a Risk Assessment and Measure Recommendation Committee (CERREM) for Women, which includes the participation of women's organizations, State agencies that work on issues of gender, the High Presidential Council on Women's Equality, and representatives of international organizations such as UN Women. The CERREM for Women meets specially and exclusively to examine cases in which women are requesting protection. According to the Protocol, the beneficiary can choose to have her case analyzed by the CERREM for Women or the CERREM created to examine situations of risk in the other segment of the population to which she belongs, such as for example journalists. Likewise, the Protocol establishes the adoption of supplementary measures with a differential approach when they are requested by the beneficiary or found necessary in the risk assessment. These include measures to ensure the health, social safety and well-being of women human rights defenders and their family members; measures aimed at providing support to the beneficiary and her family members for accessing the education system; and measures for aiding mothers who are nursing, pregnant, or have minors in their care. The Protocol also establishes the need for training and sensitizing the agencies and officials with the program on the issue of gender and women's rights.<sup>216</sup> According to available information as of the closing of this report, the State was designing additional protocols with a differential approach.<sup>217</sup>

98. In an later monitoring order (Order 098 of 2013), the Constitutional Court identified an increase in the violation of the fundamental rights of women human rights defenders and established a presumption of extraordinary gender risk for this population, including an obligation for the State to guarantee that protective measures respond “adequately to the multidimensional ways gender can come into play - individual, familial, collective and community - and the type of risk.” Likewise, the Constitutional Court viewed positively the changes made to the Protection Program to incorporate a gender perspective, including the adoption of the differential approach Protocol on gender and the creation of the CERREM for Women.<sup>218</sup>

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<sup>214</sup> Presidencia de la República. [Decreto No. 4912 de 26 de diciembre de 2011](#). Article 2, subparagraph 8.

<sup>215</sup> Presidencia de la República. [Decreto No. 4912 de 26 de diciembre de 2011](#). Article 50.

<sup>216</sup> Ministerio del Interior. Resolución 0805. [Protocolo específico con enfoque de género y de los derechos de las mujeres](#). May 2012.

<sup>217</sup> Corte Constitucional de Colombia. [Auto No. 098/13](#). May 21, 2013.

<sup>218</sup> Corte Constitucional de Colombia. [Auto No. 098/13](#). May 21, 2013.

99. Finally, as mentioned previously, the Constitutional Court has also ruled (in judgment T-1037/08) on journalists' right to participate in the design of measures granted by the Protection Program so as to allow for the continuation of their professional activities. In the ruling, the Constitutional Court found that "when what is at issue is a journalist who, despite threats, decides to continue their 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."<sup>219</sup> The Court concluded that "in these cases, it becomes necessary to make special allotments designed to guarantee both the journalist's safety and their work and the important rights associated with freedom of expression."<sup>220</sup> In light of this, the Office of the Special Rapporteur observes that in recent years, the protection program has also recognized the need to adopt protective measures that guarantee the conditions under which journalists who decide to continue their investigations may carry out their professional activities.

100. In a communication dated October 22, 2013, the State informed that in September 2013, the UNP has provided protection to 93 journalists in 20 departments. Among the beneficiaries, the implemented protective measures included 104 bodyguards; 28 motor vehicles; 19 armored vehicles; 2 motorcycles; 37 bullet-proof vests; 22 mobile communications devices; 14 Avantel communication devices; and approximately 30 million pesos per month in support of relocation and transportation aid. Additionally, the National Protection Unit declared to have invested a total sum of 7,750 million Colombian pesos (some US\$ 4,100,000) in the protection of journalists and social communicators. Finally, the State informed that it "keeps direct contact with civil associations such as the [Fundación] para la Libertad de Prensa (FLIP), with a dialogue on threats under their attention, and that it is a task of the UNP to be in contact with the victims of such threats, and to provide them with a protective road map."<sup>221</sup> Additionally, according to information provided by the Fundación para la Libertad de Prensa (FLIP) – a civil society organization that participates in the CERREM as a permanent guest – in 2012 the protection program "handled 100 requests from journalists. Of these, 50 had an extraordinary result, in other words, needed some measure of protection; 40 were ordinary and 10 were returned - that is to say, they were not accepted."<sup>222</sup> The figures indicate an increase of 40% over the number of cases handled in 2011.<sup>223</sup>

101. The UN Special Rapporteur on the Promotion and Protection of the Right to Opinion and Expression recognized in a recent report the efforts made by Colombia to protect at-risk journalists. At the same time, he pointed to a number of obstacles the program faces, such as the delay in risk analysis

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<sup>219</sup> Corte Constitucional de Colombia. [Sentencia T-1037/08](#). October 23, 2008. Considering 21.

<sup>220</sup> Corte Constitucional de Colombia. [Sentencia T-1037/08](#). October 23, 2008. Considering 21.

<sup>221</sup> Communication from the State of Colombia to the Inter-American Commission on Human Rights. MPC/OEA letter No. 1423/2013. October 23, 2013. Memorandum I-GAPDH-13-035732 of October 18, 2013, forwarding communication S-GAPDH-13-042535 to the Office of the Special Rapporteur for Freedom of Expression of October 18, 2013.

<sup>222</sup> Fundación para la Libertad de Prensa (FLIP). 2013. [De las balas a los expedientes: Informe sobre el estado de la libertad de prensa en Colombia, 2012](#). P. 55.

<sup>223</sup> Fundación para la Libertad de Prensa (FLIP). 2012. [De las balas a los expedientes: Informe sobre el estado de la libertad de prensa en Colombia, 2012](#). P. 55.

and implementation of protective measures, the absence of a focus of the risk assessment that takes context into account, and the transfer of arrangements for protection to private companies.<sup>224</sup>

102. As mentioned previously, in its 2005 report *Impunity, Self-censorship and Armed Internal Conflict: an Analysis of the State of Freedom of Expression in Colombia*, the Inter-American Commission's Office of the Special Rapporteur for Freedom of Expression recognized "the efforts of the Colombian State in creating a program aimed at guaranteeing the right to freedom of expression, which has allowed for the protection of the physical integrity of an important number of Colombian journalists."<sup>225</sup> The Office of the Special Rapporteur wishes also to recognize the political support that the program has received for more than a decade, as well as the significant financial resources that have been allocated, the clarity of the legal framework and administrative proceedings surrounding its implementation, and the variety of protective measures available to the CERREM.

103. The Office of the Special Rapporteur also takes note of the aforementioned challenges to the implementation of the protection program for journalists and social communicators that have been pointed out by domestic courts, international organizations and civil society organizations. In particular, the Office of the Special Rapporteur observes the importance of establishing effective communication between the State agencies in charge of protecting at-risk journalists and social communicators and the authorities responsible for investigating, trying and punishing those responsible for the alleged violations of their rights perpetrated based on their professional activities. In this sense, it is crucial to ensure the effective participation of the Office of the Attorney General of Nation in the different CERREM divisions in its capacity as a special guest such that it is able to provide and receive key information on situations under analysis and the alleged human rights violations suffered by journalists and social communicators. The Office of the Special Rapporteur also reiterates the importance of accelerating as much as technically possible the procedures for risk assessment and implementation of protective measures, especially in cases in which the need to adopt urgent measures is verified. In this regard, the Office of the Special Rapporteur believes it is important for the program to continue taking into account the specific needs of journalists and social communicators when deciding on the protective and preventive measures to be adopted.

104. Additionally, the Office of Special Rapporteur has previously expressed its concern with regard to the existence of serious irregularities that, from 2002 to 2008, increased rather than decreased the risks to which certain journalists were exposed. Specifically, the Office of the Special Rapporteur has reported that during that time, officials with a State intelligence agency, the now-defunct Administrative Security Department [*Departamento Administrativo de Seguridad*] (DAS), took part in illicit intelligence activities and acts of intimidation directed at journalists and their families.<sup>226</sup> As the Office of the Special Rapporteur indicated in its 2010 Annual Report:

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<sup>224</sup> United Nations. General Assembly. Report of the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/20/17. June 4, 2012. Para. 69-171. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>225</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Impunity, Self-Censorship and Armed Conflict: An Analysis of the State of the Freedom of Expression in Colombia](#). OEA/Ser.L/V/II Doc.51. August 31, 2005. Para. 107.

<sup>226</sup> IACHR. [Annual Report 2010. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/SER.L/V/II. Doc. 5. March 7, 2011. Para. 140-162.

The investigations initiated by the National Procurator General and the National Attorney General's Office, as well as the important revelations of the media indicate a sustained and systematic policy of persecution on the part of the principal intelligence agency of the State of Colombia, directed at spying on, smearing and intimidating some of the journalists criticizing the Government of President Álvaro Uribe Vélez. In some cases, the unlawful spying by the DAS was undertaken by the same agents charged with protecting those journalists within the framework of the Interior and Justice Ministry's Human Rights Protection Program.<sup>227</sup>

105. The Office of the Special Rapporteur notes that in response to the illicit intelligence activities reported and acts of intimidation directed at journalists and their relatives perpetrated by the DAS between 2002 and 2008,<sup>228</sup> the current administration in Colombia decided to close the DAS and replace it with a new intelligence service. Likewise, the National Protection Unit was created partly to take over the responsibilities of the protection program that previously corresponded to the DAS, such as risk assessments and the implementation of protective measures.<sup>229</sup> The Inter-American Commission has considered that the State should “ensure that the personnel who participate in the security schemes inspire trust in the beneficiaries,” by guaranteeing that “the assignment of personnel for protection include[s] the participation of the beneficiaries.”<sup>230</sup>

106. The Office of the Special Rapporteur reiterates its satisfaction at the political and financial support that the Colombian State has provided to the program for the protection of journalists and social communicators since its creation in the year 2000. The Office of the Special Rapporteur recognizes the reduction seen since the establishment of the program in cases of journalists and social communicators murdered in Colombia for reasons related to their profession. Without a doubt, the program for the protection of journalists and social communicators in Colombia offers an important example for the countries in the region of a program that has protected the lives and integrity of dozens of journalists and communicators throughout the country.

## Mexico

107. In 2012, Mexico became the second country in the region to adopt a specialized mechanism for the protection of at-risk journalists. As mentioned previously, the creation of such a program was one of the main recommendations of the IACHR and UN special rapporteurs following their August 2010 on-site visit to the country. Subsequent to the on-site visit the Office of the Special Rapporteur learned that on November 3, 2010, a “Coordination Agreement for the Implementation of Preventive and Protective Actions for Journalists” was signed by the Ministry of the Interior, the Foreign Ministry, the Public Security Ministry, the Prosecutor General’s Office, and the National Human Rights

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<sup>227</sup> IACHR. [Annual Report 2010. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/SER.L/V/II. Doc. 5. March 7, 2011. Para. 141.

<sup>228</sup> IACHR. [Annual Report 2010. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/SER.L/V/II. Doc. 5. March 7, 2011. Para. 140-162.

<sup>229</sup> Presidencia de la República. [Decreto No. 4065](#). October 31, 2011. Considering 2.

<sup>230</sup> IACHR. [Annual Report 2011](#). Chapter IV (Human Rights Developments in the Region) OEA/SER.L/V/II. Doc. 69. December 30, 2011. Para. 128; IACHR. Office of the Special Rapporteur for Freedom of Expression. [Impunity, Self-Censorship and Armed Conflict: An Analysis of the State of the Freedom of Expression in Colombia](#). OEA/Ser.L/V/II Doc.51. August 31, 2005. Para. 126-128.



Commission. On November 11, 2010, the Office of the Special Rapporteur received a communication from the Mexican State formally informing it that this Agreement had been signed, which, in the State's view, represented "the first step towards establishing a mechanism for the protection of journalists and media workers."<sup>231</sup> The aforementioned Coordination Agreement created a Consultative Committee in charge of receiving requests for protection, establishing and following up on measures of prevention and protection for journalists, and facilitating the federal and local implementation of those measures. Likewise, an Evaluation Subcommittee was created with the responsibility of analyzing the requests for preventive and protective measures and making the corresponding recommendations to the Consultative Committee. The Ministry of Interior [*Secretaría de Gobernación*] was charged with coordinating the mechanism for the protection of journalists.<sup>232</sup>

108. The Office of the Special Rapporteur subsequently received information on some progress in the implementation of the Agreement, including the incorporation of a civil society organization into the Consultative Committee and the adherence of a state government.<sup>233</sup> At the same time, the Office of the Special Rapporteur received comments from press and freedom of expression organizations on the mechanism's capacities and procedures and the lack of effective implementation of the protective measures contemplated in the agreement.<sup>234</sup> In its 2011 Annual Report, the Office of the Special Rapporteur expressed concern regarding the delay in publicly issuing the Operational and Working Guidelines of the Agreement, and reiterated the urgent need to put the protection mechanism into operation given the critical situation of violence against journalists and the media in Mexico.<sup>235</sup>

109. In this context, the Mexican Congress discussed and eventually approved a "Law for the Protection of Human Rights Defenders and Journalists."<sup>236</sup> The bill was signed into law by President Felipe Calderón and entered into force on June, 2012. The law creates the "Mechanism for the Protection of Human Rights Defenders and Journalists" in order to attend the State's "fundamental responsibility to protect, promote and guarantee human rights."<sup>237</sup> Its stated objective is to establish coordination between federal and state governments in the implementation of preventive and protective measures to guarantee the "life, integrity, liberty and security of persons who are in a situation of risk as a consequence of the defense or promotion of human rights or the exercise of

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<sup>231</sup> IACHR. [Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 710.

<sup>232</sup> IACHR. [Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 711.

<sup>233</sup> IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/SER.L/V/II. Doc. 69. December 30, 2011. Para. 432.

<sup>234</sup> IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/SER.L/V/II. Doc. 69. December 30, 2011. Para. 433.

<sup>235</sup> IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/SER.L/V/II. Doc. 69. December 30, 2011. Para. 434.

<sup>236</sup> Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012.

<sup>237</sup> Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Article 1.

freedom of expression and journalism.”<sup>238</sup> The mechanism is made up of a Government Council [*Junta de Gobierno*], an Advisory Board [*Consejo Consultivo*], and a National Executive Coordinator [*Coordinación Ejecutiva Nacional*], and it is run by the Ministry of Interior.

110. Under Mexican law, the Government Council is the most senior level of the Mechanism and the main body for taking decisions on the granting of preventative and protective measures. The Government Council is made up of four representatives of the executive branch (Ministry of Interior, Office of the Attorney General of the Republic, Secretariat of Public Security, and Secretariat for Foreign Relations), a representative of the National Human Rights Commission, and four representatives of the Advisory Board, two of them independent experts on the defense of human rights and two of them experts on the exercise of freedom of expression and journalism.<sup>239</sup> Representatives from Congress, the judicial branch, the states, and the Mexico Office of the United Nations High Commissioner for Human Rights may participate in the Government Council sessions with speaking rights, but not voting rights.<sup>240</sup> The petitioners whose case is under consideration will also be called to participate in the sessions.<sup>241</sup> The main role of the Government Council is to evaluate, deliberate and rule on the granting and suspension of preventative and protective measures based on the information provided by the auxiliary units of the National Executive Coordinator.<sup>242</sup> In its decisions, the body should respect “the *pro persona*, gender perspective, and best interest of the child principles, and other human rights standards.”<sup>243</sup>

111. The National Executive Coordinator is the body responsible for coordinating the operations of the Mechanism with federal entities, the sub-offices of the federal government, and autonomous agencies, and must be headed up by an official of the Ministry of Interior ranking just below under-secretary or equivalent. The body is also made up of three auxiliary technical coordination units. The first is the Case Receipt and Rapid Reaction Unit, which is responsible for receiving requests to be included in the Mechanism, analyzing and defining which cases will be addressed through an extraordinary proceeding, and implementing urgent protective measures. The second is the Risk Assessment Unit, which is responsible for drawing up the risk assessment studies, recommending the preventative or protective measures to be adopted in each case, periodically following up on the implementation of the measures, and making recommendations with regard to their continuation, adequateness or conclusion. Under the law, both units must be made up of at least five risk assessment and protection experts, one of them an expert in the defense of human rights and another in journalism and the exercise of freedom of expression. Finally, the third is the Prevention, Follow-up and Analysis Unit, which is responsible for proposing preventative measures, monitoring attacks nationwide in order

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<sup>238</sup> Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Article 1.

<sup>239</sup> Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Artículos 5 y 13.

<sup>240</sup> Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Article 6.

<sup>241</sup> Estados Unidos Mexicanos. Presidente de la República. Diario Oficial de la Federación. [Reglamento de la Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). November 30, 2012. Article 9.

<sup>242</sup> Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Article 8.

<sup>243</sup> Estados Unidos Mexicanos. Presidencia de la República. Diario Oficial de la Federación. [Reglamento de la Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). November 30, 2012. Article 22.

to collect the raw information and place it in a database; identifying patterns of attacks and preparing risk maps; and evaluating the effectiveness of the preventative, protective and urgent measures implemented.<sup>244</sup> The National Executive Coordinator is responsible for coordinating the work of the different units, managing communications between them and the Government Council, and communicating the Council's decisions to the agencies in charge of implementing them.<sup>245</sup>

112. The final body that is part of the Mechanism for Protection is the Advisory Board, a consultation body of the Government Council made up of members of civil society. The Board is composed of nine advisors, including experts in the defense of human rights and the exercise of freedom of expression and journalism, four of whom are elected to participate in the Government Council. The Advisory Board is responsible for addressing consultations and formulating opinions requested by the Government Council on the programs and activities carried out by the National Executive Coordinator; submitting complaints before the Government Council that have been brought by petitioners or beneficiaries with regard to the implementation of the measures; and commissioning the independent Risk Assessment Studies requested by the Government Council to resolve disputes.<sup>246</sup>

113. The law allows for both "ordinary" and "extraordinary" procedures for assigning the measures of protection requested. During the process and in the implementation of the measures, gender perspective must always be taken into account.<sup>247</sup> To access the Mechanism, the potential beneficiary must be a human rights defender or a journalist,<sup>248</sup> or their relatives, that have suffered from attacks that have damaged their physical, psychological, moral or financial integrity. The program also covers the property of the beneficiary, group, organization or social movement.<sup>249</sup> The beneficiary must not be under the protection of an arrangement or program set up by another State mechanism, except should they agree with the transfer of the protection responsibilities to the federal mechanism.<sup>250</sup>

114. The requests for protective or preventative measures are processed by the Unit for Case Reception and Fast Reaction, which verifies that the request meets the requirements established by law and determines the type of proceeding to be adopted. In cases in which the petitioner declares that their life or physical integrity is in imminent danger, an extraordinary proceeding will be launched through which urgent protective measures are provided within no more than three hours of receipt of

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<sup>244</sup> Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Articles 17-23.

<sup>245</sup> Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Article 18.

<sup>246</sup> Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Articles 9-16.

<sup>247</sup> Estados Unidos Mexicanos. Presidencia de la República. Diario Oficial de la Federación. [Reglamento de la Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). November 30, 2012. Article 2.

<sup>248</sup> Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Article 1. According to Article 2 of the Act, journalists are "persons, as well as public, community, private, independent, university, experimental or any other kind of media outlet, whose work consists in collect, generate, process, edit, comment, opine, disseminate, publish or provide information, through any means dissemination and communications, which can be print, broadcasting, digital or images."

<sup>249</sup> Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Article 24.

<sup>250</sup> Estados Unidos Mexicanos. Presidencia de la República. Diario Oficial de la Federación. [Reglamento de la Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). November 30, 2012. Article 53, IV.

the request. They must be implemented over the following nine hours.<sup>251</sup> Simultaneously, the Receipt Unit must carry out an Immediate Action Evaluation Study and submit the case to the Risk Assessment Unit to begin the ordinary proceeding. Urgent measures can include evacuation, temporary relocation, specialized bodyguards, and the protection of the property where the beneficiary is located.<sup>252</sup> Urgent protective measures remain in force while the ordinary proceeding moves forward.<sup>253</sup>

115. In cases in which there is no imminent risk of physical danger or death, an ordinary proceeding is launched under which the Risk Assessment Unit must do a risk analysis, determine the level of risk and the beneficiaries of the measures, and define the protective measures within 10 days of the submission of the request.<sup>254</sup> The evaluation is brought for the analysis of the Government Council, which decrees the applicable preventative and protective measures that must be implemented by the National Executive Coordinator within a time period of no more than 30 days.<sup>255</sup> According to the law, protective measures include instructions, manuals, self-defense courses and the accompaniment of observers,<sup>256</sup> while the protective measures include the provision of communications devices, security cameras, locks, etc. in the home or workplace of the individual, bulletproof vests, metal detectors and armored cars.<sup>257</sup> The Risk Assessment Unit is responsible for the periodic evaluation of the measures adopted, which can be increased or decreased by the Government Council based on these reviews.<sup>258</sup>

116. The Law explicitly stipulates that in no case the provided measures may “restrict the activities of the beneficiaries, or imply in surveillance or undesired intrusions in their professional or personal lives”,<sup>259</sup> and that these measures must be agreed with the petitioners.<sup>260</sup> In this sense, they can present a note of dissatisfaction to the Executive Secretariat of the Government Board against the resolutions of the Government Board and of the National Executive Coordination regarding the imposition or denial of measures; the insufficient or unsatisfactory fulfillment of measures; or the rejection of the Government Board’s decisions by the authorities in charge of implementing the

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<sup>251</sup> Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Article 26.

<sup>252</sup> Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Article 32.

<sup>253</sup> Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Article 26.

<sup>254</sup> Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Article 27.

<sup>255</sup> Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Article 29.

<sup>256</sup> Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Article 34.

<sup>257</sup> Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Article 33.

<sup>258</sup> Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Articles 21, III and 8.

<sup>259</sup> Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Article 30.

<sup>260</sup> Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Article 31.

measures.<sup>261</sup> In the case of an extraordinary procedure, the beneficiaries may present notes of dissatisfaction to the National Executive Coordination against the resolutions of the Unit for Case Reception and Fast Reaction, on the access to the extraordinary procedure or the adoption of urgent measures; against the deficient or unsatisfactory fulfillment of these measures; and against the rejection of the decisions of this Unit.<sup>262</sup>

117. In order to obtain financial resources additional to those provided in the federal budget for the mechanism, the law establishes the creation of the “Fund for the Protection of Human Rights Defenders and Journalists,” whose resources shall be dedicated exclusively to the implementation and operation of preventative, protective and urgent measures, as well as any other measures established in the law for the implementation of the mechanism. The fund shall be operated through a public trust. Its resources will be made up of, among other sources, contributions from the federal government, funds from the annual federal budget, and donations from individuals and corporations. Likewise, the fund must have a Technical Committee chaired by the Ministry of Interior, along with its own oversight body.<sup>263</sup>

118. Finally, the law establishes that the resolutions of the Government Council are binding for the federal authorities whose actions are necessary for compliance with the measures adopted.<sup>264</sup> Nevertheless, the law is not binding for the authorities of the individual states or the Federal District. For this, the law establishes the possibility of agreements signed by the federative entities and the federal government for implementing measures.<sup>265</sup> Regarding this, the Mexico Office of the United Nations High Commissioner of Human Rights (UNHCR) found that “coordination between federal and state authorities is one of the great challenges for the new protection mechanism given the federal structure of the Mexican State. [...] [T]he agreements that have been signed are a vehicle for promoting adequate coordination between the different levels of governance and guarantee a coherent response from the Mexican State.”<sup>266</sup>

119. On September 19, 2012, the Mexican government provided the Office of the Special Rapporteur detailed information on the status of the implementation of the protection law.<sup>267</sup> The information provided indicated that the Government Council held its first meeting on July 10, 2012, and

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<sup>261</sup> Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Articles 55 and 56; Estados Unidos Mexicanos. Presidencia de la República. Diario Oficial de la Federación. [Reglamento de la Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). November 30, 2012. Article 108.

<sup>262</sup> Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Articles 59 and 60; Estados Unidos Mexicanos. Presidencia de la República. Diario Oficial de la Federación. [Reglamento de la Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). November 30, 2012. Articles 110 to 114.

<sup>263</sup> Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Articles 48-54.

<sup>264</sup> Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Article 4.

<sup>265</sup> Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Articles 46 and 47.

<sup>266</sup> Office of the UN High Commissioner for Human Rights in Mexico (OHCHR). [Informe sobre la situación de las y los defensores de derechos humanos en México: actualización 2012 y balance 2013](#). Para. 73.

<sup>267</sup> Communication No. OEA02752 from the Mexico Permanent Mission before the OAS. September 19, 2012.

subsequently publicly convened individuals and organizations involved in journalism or the defense of human rights or freedom of expression to form part of the Advisory Board.<sup>268</sup> According to available information, the Advisory Board was formed in October of 2012.<sup>269</sup>

120. On November 8, 2013, the State sent updated information on the national protection mechanism.<sup>270</sup> The State reported that 105 requests for protection had been received, 40 of which were requests from journalists. In 9 of the 105 cases, the determination was reportedly made not to include the petitioning individual in the mechanism. In addition, the State reported that the main protection measures that had been granted included ongoing bodyguard services or transportation security; security measures at residences; armored vehicles and the provision of gasoline; telecommunications equipment; panic buttons; surveillance by police patrols; a directory to be used in case of emergencies; self-defense manuals; and support in the filing of complaints. The State also reported that the Government Council had approved the Protocols on Preventive, Protective, and Urgent Measures for Risk Assessment and Protection.<sup>271</sup>

121. With respect to the Mechanism's operational personnel, the State reported that the National Executive Coordination and its three technical units is comprised by 20 individuals, and that "there are plans to increase the technical know-how of the individual members of the Government Council and the Advisory Board, as well as of the personnel that form part of the National Executive Coordination."<sup>272</sup> The State further reported that various measures would be put in place with the "aim of consolidating and strengthening the operation of the Mechanism," including the establishment of indicators for the evaluation of the mechanism, in cooperation with the Office of the United Nations High Commissioner for Human Rights in Mexico, and the signing of a memorandum of understanding with the organization Freedom House, which "has the purpose of strengthening the Mechanism technically."<sup>273</sup> The State also provided information on the establishment of the "Fund for the Protection of Human Rights Defenders and Journalists." According to the information received, the Rules of Operation of the Public Trust were approved on February 27, 2013, and published on November 5, 2013. On October 1, the funds authorized for the 2013 fiscal year were transferred to the Trust, a total of \$127,500,000.00 Mexican pesos (some US \$9,720,000). To date, the Trust has \$169,895,841.61 (some US \$12,952,145). Finally, the State reported that 25 Mexican states had signed Cooperation Agreements with the federal mechanism.<sup>274</sup>

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<sup>268</sup> Communication No. OEA02752 from the Mexico Permanent Mission before the OAS. September 19, 2012.

<sup>269</sup> Knight Center for Journalism in the Americas. October 24, 2012. [Council formed in Mexico to supervise new security mechanism for journalists](#); La Prensa. October 22, 2012. [Eligen a miembros del primer consejo consultivo para la protección de periodistas](#).

<sup>270</sup> Communication No. OEA-04472 from Mexico's Permanent Mission to the OAS. November 8, 2013, forwarding letter CEN/640/2013, of November 5, 2013.

<sup>271</sup> Communication No. OEA-04472 from Mexico's Permanent Mission to the OAS. November 8, 2013, forwarding letter CEN/640/2013, of November 5, 2013.

<sup>272</sup> Communication No. OEA-04472 from Mexico's Permanent Mission to the OAS. November 8, 2013, forwarding letter CEN/640/2013, of November 5, 2013.

<sup>273</sup> Communication No. OEA-04472 from Mexico's Permanent Mission to the OAS. November 8, 2013, forwarding letter CEN/640/2013, of November 5, 2013.

<sup>274</sup> The federal entities are: Aguascalientes, Campeche, Coahuila, Colima, Chiapas, Chihuahua, Durango, Guanajuato, Guerrero, Hidalgo, Jalisco, Estado de México, Michoacán, Morelos, Nayarit, Oaxaca, Puebla, Querétaro, San Luis Potosí, Sinaloa, Tabasco, Tamaulipas, Veracruz, Yucatán and Zacatecas. Communication No. OEA-04472 from Mexico's Permanent Mission to the OAS November 8, 2013, forwarding letter CEN/640/2013, of November 5, 2013.

122. The Office of the Special Rapporteur considers that the Law for the Protection of Human Rights Defenders and Journalists represents an important expression of the Mexican government's commitment to protecting at-risk journalists. The existence of a clear legal framework marks a significant improvement from the prior Coordination Agreement, and the law has a number of noteworthy characteristics, including the participation of representatives of the human rights and freedom of expression communities in the Government Council, the adoption of the principles of differentiated treatment and gender perspective, the availability of a range of protection measures, the existence of an expedited procedure for protecting those facing imminent risk of grave harm, and the explicit goal of maximizing protection while not limiting the journalist's professional activities.

123. In an analysis of the mechanism dating from June of 2013, the Mexico Office of the United Nations High Commissioner for Human Rights (OHCHR) identified a number of challenges facing the protection program's implementation. Among them, the organization observed that:

As the Mechanism is an institution that is in the early stages of operations, it faces challenges that range from the administrative to the fundamental. Noteworthy in these initial months are the needs to overcome as soon as possible any obstacles to accessing financial resources, to having a proper internal structure, and to staffing that structure with qualified personnel. The preparation of risk reports following the guidelines of a methodology that has been agreed upon with civil society and has a broad focus requires stability for personnel in their positions and constant training, together with strong political backing that allows the Mechanism to move beyond traditional approaches to risk assessment. Adequate implementation of the agreed-upon protective measures, monitoring of them, and timely publicizing of the existence and functions of the Mechanism itself are challenges that must be addressed without delay.<sup>275</sup>

124. Similarly, on October 25, 2013, a "Draft Report of the Working Group on the Universal Periodic Review", was issued containing, among other items, preliminary recommendations by several member States to strengthen the federal protection mechanism. In this regard, it recommended: to provide the mechanism with the necessary political support to the fulfillment of its mandate; to secure the mechanism's ability to act preventively, considering the existing threats in relation to organized crime; to continue contributing to the mechanism with the necessary budget for its operations; to contact and provide training to the specialized staff, so as to secure the effective activities of the mechanism; to guarantee the cooperation of the states and municipalities in the implementation of the mechanism; to count with a clear division of jurisdictional responsibilities among the different levels of government; and to integrate a gender perspective when treating the issue of journalists' safety in the country.<sup>276</sup>

125. The Office of the Special Rapporteur notes that the law was passed in June 2012, meaning that the mechanism is in its initial stage of implementation. That said, the resolution of certain pending questions is crucial for guaranteeing the law's effectiveness and adequate application. Among these challenges, the Office of the Special Rapporteur would particularly like to point to the importance of assigning and training of personnel necessary for the proper operation of the three auxiliary technical

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<sup>275</sup> Office of the UN High Commissioner for Human Rights in Mexico (OHCHR). [Informe sobre la situación de las y los defensores de derechos humanos en México: actualización 2012 y balance 2013](#). Para. 77 and 78.

<sup>276</sup> United Nations. Human Rights Council. [Draft report of the Working Group on the Universal Periodic Review Mexico](#). A/HRC/WG.6/17/L.5. October 25, 2013.

units; guaranteeing that risk assessment studies and implementation of urgent, preventative and protective measures are carried out in an adequate manner and with a differential approach regarding the conditions of each beneficiary, following proper guidelines and meeting the deadlines set by law, and that the urgent measures and protective measures granted are not replaced or withdrawn prior to the resolution of potential disagreement; and taking the measures necessary to achieve an effective transition - with the entry into force of the federal protection mechanism - for the protection that certain individuals previously enjoyed under the “Coordination Agreement for the Implementation of Preventive and Protective Actions for Journalists.”

126. Likewise, coordination of the different State federal agencies, as well as with the federal entities, is crucial for the mechanism to work adequately. It is especially important to ensure effective coordination and exchange of information between the agencies that administer the mechanism and the governmental entities that act to defend of the rights of journalists and that participate in the Government Council, such as the National Human Rights Commission [*Comisión Nacional de Derechos Humanos*] (CNDH) and the Office of the Special Public Prosecutor on Crimes against Freedom of Expression [*Fiscalía Especial para la Atención de Delitos contra la Libertad de Expresión*] (FEADLE). Specifically, that coordination must take into account the CNDH and the FEADLE’s authority to grant, *ex officio*, precautionary protective measures to at-risk journalists and the authority of both agencies to receive complaints and investigate attacks on journalists.<sup>277</sup>

127. In recent years, certain states in the Federation have also established autonomous state mechanisms for prevention and the protection of at-risk journalists. For example, in March 2012, the Federal District created the “Mechanism for Prevention and Protection of Journalists, Journalistic Contributors, and Human Rights Defenders Facing Risk because of their Professions.” The mechanism functions through an Institutional Collaboration Agreement signed by the Secretariat of Government, the Secretariat of Public Security, the Office of the Attorney General for Justice, and the Human Rights Commission. Although it was not enshrined by law, the mechanism included important principles and practices in its protocols, such as gender perspective, nondiscrimination, and the permanent participation of civil society.<sup>278</sup> Similarly, in September of 2012, the state of Morelos established a “Mechanism for the Protection of Journalists” following the adoption of an Inter-institutional Coordination Agreement for the Implementation of Preventative and Protective Actions, signed by the state’s Executive Branch, the Judicial Branch, the state Human Right Commission, the Morelos Institute for Public Information and Statistics, and the State Journalist Forum.<sup>279</sup> Also, in November of 2012, the

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<sup>277</sup> See, Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley de la Comisión Nacional de los Derechos Humanos](#). June 29, 2012. Article 40; Comisión Nacional de Derechos Humanos. August 15, 2013. [Recomendación General No. 20](#), Para. 140.

<sup>278</sup> Estados Unidos Mexicanos. Distrito Federal. May 29, 2012. Institutional Collaboration Agreement. Gobierno del Distrito Federal, el Tribunal Superior de Justicia, la Secretaría de Gobierno, la Comisión de Derechos Humanos, el Secretario de Seguridad Pública el Procurador General de Justicia. Cláusula tercera; Estados Unidos Mexicanos. Distrito Federal. Protocolo de Operación del Mecanismo de Prevención y Protección a Periodistas, Colaboradores Periodísticos, así como a Defensoras y Defensores de Derechos Humanos en Situación de Riesgo con Motivo del Ejercicio de sus Actividades. Capítulo II, b, k. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>279</sup> Estados Unidos Mexicanos. Estado de Morelos. [Convenio de Colaboración Interinstitucional para la implementación de acciones de prevención y protección para periodistas en el Estado de Morelos](#). June 6, 2012; El Sol de Cuernavaca. September 29, 2012. [Cuentan periodistas con métodos de protección](#); Instituto Morelense de Información Pública y Estadística. October 2, 2012. [Presentación del documento: “Mecanismos de protección para los periodistas del estado de Morelos”](#).



state of Veracruz, facing a context of intense violence committed against journalists,<sup>280</sup> amended its Constitution to create a “State Commission for Attending to and Protecting Journalists.” The operation of the state mechanism was later outlined in the law passed in December 2012 and its corresponding regulations. Among other things, these norms establish the structure of the Commission and its administrative bodies, and the procedure for accessing protective measures.<sup>281</sup> Finally, according to the information received, other states in the Federation, including Chihuahua,<sup>282</sup> San Luis Potosí<sup>283</sup> and Hidalgo,<sup>284</sup> also established mechanisms for protecting at-risk journalists.

128. The Office of the Special Rapporteur takes note of the initiative of members of the Mexican federation to establish mechanisms to protect at-risk journalists. Nevertheless, the Office of the Special Rapporteur observes that it is crucial to ensure the development of legal frameworks that allow for effective coordination with the federal protective mechanism and particularly take into account the cases in which petitioners access both mechanisms in order to request protection. In this regard, it is essential to guarantee that beneficiaries are not left unprotected or assigned protective measures by both mechanisms that are not compatible. In any case, both the state and the federal mechanisms must meet all the requirements set forth in international standards for their operation. Finally, the Office of the Special Rapporteur indicates that the evaluation of these state mechanisms will depend on their effectiveness in reducing the violence against journalists reported in their respective jurisdictions.

### Brazil

129. Brazil is the third country in the Americas that has taken steps to include journalists under a protective mechanism for at-risk individuals. Although the mechanism in question is a “Program for the Protection of Human Rights Defenders” (PPDDH), the Brazilian State has indicated that the program may provide protection to journalists under a broad definition of human rights defenders.<sup>285</sup>

<sup>280</sup> See, IACHR. [Annual Report 2012. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. Para. 356-389.

<sup>281</sup> Estados Unidos Mexicanos. Estado de Veracruz. [Constitución Política del Estado de Veracruz de Ignacio de la Llave](#). Article 67, V; Estado de Veracruz. Gaceta Oficial. [Ley Número 586 de la Comisión Estatal para la Atención y Protección de los Periodistas](#). December 3, 2012; Estado de Veracruz. Gaceta Oficial. [Reglamento Interior de la Comisión Estatal para la Atención y Protección de los Periodistas](#). February 14, 2013.

<sup>282</sup> Estados Unidos Mexicanos. Estado de Chihuahua. [Acuerdo para la Implementación del Sistema Integral de Seguridad para Periodistas del Estado de Chihuahua](#). February 14, 2012; Comisión Estatal de Derechos Humanos de Chihuahua. [Sistema de Protección a Periodistas](#); Red de Periodistas de Juárez. April 30, 2012. [Conoce el protocolo de protección a periodistas que se pretende implementar en Chihuahua](#); La Jornada. September 6, 2010. [Formalizan en Chihuahua protección a los periodistas](#); El Buen Vecino. September 6, 2010. [Autorizan en Chihuahua el Sistema Integral de Protección a Periodistas](#).

<sup>283</sup> Estados Unidos Mexicanos. Estado de San Luis Potosí. [Ley de Protección al Ejercicio del Periodismo del Estado de San Luis Potosí](#). May 25, 2013; La Jornada San Luis. April 26, 2013. [Pasa incompleta la Ley de Protección al Ejercicio del Periodismo en SLP](#); El Heraldo de San Luis Potosí. September 3, 2013. [Por unanimidad se aprobó Ley de Protección al Ejercicio del Periodismo en SLP](#).

<sup>284</sup> Estados Unidos Mexicanos. Estado de Hidalgo. [Ley de Protección a Personas Defensoras de Derechos Humanos y de Salvaguarda de los Derechos para el Ejercicio del Periodismo](#). August 27, 2012; Radio Trece. July 31, 2012. [Congreso de Hidalgo aprueba por unanimidad ley de protección a periodistas](#); Diario Vía Libre. August 27, 2012. [Comunicadores reconocen Ley de Protección a Periodistas en Hidalgo](#).

<sup>285</sup> United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). [The Safety of Journalists and the Danger of Impunity. Report by the Director-General](#). CI-12/CONF.202/4 REV. March 27, 2012. Pp. 22 and 23; Committee to Protect Journalists (CPJ). December 18, 2012. [Assassinatos do Brasil refletem reportagens duras, falta de justiça](#).

Indeed, the Office of the Special Rapporteur has reported that the program was used in at least one case to provide protection to a threatened journalist. As noted in the Office of the Special Rapporteur's 2011 Annual report, journalist Wilton Andrade dos Santos of broadcaster *Milenius FM* in the municipality of Itaporanga D'Ajuda was included in the Protection Program after being attacked on December 17, 2010 by two unidentified individuals who threw Molotov cocktails at his home and set his car on fire. Andrade dos Santos had reportedly alleged corruption in the municipal government and received death threats.<sup>286</sup>

130. The program for the protection of human rights defenders was established in 2004 by the federal Executive Branch, under the Human Right Secretariat<sup>287</sup> [*Secretaría de Derechos Humanos*] (SDH). The program's current legal framework is based on Decree No. 6,044 of 2007,<sup>288</sup> which establishes the National Human Rights Defender Protection Policy in order to establish "principles and directives for the protection and aid of physical or legal persons, groups, institutions, organizations, or social movements that promote, protect, or defend Human Rights and as a result of their actions or activities face a situation of risk or vulnerability."<sup>289</sup> In that regard, the Decree establishes general protection directives, such as coordination with civil society; the training of State agents that provide protection; protection of life, provision of social, medical, psychological and material aid, as well as re-location for at-risk or vulnerable human rights defenders; cooperation between public safety agencies and the judicial branch for the prosecution of those responsible, and the adoption of measures to address the underlying causes of the situation of risk or vulnerability.<sup>290</sup>

131. Likewise, Decree No. 6,044 provides the SDH 90 days to prepare a National Plan for the Protection of Human Rights Defenders.<sup>291</sup> However, as of the publication date of this report, the Plan has not been adopted. Given the absence of a National Plan, the Decree grants the federal government and the states the option of adopting urgent protective measures - *ex officio* or upon request - that are "immediate, provisional, precautionary and investigative," in order to guarantee the "physical, psychological and financial integrity" of the at-risk or vulnerable human rights defender.<sup>292</sup> Likewise, the Decree authorizes the federal government's human rights and public safety bodies to sign agreements with the states and the Federal District for the implementation of the protective measures.<sup>293</sup>

132. On the federal level, the PPDDH is in the hands of a General Coordination Committee, associated with the Human Rights Secretariat and composed of members of civil society and representatives of the executive, legislative and federal judicial branches. Likewise, states that have

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<sup>286</sup> IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/SER.L/V/II. Doc. 69. December 30, 2011. Para. 51.

<sup>287</sup> Secretaria de Direitos Humanos da Presidência da República. [Proteção dos Defensores de Direitos Humanos](#).

<sup>288</sup> Estado de Brasil. [Decreto 6044](#). February 12, 2007.

<sup>289</sup> Estado de Brasil. [Decreto 6044](#). February 12, 2007. Article 1.

<sup>290</sup> Estado de Brasil. [Decreto 6044](#). February 12, 2007. Annex. Política Nacional de Proteção aos Defensores dos Direitos Humanos. Articles 4-7.

<sup>291</sup> Estado de Brasil. [Decreto 6044](#). February 12, 2007. Article 2.

<sup>292</sup> Estado de Brasil. [Decreto 6044](#). February 12, 2007. Artículo 3.

<sup>293</sup> Estado de Brasil. [Decreto 6044](#). February 12, 2007. Article 3, sole paragraph.

signed agreements to participate in the program have State Coordination Committees.<sup>294</sup> The national coordination committee and the state committees are deliberative bodies and have the authority to respond to requests for protection and determine which measures should be adopted and implemented.<sup>295</sup> The National Committee is in charge of the requests for protection that come from those states that do not have their own coordination committees.<sup>296</sup> The federal program and participating states can also have a Federal Technical Team and state technical teams for evaluating requests for protection and the level of risk faced by applicants and their families, as well as periodically monitoring the cases.<sup>297</sup>

133. In order to access the program, at-risk human rights defenders or any other agency that is aware of the situation of risk must send the request for protection to the State Coordinator or the General Coordinator (when the state in question is not part of the program). The request is evaluated by the corresponding state or federal protective program. The request for protection must demonstrate the willingness of the potential beneficiary to access the program, the individual's actions for the defense of human rights, and the causal nexus between the risk and the person's activity as a human rights defender. According to the SDH, the seriousness of the threat to the petitioner can be characterized by "any threatening conduct whose purpose is to prevent the continuation of the individual's activities for the promotion and defense of human rights." This conduct can be manifested through attacks on the individual's "physical, psychological, moral or financial integrity, or that are discriminatory in nature," as well as through such conduct directed at the applicant's family members or close associates. Following the risk assessment carried out by the technical teams, the state or general deliberative coordination bodies determine which measures must be adopted in a specific case, with the general objective of "guaranteeing protection in order that [human rights defenders] may continue working where they are located."<sup>298</sup>

134. The protective measures provided for under the program include periodic visits to the beneficiaries' workplaces, temporary relocation, and police protection. The program takes a holistic focus that seeks to deactivate the underlying causes of the insecurity and places emphasis on the coordination of protective actions with the measures that must be adopted in other areas of the State, such as the criminal justice system and land registry authorities.<sup>299</sup> The measures are periodically evaluated by the technical teams and can be lifted should the beneficiaries fail to comply with the program's rules, at the request of the beneficiaries, or upon the elimination of the threat or risk.

135. In general, the program has been implemented in states through agreements with civil society organizations. For example, in the state of Ceará, the PPDDH operates through an agreement between that state's Secretariat for Justice and Citizenry and nongovernmental organization Association of Relatives and Friends of Victims of Violence (APAVV).<sup>300</sup> Likewise, some participating states have

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<sup>294</sup> Secretaria de Direitos Humanos da Presidência da República. [Proteção dos Defensores de Direitos Humanos](#).

<sup>295</sup> Secretaria de Direitos Humanos da Presidência da República. [Proteção dos Defensores de Direitos Humanos](#).

<sup>296</sup> Secretaria de Direitos Humanos da Presidência da República. [Proteção dos Defensores de Direitos Humanos](#).

<sup>297</sup> Secretaria de Direitos Humanos da Presidência da República. [Proteção dos Defensores de Direitos Humanos](#).

<sup>298</sup> Secretaria de Direitos Humanos da Presidência da República. [Proteção dos Defensores de Direitos Humanos](#).

<sup>299</sup> Secretaria de Direitos Humanos da Presidência da República. [Proteção dos Defensores de Direitos Humanos](#).

<sup>300</sup> Estado de Brasil. Estado de Ceará. August 1, 2012. [Equipe técnica do Programa de Proteção aos Defensores de Direitos Humanos recebe capacitação](#). See also: Estado de Rio de Grande do Sul. Edital. [Seleção Pública de Entidade Privada](#)

passed laws formally adopting the program.<sup>301</sup> As of the closing of this report, seven States have signed agreements to implement the program in their jurisdictions.<sup>302</sup>

136. Since 2009, the National Congress has been analyzing a bill that would establish a formal legal basis for the Program for the Protection of Human Rights Defenders. As previously mentioned, the PPDDH currently operates under the auspices of a decree. Among other things, the bill would establish who can access the program; which bodies form part of it and their authority; and the measures of protection available. The draft bill defines human rights defenders as those individuals who “individually or as part of a group, organization or social movement act in the defense of human rights, including legal persons.” The text of the bill does not explicitly include journalists or media outlets in that group. Nevertheless, the report from the executive branch presenting the bill to the National Congress mentions journalists among those who act for the defense and promotion of human rights. The bill has been ready for a vote in the Chamber of Deputies since it was approved in committee in October 2011.<sup>303</sup>

137. In a letter sent in December 2012 to the Human Rights Secretariat, the Committee of Human Rights Defenders of Brazil highlighted some progress in the PPDDH, including the government’s efforts to include individuals from a variety of different at-risk groups under a broad definition of human rights defenders. At the same time, the Committee pointed to a series of challenges that persist, such as the need to move the legislative debate forward in Congress in order for the PPDDH to be formally established, the need to strengthen the budget and the program’s structure as part of the Human Rights Secretariat, and the need to ensure coordination that is less bureaucratic and more effective between the federal and state programs.<sup>304</sup>

138. On October 29, 2013, the State of Brazil provided additional information on the National Program for the Protection of Human Rights Defenders at the hearing on the “Situation of Human Rights Defenders in Brazil,” held during the IACHR’s 149 Period of Sessions. The State reported that 404 individuals are currently included in the program. Among them, 218 people had their cases supervised by the federal technical team in 21 states, and 186 people had their cases supervised by the program’s state teams in six states<sup>305</sup> that signed agreements to participate in the program. Additionally, the State reported that the state and federal teams were composed of a total of 60 individuals. According to reports, the protection program has a budget of 13 million *reais* (some US\$ 5,600,000), and additional funds and logistical support are provided by other federal government agencies to hire technical teams, take protection measures, and hold regular meetings, among other things. Finally, the State acknowledged some of the challenges to the implementation of the program, such as violence and threats to the beneficiaries, the task of investigating and holding responsible the perpetrators of these crimes, and the need for greater financial support so that the program will be able to provide special

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[sem Fins Lucrativos com Objeto de Formalizar Parceria por Meio de Convênio para Gestão do Programa de Proteção aos Defensores de Direitos Humanos do Estado do Rio Grande do Sul. Rio Grande do Sul.](#)

<sup>301</sup> Thus, for example, see: Estado de Brasil. Estado de Espírito Santo. [Ley No. 8,233](#). December 21, 2005.

<sup>302</sup> Secretaria de Direitos Humanos da Presidência da República. [Proteção dos Defensores de Direitos Humanos](#)

<sup>303</sup> State of Brazil. Câmara dos Deputados. [Projecto de Ley 4575 de 2009](#).

<sup>304</sup> Comitê Brasileiro de Defensoras/es de Direitos Humanos. November 19, 2010. [Carta do Comitê Brasileiro de Defensoras/ES de Direitos Humanos – 2010](#). See also, Amnesty International. 2012. [Transformando dor em esperança: defensoras e defensores dos direitos humanos nas Américas](#).

<sup>305</sup> Those states are Bahia, Minas Gerais, Espírito Santo, Pernambuco, Ceará and Rio Grande do Sul.

services to all of the states in the country. The State reported that 3 consultants had been hired to prepare a diagnostic report on the procedures, rules, and methodology of the program, including the action of the justice system and the structure of the offices of the secretaries of the federation's states that coordinate the program. According to the information received, civil society is also cooperating in the identification of measures to improve the program.<sup>306</sup>

139. In a letter dated March 29, 2013, the Brazilian State reiterated that it "is willing to discuss and adopt broader measures to protect journalists [...] threatened for reasons associated with the free exercise of their activities." In this sense, the State reported that on October 18, 2012, the Council for the Defense of the Rights of the Human Person (CDDPH) created the "Working Group on the Human Rights of Communication Professionals in Brazil."<sup>307</sup> The group is composed of authorities from the federal government,<sup>308</sup> from the Office of the Attorney General of the Republic, and representatives of journalist associations and organizations. The Working Group can receive complaints of violence and threats against communication professionals for reasons related to the exercise of their work and refer these cases to the competent bodies for follow up. In addition, according to the State, the Working Group should propose the creation of a system for monitoring complaints; the fine tuning of public policy for carrying out this monitoring; and directives for the safety of communication professionals facing risk as a result of the exercise of their professions. Finally, the State reported that "the Working Group shall carry out its activities for 180 days, extendable for an equal period, and must submit partial reports and a final report to the Council for the Defense of the Rights of the Human Person."<sup>309</sup> According to the received information, during 2013 the Working Group had many meetings and activities, including public hearings in the states of the federation to receive information on the situation of violence against journalists. Attendees to the meetings of the Working Group also included UNESCO authorities, the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, and experts who work with the issue of the protection of journalists in Mexico and Colombia.<sup>310</sup>

140. According to the information received, in December of 2012, the Minister of the Human Rights Secretariat stated that the Working Group would analyze the possibility of creating a new special program to protect journalists or broadening the existing program for the protection of human rights defenders to explicitly include journalists.<sup>311</sup> Later, on October 15, 2013, during the Global Investigative Journalism Conference, the Minister of the Human Rights Secretariat presented information on the

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<sup>306</sup> IACHR. 149 Period of Sessions. Hearing on the Situation of Human Rights Defenders in Brazil. October 29, 2013. Available for consultation: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=132>

<sup>307</sup> State of Brazil. Communication No. 129 to the Office of the Special Rapporteur for Freedom of Expression. May 28, 2013.

<sup>308</sup> According to the information received, the Working Group is composed by representatives of the Council for the Defense of the Rights of the Human Person, of the Human Rights Secretariat of the Presidency of the Republic, of the Social Communications Secretariat, and of the General Secretariat of the Presidency of the Republic.

<sup>309</sup> Estado de Brasil. Communication No. 129 to the Office of the Special Rapporteur for Freedom of Expression, dated May 28, 2013.

<sup>310</sup> Estado de Brasil. Communication No. 301 to the Inter-American Commission on Human Rights dated November 11, 2013, anexo XIV. Grupo de Trabalho "Direitos Humanos dos Profissionais de Comunicação no Brasil" criado pela Resolução No. 07/2012 – Relatório Parcial.

<sup>311</sup> O Globo. December 24, 2012. [Governo planeja proteção a jornalistas](#); G1. April 18, 2013. [Secretaria de Direitos Humanos avalia riscos para jornalistas de MG](#); BBC Brasil. December 20, 2012. [Governo estuda criar programa de proteção a jornalistas](#).

Working Group's recent activities. At that time, the President of the Working Group indicated that the group's final report would be presented in February 2014, and that a preliminary report would be presented in December 2013. He observed that at least four guidelines are under consideration: the creation of a public observatory of investigations and judicial proceedings on crimes against journalists; the creation of manuals and guides on safety and risk for training communicators; the adaptation and implementation of UNESCO's national journalists' safety indicators;<sup>312</sup> and the development of a national strategy pursuant to the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity.<sup>313</sup>

141. The Office of the special Rapporteur receives with satisfaction the information provided by the Brazilian State with regard to the progress of the Program for the Protection of Human Right Defenders and on the creation of the Working Group on the Human Rights of Communication Professionals in Brazil. The Office of the Special Rapporteur believes it is crucial for the Brazilian State to continue adopting measures to strengthen the current mechanism for protecting human rights defenders, which, as mentioned previously, has also granted protection to journalists. In particular, the Office of the Special Rapporteur observes the need to clearly define the status, budget and legal framework of the protection program by passing a law that could contribute to improving the general effectiveness of the PPDDH program. Likewise, the Office of the Special Rapporteur observes with satisfaction the comments from state authorities on the possibility of explicitly including journalists in the protection program or creating a protection program specifically for that group, which would need to be established in accordance with international standards on the subject. Finally, the Office of the Special Rapporteur observes that in order for the current protection program to respond to the needs of journalists as well as human rights defenders, it is crucial to, among other things, explicitly make the necessary adjustments to the protection of journalists and disseminate information on its existence to the country's media workers, who may not know they can request protection from the program.

## Guatemala

142. For its part, the State of Guatemala has expressed recently on a number of occasions its intention to adopt a specialized mechanism to protect at-risk journalists. In that regard, in the context of its participation in the Universal Periodic Review (UPR) before the UN Human Right Council in October 2012, the government of Guatemala announced that it was preparing a national plan for the protection of journalists from threats to their physical integrity.<sup>314</sup> Also, according to the information received, in May 2013, the president of Guatemala - Otto Pérez Molina - reiterated in the presence of UNESCO and the United Nations Office of the High Commissioner for Human Rights in Guatemala his commitment to local journalism associations and the Centro de Reportes Informativos sobre Guatemala (CERIGUA) "to draw up and implement as soon possible a program of a preventative nature for the protection of

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<sup>312</sup> United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). July 25, 2013. [Journalists' Safety Indicators-National Level](#).

<sup>313</sup> Secretaria de Direitos Humanos. October 16, 2013. [País precisa garantir atuação dos profissionais de comunicação, diz ministra](#); ONU BR. October 16, 2013. [Brasil mapeia violência contra jornalistas e deve adotar plano de proteção da ONU, afirma ministra](#).

<sup>314</sup> United Nations. Office of the UN High Commissioner for Human Rights (OHCHR). [National report submitted in accordance with paragraph 5 of the annex to Human Rights Council Resolution 16/21](#). August 7, 2012; Agencia Guatemalteca de Noticias (AGN). November, 30 2012. [Elaboran plan para protección de periodistas](#); Centro de Reportes Informativos sobre Guatemala (Cerigua). October 29, 2012. [Llaman a la acción para proteger a los periodistas en Guatemala](#).

journalists.”<sup>315</sup> In August 2013, the President of the Republic reiterated his commitment and said that the State was studying the creation of an office to protect the work and lives of journalists.<sup>316</sup>

143. Although it has no specialized mechanism to protect at-risk journalists, in communication dated March 4, 2013, the State of Guatemala informed the Office of the Special Rapporteur of the existence of other protective mechanisms in the country intended to protect victims, witnesses and justice department personnel and to which journalists have access.<sup>317</sup> The State indicated that the Service to Protect People Involved in Legal Proceedings and Individuals Connected to the Administration of Criminal Justice, which operates under Decree 70-96 of the Congress of the Republic, provides coverage to, among other people, “journalists who need it because they are at risk as a result of performing their duties to inform.”<sup>318</sup> The Protection Service is set up within the organizational structure of the Office of the Public Prosecutor and its main role is to provide protection to individuals exposed to risks as a result of their participation in criminal proceedings.<sup>319</sup> The protection system is composed of a Board of Directors comprised of the Attorney General of the Republic, a representative of the Ministry of Interior and the director of the Office of Protection. Its responsibilities include designing general protection policies; approving programs and plans presented by the director of the Office of Protection; issuing general instructions for protection; and approving the necessary expenditures for the protection plans. The protection service has an Office for Protection that acts as the executor of the policies of the Board of Directors and decisions of the director. The Office of Protection is also responsible for examining requests for protection.<sup>320</sup>

144. As established in Decree 70-96, in order to access protection services, a request must be sent to a program official and information provided on the case. The information is analyzed through a review carried out by the Office of Protection that must take into account in its analysis, among other things: whether the risk to which the petitioner is exposed is reasonably certain; the seriousness of the punishable act and its “social transcendence;” the evidentiary value of the statement accusing the participants in the criminal act, both the direct perpetrators and the masterminds; the possibility of obtaining the offered information through other means; the options for granting the protection provided for by law; and the risks that said protection could present to the society or community in which the beneficiary resides. The measures granted by the protection service include the protection of

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<sup>315</sup> IFEX/ Centro de Reportes Informativos sobre Guatemala (CERIGUA). May 7, 2013. [El futuro para un programa de protección a periodistas en Guatemala](#); Commitment adopted by the Guatemalan Government through the President of the Republic of Guatemala before the departmental journalism associations and the news agency Cerigua, Centro de Reportes Informativos sobre Guatemala. May 3, 2013. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>316</sup> Terra. August 22, 2013. [Guatemala suscribirá acuerdo de protección a periodistas de ONU](#); El Periódico. August 22, 2013. [Guatemala suscribirá acuerdo de protección a periodistas de ONU](#); El País. August 20, 2013. [Guatemala busca proteger a los periodistas tras cuatro asesinatos](#); Yahoo!. August 21, 2013. [Firma Guatemala con aval de ONU acuerdo para proteger a periodistas](#).

<sup>317</sup> Communication of the Permanent Mission of Guatemala to the OAS. M12-OEA-F.9.2.1 No. 463-2013. April 22, 2013, that submits a communication of the Presidential Commission of Human Rights [*Comisión Presidencial de Derechos Humanos (COPREDEH)*] Ref. P-150-2013/AFAF/MR/hm. March 4, 2013.

<sup>318</sup> Communication of the Permanent Mission of Guatemala to the OAS. M12-OEA-F.9.2.1 No. 463-2013. April 22, 2013, that submits a communication of the Presidential Commission of Human Rights [*Comisión Presidencial de Derechos Humanos (COPREDEH)*] Ref. P-150-2013/AFAF/MR/hm. March 4, 2013.

<sup>319</sup> Estado de Guatemala. [Decreto número 70-96](#). August 27, 1996. Articles 1 and 2.

<sup>320</sup> Estado de Guatemala. [Decreto número 70-96](#). August 27, 1996. Artículos 3 to 7.

beneficiaries using security personnel; change of residence that could include housing, transportation and living expenses; protection of security personnel at the place of residence and/or the workplace of the beneficiaries; change of identity; and other benefits. The measures can be lifted at the conclusion of the term granted if the circumstances of risk on which the protection was based have disappeared, or should the beneficiary fail to comply with the conditions or obligations established in the agreement signed with the director of the Board of Directors.<sup>321</sup>

145. Likewise, the Guatemalan State reported on the existence of the Coordinating Unit for the Protection of Human Rights Defenders, Administrators and Operators of Justice, Journalists and Social Communicators. The unit was created in 2004, became a Department in 2008, and currently has the status of Directorate. The agency is responsible for “coordinating the executive branch institutions in charge of granting and implementing protective measures for individuals who request precautionary, provisional and security measures before the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, the Rapporteurs of the Universal System [...], or national mechanisms. Its purpose is to guarantee effective compliance.”<sup>322</sup>

146. In addition, the State indicated that the agency has been needed “for the protection of journalists in 48 cases.” Of these cases, 83% were in response to calls from the Rapporteurs of the United Nation system and 16% to precautionary or provisional measures granted by the Inter-American System. According to the State, only one of the cases had to do with a request under the national system for protection.<sup>323</sup> Indeed, the State reported that:

The experience of protecting journalists and social communicators, as well as the degree to which they have accepted the mechanisms, is reflected in the fact that in three cases, personal protection or bodyguard services have been adopted (6% of cases), while in nine cases, perimeter protection was accepted (representing 18%), and finally, in 37 cases (76%) journalists and social communicators did not feel any of the arrangements would be worthwhile.<sup>324</sup>

147. The State added that the high percentage of journalists who refuse any protection arrangements “continues to be a challenge for the State of Guatemala, and from there the need to create a protection program that allows for other security arrangements to be offered in accordance with and without limiting the activity or role petitioners play.”<sup>325</sup>

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<sup>321</sup> Estado de Guatemala. [Decreto número 70-96](#). August 27, 1996. Artículos 8 to 11.

<sup>322</sup> Communication of the Permanent Mission of Guatemala to the OAS. M12-OEA-F.9.2.1 No. 463-2013. April 22, 2013, that submits a communication of the Presidential Commission of Human Rights [*Comisión Presidencial de Derechos Humanos (COPREDEH)*] Ref. P-150-2013/AFAF/MR/hm. March 4, 2013.

<sup>323</sup> Communication of the Permanent Mission of Guatemala to the OAS. M12-OEA-F.9.2.1 No. 463-2013. April 22, 2013, that submits a communication of the Presidential Commission of Human Rights [*Comisión Presidencial de Derechos Humanos (COPREDEH)*] Ref. P-150-2013/AFAF/MR/hm. March 4, 2013.

<sup>324</sup> Communication of the Permanent Mission of Guatemala to the OAS. M12-OEA-F.9.2.1 No. 463-2013. April 22, 2013, that submits a communication of the Presidential Commission of Human Rights [*Comisión Presidencial de Derechos Humanos (COPREDEH)*] Ref. P-150-2013/AFAF/MR/hm. March 4, 2013.

<sup>325</sup> Communication of the Permanent Mission of Guatemala to the OAS. M12-OEA-F.9.2.1 No. 463-2013. April 22, 2013, that submits a communication of the Presidential Commission of Human Rights [*Comisión Presidencial de Derechos Humanos (COPREDEH)*] Ref. P-150-2013/AFAF/MR/hm. March 4, 2013.



148. In a December 18, 2013 communication, the State provided updated information on the measures taken for the creation of a program for the protection of journalists. The State reported that President Otto Pérez Molina, together with Vice President Ingrid Baldetti Elias, presented the “Plan for the Protection of Journalists.” The State reported that the Plan has “a structure for coordination among the Ministry of Interior, the Office of the Press Secretary of the President (SCSPR), the Public Ministry (MP), the Presidential Human Rights Commission (COPREDEH), the Office of the Public Prosecutor for Human Rights (PDH), and organizations of journalists, which will be headed by the Office of the Press Secretary of the President of the Republic.” It further reported that the Plan would take account of “the recommendations of the United Nations Organization for Education, Science and Culture (UNESCO).”<sup>326</sup> In that communication, the State also provided a copy of the document entitled “Program Proposal for the Protection of Journalists” dated November 28, 2013, which proposes, among other things, general provisions on the organization of the program, the bodies it would include, the process for requesting protection, the protection measures that could be taken, and ways of funding the program.<sup>327</sup>

149. The Office of the Special Rapporteur takes note of the information provided by the State with regard to the existence of a Service to Protect People Involved in Legal Proceedings and Individuals Connected to the Administration of Criminal Justice and the existence of a Coordinating Unit for the Protection of Human Rights Defenders, Administrators and Operators of Justice, Journalists and Social Communicators. However, as was indicated by the State, 99% of requests for protection received have to do with international mechanisms, with only 1% brought under domestic protection programs. Likewise, the Office of the Special Rapporteur notes that the programs for the protection of witnesses and individuals connected with the administration of criminal justice are generally not adequate for guaranteeing effective protection to at-risk journalists due to their professional activities, especially with regard to their specific needs to continue exercising their professions. In this sense, the Office of the Special Rapporteur reiterates that the standards under which potential beneficiaries of specialized programs for the protection of journalists or human rights defenders may obtain protection - that is, in the event of threats or acts of violence connected to these individuals professional activities - should not be confused with the standards applied to programs for the protection of witnesses and victims.<sup>328</sup>

150. On the other hand, the Office of the Special Rapporteur notes with satisfaction the State’s recognition of the need to adopt a specialized program for the protection of at-risk journalists and social communicators. The Office of the Special Rapporteur reiterates that it is important for the protection program to be set up pursuant to international parameters, like the ones mentioned in this report, and through consultation with civil society and journalist and media worker organizations, which must also be guaranteed participation in the implementation and operation of said program. The Office of the Special Rapporteur reiterates that it is important for the programs for the protection of journalists

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<sup>326</sup> Communication of the State of Guatemala to the Inter-American Commission of Human Rights. Oficio M12-OEA-F.2.4.2.1 No. 1230-2013. December 24, 2013. “Informe del Estado de Guatemala a Relatora Especial sobre Libertad de Expresión de la Comisión Interamericana de Derechos Humanos, Organización de Estados Americanos.” Ref. P-100-2013/AFAF/hm. December 18, 2013.

<sup>327</sup> Communication of the State of Guatemala to the Inter-American Commission of Human Rights. Oficio M12-OEA-F.2.4.2.1 No. 1230-2013. December 24, 2013. “Informe del Estado de Guatemala a Relatora Especial sobre Libertad de Expresión de la Comisión Interamericana de Derechos Humanos, Organización de Estados Americanos.” Ref. P-100-2013/AFAF/hm. December 18, 2013. Secretaría de Comunicación Social de la Presidencia. November 28, 2013. *Propuesta de Programa de Protección al Periodista*.

<sup>328</sup> IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 498-504.

to take into account the need to guarantee that communicators are able to continue to perform their professional activities and to guarantee their right to freedom of expression when designing the measures of protection available, taking into account the circumstances in each specific case and in consultation with the potential beneficiaries.

## Honduras

151. The State of Honduras has expressed its intention to create a mechanism to protect at-risk journalists. Following its *in loco* visit in 2010, the IACHR concluded that “the State needs to adopt permanent mechanisms of protection in order to guarantee the life and integrity of at-risk communicators.”<sup>329</sup> Regarding this, in communication dated February 22, 2013, the Honduran State reported that “the bill titled ‘Law for the Protection of Human Rights Defenders, Journalists, Social Communicators and Justice Operators’ is being moved forward.” The State reported that the bill was “a broad process of consultation and validation at the national level,” and includes the participation of civil society organizations, bar associations, journalism associations, and State human rights organizations. Likewise, the State provided information on the passage of the National Plan for the Protection of human rights defenders, journalists, social communicators and justice operators. The Honduran State indicated that the plan “is undergoing the socialization process.”<sup>330</sup>

152. On July 11, 2013, the government of Honduras announced in a press release that the draft bill for the Law for Human Rights Defenders, Journalists, Social Communicators and Justice Operators was ready and in the process of looking for funds. For this, the Secretariat of Justice and Human Rights would be working with the Secretariat of the Treasury “to identify and assign the budget line item necessary for the Law to be passed by the National Congress of the Republic.”<sup>331</sup>

153. On October 28, 2013, at a hearing held during the IACHR’s 149 Period of Sessions, the State of Honduras provided as additional information the Draft Bill for the Protection of Human Rights Defenders, Journalists, Media Workers, and Legal Practitioners.<sup>332</sup>

154. On that occasion, the State reported that the Draft Bill provides for the creation of a National Protection Council attached to the Office of the Secretary of State for Justice and Human Rights. According to the State, “[t]he Council is an executive, deliberative, and advisory body to guarantee and enforce the rights enshrined in the Protection Law [...] and to advise the Office of the President of the Republic on matters concerning the protection of the groups enumerated in the law,”

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<sup>329</sup> IACHR. [Preliminary Observations of the IACHR on its Visit to Honduras, May 15 to 18, 2010](#). OEA/SER.L/V/II. Doc. 68. June 3, 2010. Para. 26.

<sup>330</sup> IACHR. [Annual Report 2012. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. Para. 299.

<sup>331</sup> Estado de Honduras. Secretaría de Justicia y Derechos Humanos. July 11, 2013. [Mecanismo de Protección a Defensores de Derechos Humanos, Periodistas, Comunicadores y Operadores de Justicia permitirá dar seguimiento a denuncias de amenazas](#); Proceso Digital. July 11, 2013. [Decreto para protección de periodistas está listo, pero no hay fondos reitera Justicia y Derechos Humanos](#); La Tribuna. August 9, 2012. [Lobo anuncia medidas para proteger a periodistas hondureños](#); El Heraldo. July 10, 2013. [Buscan fondos para proteger periodistas](#).

<sup>332</sup> IACHR. 149<sup>th</sup> Period of Sessions. Hearing on the implementation of precautionary measures in Honduras. October 28, 2013. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=132>

which would include journalists.<sup>333</sup> The Draft Bill establishes that the Council will be comprised by representatives of State institutions and civil society organizations.<sup>334</sup> It also stipulates that trade associations representing individual beneficiaries will be able to request to participate as observers to the National Council.<sup>335</sup> According to the information received, the National Council's powers will include: handling risk reports filed before the Office of the Secretary of State for Security or the Office of the Secretary of State for Justice and Human Rights; promoting or directing the design and implementation of instructions, public policies, and programs to guarantee and enforce the rights enshrined in the law; examining and debating the national context of the human rights situation in the country and making recommendations; and proposing new prevention, protection, and urgent protection measures that guarantee the life, integrity, freedom, and safety of persons at risk, among other things, for exercising their right to freedom of expression.<sup>336</sup>

155. According to the information received, the Draft Bill also stipulates that the Office of Protection Mechanisms for Human Rights Defenders, Journalists, Media Workers, and Legal Practitioners, which is within the organizational structure of the Office of the Secretary of State for Justice and Human Rights, will be the body responsible for "handling complaints of risk to the beneficiaries of this law, and the instructions and policies issued by the National Protection Council."<sup>337</sup> Accordingly, the Draft Bill provides that the Office of Protection Mechanisms will have three auxiliary units. The first one will be the Case Intake, Risk Assessment, and Immediate Response Unit. This unit will be in charge of receiving complaints involving situations of risk, examining and assessing the reported risk, recommending the adoption of protection measures, and identifying the urgent cases that will be dealt with through the extraordinary procedure.<sup>338</sup> The second unit will be the Prevention, Monitoring, and Analysis Unit, which will be responsible for ordering measures for the prevention of risks to individual beneficiaries, monitoring the protection measures implemented, and ordering any necessary

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<sup>333</sup> Estado de Honduras. Report on progress regarding the implementation of the National Plan for the Protection of Human Rights Defenders, Journalists, Media Workers and Judicial Operators. October 23, 2013. P. 8. Information submitted by the State during the Hearing on the implementation of precautionary measures in Honduras, during the 149<sup>th</sup> Period of Sessions of IACHR.

<sup>334</sup> According to Article 17 of the Draft Bill for the Protection of Human Rights Defenders, Journalists, Media Workers, and Legal Practitioners, the National Protection Council will be composed of representatives from: the Office of the Secretary of State for Justice and Human Rights; the Office of the Secretary of State for Security; the Office of the Secretary of State for Foreign Affairs; the Office of the National Human Rights Commissioner; the Public Ministry; the Office of the Attorney General of the Republic; the Judiciary; the Honduran Bar Association; the Honduran Association of Journalists; and by five representatives of civil society organizations. Draft Bill for the Protection of Human Rights Defenders, Journalists, Media Workers, and Judicial Operators. Article 17. Information provided by the State at the Hearing on the Implementation of precautionary measures in Honduras, during the 149 Period of Sessions of the IACHR.

<sup>335</sup> Draft Bill for the Protection of Human Rights Defenders, Journalists, Media Workers, and Judicial Operators. Article 18. Information provided by the State at the Hearing on the Implementation of precautionary measures in Honduras, during the 149 Period of Sessions of the IACHR.

<sup>336</sup> Draft Bill for the Protection of Human Rights Defenders, Journalists, Media Workers, and Judicial Operators. Article 21. Information provided by the State at the Hearing on the Implementation of precautionary measures in Honduras, during the 149 Period of Sessions of the IACHR.

<sup>337</sup> Draft Bill for the Protection of Human Rights Defenders, Journalists, Media Workers, and Judicial Operators. Article 25. Information provided by the State at the Hearing on the Implementation of precautionary measures in Honduras, during the 149 Period of Sessions of the IACHR.

<sup>338</sup> Draft Bill for the Protection of Human Rights Defenders, Journalists, Media Workers, and Judicial Operators. Article 31. Information provided by the State at the Hearing on the Implementation of precautionary measures in Honduras, during the 149 Period of Sessions of the IACHR.

corrective measures.<sup>339</sup> The last unit will be the Unit for the Protection of At-Risk Individuals, which will be attached to the Office of the Secretary of State for Security, and will operate as a specialized technical body to implement preventive, protective, and urgent protection measures. Therefore, the Draft Bill provides that this unit will have its own security personnel in charge of implementing the measures.<sup>340</sup>

156. According to the information received, the Draft Bill contains various preventive and protective measures that will be implemented according to the risk faced by the beneficiary. In this regard, in situations of “moderate risk,” the available measures will include: special instructions with personal security measures adapted to the situation at hand; self-defense courses; a telephone hotline; the appointment of a liaison in the security corps assigned to provide protection to the individual beneficiaries; and regular monitoring by the General Office of Protection Mechanisms.<sup>341</sup> In cases of “serious risk,” the measures will include: the assignment of cellular, radio, or satellite telephone equipment; the installation of cameras, locks, lights, and other devices at residences; the assignment of bulletproof vests; the installation of metal detectors; ongoing monitoring of the situation of risk and the measures taken, in coordination with the Office of the Secretary of State for Security; the assignment of personal police protection; and, the assignment of police protection at specific properties.<sup>342</sup> Finally, in cases of “serious risk,” the available measures will include: immediate evacuation; temporary or permanent relocation in-country or abroad; the assignment of armored vehicles for ongoing or temporary travel; the assignment of bodyguards from specialized corps; the assignment of bodyguards for personal protection; and the assignment of police protection at specific properties, in qualified cases. The Draft Bill also provides that, “to the extent possible, the protection measures shall not restrict the normal activities of the beneficiaries or involve unwanted monitoring or intrusions in their personal or professional lives.”<sup>343</sup>

157. Finally, with respect to the budget, the Draft Bill instructs the Office of the Secretary of State for Finance to “progressively, according to budgetary availability, allocate the necessary funds from the General Budget of the Republic for the Office of the Secretary of State for Security and for the Office the Secretary of State for Justice and Human Rights, each one within its respective mandate, to timely implement this law.”<sup>344</sup> It further provides that the Office of the Secretary of State for Justice and

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<sup>339</sup> Draft Bill for the Protection of Human Rights Defenders, Journalists, Media Workers, and Judicial Operators. Article 34. Information provided by the State at the Hearing on the Implementation of precautionary measures in Honduras, during the 149 Period of Sessions of the IACHR.

<sup>340</sup> Draft Bill for the Protection of Human Rights Defenders, Journalists, Media Workers, and Judicial Operators. Articles 36 and 37. Information provided by the State at the Hearing on the Implementation of precautionary measures in Honduras, during the 149 Period of Sessions of the IACHR.

<sup>341</sup> Draft Bill for the Protection of Human Rights Defenders, Journalists, Media Workers, and Judicial Operators. Article 45. Information provided by the State at the Hearing on the Implementation of precautionary measures in Honduras, during the 149 Period of Sessions of the IACHR.

<sup>342</sup> Draft Bill for the Protection of Human Rights Defenders, Journalists, Media Workers, and Judicial Operators. Article 46. Information provided by the State at the Hearing on the Implementation of precautionary measures in Honduras, during the 149 Period of Sessions of the IACHR.

<sup>343</sup> Draft Bill for the Protection of Human Rights Defenders, Journalists, Media Workers, and Judicial Operators. Article 47. Information provided by the State at the Hearing on the Implementation of precautionary measures in Honduras, during the 149 Period of Sessions of the IACHR.

<sup>344</sup> Draft Bill for the Protection of Human Rights Defenders, Journalists, Media Workers, and Judicial Operators. Article 67. Information provided by the State at the Hearing on the Implementation of precautionary measures in Honduras, during the 149 Period of Sessions of the IACHR.

Human Rights and the Office of the Secretary of State for Security may have additional funds, for example, through contributions made by institution, donations, and national and international cooperation agencies.<sup>345</sup>

158. The State reported that the Draft Bill was introduced to the Congress of the Republic on August 28, 2013 for debate and approval.<sup>346</sup> As of the closing of this report, the Draft Bill was at the initial processing stage. Different organizations of civil society made important observations to the draft bill at the hearing entitled “Implementation of precautionary measures in Honduras,” held during the 149 Period of Sessions of the IACHR, especially with regard to its reference to the participation of social organizations in the protection mechanism, its institutional design, and the indiscriminate treatment in the Draft Bill of the people subject to protection.<sup>347</sup>

159. In its reports, the IACHR has urged the Honduran State to establish protective mechanisms aimed at guaranteeing the safety of individuals who are threatened due to their activity as journalists. In that sense, the Office of the Special Rapporteur notes with satisfaction the progress made with the creation of this mechanism and reiterates to the State that it is important for the protection program to be established as quickly as possible. Likewise, in order for the protection program be properly implemented, it must have the funding and personnel necessary to operate. The Office of the Special Rapporteur also reiterates that it is important for the programs for the protection of journalists to take into account the need to guarantee that communicators are able to continue to perform their professional activities and to guarantee their right to freedom of expression when designing the protection measures available, taking into account the circumstances in each specific case and in consultation with the potential beneficiaries.

### **C. The obligation to criminally investigate, prosecute and punish**

160. The third and final component of a comprehensive State policy to address violence against journalists is the investigation, prosecution and punishment of those who perpetrate such violence. The Office of the Special Rapporteur has repeatedly called on States to “[c]arry out serious, impartial, and effective investigations of the murders, attacks, threats, and acts of intimidation committed against journalists and media workers.”<sup>348</sup> The Inter-American Court has observed that

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<sup>345</sup> Draft Bill for the Protection of Human Rights Defenders, Journalists, Media Workers, and Judicial Operators. Article 68. Information provided by the State at the Hearing on the Implementation of precautionary measures in Honduras, during the 149 Period of Sessions of the IACHR.

<sup>346</sup> State of Honduras. Report on progress regarding the implementation of the National Plan for the Protection of Human Rights Defenders, Journalists, Media Workers and Judicial Operators. October 23, 2013. P. 10. Information submitted by the State during the Hearing on the implementation of precautionary measures in Honduras, during the 149 Period of Sessions of IACHR.

<sup>347</sup> IACHR. 149 Period of Sessions. Hearing on the implementation of precautionary measures in Honduras. October 28, 2013. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=132>

<sup>348</sup> IACHR. [Annual Report 2012. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter V (Conclusions and Recommendations). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. Para. 4, letter c). *See also*, IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter VII (Conclusions and Recommendations). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 4, letter a); IACHR. [Annual Report 2010. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter VI (Conclusions and Recommendations). OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 4, letter a); IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter V (Conclusions and Recommendations). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 4, letter c).

impunity<sup>349</sup>—the total lack of investigation, prosecution, arrest, trial and conviction of those responsible—fosters the chronic repetition of human rights violations and the total defenselessness of victims and their relatives, and the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has stated that impunity is “widely recognized as one of the main causes of the continued killing of journalists.”<sup>350</sup> In the same way, the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression has found that impunity constitutes a fundamental obstacle to the protection of the lives and personal integrity of journalists, “as it emboldens perpetrators as well as would-be perpetrators to attack journalists with no legal consequences”.<sup>351</sup>

161. Both the Commission and the Court have referred to the chilling effect of crimes against journalists on the willingness of other media professionals as well as ordinary citizens to expose abuses of power and illicit acts of all kinds.<sup>352</sup> Such a chilling effect can only be avoided, the Commission has observed, “by swift action on the part of the State to punish all perpetrators, as is its duty under international and domestic law.”<sup>353</sup>

162. This section lays out international standards and best practices with regard to the investigation, prosecution and punishment of perpetrators of acts of violence against journalists and media workers.

163. The obligation of States to investigate cases of human rights violations arises from this general obligation to guarantee the rights established in Article 1.1, 8 and 25 of the American Convention and Article XVIII and XXVI of the American Declaration, together with the substantive right that must be protected or ensured. In light of this duty, authorities must investigate conduct affecting the enjoyment of the rights protected under inter-American human rights law. This investigation must be carried out, without delay, by all available legal means with the aim of determining the truth and

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<sup>349</sup> I/A Court H.R. *Case of Ivcher-Bronstein v. Perú. Merits, Reparations, and Costs*. Judgment of February 6, 2001. Series C No. 74. Para. 186; I/A Court H.R. *Case of Constitutional Court v. Peru. Merits, Reparations, and Costs* Judgment of January 31, 2001. Series C No. 71. Para. 123; I/A Court H.R. *Case of Bámaca Velásquez v. Guatemala. Merits*. Judgment of November 25, 2000. Series C No. 70. Para. 211.

<sup>350</sup> I/A Court H.R. *Case of Bámaca Velásquez v. Guatemala. Merits*. Judgment of November 25, 2000. Series C No. 70. Para. 211; United Nations. General Assembly. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns. A/HRC/20/22. April 10, 2012. Para. 43. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96)

<sup>351</sup> United Nations. General Assembly. Report of the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/20/17. June 4, 2012. Para. 54. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>352</sup> I/A Court H.R. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248. Para. 148. IACHR. Report No. 136/10. Case 12.658. Luis Gonzalo “Richard” Vélez Restrepo and Family. (Colombia). October 23, 2010. Para. 136; IACHR. Report No. 50/99. Case 11.739. Héctor Félix Miranda (Mexico). April 13, 1999. Para. 52; IACHR. Report No. 130/99. Case No. 11.740. Víctor Manuel Oropeza (Mexico). November 19, 1999, para.58. *See Also*, IACHR. [Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 716.

<sup>353</sup> IACHR. Report No. 136/10. Case 12.658. Luis Gonzalo “Richard” Vélez Restrepo and Family. (Colombia). October 23, 2010. Para. 136; IACHR. Report No. 50/99. Case 11.739. Héctor Félix Miranda (Mexico). April 13, 1999. Para. 52; IACHR. Report No. 130/99. Case No. 11.740. Víctor Manuel Oropeza (Mexico). November 19, 1999. Para. 58. *See also*, IACHR. [Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 716. *See also*, I/A Court H.R. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248. Para. 212.

ensuring the identification, prosecution and punishment of the perpetrators. During the investigation procedure and the judicial proceedings, the victims of the human rights violations, or their next-of-kin, should have extensive opportunities to participate and be heard, both in the clarification of the facts and the punishment of those responsible, as well as in seeking fair compensation. However, the investigation should be carried out by the State as an inherent juridical obligation and not merely as a reaction to private interests.<sup>354</sup>

164. The duty of States to investigate conduct affecting the enjoyment of human rights exists irrespective of the agent to which the violation may eventually be attributed. In those cases where conduct is attributed to private individuals (non-state actors), the lack of a serious investigation with the characteristics described can compromise the international responsibility of the State.<sup>355</sup> This is particularly relevant with regard to acts of violence against journalists, considering that nowadays some of the most serious crimes are committed by non-state actors. Such crimes are often carried out by sophisticated and powerful criminal networks in which the direct perpetrator of a crime acts in conjunction with others and at the behest of the organization's leaders.

165. That said, when the crime has been committed by State actors or with the acquiescence or complicity of the State, the State is directly responsible for the violence.

166. States have the obligation to investigate, identify, prosecute and punish all perpetrators of such crimes, including those who carry out the crime, the masterminds, accomplices, collaborators, and those who cover up the human rights violations committed. They must also investigate the structures involved in the execution of the crimes or the criminal structures to which the perpetrators belong.<sup>356</sup>

167. To the Inter-American Court the failure to comply with the obligation to investigate acts of violence against a journalist violates the duty to respect and ensure the right to freedom of thought and expression.<sup>357</sup>

168. Unfortunately, it is unusual in the Americas for the whole range of individuals involved in the murder of a journalist to be brought to trial.<sup>358</sup> As mentioned previously, in its Special Study on

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<sup>354</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 33-34; IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II Doc. 57. December 31, 2009. Para. 45; I/A Court H.R. *Case of the Mapiripán Massacre v. Colombia. Merits, Reparations and Costs*. Judgment of September 15, 2005, Series C No. 134. Para. 219; I/A Court H.R. *Case of the Moiwana Community v. Surinam. Preliminary Objections, Merits, Reparations and Costs*. Judgment of June 15, 2005. Series C No. 124. Para. 147; I/A Court H.R. *Hermanas Serrano Cruz Sisters v. El Salvador. Merits, Reparations and Costs*. Judgment of March 1, 2005, Series C No. 120. Para. 63.

<sup>355</sup> I/A Court H.R. *Case of González et al. ("Cotton Field") v. México. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 16, 2009. Series C No. 205. Para. 291; *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006, Series C No. 140. Para. 145; *Case of Kawas Fernández v. Honduras. Merits, Reparations and Costs*. Judgment of April 3, 2009. Series C No. 196. Para. 78.

<sup>356</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 40.

<sup>357</sup> See also, I/A Court H.R. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248. Para. 215.

the Status of Investigations into the Murder of Journalists, the Office of the Special Rapporteur found that from 1995 to 2005, 157 journalists and media workers were murdered for reasons possibly related to their work in journalism.<sup>359</sup> In the vast majority of these cases, investigations have not been completed and in the majority of the cases, the masterminds were not identified.<sup>360</sup> A conviction of any kind was handed down in only 32 out of the 157 cases and only in four cases were the masterminds convicted.<sup>361</sup> In other cases of attacks that are not as serious as murders or disappearances, the probability of a trial and conviction of those responsible is much lower.

169. Explanations for the generalized impunity seen in cases of violence against journalists vary. In some cases, it is possible to point to deficiencies in the law, such as amnesty laws or the disproportionate granting of leniency. There may also be institutional failings, such as a lack of technical capacity, adequate resources and specialized personnel in investigative bodies.<sup>362</sup> The majority of the countries in the region have not put special protocols in place requiring authorities to exhaust the line of investigation regarding the exercise of the profession in cases of crimes committed against journalists. This presents an obstacle to the criminal prosecution of these crimes and is a special factor in the impunity of masterminds.<sup>363</sup> Delays, omissions and failures in the timely and adequate carrying out of evidence procedures, especially with regard to initial investigative steps - such as crime scene analysis, the examination of the *corpus delicti* and the collection of statements from witnesses - are elements that can considerably contribute to impunity in particular cases.<sup>364</sup> Likewise, another fundamental factor in many cases is the lack of independence and impartiality of the authorities responsible for pursuing the investigations and corresponding legal proceedings. This phenomenon is especially concerning in cases in which the security forces or local state authorities are suspected to have participated in the crimes committed.

170. However, the complexity of this phenomenon suggests that other factors may also come into play, including a lack of political will to launch effective investigations or even the existence of

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<sup>358</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 125-126.

<sup>359</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 139.

<sup>360</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 96 and 127.

<sup>361</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 120 and 125 (footnote 160).

<sup>362</sup> IACHR. [Annual Report 2008. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (A Hemispheric Agenda for the Defense of Freedom of Expression). OEA/Ser.L/V/II.134 Doc. 5 rev. 1. February 25, 2009. Para. 49.

<sup>363</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. 109-113.

<sup>364</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Paras 98-108 and 115.



a culture of intolerance toward criticism, or the tacit acceptance of the crimes committed, especially in cases in which the violence is committed against journalists who expose corruption among state authorities.<sup>365</sup> Particularly, impunity in the context of crimes committed against journalists critical of local governments can be aggravated through pressure applied by authorities to the justice system, as well as through the corruption of that system. Thus, a lack of cooperation and coordination between local and national agencies that pursue criminal prosecutions can present an additional obstacle to obtaining justice in these cases.<sup>366</sup>

171. Finally, there are other considerably relevant social factors that cannot be ignored and that have to do with the existence of powerful criminal groups that, in some places, may seriously weaken the State's capacity to defend, guarantee and promote human rights.<sup>367</sup> No doubt, in areas with a strong organized crime presence, another important factor is the wrongful influence exercised over the judicial system through intimidation, and in some cases the complicity of police officers, prosecutors and judges, as well as witnesses and civilian parties.<sup>368</sup> In that sense, the lack of protective measures and adequate investigation into attacks on or even murders of witnesses, individuals linked to the investigation or the alleged perpetrators presents a significant obstacle to establishing the facts and the possibility of criminally prosecuting those responsible.<sup>369</sup> Given this situation, many journalists choose not to file complaints over the threats and attacks against them, perpetuating the cycle of impunity.<sup>370</sup>

172. Nevertheless, there are examples of successful trials from which it is possible to draw some important lessons. One of those is the legal proceeding carried out following the murder of Brazilian journalist Tim Lopes in June of 2002. Lopes, an investigative reporter with *TV Globo* in Rio de Janeiro, was seized, tortured and killed when he was discovered using a hidden camera to document the sexual exploitation of minors by drug trafficking organizations who organized "funk" dance parties in the community of Vila Cruzeiro, in Rio's *Complexo do Alemão*.<sup>371</sup> Over the following three years, a total of seven people were captured, convicted and sentenced for Lopes' murder, including all those accused as

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<sup>365</sup> IACHR. [Annual Report 2008. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (A Hemispheric Agenda for the Defense of Freedom of Expression). OEA/Ser.L/V/II.134 Doc. 5 rev. 1. February 25, 2009. Para. 49.

<sup>366</sup> United Nations. General Assembly. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns. A/HRC/20/22. April 10, 2012. Para. 73. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96)

<sup>367</sup> IACHR. [Annual Report 2008. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (A Hemispheric Agenda for the Defense of Freedom of Expression). OEA/Ser.L/V/II.134 Doc. 5 rev. 1. February 25, 2009. Para. 49.

<sup>368</sup> United Nations. General Assembly. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns. A/HRC/20/22. April 10, 2012. Para. 73. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96)

<sup>369</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 117 and 118.

<sup>370</sup> United Nations. General Assembly. Report of the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/20/17. June 4, 2012. Para. 66. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>371</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression.. June 6, 2002. [Press Release 58/02. Rapporteur for Freedom of Expression Gravely Concerned regarding Disappearance of Journalist in Brazil](#); Proyecto Impunidad. June 2, 2002. [Muerte de Tim Lopes denuncia el poder de los traficantes](#); Committee to Protect Journalists (CPJ). [Tim Lopes](#).

the direct perpetrators and as the crime's mastermind.<sup>372</sup> The success of the prosecution effort in this case can be attributed to various factors, among them, the role of the media itself. Though Lopes tended to operate behind the camera and was therefore little known by the public prior to his death, the *Globo* network used its television, radio and newspaper outlets throughout the country to launch an "Enemies of Rio" campaign drawing attention to the murder and calling for justice. The media publicized the government's anonymous tip hotline and the reward offered for information on the whereabouts of the presumed mastermind, drug lord Elias Pereira da Silva. The Journalists' Union of Rio de Janeiro and the Associação Brasileira de Imprensa organized public events to press the authorities to resolve the crime, while Lopes' colleagues at *TV Globo* closed an edition of the network's leading news program, 'Jornal Nacional', dressed in black and applauding in recognition of Lopes.<sup>373</sup> These actions combined to assert strong and sustained pressure on the authorities to bring Lopes' killers to justice.

173. Days after Lopes' murder, the police arrested Angelo Ferreira da Silva in connection with the crime. He admitted to helping transport Lopes from the place where he was seized to the location of Elias Pereira da Silva, and he began helping the authorities identify the remaining participants in the murder. Three months later, Pereira da Silva was captured. In all, seven suspects were eventually detained, tried and convicted of sentences ranging from 23 years (in the case of the five direct perpetrators) to 28 years in prison (in the case of the mastermind, Elias Pereira da Silva), while Ferreira da Silva, the last suspect to be tried, received a much reduced sentence of nine years in prison in return for his cooperation.<sup>374</sup> Two of those convicted later escaped after being released on parole, eliciting criticism from press freedom groups, but they were both later recaptured.<sup>375</sup> On the tenth anniversary of Tim Lopes' death, *Globo* published an article headlined "Death of Tim Lopes marks 10 years with all seven accused in jail."<sup>376</sup>

174. The Tim Lopes case demonstrates that journalists' murders can be solved, even when they are committed by powerful actors of organized crime. A series of factors - including constant attention from the press, energetic action on the part of civil society, the assigning of the case to independent judges and prosecutors with the right technical training, and the intelligent use of incentives on the part of authorities - ensured that in this case, the murderers were brought to justice. The remainder of this section will examine a variety of State actions that are crucial for effectively investigating, trying and punishing those who commit acts of violence against journalists.

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<sup>372</sup> Reporters Without Borders. October 24, 2005. [Last suspect in Tim Lopes Murder gets nine-year prison sentence](#); Abrajil. June 15, 2005. [Homem que torturou Tim Lopes é condenado a 23 anos de prisão](#).

<sup>373</sup> Proyecto Impunidad. June 2, 2002. [Muerte de Tim Lopes denuncia el poder de los traficantes](#).

<sup>374</sup> Reporters Without Borders. October 24, 2005. [Last suspect in Tim Lopes Murder gets nine-year prison sentence](#); Committee to Protect Journalists (CPJ). [Tim Lopes](#); G1. May 31, 2012. [Morte de Tim Lopes faz 10 anos com todos os sete acusados presos](#).

<sup>375</sup> Knight Center for Journalism in the Americas. November 29, 2010. [Brazilian police arrest drug trafficker convicted of killing journalist Tim Lopes in 2002](#); Knight Center for Journalism in the Americas. May 25, 2010. [Another convicted killer of Brazilian journalist flees prison through the front gate](#).

<sup>376</sup> G1. May 31, 2012. [Morte de Tim Lopes faz 10 anos com todos os sete acusados presos](#).

## 1. The obligation to adopt an adequate institutional framework for the effective investigation, prosecution and punishment of violence against journalists

175. The existence of an adequate institutional framework with sufficient resources is crucial to a State's ability to investigate, prosecute and punish crimes against journalists. States have the obligation to guarantee that institutional frameworks are not designed so as to lead to or even promote impunity when these crimes take place.<sup>377</sup> Likewise, states must ensure that the agencies responsible for investigating, trying and punishing those responsible for these crimes work under the conditions necessary to do their jobs.

176. The first determining factor for complying with this obligation is assigning the responsibility to investigate and try these crimes to those authorities that will best be able to resolve them and are autonomous and independent to act. States must ensure not only the hierarchical and institutional independence of the authorities responsible for moving the investigations and judicial proceedings forward, but also that their independence can be verified in practice in the case in question.<sup>378</sup> The State must ensure that the judges and prosecutors with authority to act in cases of violence against journalists can operate without being subjected to influence by the public official or criminal organization allegedly involved in the crime, given the existence of indications that said persons participated in the act of violence. Should the investigation and criminal prosecution agencies be acting within such a sphere of influence, the State has the duty to provide them with sufficient capacity to resist it.

177. Along these lines, the United Nations (UN) Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, the Organization for Security and Cooperation in Europe's (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 determined that the investigation of a crime committed against freedom of expression 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. 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

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<sup>377</sup> United Nations. General Assembly. Report of the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/20/17. June 4, 2012. Para. 57. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>378</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 58, citing I/A Court H. R. *Case of Baldeón-García v. Peru. Merits, Reparations and Costs*. Judgment of April 6, 2006. Series C No. 147. Para. 95; United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 25, 2012. [Joint Declaration on Crimes Against Freedom of Expression](#); European Court of Human Rights. *Case of Adali v. Turkey*. Application no. 38187/97. Judgment of March 31, 2005. Para. 222. "This means not only a lack of hierarchical or institutional connection but also a practical independence (see, for example, *Ergi v. Turkey*, judgment of July 28, 1998, Reports 1998-IV, §§ 83-84, where the public prosecutor investigating the death of a girl during an alleged clash showed a lack of independence through his heavy reliance on the information provided by the gendarmes implicated in the incident.)"

should be able to explore all allegations fully.”<sup>379</sup> For its part, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions stated that “[w]here there is a possibility of undue influence by local authorities or other government bodies, such an investigation should be moved to a different authority outside of their jurisdiction or sphere of influence (for example, in appropriate cases, to the federal as opposed to the state level).”<sup>380</sup>

178. In particular, the bodies of the inter-American system have indicated that when State security services have allegedly committed human rights violations, including acts of violence against journalists, under no circumstance can these cases be investigated and brought to trial under the military justice system.<sup>381</sup> In that regard, in the aforementioned case of *Vélez Restrepo and Family*, the Inter-American Court found the State responsible for having conducted the preliminary investigation into an attack on a journalist committed by members of the national army through the criminal military jurisdiction. At that time, the Inter-American Court reiterated that the military justice system “is not the competent system of justice to investigate and, as appropriate, prosecute and punish the authors of human rights violations,” and added that “only soldiers on active duty who have committed crimes or misdemeanors that, owing to their nature, harm juridical rights of a military nature, can be tried by the military justice system.” Finally, the Court clarified that “that the criteria to investigate and prosecute human rights violations before the ordinary jurisdiction reside not on the gravity of the violations, but rather on their very nature and on that of the protected juridical right.”<sup>382</sup>

179. For its part, in the case of *Najafli v. Azerbaijan*, the European Court found a violation of the obligation to guarantee the independence of the investigators in the case of a journalist who had been beaten by individuals presumed to be members of the local police force while covering a demonstration. The Court found that although the authority to investigate lay with a police department other than the local one, the department was under the same public authority as the agents who had participated in the attacks and was therefore not independent. The Court found that the State failed to comply with its obligation to effectively investigate the violations committed.<sup>383</sup> Likewise, in the case of

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<sup>379</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Cooperation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 25, 2012. [Joint Declaration on Crimes Against Freedom of Expression](#).

<sup>380</sup> United Nations. General Assembly. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns. A/HRC/20/22. April 10, 2012. Para. 113. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96)

<sup>381</sup> I/A Court H.R. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248. Para. 241-245; I/A Court H.R. *Case of Radilla Pacheco v Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 23, 2009. Series C No. 209. Para. 273-275; IACHR. Report No. 136/10. Case 12.658. Luis Gonzalo “Richard” Vélez Restrepo and Family (Colombia). October 23, 2010. Para. 156. See also, IACHR. [Annual Report 2010. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 736-742; United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). [Resolution 29 "Condemnation of violence against journalists"](#). November, 1997.

<sup>382</sup> I/A Court H.R. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248. Para. 239-245.

<sup>383</sup> In the case *Najafli v. Azerbaijan*, the European Court convicted the State for violating the right not to receive an inhuman or degrading treatment, and the right to freedom of expression, of a journalist who was severely beaten by agents of the security forces while covering an unauthorized demonstration by the opposition. The journalist was not wearing the special blue vest that identified him as a press member, but he was in possession of his press credentials and did identify himself as a journalist to the police agents as he was beaten. The Court remarked that the activity of reporting on meetings and

*Kılıç v. Turkey*, the European Court ruled that state agents in charge of investigating crimes committed by security officials at the time of the murder of journalist Kılıç did not have independence safeguards, which “undermined the effectiveness of the protection afforded [to the journalist] by the criminal law” According to the Court, the lack of independence of the investigative bodies enabled the impunity of the members of state security forces, something that is not compatible with a democratic society<sup>384</sup>.

180. In its Special Report on Freedom of Expression in Mexico 2010, the Office of the Special Rapporteur specifically recommended that the State “adopt the necessary reforms to facilitate the exercise of federal jurisdiction over crimes against freedom of expression and ensure that all possible violations of the right to freedom of expression are investigated by the civilian authorities.”<sup>385</sup> This option is particularly important in the event that local authorities have a limited investigative capacity and/or are more exposed to pressure from the criminal organizations that attack journalists. In June 2012, Mexico adopted this precise measure and amended Article 73 of its Constitution so as to allow federal authorities to take over investigations into crimes committed against journalists.<sup>386</sup> As will be seen hereinafter, the authority to take over investigations was later established through reforms of a number of federal laws passed by the National Congress in April 2013.

181. For its part, the National Congress of Brazil is currently considering passage of Bill 1078/11, which, without prejudice to the responsibilities of state civilian and military police forces, grants the Federal Police authority to investigate crimes committed “against journalistic activity.”<sup>387</sup> The bill has been before the Chamber of Deputies since 2011 and is currently awaiting the approval of the Commission on Public Safety and Combating Organized Crime.<sup>388</sup> On April 1, 2012, the National Congress’ Social Communication Council passed a motion to approve the bill.<sup>389</sup> According to the Senate’s website, the motion of support requested that the law explicitly cover crimes against all individuals performing journalism activities, including radio journalists. Likewise, the Council’s motion

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demonstrations of the opposition is “essential for a democratic society” and concluded that the use of force by the police was abusive and characterized a degrading treatment committed with the aim of casting obstacles to the journalistic activity of the victim. Further on, the Court indicated that independently of the State’s intention to interfere in the exercise of the journalist’s profession, the victim was submitted to a degrading treatment in spite of having made “clear efforts to identify himself as a journalist who was simply doing his work and observing the event.” In this sense, the Court concluded that the State violated the journalist’s right to freedom of expression, given that the restriction to this right took place in an illegal way, without aiming at a legitimate purpose, and without being necessary in a democratic society. European Court of Human Rights. *Case of Najafli v. Azerbaijan*. Application no. 2594/07. Judgment. October 2, 2012.

<sup>384</sup> European Court of Human Rights. *Case of Kılıç v. Turkey*. Application No. 22492/93. Judgment. 28 March 2000.

<sup>385</sup> IACHR. [Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 821; United Nations. General Assembly. Report of the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/20/17. June 4, 2012. Para. 75. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>386</sup> Estados Unidos Mexicanos. Senado de la República. June 6, 2012. *Boletín 1111*. [Valida la permanente reforma constitucional a favor de periodistas](#).

<sup>387</sup> Estado de Brasil. Câmara dos Deputados. Bill 1078/11. April 13, 2011. Available for consultation at: <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=498538>

<sup>388</sup> Estado de Brasil. Câmara dos Deputados. Bill 1078/11. April 13, 2011. Available for consultation at: <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=498538>

<sup>389</sup> Estadão. April 2, 2013. [Conselho de Comunicação Social pede federalização de crime contra jornalista](#); Associação Brasileira de Emissoras de Rádio e Televisão (Abert). April 1, 2013. [Conselho de Comunicação pede que radialistas sejam contemplados em PL que federaliza crimes contra jornalistas](#).

requested the bill be moved forward quickly and given priority.<sup>390</sup> In 2004, the the Brazilian State amended its constitution so that the Attorney General of the Republic could, in serious cases of human rights violations and “in order to ensure compliance with the obligations derived from international human rights treaties,” require the country’s Supreme Tribunal of Justice [*Superior Tribunal de Justiça*] to move the case to federal jurisdiction for investigation, prosecution and trial.<sup>391</sup>

182. Likewise, in States with centralized governments, corresponding norms should allow for the assignation of jurisdiction to investigate and punish these cases to authorities outside the sphere of influence of the officials being accused or the reach of the criminal organization concerned. Thus, for example, the Colombian Criminal Procedural Code allows for the exceptional possibility of changing the location of a criminal trial when the location where it is currently being pursued presents “circumstances that could affect the public order, the impartiality or independence of the administration of justice, procedural guarantees, the public nature of the trial, or the safety or personal integrity of participants, particularly of victims or public servants.”<sup>392</sup>

183. The second element of the State obligation to adopt an adequate institutional framework for the investigation, trial and criminal sanction of crimes against journalists is the duty to clearly define the formal jurisdiction of the authorities in charge of investigating and processing these crimes. This obligation is especially fundamental for defining the authority to assert jurisdiction for those cases in which the domestic legal context allows for the possibility of federal authorities or authorities located in a different jurisdiction than the one in which the crime was committed taking over an investigation. The absence of clear rules regarding jurisdiction and change of venue can lead to procedural errors and nullities that can affect the entire proceeding and any investigations carried out, thus contributing to generating impunity.

184. Thus, for example, in its Special Report on Freedom of Expression in Mexico 2010, the Office of the Special Rapporteur made special note of the deficient and ambiguous definition of the jurisdiction of the Office of the Special Prosecutor in charge of investigating crimes against journalists. The report observed that this could prevent such crimes from being investigated by federal authorities when it fell to them to investigate the facts and recommended that Mexico make the necessary reforms “to permit the exercise of federal jurisdiction over crimes against freedom of expression.”<sup>393</sup> As mentioned earlier, in May 2013 the National Congress passed a legal reform that made changes to a number of federal laws in order to codify the Office of the Federal Public Prosecutor’s authority to assert jurisdiction and the authority of federal courts to process and try crimes committed against journalists,

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<sup>390</sup> Estado de Brasil. Senado Federal. April 1, 2013. [Conselho de Comunicação formaliza apoio à federalização dos crimes contra jornalistas](#).

<sup>391</sup> Estado de Brasil. [Emenda Constitucional No. 45](#). December 30, 2004. Article 109. Para. 5.

<sup>392</sup> Estado de Colombia. Rama Legislativa - Poder Público. [Ley 906 de 2004](#). Código de Procedimiento Penal. Diario Oficial No. 45.657. August 31, 2004. Article 46 to 49. Also, according to the Brazilian Criminal Procedure Code, in cases of intentional crimes against life under State jurisdiction, in which “there is doubt on the impartiality of the jury or on the safety of the defendant” it is possible to change the jurisdiction to a court in a different locality. However, it is not possible for the case to be tried by a federal court. This rule has been applied in some cases to provide better independence and impartiality safeguards in the judgment of crimes committed by powerful actors in the region. Estado de Brasil. Presidência da República. [Decreto-Lei Nº 3.689](#). Código de Processo Penal. October 3, 1941. Article. 427. *See also*, Estado de Brasil. Presidência da República. [Constituição da República Federativa do Brasil de 1988](#). Article. 5. Section XXXVIII. subparagraph d).

<sup>393</sup> IACHR. [Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 724-725.

individuals or facilities that “affect, limit or threaten the right to information or the freedoms of expression or the press.”<sup>394</sup>

185. Among its provisions, the reform establishes that the federal authority to assert jurisdiction may be exercised in cases in which intent of the perpetrator is assumed and at least one of the following circumstances is also present: (i) when there are indications that a state or municipal public servant participated in the crime; (ii) when the victim has accused a state or municipal public servant in the criminal complaint; (iii) when the crimes at issue qualify as serious ones under the law; (iv) when the life or physical integrity of the victim or offended party are at real risk; (v) when the authority of the federal entity with jurisdiction requests it; (vi) when the facts constituting the crime overwhelmingly impact the exercise of the right to freedom of expression; (vii) when objective and generalized circumstances of risk to the exercise of freedom of expression exist in the federal entity where the crime took place or where its effects are seen; (viii) when the act constituting the crime crosses beyond the sphere of one or more federal entities; or (ix) when a body provided for in any international treaty to which the State of Mexico is party determines through a judgment or resolution that the Mexican State is internationally responsible due to defects or omissions in the investigation, prosecution or trial regarding the crimes.<sup>395</sup>

186. Third, necessary steps should be taken to protect judges, witnesses and other persons that intervene in criminal investigations from external pressures, including threats, attacks, and other forms of intimidation.<sup>396</sup> In its 2008 Special Study on the Status of Investigations in the Murder of Journalists, the Office of the Special Rapporteur identified several cases of murdered journalists in Brazil, Colombia and Mexico in which witnesses or individuals linked to the investigations or suspected perpetrators of the crimes were killed, as well as cases in which witnesses were afraid to testify.<sup>397</sup> In this regard, the Office of the Special Rapporteur recalled that States must ensure the security of investigating authorities and adopt any measures or mechanisms that are necessary to prevent the obstruction of investigations, as well as any necessary measures to guarantee the security of witnesses, victims, their family members, and other judicial representatives against threats, intimidations or attacks aggression that seek to impede the proceedings.<sup>398</sup> Similarly, the Inter-American Court has stated that “in order to comply with the obligation to investigate within the framework of the guarantees of due process, the State must take all necessary measures to protect judicial officers, investigators, witnesses and the victims’ next-of-kin from harassment and threats” which are designed

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<sup>394</sup> Estados Unidos Mexicanos. [Decreto por el que se reforman y adicionan diversas disposiciones del Código Federal de Procedimientos Penales, de la Ley Orgánica del Poder Judicial de la Federación, de la Ley Orgánica de la Procuraduría General de la República y del Código Penal Federal](#). May 3, 2013.

<sup>395</sup> Estados Unidos Mexicanos. [Decreto por el que se reforman y adicionan diversas disposiciones del Código Federal de Procedimientos Penales, de la Ley Orgánica del Poder Judicial de la Federación, de la Ley Orgánica de la Procuraduría General de la República y del Código Penal Federal](#). May 3, 2013.

<sup>396</sup> IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 383 and 385.

<sup>397</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 117.

<sup>398</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 58.

to obstruct the proceedings, impede the clarification of the facts of the case, and prevent the identification of those responsible.<sup>399</sup>

187. Fourth, opportunities must be provided for sufficient training of investigative police officers, prosecutors and judges to ensure that investigations into crimes against freedom of expression are exhaustive, rigorous and effective, and that all aspects of these crimes are minutely examined.<sup>400</sup> Along these lines, in their 2012 Joint Declaration on Crimes against Freedom of Expression, the United Nations (UN) Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, the Organization for Security and Cooperation in Europe's (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 highlighted that "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"<sup>401</sup>. An initiative of this nature was developed by the organization Article 19 in Mexico in November 2012 when it organized a workshop on "investigative techniques and attacks against the right to information or freedom of expression or the press." The training was aimed at the personnel of the Office of the Special Prosecutor on Crimes against Freedom of Expression (FEADLE) and its purpose was to provide theoretical and practical elements for investigating these crimes from a pro-victim and pro-human rights perspective.<sup>402</sup>

188. Likewise, for the success of investigations into crimes against freedom of expression, investigators should receive sufficient human, financial, logistical and scientific resources to collect, secure and evaluate evidence and carry out other tasks necessary for determining liability.<sup>403</sup>

189. Finally, in contexts of ongoing violence against journalists and impunity for such crimes, States should set up dedicated investigative units. In their 2012 Joint Declaration, the United Nations

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<sup>399</sup> I/A Court H.R. *Case of the Rochela Massacre v. Colombia Case. Merits, Reparations and Costs*. Judgment of May 11, 2007. Series C No. 163. Para. 171.

<sup>400</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Cooperation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 25, 2012. [Joint Declaration on Crimes Against Freedom of Expression](#).

<sup>401</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Cooperation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 25, 2012. [Joint Declaration on Crimes Against Freedom of Expression](#).

<sup>402</sup> Campaña Permanente de Protección a Periodistas en México. November 13, 2012. [Taller de capacitación al personal de la FEADLE](#).

<sup>403</sup> IACHR. [Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 733 and 821; United Nations. General Assembly. Report of the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/20/17. June 4, 2012. Para. 102. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85); IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 58; citing I/A Court H.R., *Carpio Nicolle et al. v. Guatemala Case*. Merits, Reparations and Costs. Judgment of November 22, 2004. Series C No. 117. Para. 135; United Nations. Human Rights Council. [Resolution 21/12 Safety of Journalists](#). A/HRC/21/L.6. September 21, 2012. Para. 8.



(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, stated that "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".<sup>404</sup> The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has likewise recommended the creation of such units in countries where high incidences of attacks against journalists are reported.<sup>405</sup>

190. At the conclusion of its 2010 on site visit to Honduras, the IACHR observed that "[i]t is imperative that the Honduran State take urgent action to move forward with investigations conducted by independent, specialized bodies, with a view to ascertaining the facts surrounding these deaths, which includes determining whether in fact the crimes were related to the practice of the profession, so that the persons responsible for the crimes can be tried and convicted."<sup>406</sup> The Commission noted the need for specialized investigation units given that Honduras' own Office of the Special Prosecutor for Human Rights had attributed the failings of investigations into journalists' murders to the "limited investigative skills of the police."<sup>407</sup>

191. In the region today, the clearest example of a specialized investigative and prosecutorial unit focused on violence against journalists is Mexico's Office of the Special Prosecutor on Crimes against Freedom of Expression (FEADLE). In its 2010 Special Report on Freedom of Expression in Mexico, the Office of the Special Rapporteur commended the Mexican State for its decision to respond to the situation of widespread impunity that exists with regard to crimes against journalists in Mexico by creating the Office of the Special Prosecutor within the structure of the Office of the Prosecutor General of the Republic (PGR). As detailed in the report, the Mexican government, through an agreement with the Prosecutor General of the Republic, dated February 15, 2006, created the Special Prosecutor's Office for Crimes against Journalists (FEADP), as an administrative body of Office of the Prosecutor General of the Republic's specialized in dealing with matters relating to criminal acts committed against journalists.<sup>408</sup> The FEADP was subsequently modified in a new agreement of July 5, 2010, becoming the Office of the Special Prosecutor on Crimes against Freedom of Expression (FEADLE), with the objective of

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<sup>404</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 25, 2012. [Joint Declaration on Crimes Against Freedom of Expression](#).

<sup>405</sup> United Nations. General Assembly. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns. A/HRC/20/22. April 10, 2012. Para. 113. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96)

<sup>406</sup> IACHR. [Preliminary observations of the Inter-American Commission on Human Rights on its visit to Honduras](#). May 15-18, 2010. OEA/SER.L/V/II. Doc. 68, June 3, 2010. Para. 26.

<sup>407</sup> IACHR. [Preliminary observations of the Inter-American Commission on Human Rights on its visit to Honduras](#). May 15-18, 2010. OEA/SER.L/V/II. Doc. 68, June 3, 2010. Para. 25.

<sup>408</sup> Document provided to the Inter-American Commission on Human Rights by the Special Prosecutor's Office for Crimes Against Journalists in March 2010. IACHR. [Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 719.

responding “to the persistent and deeply-felt demand on the part of society as a whole with regard to the improvement and reinforcement of government actions which guarantee the physical and moral integrity of those engaging in journalistic or informative activities in Mexico.”<sup>409</sup>

192. In the aforementioned report, while recognizing that Mexico had taken a critical step in creating the FEADLE, the Office of the Special Rapporteur also observed that this alone was insufficient to make “any impact on reducing the generalized impunity that holds sway in cases of violence against journalists.”<sup>410</sup> The Office of the Special Rapporteur pointed to shortcomings such as a lack of initiative in assuming responsibility for investigations, a lack of autonomy and resources, and the aforementioned ambiguity regarding the FEADLE’s jurisdiction,<sup>411</sup> and called on the Mexican State to strengthen the FEADLE, endow it with greater autonomy and resources, and clearly define its jurisdiction over crimes against freedom of expression.<sup>412</sup> The challenges facing FEADLE were also recently recognized by the National Human Rights Commission [*Comisión Nacional de los Derechos Humanos*] (CNDH) in Mexico in its General Recommendation No. 20, which noted a lack of efficiency in the actions of the Office of the Public Prosecutor given the results seen since its creation in 2010. The CNDH found that out of the 378 preliminary investigations launched by the FEADLE between July 5, 2010, and July 5, 2013, 210 were transferred to other authorities due to lack of jurisdiction. Meanwhile, of the 168 cases handled by the FEADLE, criminal action was taken in 28%, 55% of the investigations remained unsolved, and in only one case was a judgment handed down. The CNDH also found that the FEADLE had granted precautionary protective measures to victims and their families in 75 of the preliminary investigations and exercised its authority to assert jurisdiction in nine cases.<sup>413</sup> Recently, on October 25, 2013, the “Draft Report of the Working Group on the Universal Periodic Review” was distributed. In its text, the states recommend that the Mexican State strengthen the FEADLE and combat impunity in the crimes committed against journalists.<sup>414</sup>

193. On June 6, 2012, the Permanent Commission of the Congress of the Union approved the reform of article 73 of the Constitution, so as to allow federal authorities to assert jurisdiction and investigate crimes of local jurisdiction “when they are connected to crimes committed against journalists, individuals or facilities that affect, limit or threaten the right to information or the freedoms of expression or the press.”<sup>415</sup> In May, 2013 a legal reform was passed that defined the cases in which the Office of the Public Prosecutor could exercise its authority to assert jurisdiction in these crimes. The law establishes that the unit of the Office of the Public Prosecutor that deals with the crimes will have

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<sup>409</sup> IACHR. [Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 719-722.

<sup>410</sup> IACHR. [Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 723.

<sup>411</sup> IACHR. [Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 724.

<sup>412</sup> IACHR. [Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 821.

<sup>413</sup> Comisión Nacional de los Derechos Humanos México. [Recomendación General No. 20](#). On Agresions to Journalists in Mexico and the Prevailing Impunity. August 15, 2013. Para. 140.

<sup>414</sup> Naciones Unidas. Human Rights Council. Working Group of the Universal Periodic Review. [Draft report of the Working Group on the Universal Periodic Review Mexico](#). A/HRC/WG.6/17/L.5. October 25, 2013. Para. 148.127 and 148.129.

<sup>415</sup> Estados Unidos Mexicanos. Senado de la República. June 6, 2012. [Boletín 1111. Valida la permanente reforma constitucional a favor de periodistas](#).

“full access to the information, records and actions taken in the investigation of crimes related to its area of jurisdiction that are being addressed by any other administrative unit of the Office of the Prosecutor General of the Republic.”<sup>416</sup> In that legal reform, the National Congress did not include the proposed changes to the bill that would include the FEADLE in the Organic Law of the Office of the Prosecutor General of the Republic<sup>417</sup> which would have provided the Office of the Special Prosecutor with greater autonomy and legal certainty. However, the legislation that was passed establishes a deadline of 180 days in its transitional provisions for the Federal Executive Branch to make the necessary changes to the Rules of the Organic Law of the Office of the Prosecutor General of the Republic in order to establish an administrative unit of the Office of the Public Prosecutor “that deals with the federal crimes committed against any journalist, individual or facility that threaten the right to information or the freedoms of expression or press, as well as for asserting jurisdiction over local jurisdiction crimes.” Until the changes are made, FEADLE will be the agency responsible for exercising authority to assert jurisdiction.<sup>418</sup> As of the closing of this report, the Regulations have not been approved.

194. According to the information received, since the passage of the legal reform in 2013, the FEADLE has exercised its authority to assert jurisdiction in at least one case of the murder of a journalist. According to reports, in August of 2013, the Office of the Public Prosecutor asserted jurisdiction in the case of Armando Rodríguez Carreón (“*El Choco*”), journalist with *El Diario* in Ciudad Juárez, murdered on November 13, 2008.<sup>419</sup> The journalist had spent more than 10 years covering security issues for the newspaper and was the author of a number of analyses and statistics illustrating the increase in violence in Ciudad Juárez. Two weeks prior to his death, he had published an article linking the relatives of a senior official with the state Attorney General's office to drug trafficking.<sup>420</sup> The case was being investigated by the Office of the Attorney General of Justice of the State of Chihuahua, and as of the moment the FEADLE asserted jurisdiction in the case, nobody had been brought to trial or convicted for the murder.<sup>421</sup>

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<sup>416</sup> Estados Unidos Mexicanos. [Decreto por el que se reforman y adicionan diversas disposiciones del Código Federal de Procedimientos Penales, de la Ley Orgánica del Poder Judicial de la Federación, de la Ley Orgánica de la Procuraduría General de la República y del Código Penal Federal.](#) May 3, 2013.

<sup>417</sup> Estados Unidos Mexicanos. Senado de la República. LXII Legislatura. Comisiones Unidas de Justicia, Derechos Humanos y de Estudios Legislativos, con Opinión de la Comisión de Gobernación. Anteproyecto de Dictamen de las Comisiones Unidas de Justicia, Derechos Humanos y de Estudios Legislativos, con Opinión de la Comisión de Gobernación, sobre la iniciativa con Proyecto de Decreto por el que se reforman, derogan y adicionan diversas disposiciones del Código Federal de Procedimientos Penales; de la Ley Orgánica del Poder Judicial de la Federación y de la Ley Orgánica de la Procuraduría General de la República y del Código Penal Federal. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>418</sup> Estados Unidos Mexicanos. [Decreto por el que se reforman y adicionan diversas disposiciones del Código Federal de Procedimientos Penales, de la Ley Orgánica del Poder Judicial de la Federación, de la Ley Orgánica de la Procuraduría General de la República y del Código Penal Federal.](#) May 3, 2013.

<sup>419</sup> El Diario. August 13, 2013. [Atrae PGR caso de homicidio contra El Choco](#); Artículo 19. August 14, 2013. [México: FEADLE debe atraer los expedientes de periodistas asesinados y desaparecidos](#); Zócalo Saltillo. August 14, 2013. [Atrae PGR caso de periodista asesinado](#).

<sup>420</sup> IACHR. [Annual Report 2010. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 653.

<sup>421</sup> El Diario. August 13, 2013. [Atrae PGR caso de homicidio contra El Choco](#); Zócalo Saltillo. August 14, 2013. [Atrae PGR caso de periodista asesinado](#).

195. The Office of the Special Rapporteur expresses its satisfaction at the passage of the legal reform in Mexico codifying the authority of the Office of the Federal Public Prosecutor and the FEADLE to assert jurisdiction in crimes committed against journalists and other individuals in response to the exercise of their right to freedom of expression. In addition, the Office of the Special Rapporteur reiterates the importance of strengthening the FEADLE and providing it with greater autonomy and resources.<sup>422</sup> The Office of the Special Rapporteur urges the Mexican State to approve the necessary changes to the Regulations of the Organic Law of the Office of the Attorney General of the Republic for this to happen as soon as possible.

196. Though not focused specifically on crimes against journalists, the International Commission against Impunity in Guatemala [*Comisión Internacional Contra la Impunidad en Guatemala*] (CICIG)<sup>423</sup> has also attracted attention as an innovative investigative body that employs international specialists to support domestic prosecutions of complex crimes.<sup>424</sup> The result of an agreement between the United Nations and the Government of Guatemala, CICIG was established in 2007 as an independent, international body designed to support the Office of the Public Prosecutor, the National Civil Police and other State institutions in the investigation of crimes committed by members of illegal security forces and clandestine security structures and, in a more general sense, help to disband such groups. To do so, CICIG assists with investigations and criminal prosecutions in select complex cases, as well as implementing steps—in accordance with its mandate—aimed at strengthening the institutions of the justice system so that they can continue to tackle these illegal groups in the future.<sup>425</sup> The UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression has observed that while “CICIG is not specifically directed towards journalists, it draws attention to issues at the heart of the problem of impunity.”<sup>426</sup> In this way, it has the potential to address structural factors, including the role of organized crime and the weakness of the justice system, that contribute to violence and impunity in the case of journalists. More generally, CICIG’s approach to strengthening domestic investigative capacity by employing international experts to work side-by-side with national prosecutors may serve as a model for countries that have the political will to tackle violence against journalists but lack the technical expertise and resources to do so effectively.

197. In a communication received on December 24, 2013, the State of Guatemala provided information on the “Prosecution Unit for Crimes against Journalists” of the Human Rights Prosecution Section of the Office of the Public Prosecutor. According to reports, the Unit was created in 2001, and “it became the specialized Prosecution Unit with national jurisdiction in 2011.”<sup>427</sup> The purpose of the

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<sup>422</sup> IACHR. [Annual Report 2010. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 821.

<sup>423</sup> Comisión Internacional contra la Impunidad en Guatemala (CICIG). [Acuerdo de creación de la CICIG](#).

<sup>424</sup> United Nations. General Assembly. Report of the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/20/17. June 4, 2012. Para. 68. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>425</sup> Comisión Internacional contra la Impunidad en Guatemala (CICIG). [Acuerdo de creación de la CICIG](#).

<sup>426</sup> United Nations. General Assembly. Report of the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/20/17. June 4, 2012. Para. 68. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>427</sup> Communication of the State of Guatemala to the Inter-American Commission of Human Rights. Oficio M12-OEA-F.2.4.2.1 No. 1230-2013. December 24, 2013. “Informe del Estado de Guatemala a Relatora Especial sobre Libertad de Expresión de la Comisión Interamericana de Derechos Humanos, Organización de Estados Americanos.” Ref. P-100-2013/AFAF/hm. December 18, 2013. Annex 1.

Prosecution Unit is to “give special treatment to crimes committed against journalists and to draw national attention to the existence of the Prosecution Unit for crimes against journalists, for purposes of implementing a direct procedure for the filing of complaints.” The Unit reportedly has jurisdiction to handle all crimes committed against journalists “in the practice of their journalistic work” anywhere in the country. It is comprised by a Prosecutor, Assistant Prosecutors, and a Prosecution Officer. The State further reported that the Unit has protocols of action, which include monitoring the media to keep abreast of attacks against journalists; conducting evidence-gathering procedures, especially those that are time-sensitive; and making recommendations to journalists with respect to filing complaints of attacks and participating in the criminal proceedings. Finally, the State reported that during 2013 the Prosecution Unit has documented 63 complaints of assaults on journalists, of which “approximately 50% involve threats or coercion.” The State indicated that the Prosecution Unit “has had successful cases,” such as the sentencing of a security forces officer to 3 years and 8 months in prison for the offenses of discrimination and threats against a journalist; the imposition of a two-year prison sentence (subject to commutation) against two individuals for having assaulted five journalists who were covering a demonstration; and the criminal prosecution of a former Minister of Culture and Sports for threatening a journalist.<sup>428</sup>

198. Turning to Colombia, in 1999 a Subunit for the Investigation of the Murder of Journalists was established under the Human Rights Unit of the Office of the Attorney General of the Nation.<sup>429</sup> The Office of the Special Rapporteur recognized the efforts of the Colombian authorities in the creation of the subunit as a specific mechanism to provide effectiveness to the investigations.<sup>430</sup> Later, in its 2005 report *Impunity, Self-censorship and Armed Internal Conflict: an Analysis of the State of Freedom of Expression in Colombia*, the Office of the Special Rapporteur observed that the subunit lacked prosecutors specifically assigned to the issue of freedom of expression and expressed its concern at the high number of cases of murders and attacks against journalists still pending. However, the Office of the Special Rapporteur reiterated the “importance of the existence of an office of this nature with personnel specifically assigned to this issue” and urged the State “to provide the Office of the Attorney General of the Nation with the budgetary resources necessary to specifically investigate these crimes.”<sup>431</sup>

199. More recently, in communication received on October 23, 2013, the Colombian State reported that it had implemented strategies for the investigation of cases of threats against journalists (among other vulnerable groups) “as a legal methodology aimed at guaranteeing the efficiency, effectiveness and optimization of resources and intended to obtain results in criminal investigations.”

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<sup>428</sup> Communication of the State of Guatemala to the Inter-American Commission of Human Rights. Oficio M12-OEA-F.2.4.2.1 No. 1230-2013. December 24, 2013. “Informe del Estado de Guatemala a Relatora Especial sobre Libertad de Expresión de la Comisión Interamericana de Derechos Humanos, Organización de Estados Americanos.” Ref. P-100-2013/AFAF/hm. December 18, 2013.

<sup>429</sup> Fundación para la Libertad de Prensa (FLIP). [Informe sobre la Libertad de Prensa en Colombia en 1999. La Guerra Impactó como Nunca al Periodismo. Ataques contra el periodista y su oficio](#); Observatório da Imprensa. 2002. [Repórteres Sem Fronteiras. Impunidade em 21 países do mundo](#).

<sup>430</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. December 13, 2001. [Press Release No. 49/01. Concern on the Part of the IACHR Rapporteur for Freedom of Expression over the Assassinations of Journalists in Colombia](#); IACHR. [Annual Report 2000. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.111. Doc. 20 rev. April 16, 2001. Para. 19 and 20.

<sup>431</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Impunity, Self-Censorship and Armed Conflict: An Analysis of the State of the Freedom of Expression in Colombia](#). OEA/Ser.L/V/II Doc.51. August 31, 2005. Para. 67.

The State reported that as of May 2013, the Human Rights Unit of the Office of the Attorney General of the Nation had followed up on 51 cases of crimes committed against journalists, 37 of which were open. Of these, 19 cases were in their preliminary phase, 15 cases in pretrial examination, and three at trial. The State also reported that 30 convictions had been handed down. Finally, the State indicated that the Analysis and Context Unit of the Office of the Attorney General of the Nation had marked investigations into crimes committed against journalists as a priority.<sup>432</sup>

200. On October 28, 2013, at a hearing held during the 149 Period of Sessions of the IACHR, the State of Honduras provided information on the creation of a “High Impact Deaths Unit” assigned to the Office of the Special Prosecutor for Crimes against Life. According to the information received, the unit was established to identify the murders of persons belonging to groups particularly affected by violence, such as journalists, legal practitioners, and human rights defenders. According to the information received, the unit was involved in 26 investigations into the murder of journalists during the period from 2009 to 2013, of which 10 have reportedly gone to trial.<sup>433</sup>

201. In addition to the aforementioned examples of specialized investigatory and prosecution units, it is worth mentioning that Peru has created specialized tribunals with jurisdiction to try, *inter alia*, serious crimes committed against journalists in the exercise of their profession. Peru’s Criminal Procedural Code envisions the creation of a specific criminal justice system to try crimes that are particularly serious and particularly complex or massive, as long as they have national repercussion and have effects that extend beyond one judicial district or are committed by criminal organizations.<sup>434</sup> Under this system, initially developed to try cases of terrorism, crimes against humanity, and human rights violations,<sup>435</sup> a National Criminal Court [*Sala Penal Nacional*] was granted nationwide jurisdiction over certain crimes. In 2010, the jurisdiction of the National Criminal Court was expanded to include cases of homicide, murder, grave injury, kidnapping and extortion committed against journalists in the exercise of their profession.<sup>436</sup> In 2012 the National Criminal Court’s jurisdiction was reviewed and redefined, given the need to “prioritize its intervention in those cases which, given their characteristics, imply great transcendence, reach or repercussion at the national level,” and thus require “specialized judges equipped with the best infrastructure possible, technological means, and human resources in order to resolve the cases with efficiency, celerity, security and independence.” The Court’s jurisdiction continued to include the aforementioned crimes committed against journalists.<sup>437</sup>

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<sup>432</sup> Communication from the State of Colombia to the Inter-American Commission on Human Rights. MPC/OEA letter No. 1423/2013. October 23, 2013. Memorandum I-GAPDH-13-035732 of October 18, 2013, forwarding communication S-GAPDH-13-042535 to the Office of the Special Rapporteur for Freedom of Expression of October 18, 2013.

<sup>433</sup> IACHR. 149<sup>th</sup> Period of Sessions. Hearing on the implementation of precautionary measures in Honduras. October 28, 2013. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=132>

<sup>434</sup> Estado de Perú. [Código de Procedimientos Penales](#). Article 16. Article modified by Article 1 of the Legislative Decree No. 983. July 22, 2007.

<sup>435</sup> Justicia Viva. [Sala Penal Nacional: el trabajo en los casos de terrorismo](#). March 2005. Pp. 12-14.

<sup>436</sup> Estado de Perú. Consejo Ejecutivo del Poder Judicial. Resolución Administrativa No. 187-2010-CE-PJ. May 26, 2010. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>437</sup> Estado de Perú. Consejo Ejecutivo del Poder Judicial. [Resolución Administrativa No. 136-2012-CE-PJ](#). July 9, 2012.

## 2. The obligation to exercise due diligence and exhaust lines of inquiry related to the victim's practice of journalism

202. The Inter-American Court has emphasized that the obligation of due diligence requires that criminal investigations exhaust logical lines of inquiry. In particular, “due diligence” requires that investigations carried out by the State take into account “the complexity of the facts, the context in which they occurred and the systematic patterns that explain why the events occurred,” ensuring that there are “no omissions in gathering evidence or in the development of logical lines of investigation.”<sup>438</sup> This is critical if States are to comply with their aforementioned duty to investigate, prosecute and punish all direct perpetrators and masterminds.<sup>439</sup>

203. The obligation to exercise due diligence and exhaust logical lines of inquiry is particularly important in cases of violence against journalists, where an investigation that fails to take into account contextual factors such as a journalist's professional activities will be both less likely to succeed and prone to questions about the authorities' political will to solve the crime in question. In its 2008 Special Study on the Status of Investigations in the Murder of Journalists, the Office of the Special Rapporteur examined 157 cases of murdered journalists and media workers and found that in the majority of cases studied, avenues of investigation had not been pursued that would help identify the actual perpetrators or masterminds of the crime.<sup>440</sup> The report noted that the motive of the murder—in particular, whether it was related to the journalist's professional activities—had been established in only a limited number of cases.<sup>441</sup> Furthermore, negative repercussions were observed at the indictment or trial stage due to the omission of logical avenues of investigation or a lack of diligence in the gathering evidence.<sup>442</sup> The failure to fully exhaust logical lines of inquiry has led, in particular, to a generalized failure to identify the masterminds.<sup>443</sup>

204. In examining individual cases of violence against journalists, the IACHR has called attention to the failure to pursue logical lines of inquiry in the investigation of such crimes. In the case of Héctor Félix Miranda, a journalist with the weekly *Zeta* in Tijuana, Mexico murdered in 1988, the IACHR found that while the direct perpetrators had been punished, the “central violation” was the Mexican

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<sup>438</sup> /A Court H.R. *Case of the Rochela Massacre v. Colombia. Merits, Reparations and Costs*. Judgment of May 11, 2007. Series C No. 163. Para. 158.

<sup>439</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 40.

<sup>440</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 110.

<sup>441</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 111.

<sup>442</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 116.

<sup>443</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 125-126; IACHR. Office of the Special Rapporteur for Freedom of Expression. [Impunity, Self-Censorship and Armed Conflict: An Analysis of the State of the Freedom of Expression in Colombia](#). OEA/Ser.L/V/II Doc.51. August 31, 2005. Para. 65-66.

State's failure to "definitively and conclusively determine who were the intellectual authors of the crime."<sup>444</sup> The Commission took note of the evidence that the investigation did not adequately pursue the "numerous items which point to the existence of an intellectual author", including a US\$ 10,000 payment made to the murderers one day after the murder by a business owned by an individual who Felix Miranda had criticized repeatedly in his columns during the months prior to his death.<sup>445</sup> The IACHR concluded that the "failure to investigate and punish the mastermind behind the murder of Héctor Félix Miranda [...] goes hand-in-hand with a violation of the right to inform and to express one's views freely and publicly."<sup>446</sup>

205. The Inter-American Court also highlighted the failure to pursue logical lines of inquiry that pointed to one or more masterminds in the 1994 murder of Manuel Cepeda Vargas, a Colombian journalist and politician. Two Colombian Army sergeants were convicted of being the direct perpetrators of Cepeda's murder, and strong evidence pointed to an Army coronel and a paramilitary group leader as the masterminds of the crime. Nonetheless, the Court found that these hypotheses were not diligently investigated by the domestic authorities, in violation of the State's international obligation to investigate and punish all those who participated in the crime.<sup>447</sup>

206. Likewise, in the case of Colombian cameraman Richard Vélez, the Court underscored the importance of exhausting logical lines of inquiry related to the professional activities of journalists victims of violence.<sup>448</sup> In said case, the Court concluded that the harassment, threats, and attempted deprivation of liberty against Vélez in 1996 and 1997 were linked to the attack he suffered as a result of his reporting, as well as his subsequent attempts to ensure the investigation and punishment of the soldiers responsible for the attack.<sup>449</sup> The Court found that this connection was not sufficiently incorporated into the authorities' investigative strategy, observing that "[t]he State should have undertaken the compliance with its obligations of investigation and protection taking into account the reasonable connection between the attack motivated by the exercise of freedom of expression and the subsequent threats and harassment that escalated into an attempted deprivation of liberty."<sup>450</sup>

207. The European Court ruled similarly in the case of the murder of journalist Kutlu Adali, known for writing articles critical of the policies and practices of the Turkish government. After repeatedly receiving death threats, Adali was murdered on July 6, 1996, in Turkey. In the case, the Court found that State authorities erred in failing to inquire sufficiently into the motives behind the murder of the journalist. The Court observed that "it was not established that any adequate steps were taken to investigate the possibility that the murder was politically motivated or had any link with his work as a journalist." The Court indicated that on the contrary, investigators dismissed that possibility in the initial

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<sup>444</sup> IACHR. Report No. 50/99. Case 11.739. Héctor Félix Miranda (Mexico). April 13, 1999. Para. 2 and 51.

<sup>445</sup> IACHR. Report No. 50/99. Case 11.739. Héctor Félix Miranda (Mexico). April 13, 1999. Para. 20, 29, 65.

<sup>446</sup> IACHR. Report No. 50/99. Case 11.739. Héctor Félix Miranda (Mexico). April 13, 1999. Para. 56.

<sup>447</sup> I/A Court H.R. *Case of Manuel Cepeda-Vargas v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of May 26, 2010. Series C No. 213. Para. 106-110 and 167.

<sup>448</sup> I/A Court H.R. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248. Para. 211.

<sup>449</sup> I/A Court H.R. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248. Para. 174.

<sup>450</sup> I/A Court H.R. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248. Para. 211.



stage of the investigation without sufficient basis for doing so. The Court added that the victim's documents and other belongings were not searched for evidence that could indicate the crime's motive.<sup>451</sup> Likewise, in the case of *Kılıç v. Turkey*, the European Court found that the State had failed to comply with its duty to adequately investigate the murder of journalist Kemal Kılıç because, among other things, the investigation that was carried out did not include inquiries into a possible connection between the attack and the victim's work as a journalist.<sup>452</sup>

208. Recent experiences suggest that a tendency to dismiss logical lines of inquiry persists in certain contexts. Following its 2010 on-site visit to Honduras, for example, the IACHR questioned some government authorities' conclusion that murders of journalists were unrelated to their profession, and stressed the State's obligation to determine "the facts surrounding these deaths, which includes determining [...] whether in fact the crimes were related to the practice of the profession, so that the persons responsible for the crimes can be tried and convicted."<sup>453</sup> Likewise, in its 2010 Special Report on Freedom of Expression in Mexico, the Office of the Special Rapporteur cited the National Human Rights Commission's conclusion that impunity for crimes against journalists was due in part to a failure to exhaust relevant lines of inquiry, including the possibility that the attack was motivated by the victim's exercise of freedom of expression.<sup>454</sup> The report recognized that the Office of the Attorney General of Justice of the Federal District of Mexico has adopted a protocol with guidelines for the investigation of crimes against journalists that includes the adoption of protective measures for victims and witnesses.<sup>455</sup> The report indicated that in a number of meetings held during the on-site visit of the Office of the Special Rapporteur, especially with state authorities, a propensity was observed to "dismiss out of hand that attacks on communicators were motivated by their journalism work."<sup>456</sup> The Office of the Special Rapporteur recommended that the State "adopt special protocols of investigation for crimes committed against journalists, requiring the full consideration of the possibility that the crime was committed because of the victim's professional activity."<sup>457</sup> Regarding this, the Office of the Special Rapporteur notes with satisfaction that the recent legal reform regarding crimes committed against freedom of expression in Mexico requires the Office of the Federal Public Prosecutor to exhaust investigative inquiries into the violation, limitation or threatening of the right to freedom of expression in cases in which the authority to assert jurisdiction in these crimes is exercised.<sup>458</sup>

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<sup>451</sup> European Court of Human Rights. *Case of Adali v. Turkey*. Application no. 38187/97. Judgment. 31 March 2005. Para. 231.

<sup>452</sup> European Court of Human Rights. *Case of Kılıç v. Turkey*. Application no. 22492/93. Judgment. 28 March 2000. Para. 82.

<sup>453</sup> IACHR. [Preliminary observations of the Inter-American Commission on Human Rights on its visit to Honduras](#). May 15-18, 2010. OEA/Ser.L/V/II. Doc. 68, June 3, 2010. Para. 26.

<sup>454</sup> IACHR. [Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 718.

<sup>455</sup> IACHR. [Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 735.

<sup>456</sup> IACHR. [Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 718.

<sup>457</sup> IACHR. [Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 821.

<sup>458</sup> Estados Unidos Mexicanos. [Decreto por el que se reforman y adicionan diversas disposiciones del Código Federal de Procedimientos Penales, de la Ley Orgánica del Poder Judicial de la Federación, de la Ley Orgánica de la Procuraduría General de la República y del Código Penal Federal](#). May 3, 2013.

209. In their 2012 Joint Declaration, 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 similarly noted the importance of exhausting lines of inquiry related to a journalist's professional activities, observing that "[w]here 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 inquiry related to the victim's expressive activities have been exhausted." Investigations should, in turn, "lead to the identification and prosecution of all 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."<sup>459</sup>

### 3. The obligation to conduct investigations in a reasonable time

210. The Inter-American Court has held that in certain cases an excessive delay in investigating acts of violence can, in and of itself, constitute a violation of the right to fair trial.<sup>460</sup> The authorities responsible for an investigation should conduct their activities in an expedited manner, avoiding delays or unnecessary hindrances in the proceedings which could lead to impunity and infringe on judicial protections under the law.<sup>461</sup> In this regard, the IACHR has indicated that "as a general rule, a criminal investigation must be carried out promptly to protect the interest of the victims, preserve evidence and even to safeguard the rights of any person that is considered a suspect in the investigation."<sup>462</sup> In reference specifically to violence against journalists, 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 have stated that "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."<sup>463</sup>

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<sup>459</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 25, 2012. [Joint Declaration on Crimes Against Freedom of Expression](#).

<sup>460</sup> I/A Court H. R. *Case of Gómez Palomino v. Peru. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 136. Para. 85; I/A Court H. R. *Case of the Moiwana Community v. Suriname. Preliminary Objections, Merits, Reparations and Costs*. Judgment 15, 2005. Series C No. 124. Para. 160.

<sup>461</sup> I/A Court H. R. *Case of Gómez Palomino v. Peru Case. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 136. Para. 85.

<sup>462</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 60.

<sup>463</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 25, 2012. [Joint Declaration on Crimes Against Freedom of Expression](#).

211. In its Special Study on the Status of Investigations in the Murder of Journalists, the Office of the Special Rapporteur found that in many of the 157 cases studied, ten years or more had passed “without the investigations shedding any light on the perpetrators or the motives for the crime.”<sup>464</sup> The IACHR has also encountered significant delays in criminal investigations when analyzing individual cases of violence against journalists. In the aforementioned case of Mexican journalist Héctor Felix Miranda, the IACHR’s merits report concluded that Mexico violated its obligation to carry out an effective investigation in a reasonable time, given that more than a decade had passed without the mastermind of the crime being identified and prosecuted. The Commission recalled the Court’s observation that the reasonable time period established in Article 8.1 of the American Convention “is not a concept of simple definition,” but one that must be interpreted in light of the complexity of the case, the procedural activity of the interested party, and the conduct of the judicial authorities.<sup>465</sup> In the Commission’s view, however, the murder of Héctor Felix Miranda was “not an extremely complex case”, given that the direct perpetrators were quickly tried and convicted, and that there was clear evidence linking them to a potential mastermind.<sup>466</sup>

212. Similarly, in its merits report in the case of *Luis Gonzalo “Richard” Vélez Restrepo and Family*, the Commission found a “reasonable time” violation given that 13 years had passed without the Colombian State identifying, trying or punishing any of those responsible for a series of threats and acts of harassment against journalist Richard Velez and members of his family, actions which eventually forced them to flee the country.<sup>467</sup> Richard Vélez had been violently beaten by security forces agents after he filmed them attacking unarmed protesters, and he subsequently pursued criminal charges against the soldiers. This led Colombia’s own Procurator General’s Office [*Procuraduría General de la Nación*] to observe that those most likely to be threatening Vélez were his attackers.<sup>468</sup> Nonetheless, the evidence presented to the IACHR indicated that the investigation of these threats had not advanced beyond the preliminary stage, and the Commission found that the delay violated Colombia’s obligations under Article 8.1 of the American Convention.<sup>469</sup> For its part, in the previously cited case *Najafli v. Azerbaijan*, the European Court found that a period of three months between the incidents of violation that took place and the launch of the initial relevant procedural measures (like the victim’s statement and the request for an examination of the *corpus delicti*) constitute a violation of the obligation to carry out an effective investigation in the case.<sup>470</sup>

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<sup>464</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 98.

<sup>465</sup> IACHR. Report No. 50/99. Case 11.739. Héctor Félix Miranda (México). April 13, 1999. Para. 52; IACHR. Report No. 130/99. Case No. 11.740. Víctor Manuel Oropeza (México). November 19, 1999. Para. 30.

<sup>466</sup> IACHR. Report No. 50/99. Case 11.739. Héctor Félix Miranda (México). April 13, 1999. Para. 31; IACHR. Report No. 130/99. Case No. 11.740. Víctor Manuel Oropeza (México). November 19, 1999. Para. 31.

<sup>467</sup> IACHR. Report No. 136/10. Case 12.658. Luis Gonzalo “Richard” Vélez Restrepo y Familia (Colombia). October 23, 2010. Para. 158.

<sup>468</sup> IACHR. Report No. 136/10. Case 12.658. Luis Gonzalo “Richard” Vélez Restrepo y Familia (Colombia). October 23, 2010. Para. 90.

<sup>469</sup> IACHR. Report No. 136/10. Case 12.658. Luis Gonzalo “Richard” Vélez Restrepo y Familia (Colombia). October 23, 2010. Para. 159.

<sup>470</sup> European Court of Human Rights. *Case of Najafli v. Azerbaijan*. Application No. 2594/07. Judgment. October 2, 2013.

#### 4. The obligation to remove legal obstacles to the investigation and effective and proportional punishment of the most serious crimes against journalists

213. The Commission has repeatedly held that general amnesties in cases of serious human rights violations contravene Article XVIII (Right to justice) of the American Declaration and Articles 8 and 25 of the American Convention on Human Rights.<sup>471</sup> The IACHR has especially called attention to the use of general amnesty laws to block the investigation of serious human rights violations committed against journalists. For example, the Commission expressed its “deep concern” over the amnesty legislation passed by the Parliament of Suriname on April 5, 2012, which “seeks to consolidate immunity for human rights violations committed during the military era (1982-1992).”<sup>472</sup> Regarding this, the IACHR specifically mentioned the murder of 15 prominent citizens, among them five journalists, which took place on December 8, 1982, in the Fort Zeelandia military barracks.<sup>473</sup>

214. International bodies have also expressed concern regarding the effect of provisions of prescription, also known as statutes of limitation, on the investigation and punishment of crimes against journalists because of their work. UNESCO’s General Conference, for example, has called upon governments to “adopt the principle that there should be no statute of limitations for crimes against persons when these are perpetrated to prevent the exercise of freedom of information and expression or when their purpose is the obstruction of justice”,<sup>474</sup> something that was reiterated by the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity.<sup>475</sup> Likewise, the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions recommended that “[s]tatutes of limitation should not allow prosecutions to be blocked.”<sup>476</sup> 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 have stated that “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 limitations (i.e. the time

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<sup>471</sup> IACHR. Report No. 28/92. Cases 10.147, 10.181, 10.240, 10.262, 10.309 and 10.311 *Argentina*, October 2, 1992; IACHR. Report No. 29/92. Cases 10.029, 10.036, 10.145, 10.305, 10.372, 10.373, 10.374 and 10.375. *Uruguay*. October 2, 1992; [Report on the Situation of Human Rights in El Salvador](#). Chapter II (El Salvador and Its International Commitments in the Area of Human Rights: the American Convention. Individual Cases). Point 4 (Enactment of the Amnesty Law and El Salvador’s international commitments). OEA/Ser.L/II.85 Doc. 28 rev., February 11, 1994.

<sup>472</sup> IACHR. April 13, 2012. [Press release 38/12. IACHR Expresses Concern about Amnesty Legislation in Suriname](#).

<sup>473</sup> IACHR. April 13, 2012. [Press release 38/12. IACHR Expresses Concern about Amnesty Legislation in Suriname](#); IACHR. [Annual Report 2010. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 404.

<sup>474</sup> United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). [Resolution 29 "Condemnation of violence against journalists."](#) November, 1997.

<sup>475</sup> United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). International Programme for the Development of Communication. 2012. [United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity](#); United Nations Educational, Scientific and Cultural Organization (UNESCO). [San José Declaration](#). May 2-4, 2013.

<sup>476</sup> United Nations. General Assembly. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns. A/HRC/20/22. April 10, 2012. Para. 111. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96)

beyond which prosecutions are barred).<sup>477</sup> In these cases, extending statute of limitations deadlines is especially justifiable due to the systemic impact of crimes committed against journalists and media workers for the exercise of their professions.

215. For its part, the Inter-American Court has established that generally speaking, human rights violations are not exempt from statutes of limitations, with the exception of conducts so serious that they must be punished in order to prevent them from being repeated, such as the forced disappearance of persons, extrajudicial execution and torture.<sup>478</sup> Nevertheless, statute of limitations deadlines cannot present an obstacle to justice in cases of violence committed against journalists and media workers over the exercise of their right to freedom of expression. In the *Case of Vélez Restrepo and Family v. Colombia*, the Inter-American Court found it necessary in the context of the overwhelming impunity in the case to order the State to report to the Court on the possibility of taking “other measures or actions that allow for the determination of responsibility for the aforementioned acts in this case, and should it be possible, to take such measures or actions.”<sup>479</sup>

216. For its part, the Office of the Special Rapporteur has called attention to compliance with statute of limitations deadlines in a number of cases. In Colombia for example, just from January 1, 2011 to November 1, 2013 this happened in thirteen cases of murdered journalists.<sup>480</sup> In this context, the Office of the Special Rapporteur has viewed favorably the Colombian Congress’ approval of Law No. 1426, signed by President Juan Manuel Santos on December 29, 2010, which increases from 20 years to 30 years the statute of limitations on the murder of journalists, human rights defenders, and union members.<sup>481</sup> The Office of the Public Prosecutor of the Colombian State has also qualified some cases

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<sup>477</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 25, 2012. [Joint Declaration on Crimes Against Freedom of Expression](#).

<sup>478</sup> I/A Court H.R. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248. Para. 282 and 283.

<sup>479</sup> I/A Court H.R. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248. Para. 284.

<sup>480</sup> The cases would be: Arsenio Hoyos, murdered on September 13, 1991, in Granada, Meta; Carlos Julio Rodríguez and José Libardo Méndez, murdered on May 20, 1991, in Florencia, Caquetá; Julio Daniel Chaparro and Jorge Enrique Torres, murdered on April 24, 1991, in Segovia, Antioquia; Rafael Solano Rochero, who died on October 30, 1991, in Fundación, Magdalena; Néstor Henry Rojas Monje, who died on December 28, 1991, in Arauca; John Félix Tirado Castañeda, murdered in the city of Cartago, department del Valle del Cauca on August 5, 1992; José Domingo Cortés Soto, murdered in the city of Valencia on Noviembre 15, 1992; Gerardo Didier Gómez, murdered in the proximities of the city of Cali on February 11, 1993; Carlos Lajud Catalán, murdered in the city of Barranquilla on March 19, 1993; Nelson de la Rosa Toscazo, murdered on August 3, 1993 in Cartagena; and Manuel José Martínez Espinosa, murdered on September 28, 1993 in Popayán. IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 101. See also, Fundación para la Libertad de Prensa (FLIP). 2013. [De las balas a los expedientes: Informe sobre el estado de la libertad de prensa en Colombia, 2012](#); Fundación para la Libertad de Prensa (FLIP). April 19, 2013. [Asamblea de la FLIP exige respuesta de la Fiscalía frente a la prescripción de casos de asesinatos a periodistas](#); Fundación para la Libertad de Prensa (FLIP). March 19, 2013. [19 de marzo, día doloroso para el periodismo: Prescribe asesinato de Carlos Lajud Catalán y se cumplen tres años de impunidad por el crimen de Clodomiro Castilla](#); Reporters Without Borders. July 25, 2013. [“Statutes of Limitations Are a Tragic Guarantee of Eternal Impunity”](#); Fundación para la Libertad de Prensa (FLIP). September 28, 2013. [Prescribe el asesinato del periodista Manuel José Martínez Espinosa](#); Fundación para la Libertad de Prensa (FLIP). August 3, 2013. [Sin reportes del proceso, prescribe el asesinato del periodista Nelson de la Rosa Toscazo](#).

<sup>481</sup> IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 69. December 30, 2011.

involving murders of and attacks on journalists as crimes against humanity on observing that, among other considerations, the crimes were part of a systematic and generalized attack on civilians by armed groups (in the context of the internal armed conflict) or drug trafficking groups. This would be the case in the murders of journalists Guillermo Cano<sup>482</sup> and Eustorgio Colmenares<sup>483</sup> and the kidnapping and rape of journalist Jineth Bedoya.<sup>484</sup> Therefore, the statute of limitations cannot be applied in these cases.

217. States also have a duty to guarantee that punishments applied to individuals convicted of acts of violence committed against journalists and media workers over the exercise of their profession are proportionate and effective. In this sense, the Inter-American Court has determined that in order for the State to satisfy its obligation to investigate, try, and, where applicable, punish and provide redress for grave human rights violations committed under its jurisdiction, it must observe the principle (among others) of the proportionality of the punishment and serving of the sentence.<sup>485</sup> On that occasion, the Court highlighted the need for the State's response to the illegal conduct of the perpetrator of a crime to be proportional to the legal right affected and the guilt of the perpetrator, according to the nature and seriousness of the facts. Likewise, the Court found that when the sanctions imposed are set forth, the judicial authority should determine "the reasons for the punishment." With regard to the principle of the favorability of a prior law, the Court found that it "should be harmonized with the principle of proportionality of punishment, such that criminal justice does not become illusory". The Court concluded that "every element which determines the severity of the punishment should correspond to a clearly identifiable objective and be compatible with the Convention."<sup>486</sup>

218. Although the existence of leniency for sentences is legitimate in a democratic society, its application in this case, especially to serious acts of violence such as murder, torture and forced disappearance, must take place pursuant to the parameters established by international human rights law. For example, Article III of the Inter-American Convention on Forced Disappearance of Persons allows States to establish mitigating circumstances for individuals who have participated in acts of forced disappearance when they "help to cause the victim to reappear alive or provide information that sheds light on the forced disappearance of a person." Nevertheless, the application of extenuating circumstances and grounds for lessening the punishment cannot have the effect of making the criminal

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Para. 101; Congreso de la República de Colombia. [Ley No. 1426 de 2010](#). December 29, 2010. The reform does not have retroactive effect, and applies only to crimes committed subsequent to its entry into force.

<sup>482</sup> Fundación para la Libertad de Prensa (FLIP). [El Olvido de la justicia: Informe sobre el Estado de la Libertad de Prensa en Colombia](#). P. 15; Semana. July 6, 2010. [El crimen de Guillermo Cano es de lesa humanidad](#); Knight Center for Journalism in the Americas. July 7, 2010. [Colombia declara asesinato del periodista Guillermo Cano como crimen lesa humanidad](#); Fiscalía General de la Nación. July 6, 2010. [Crimen de Guillermo Cano Isaza es de lesa humanidad](#).

<sup>483</sup> El Tiempo. March 11, 2013. [Crimen de periodista Eustorgio Colmenares, delito de lesa humanidad](#); Knight Center for Journalism in the Americas. March 12, 2013. [Fiscalía de Colombia declara asesinato de periodista como delito de lesa humanidad](#); Terra/ Agencia EFE. March 11, 2013. [Fiscalía colombiana dice asesinato periodista es crimen de lesa humanidad](#).

<sup>484</sup> Fiscalía General de la Nación. October 11, 2012. [Declaración del Fiscal General de la Nación, 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](#); El Espectador. September 13, 2012. [Justicia en caso Jineth Bedoya](#).

<sup>485</sup> /A Court H.R. *Case of the Rochela Massacre v. Colombia. Merits, Reparations and Costs*. Judgment of May 11, 2007. Series C No. 163. Para. 193.

<sup>486</sup> /A Court H.R. *Case of the Rochela Massacre v. Colombia. Merits, Reparations and Costs*. Judgment of May 11, 2007. Series C No. 163. Para. 193.196.

proceeding ineffective and illusory, nor can it result in the imposition of a disproportionate punishment and subsequent partial impunity of the crime committed.

219. In this sense, it is possible to identify cases in which perpetrators are granted criminal law benefits amounting to a significant decrease in the sentence to be served without said perpetrators having collaborated in establishing the facts of the case or the identification of the masterminds. In some cases, the prisoners who benefited even worked to block efforts to identify the masterminds.

220. For example, in the case of the murder of journalist José Orlando Sierra Hernández, who died on February 1, 2002, after he was attacked on January 30, 2002, the Office of the Special Rapporteur found in its Special Study on the Status of Investigations into the Murder of Journalists that although three people had been convicted as the perpetrators of the crime,<sup>487</sup> at the time of the report's publication the masterminds had not been punished. The Office of the Special Rapporteur indicated that in 2006, four years after the crime was committed, only one of the alleged masterminds had been called to give a statement.<sup>488</sup>

221. A later study of the murder of Orlando Sierra, performed by Rodrigo Uprimy and Guillermo Puyana,<sup>489</sup> analyzed the criminal process brought against Luis Fernando Zoto Zapata, one of the perpetrators of the journalist's murder. The report confirmed that although Zoto Zapata was convicted of aggravated homicide, a crime punished in Colombia with 25 to 40 years in prison, the perpetrator spent little more than five years and eight months in prison following the application of a series of leniency measures. The research indicated that Zoto Zapata received these benefits after accepting the charges against him, but that in order to receive them he did not have to cooperate in any way in solving the journalist's murder. On the contrary, although Zoto Zapata accepted his responsibility in the aggravated homicide for the murder of a journalist over the exercise of his profession, the report finds that the perpetrator stated during the trial that he had killed Orlando Sierra by "mistake," after he confused him with another person, thus making the investigation into the masterminds behind the crime more difficult. The report concluded that in the case, the charge the Office of the Public Prosecutor brought against Zoto Zapata - and to which he pled guilty - was not intended to identify the motive behind the crime and the connection to the journalist's profession. It likewise indicated that in cases in which the evidence demonstrates that the perpetrators may be connected to organized crime, "the Office of the Public Prosecutor shall predicate a plea bargain or other leniency [...] on a more comprehensive investigation aimed at identifying all those responsible for the crime." Finally, regarding the general need to guarantee the principle of sentence proportionality, the report recommended the adoption of "minimum sentences that must be served" for certain especially grave crimes, and that the granting of leniency in a specific case is not automatic, but rather a way of guaranteeing that

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<sup>487</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 100.

<sup>488</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 100.

<sup>489</sup> UPRIMY, R. and PUYANA, G. [Injusticia Premiada: Un análisis de la impunidad de los crímenes contra periodistas en Colombia vinculada a la justicia premial, a partir del estudio del proceso contra el autor material del homicidio de Orlando Sierra](#). Realizado para El Proyecto Contra la Impunidad – Sociedad Interamericana de Prensa y para la Asociación Colombiana de Editores de Diarios y Medios Informativos (ANDIARIOS). Bogotá, August 2008.

prosecutors and judges are able to “apply leniency according to the degree of effective cooperation with the justice system.”<sup>490</sup>

222. Similarly, the Office of the Special Rapporteur reported in its 2008 and 2009 annual reports on the granting of parole to the perpetrators of the murder of journalist José Luis Cabezas, a photographer with the magazine *Noticias*. The journalist’s charred body was found in Pinamar, Buenos Aires province, on January 25, 1997, handcuffed and with two bullets in his head. In February of 2000, Gregorio Ríos, former head of security for businessman Alfredo Enrique Nallib Yabrán, was one of the individuals convicted for the murder. He was sentenced to life in prison as instigator of the crime. On October 28, 2008, while under house arrest, Gregorio Ríos was released granted parole by the Dolores Criminal Chamber. In the case, the Chamber granted a prisoner leniency as established under a law that was in force at the time of the crime but had since been struck down. The law established that after two years of preventative detention, “each day of preventative detention [would count as] two of prison or one of confinement.”<sup>491</sup> In that case, the Office of the Special Rapporteur highlighted that “the delays in the administration of justice and the granting of criminal benefits cannot lead to the employment of measures of relative impunity that run contrary to the international obligations of the State.”<sup>492</sup> Also, the Office of the Special Rapporteur underscored that the Inter-American Court has indicated that States have “a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.”<sup>493</sup>

223. Finally, in the Special Study on the Status of Investigations into the Murder of Journalists, the Office of the Special Rapporteur also found that in at least six of the cases in which

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<sup>490</sup> UPRIMY, R. and PUYANA, G. [Injusticia Premiada: Un análisis de la impunidad de los crímenes contra periodistas en Colombia vinculada a la justicia premial, a partir del estudio del proceso contra el autor material del homicidio de Orlando Sierra](#). Realizado para El Proyecto Contra la Impunidad – Sociedad Interamericana de Prensa y para la Asociación Colombiana de Editores de Diarios y Medios Informativos (ANDIARIOS). Bogotá, August 2008.

<sup>491</sup> IACHR. [Annual Report 2008. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.134 Doc. 5 rev. 1. February 25, 2009. Para. 11; IACHR. [Annual Report 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). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 26; Información Legislativa. Estado de Argentina. [Ley 24.390](#). November 2, 1994. Article 7; Información Legislativa. Estado de Argentina. [Ley 25430](#). May 9, 2001. Article 5; IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. P. 67; Clarín. October 28, 2008. [Justicia argentina otorgó libertad condicional a instigador de asesinato de Cabezas](#). La Nación. October 28, 2008. [Bronca de la viuda de Cabezas al conocer que otorgaron la libertad condicional de Gregorio Ríos](#). Committee to Protect Journalists (CPJ). October 28, 2008. [In Argentina, CPJ shocked by release](#).

<sup>492</sup> IACHR. [Annual Report 2008. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.134 Doc. 5 rev. 1. February 25, 2009. Para. 11; IACHR. [Annual Report 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). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 26.

<sup>493</sup> IACHR. [Annual Report 2008. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.134 Doc. 5 rev. 1. February 25, 2009. Para. 11; IACHR. [Annual Report 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). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 26; I/A Court H.R. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4. Para. 174.



someone had been convicted of the murder of a journalist between 1995 and 2005, the sentence was not carried out, whether because the judgment was pending further rulings on remedies sought or because the individuals convicted had not been captured.<sup>494</sup>

## 5. The obligation to facilitate victim participation

224. Under inter-American human rights law, States have an obligation to guarantee that victims of human rights violations or their family members have complete access and the capacity to be active in all stages and at all levels of the investigation and corresponding judicial process, in accordance with domestic law and with the standards of the American Convention.<sup>495</sup> This must include ample opportunity to participate and be heard, both in the clarification of the facts and the punishment of those responsible, as well as in seeking reparations.<sup>496</sup>

225. In their 2012 Joint Declaration, 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 stated that when crimes against freedom of expression occur, the victims or their next-of-kin should be afforded effective access to the procedure.<sup>497</sup> They also recognized the important role that non-governmental human rights organizations have often played in representing victims and their families in such proceedings, particularly where public prosecutor's offices lack independence or technical capacity. According to the Rapporteurs, "[c]ivil 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 [...] in criminal proceedings."<sup>498</sup>

226. As mentioned previously, facilitating victim participation in criminal proceedings also requires providing adequate protection from threats and attacks aimed at preventing such

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<sup>494</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 122-125.

<sup>495</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 41.

<sup>496</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 41.

<sup>497</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 25, 2012. [Joint Declaration on Crimes Against Freedom of Expression](#).

<sup>498</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 25, 2012. [Joint Declaration on Crimes Against Freedom of Expression](#).

participation.<sup>499</sup> In the aforementioned case of *Vélez Restrepo and Family*, the victim and his family were threatened and harassed repeatedly as a consequence of his reporting and, in particular, his decision to pursue criminal and disciplinary sanctions against the soldiers who attacked him for documenting their abuse of unarmed protesters. In its judgment in the case, the Court found the State liable for failing to protect Mr. Vélez and his family, a failure that eventually forced Vélez and his family to flee the country.<sup>500</sup> The Inter-American Court reached a similar conclusion in the case of *Manuel Cepeda Vargas v. Colombia*, in which it found that the next-of-kin of the victim, a Colombian journalist and politician who was murdered by members of the armed forces, were threatened with the objective of preventing their search for justice and forced into exile.<sup>501</sup> As a result, the Court found the State responsible for violations of the rights to personal integrity and freedom of movement and residence.<sup>502</sup>

#### D. State obligations with regard to journalists in situations of social unrest

227. The Inter-American Commission has paid special attention to the situation of journalists reporting on situations of social unrest given the particular degree of risk they face.<sup>503</sup> The Office of the Special Rapporteur has found that in places of exacerbated social tension, groups of civilians of all political persuasions have attacked communicators affiliated with media outlets that do not share their point of view.<sup>504</sup> At the same time, the Office of the Special Rapporteur has found that the majority of States do not have special protocols for protecting the press in circumstances of social unrest and has found that a significant number of attacks on communicators during protests and public demonstrations have taken place.<sup>505</sup>

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<sup>499</sup> /A Court H.R. *Case of the Rochela Massacre v. Colombia. Merits, Reparations and Costs*. Judgment of May 11, 2007. Series C No. 163. Para. 171; IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 58.

<sup>500</sup> /A Court H.R. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248. Para. 203-204.

<sup>501</sup> /A Court H.R. *Case of Manuel Cepeda-Vargas v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of May 26, 2010. Series C No. 213. Para. 194-195.

<sup>502</sup> /A Court H.R. *Case of Manuel Cepeda-Vargas v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of May 26, 2010. Series C No. 213. Para. 202 and 210

<sup>503</sup> United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. [Joint Declaration on Violence against Journalists and Media Workers in the Context of Protests](#); IACHR. June 20, 2013. [Press Release 44/13. IACHR Expresses Concern Over Arrests and Attacks on Demonstrators and Journalists During Protests in Brazil](#); IACHR. Office of the Special Rapporteur for Freedom of Expression. November 17, 2011. [Press Release R120/11. Office of the Special Rapporteur Expresses Concern over Arrests and Assaults on Journalists Covering Protests in the United States](#).

<sup>504</sup> IACHR. [Annual Report 2008. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (A Hemispheric Agenda for the Defense of Freedom of Expression). OEA/Ser.L/V/II.134 Doc. 5 rev. 1. February 25, 2009. Para. 45.

<sup>505</sup> For example, see: United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. [Joint Declaration on Violence against Journalists and Media Workers in the Context of Protests](#); IACHR. June 20, 2013. [Press Release 44/13. IACHR Expresses Concern Over Arrests and Attacks on Demonstrators and Journalists During Protests in Brazil](#); IACHR. Office of the Special Rapporteur for Freedom of Expression. November 17, 2011. [Press Release R120/11. Office of the Special Rapporteur Expresses Concern over Arrests and Assaults on Journalists Covering Protests in the United States](#).

228. Regarding this, the United Nations (UN) special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights of the OAS observed in their Joint Declaration on Violence against Journalists and Media workers in the Context of Protests that “in the context of demonstrations and situations of social unrest, the work of journalists and media workers, as well as the free flow of information through alternative media such as the social networks, is essential to keeping the public informed of the events. At the same time, it plays an important role in reporting on the conduct of the State and of law enforcement authorities toward the protesters, preventing the disproportionate use of force and the abuse of authority.”<sup>506</sup> Likewise, the European Court has found that journalist reports on demonstrations are “essential for the development of any democratic society. Were it otherwise, the press would be unable to play its vital role of “public watchdog.”<sup>507</sup>

229. It has also recognized that attacks on journalists covering situations of significant social unrest violate both the individual aspect of freedom of expression - as they prevent journalists from exercising the right to seek, cover and disseminate information and have a chilling and intimidating effect on other journalists that will affect the information they transmit - and in its collective aspect - as it deprives society of the right to learn of the information that journalists have collected.<sup>508</sup> Effectively, the Inter-American Court has found that attacks perpetrated by members of the police force against a journalist covering a demonstration not only block the journalist from working and transmitting the information to society, but also have “a negative impact on other journalists who must cover incidents of this nature and who may fear suffering similar acts of violence.”<sup>509</sup>

230. Consequently, States have a duty to guarantee that journalists and communicators working during public demonstrations and situations of significant social unrest are not detained, threatened, attacked, or limited in any way with regard to their rights as a result of exercising their professions. In this sense, the Joint Declaration on Violence against Journalists and Media Workers in the Context of Protests indicates that:

The protection of freedom of expression requires authorities to ensure the necessary conditions for journalists to be able to cover noteworthy events of interest to the public, such as the social protests mentioned. The disproportionate restrictions on access to the scene of the events, the arrests, and the criminal charges resulting from the performance of professional duties by reporters violate the right to freedom of expression. It is incumbent upon the authorities to

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<sup>506</sup> United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. [Joint Declaration on Violence against Journalists and Media Workers in the Context of Protests](#).

<sup>507</sup> European Court of Human Rights. *Case of Najafli v. Azerbaijan*. Application No. 2594/07. Judgment. October 2, 2013. Para. 66.

<sup>508</sup> United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. [Joint Declaration on Violence against Journalists and Media Workers in the Context of Protests](#).

<sup>509</sup> I/A Court H.R. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248. Para. 148.

reestablish the affected guarantees and ensure full respect for the right to freedom of expression.<sup>510</sup>

231. The declaration states that the material and equipment of journalists shall neither be destroyed nor confiscated by government authorities. Likewise, the State “must not prohibit or criminalize live broadcasts of events, and must abstain from imposing measures that regulate or limit the free circulation of information via the Internet, and other communications platforms.”<sup>511</sup>

232. Similarly, on adopting the “Basic principles concerning the protection of journalists in situations of conflict and tension”, the Committee of Ministers of the Council of Europe recommended that member States “shall not restrict the use by journalists of means of communication for the international or national transmission of news, opinions, ideas and comments” nor “delay or otherwise interfere with such transmissions”.<sup>512</sup> Likewise, the principles established that the States must avoid taking “any restrictive measures against journalists such as withdrawal of accreditation or expulsion”<sup>513</sup> in response to their exercise of journalism activities. In this sense, the principles also determine that the accreditation of journalists can only take place when it is “necessary in particular situations,” and it shall not be used to restrict journalists’ freedom of movement or access to information. In any case, the exercise of journalism shall not depend on accreditation, which must operate to “facilitate the exercise of journalism in situations of conflict and tension.”<sup>514</sup>

233. As has been mentioned, in the case of *Vélez Restrepo and Family*, the Inter-American Court found the State responsible for attacks on a journalist while he was covering a demonstration. The attacks were perpetrated by members of security forces. At the time, the State had alleged that the assault was not a deliberate attack, “but the result of a chaotic situation that led to acts of violence involving the marchers that caused the State’s security forces to react, where one of the consequences was the injury to Mr. Velez.”<sup>515</sup> In the judgment, the Inter-American Court observed that the attack on the journalist had taken place in a context in which police officers “were trying to control a protest demonstration with thousands of people, where confrontations arose with some of the protestors.”<sup>516</sup> However, the Court rejected the State’s arguments and concluded that the journalist was attacked while defenseless, without having acted in a way that would justify the attack and while identifiable as a member of the press by the video camera he was carrying. Furthermore, the Court found that “the

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<sup>510</sup> United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. [Joint Declaration on Violence against Journalists and Media Workers in the Context of Protests](#).

<sup>511</sup> United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. [Joint Declaration on Violence against Journalists and Media Workers in the Context of Protests](#).

<sup>512</sup> Council of Europe. Committee of Ministers. [Recommendation No. R \(96\) 4 of the Committee of Minister to Member States on the Protection of Journalists in Situations of Conflict and Tension](#). May 3, 1996. Principle 6.

<sup>513</sup> Council of Europe. Committee of Ministers. [Recommendation No. R \(96\) 4 of the Committee of Minister to Member States on the Protection of Journalists in Situations of Conflict and Tension](#). May 3, 1996. Principle 7.

<sup>514</sup> Council of Europe. Committee of Ministers. [Recommendation No. R \(96\) 4 of the Committee of Minister to Member States on the Protection of Journalists in Situations of Conflict and Tension](#). May 3, 1996. Principle 11.

<sup>515</sup> I/A Court H.R. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248. Para. 143.

<sup>516</sup> I/A Court H.R. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248. Para. 144.

attack was directed against him with the specific purpose of preventing him from continuing to record what was taking place and to prevent the dissemination of the recording.” In that sense, the Court concluded that it was not acceptable to argue that the attack on a journalist under those conditions “was not a deliberate attack” and a “consequence” of the operations being carried out by the police.<sup>517</sup>

234. Similarly, in the case of *Najafli v. Arzerbaijan*, the European Court found the State responsible for the attacks on a journalist covering a demonstration in the city of Baku perpetrated by members of the police force. According to the Court, the journalist did not threaten the police or act in a violent manner. The Court did not find other reasons that could justify the use of force against the journalist under those circumstances. The Court concluded that the use of force was “unnecessary, excessive and unacceptable.”<sup>518</sup> The State argued that the police had no intention of interfering with the journalist’s activities, but that the communicator was not using the blue vest that would have identified him as a member of the press, and that because of this, the police could not distinguish him from the other demonstrators. However, the European Court found that the journalist was at the demonstration to report on the event, and that although he was not using the blue vest, he had a badge identifying him as a member of the media and had identified himself as a journalist to the police who were attacking him. The Court also found that regardless of whether the State intentionally interfered with journalism activity, the relevant part of the case was that the journalist had been subjected to the excessive use of force by police “despite having made clear efforts to identify himself as a journalist who was simply doing his work and observing the event.” The Court concluded that the State violated the journalist’s right to freedom of expression as a result of the attacks he suffered.<sup>519</sup>

235. The Inter-American Court has stated that in situations of serious social tension or disruption of public order, it is not enough for authorities to order the adoption of protective measures, as this “does not prove the State has effectively protected the beneficiaries of the order in relation to the facts analyzed.” Its adequate, coherent and consistent implementation is needed in all cases. The Inter-American Court has also found that State claims that journalists “had acted beyond what state authorities could reasonably prevent and do” or disobeyed instructions must be proven by the State itself.<sup>520</sup>

236. As observed in this report, in situations of social unrest, the State’s obligation to respect the right of journalists to the confidentiality of their sources, notes and personal and professional files is especially important. As has been noted, in order to do their work effectively, journalists must be perceived as independent observers and not potential witnesses for the justice system. Otherwise, they may suffer threats to their safety and the safety of their sources. In these contexts, the perception that they can be forced to testify not only limits journalists’ ability to access sources of information, but also increases their risk of becoming a target for violent groups. In this sense, authorities shall not require

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<sup>517</sup> I/A Court H.R. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs.* Judgment of September 3, 2012. Series C No. 248. Para. 143.

<sup>518</sup> European Court of Human Rights. *Case of Najafli v. Azerbaijan.* Application no. 2594/07. Judgment. October 2, 2012. Para. 39.

<sup>519</sup> European Court of Human Rights. *Case of Najafli v. Azerbaijan.* Application no. 2594/07. Judgment. October 2, 2012. Para. 68.

<sup>520</sup> 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. 154; 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. 167.

journalists to demonstrate that the comments of witnesses given regarding the facts are accurate or to prove before a judge the veracity of the allegations reported.<sup>521</sup>

237. Likewise, as has been mentioned in this report, the authorities must take into account that public officials are guarantors of the fundamental rights of persons, and therefore, their statements cannot be construed as direct or indirect interference with the rights of those seeking to contribute to the public debate through the expression and dissemination of information. This duty is particularly accentuated in situations of greater social unrest, disruption of public order, or social and political polarization, precisely due to the combination of risks involved for certain persons. In this sense, it is crucial for authorities to energetically condemn attacks on journalists and communicators under these circumstances and act with due diligence and swiftness in clearing up the facts and punishing those responsible.<sup>522</sup>

238. Finally, the obligation to instruct the armed forces or police forces regarding the role of the media in a democratic society is also particularly important in situations of social unrest in order to prevent violence against journalists and media workers, especially considering that many of the attacks suffered by communicators in these contexts originate with said actors. In this sense, as has been mentioned in this report, an example of best training practices is a memorandum issued by the New York Police Department in the United States during the protests organized in that city in September of 2011 during the “Occupy Wall Street” movement, when a number of journalists and media workers were arrested and some faced violence at the hands of the New York City police.<sup>523</sup> The memorandum reiterated the “commitment of the Department to upholding the principles of a free press and informed citizenry” and the rules establishing that “[m]embers of the service will not interfere with the videotaping or the photographing of incidents in public places” that “the media’s access to demonstrations on private property will not be impeded by the Department,” that “the media will be given access as close to the activity as possible” and that “[w]hen incidents spill over or occur on private property, members of the media will not be arrested for criminal trespass, unless an owner or representative expressly indicates that the press is not to be permitted to enter or remain on the property.”<sup>524</sup>

239. Likewise, countries like Argentina and Brazil have adopted resolutions seeking to protect journalists covering demonstrations and situations of significant social unrest. Resolutions 210/2011, from the Security Ministry of Argentina, created a working group with the purpose of developing

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<sup>521</sup> United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. [Joint Declaration on Violence against Journalists and Media Workers in the Context of Protests](#); Council of Europe. Committee of Ministers. [Recommendation No. R \(96\) 4 of the Committee of Minister to Member States on the Protection of Journalists in Situations of Conflict and Tension](#). May 3, 1996. Principle 5.

<sup>522</sup> 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 151; 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. 139.

<sup>523</sup> IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 250-261.

<sup>524</sup> NYPD. [Memorandum](#). November 2011. See also, Knight Center for Journalism in the Americas. November 28, 2011. [New York police ordered not to interfere with journalists covering Occupy Wall Street protests](#).

protocols to guide the actions of police and security forces during public demonstrations. Under the minimum standards for the development of those guidelines, the resolution explicitly establishes that:

Security officials must respect, protect and guarantee journalism activity. Journalists, invoking their status as such - including but not limited to photographers and camera operators – cannot be harassed, arrested, detained, moved, or suffer any other restriction to their rights for the simple fact of exercising their professions during public demonstrations. Likewise, police and security officials must refrain from taking actions that could block the recording of images or the collection of statements under these circumstances.<sup>525</sup>

240. Similarly, Resolution No. 6 of 2013 of the Human Rights Secretariat of the federal government of Brazil, regarding the guarantee of human rights in the context of demonstrations, public events, execution of court orders, and actions to recover land or property that has been occupied, establishes that “the activities exercised by reporters, photographers and other communication professionals are essential for effective respect of the human right of freedom of expression” in these contexts, and mandates that these individuals “must enjoy special protection in the exercise of their profession, with any obstacle to their actions through the use of force being prohibited.”<sup>526</sup>

241. As mentioned in this report, the Office of the Special Rapporteur observes that media outlets, society organizations and other actors can play a fundamental role in the prevention of violence against journalists and in their protection in these contexts through actions including training and self protection courses for situations involving demonstrations and social unrest. Civil society organizations have developed self-protection manuals specifically for journalists covering these situations.<sup>527</sup>

#### **E. State obligations regarding journalists in situations of armed conflict**

242. Armed conflict is an especially serious form of social unrest. The Office of the Special Rapporteur has stated that “where there are still internal armed conflicts, the aggressiveness and intolerance characteristic of the armed subjects continue to pose a grave threat to the lives and safety of journalists, critics and dissidents.”<sup>528</sup> Likewise, the IACHR has recognized that visiting communities affected by armed conflict, documenting living conditions, and collecting statements and allegations of human rights violations by authorities is a part of the range of journalism activities covered by the right to freedom of expression; any attack or retaliation by the authorities as a result of the exercise of these activities is a violation of the right to freedom of thought and expression.<sup>529</sup> Attacks on journalists in

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<sup>525</sup> Estado de Argentina. Ministerio de Seguridad. [Resolución 210/ 2011](#). May 4, 2011. Para. 21.

<sup>526</sup> Estado de Brasil. Secretaria de Direitos Humanos da Presidência. [Resolução No.6](#). June 18, 2013. Article 5.

<sup>527</sup> Committee to Protect Journalists (CPJ). [Journalist Security Guide. Chapter 4: Armed Conflict](#). 2012; Article 19. [Guía Protección del Derecho de la Libertad de expresión durante Marchas, Protestas y Disturbios Sociales](#); Artigo 19. [Proteção do Direito de Liberdade de Expressão durante Manifestações e Protestos](#); Reporters Without Borders. [Handbook for journalists](#). February 17, 2006; Reporters Without Borders. May 30, 2002. [Charter for the Safety of Journalists Working in War Zones or Dangerous Areas](#).

<sup>528</sup> IACHR. [Annual Report 2008. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (A Hemispheric Agenda for the Defense of Freedom of Expression). OEA/Ser.L/V/II.134 Doc. 5 rev. 1. February 25, 2009. Para. 45.

<sup>529</sup> IACHR. Report No. 29/96. Case 11.303. *Carlos Ranferí Gómez López*. Guatemala. October 16, 1996. Para. 92.

these contexts constitute a violation of both the individual and the collective dimensions of the right to freedom of expression.<sup>530</sup>

243. Following this line of reasoning, the IACHR has recognized that given the importance of the work that journalists do to inform a society by covering situations of armed conflict, the media outlets operating under these circumstances should be provided by the State with special protection. For example, in the case of the murder of journalist Hugo Bustíos Saavedra, perpetrated in 1988 by a Peruvian military patrol while he was investigating two murders committed during the internal armed conflict that at the time was affecting the country, the IACHR found that the State was responsible for, among other things, the violation of Article 13 of the American Convention, given that although it knew that journalists were in the conflict zone, the State failed to grant them the necessary protection. The IACHR found that the acts of violence that took place prevented the free exercise of the right to freedom of expression of the murdered journalist and another communicator who was wounded by the same patrol. It also violated the right to freedom of expression of the community of media outlets and journalists who felt threatened by these types of incidents of violence, as well as the right of society in general, which was deprived of the knowledge of matters of utmost importance to the public with regard to the armed conflict. According to the IACHR, journalists serve a fundamental role in situations of armed conflict, as “it is journalists who are risking their lives to bring the public an independent and professional view of what is really happening in areas of conflict.”<sup>531</sup> Consequently, it indicated that the State must provide them with the greatest protection possible in order for them to be able to exercise their right to freedom of expression in a way that satisfies society’s right to be adequately informed.<sup>532</sup>

244. On this same issue, the IACHR has specified that journalists covering situations of armed conflict do not, despite being exposed to the risks resulting from the conflict, lose their status as civilians. They are therefore still protected by the applicable guarantees of international humanitarian law and international human rights law - particularly the guarantees derived from the principle of distinction.<sup>533</sup> In this line of thinking, Additional Protocol I to the Geneva Conventions, regarding the protection of the victims of international armed conflicts (1977), explicitly states in Article 79 that “[j]ournalists engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians” and they will consequently be protected as such pursuant to international humanitarian law “provided that they take no action adversely affecting their status as civilians” and without prejudice to the right of war correspondents accredited by the armed forces to enjoy the status of prisoners of war.<sup>534</sup> In this line of thinking, the United Nations Security Council has condemned attacks on journalists perpetrated during situations of armed conflict and urged States and all other parties involved in the

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<sup>530</sup> IACHR. Report No. 38/97. Case 10.548. *Hugo Bustíos Saavedra*. Perú. October 16, 1997. Para. 76 and 77; IACHR. Office of the Special Rapporteur for Freedom of Expression. [Impunity, Self-Censorship and Armed Conflict: An Analysis of the State of the Freedom of Expression in Colombia](#). OEA/Ser.L/V/II Doc.51. August 31, 2005. Para. 53.

<sup>531</sup> IACHR. Report No. 38/97. Case 10.548. *Hugo Bustíos Saavedra*. Perú. October 16, 1997. Para. 73.

<sup>532</sup> IACHR. Report No. 38/97. Case 10.548. *Hugo Bustíos Saavedra*. Perú. October 16, 1997. Para. 75.

<sup>533</sup> Article 48 of the Protocol I Additional to the Geneva Conventions provides that “In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.” IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The Inter-American Legal Framework Regarding the Right to Freedom of Expression). OEA/Ser.L/V/II.Doc 51. December 30, 2009. Para. 195.

<sup>534</sup> See also, Council of Europe. Committee of Ministers. [Recommendation No. R \(96\) 4 of the Committee of Ministers to Member States on the Protection of Journalists in Situations of Conflict and Tension](#). May 3, 1996. Principle 8.



conflicts to take all possible measures to prevent international humanitarian law violations from being committed against journalists, media professionals, and their associated personnel; to fulfill their duties by prosecuting and convicting those responsible; and to respect the professional independence and rights of that group of individuals.<sup>535</sup> For its part, the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions recommended that non-State actors participating in armed conflicts “respect the obligations they incur in terms of international humanitarian law during armed conflict, also towards journalists”.<sup>536</sup> In this sense, the United Nations Plan of Action on the Safety of Journalists and Issue of Impunity establishes that “provisions for the safety of journalists in conflict zones, for example by encouraging the creation of so-called ‘media corridors’” should be strengthened.<sup>537</sup>

245. Likewise, the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Execution indicated that “the spreading of propaganda for the enemy in itself does not make a journalist a legitimate target”, but observed that “incitement to commit grave breaches of international humanitarian law, acts of genocide or violence is prohibited.”<sup>538</sup> In this sense, the Belgrade Declaration provides that “authorities should not mix up independent news with propaganda that incites violence”.<sup>539</sup>

246. Also of special importance in situations of armed conflict are States’ obligations to respect the right of journalists to the confidentiality of their sources, adopt public discourse that contributes to preventing violence against journalists, and instruct the armed forces and security forces on the role of the media in a democratic society.<sup>540</sup>

247. With regard to this latter obligation, Directive No. 19/2010, issued by the Commandant of the National Army of Colombia, constitutes a best practice. It includes an overview of State obligations with regard to journalists pursuant to national and international human rights law and international humanitarian law, including the obligations to “provide special protection to those who exercise their profession” in areas with a significant concentration of illegal armed groups, and the obligation to treat communicators as “civilians” pursuant to international humanitarian law, including

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<sup>535</sup> United Nations. Security Council. [Resolution 1738 \(2006\)](#). S/RES/1738 (2006). December 23, 2006.

<sup>536</sup> United Nations. General Assembly. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns. A/HRC/20/22. April 10, 2012. Para. 136. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96)

<sup>537</sup> United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). International Programme for the Development of Communication. [United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity](#). Point 5 (24).

<sup>538</sup> United Nations. General Assembly. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns. A/HRC/20/22. April 10, 2012. Para. 67. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96)

<sup>539</sup> United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). [Belgrade Declaration. Support to Media in Violent Conflict and in Countries in Transition](#). May 3, 2004. Para. 7.

<sup>540</sup> International Criminal Tribunal for the former Yugoslavia. [Prosecutor v. Radoslav Brdjanin Momir Talick](#). Decision on interlocutory appeal Case No. IT-99-36-AR73.9. December 11, 2002. Para. 42 - 43; Council of Europe. Committee of Ministers. [Recommendation No. R \(96\) 4 of the Committee of Minister to Member States on the Protection of Journalists in Situations of Conflict and Tension](#). May 3, 1996. Principle 5; United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. [Joint Declaration on Violence against Journalists and Media Workers in the Context of Protests](#).

when the individual in question “has a favorable opinion toward any of the parties to the conflict.”<sup>541</sup> In this sense, in the *Case of Vélez Restrepo and Family*, the Inter-American Court “appreciate[d] the measures taken by Colombia in this area, through directives that seek to raise awareness within the Armed Forces about the work of journalists and social communicators and the danger they face, especially during armed conflicts, and also about the necessary respect they must exercise so that the latter can exercise their profession without obstacles.”<sup>542</sup> Nevertheless, the Court established as a guarantee of non-repetition that the State must “incorporate into its human rights education programs for the Armed Forces, a specific module on the protection of the right to freedom of thought and expression and on the work of journalists and social communicators.”<sup>543</sup> Similarly, the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions recommended that States train the members of their security and armed forces “on the legitimacy of the presence of journalists during non-armed and armed conflict and the legal protection for their safety.”<sup>544</sup>

248. Examples can be found in the region of measures taken to provide special protection to journalists in armed conflict situations. For example, the State of Colombia has recognized journalists on a number of occasions as a population that is particularly affected during armed conflict. In its 2005 report entitled *Impunity, Self-censorship and Armed Internal Conflict: an Analysis of the State of Freedom of Expression in Colombia*, the Office of the Special Rapporteur found that “[t]he exercise of freedom of expression in Colombia has been gravely affected in recent decades by the internal armed conflict.”<sup>545</sup> As this report has found, since the year 2000, journalists and social communicators have had special protection program available to them, set up by the Colombian Government.<sup>546</sup> Currently, 16 populations that face social risk are included in the recently established Prevention and Protection Program of the Ministry of the Interior and the National Protection Unit.<sup>547</sup> Likewise, journalists and social communicators have been recognized by the Unit for Full Care and Reparation of Victims as a beneficiary population of collective reparations in the framework of the Law on Victims and Land Restoration.<sup>548</sup> On the issues of the struggle against impunity and access to justice, as has been mentioned, the Colombian Penal Code includes the crime of “homicide of a protected person,” which

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<sup>541</sup> Pamphelt “Respeto, atención, reconocimiento, protección, prevención, promoción, aplicación y difusión de los derechos humanos y DIH de los grupos especiales.” Directiva Permanente No. 19/2010 de la Jefatura de Derechos Humanos y DIH del Ejército Nacional. Ejército Nacional, Fuerzas Militares de Colombia. Document Attached to the answer to the application, annex 2, file on the merits, volume I, pages 455 to 463. I/A Court H.R. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248. Para. 276.

<sup>542</sup> I/A Court H.R. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248. Para. 277.

<sup>543</sup> I/A Court H.R. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248. Para. 277.

<sup>544</sup> United Nations. General Assembly. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns. A/HRC/20/22. April 10, 2012. Para. 118. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96)

<sup>545</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Impunity, Self-Censorship and Armed Conflict: An Analysis of the State of the Freedom of Expression in Colombia](#). OEA/Ser.L/V/II Doc.51. August 31, 2005. Para. 5.

<sup>546</sup> Presidencia de la República de Colombia. [Decreto No. 1592 de 2000](#). August 24, 2000.

<sup>547</sup> Presidencia de la República de Colombia. [Decreto No. 4912 de 2011](#). December 26, 2011. Article 6.

<sup>548</sup> Unidad para la Atención y Reparación Integral a las Víctimas. September 20, 2012. [Gobierno consulta a periodistas Víctimas del conflicto sobre proceso de Reparación Colectiva](#); El Mundo. October 9, 2012. [Reparación para periodistas víctimas](#); Knight Center for Journalism in the Americas. September 25, 2012. [Colombian government consults journalists targeted by violence in reparation process](#).

occurs when a person protected by international humanitarian law is murdered due to and as part of the armed conflict, including “journalists on assignment or accredited war correspondents.”<sup>549</sup> Finally, the Office of the Public Prosecutor of the Colombian State has also qualified some cases involving murders of and assaults on journalists as crimes against humanity on observing that among other considerations, the crimes formed part of a systematic and general attack on civilians by armed groups in the context of the internal armed conflict.<sup>550</sup>

249. Finally, civil society organizations and other actors have also played a fundamental role in the prevention of violence against journalists and their protection during armed conflict. For example, the International Committee of the Red Cross (ICRC) organizes first aid training and courses for journalists who cover armed conflict and international humanitarian law.<sup>551</sup> The ICRC also has a direct line of communication with journalists, their relatives and media outlets that need assistance with regard to arrests, disappearances and injuries suffered by journalists during armed conflicts. It acts to locate disappeared journalists and evacuate those who are injured.<sup>552</sup> Likewise, civil society organizations have developed self protection manuals specifically for journalists covering armed conflicts.<sup>553</sup>

## F. Violence against women journalists

250. The Inter-American standards and domestic practices on the prevention, protection and prosecution of violence against journalists set forth so far highlight the need for State policies specifically designed to address the roots of this violence according to social context and its consequences for the lives of those affected. One relevant aspect of this endeavor involves examining the situation of women who practice journalism in our region and the multiple and specific risks they face as a result of the exercise of their right to freedom of expression. This means understanding how gender inequality and sexist practices manifest themselves in the phenomenon of violence against journalists, and with it, foster the adoption of adequate measures of prevention, protection and justice.

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<sup>549</sup> Estado de Colombia. [Código Penal. Ley 599 de 2000](#). Article 135. Para. 5.

<sup>550</sup> El Tiempo. March 11, 2013. [Crimen de periodista Eustorgio Colmenares, delito de lesa humanidad](#); Knight Center for Journalism in the Americas. March 12, 2013. [Fiscalía de Colombia declara asesinato de periodista como delito de lesa humanidad](#); Terra/Agencia EFE. March 11, 2013. [Fiscalía colombiana dice asesinato periodista es crimen de lesa humanidad](#); Fiscalía General de la Nación. October 11, 2012; [Declaración del Fiscal General de la Nación, 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](#); El Espectador. September 13, 2012. [Justicia en caso Jineth Bedoya](#).

<sup>551</sup> United Nations. General Assembly. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns. A/HRC/20/22. April 10, 2012. Para. 84, 87 and 90. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96); International Committee of the Red Cross (ICRC). [Informe 2010 Colombia](#) (In Spanish). March 2011. P. 77; TV San Jorge. June 14, 2013. [Culminó capacitación para periodistas regionales ofrecida por el CICR](#) (VIDEO).

<sup>552</sup> International Committee of the Red Cross (ICRC). September 9, 2011. [HOTLINE: assistance for journalists on dangerous assignments](#).

<sup>553</sup> Committee to Protect Journalists (CPJ). [Journalist Security Guide. Chapter 4: Armed Conflict](#). 2012; Article 19. [Guía Protección del Derecho de la Libertad de expresión durante Marchas, Protestas y Disturbios Sociales](#); Artigo 19. [Proteção do Direito de Liberdade de Expressão durante Manifestações e Protestos](#); Reporters Without Borders. [Handbook for journalists](#). February 17, 2006; Reporters Without Borders. May 30, 2002. [Charter for the Safety of Journalists Working in War Zones or Dangerous Areas](#).

251. As explained below, according to the information compiled by the Office of the Special Rapporteur, violence committed against female journalists as a result of their work has particular characteristics stemming from the social constructs of gender and discrimination to which women have traditionally been subjected. This violence is manifested in different ways, from murder and sexual violence—including sexual harassment—to intimidation, abuse of power, and threats based on gender. According to the information available, violence against women is perpetrated by different actors, including State agents, sources of information, and colleagues, and it takes place in diverse contexts and settings, including the street, the workplace, and State offices or institutions.<sup>554</sup>

252. To this point, United Nations Special Rapporteur on the Promotion and Protection of Freedom of Opinion and Expression, Frank La Rue, stated in his report on the protection of journalists and media freedom, that “[f]emale journalists also face additional risks, such as sexual assault, mob-related sexual violence aimed against journalists covering public events, or sexual abuse in detention or captivity. Many of these attacks are not reported as a result of powerful cultural and professional stigmas. A gender-sensitive approach is therefore needed when considering measures to address the issue of violence against journalists.”<sup>555</sup>

253. The importance of taking account of gender in the study of violence against journalists and the identification of strategies to eradicate it is reinforced by the obligation of the States to combat discrimination and violence against women with due diligence.<sup>556</sup> As has been recognized by the Inter-American Commission “gender-based violence is one of the most extreme and common forms of discrimination”<sup>557</sup>, as it severely impedes and annuls women’s exercise of their rights, including the rights to life and personal integrity. Effectively, the Inter-American system has highlighted the strong connection between the issues of discrimination and violence against women.<sup>558</sup> An example of this can

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<sup>554</sup> CIMAC. Informe diagnóstico. [Violencia contra mujeres periodistas. México 2010-2011](#). Septiembre 7, 2012. P. 11; Committee to Protect Journalists (CPJ). June 7, 2011. [Special Report: The silencing crime: Sexual violence and journalists](#).

<sup>555</sup> United Nations. General Assembly. Report of the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/20/17. June 4, 2012. Para. 52. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>556</sup> IACHR. Report No. 80/11. Case 12.626. Merits. Jessica Lenahan (Gonzales) et al. United States. July 21, 2011. Para. 110-111; IACHR. Report No. 28/07. Cases 12.496-12.498. Claudia Ivette González et al. Mexico. March 9, 2007. See also, IACHR. Report No. 54/01. Case 12.051. Maria Da Penha Maia Fernandes. Brazil. April 16, 2001. IACHR. [Access to Justice for Women Victims of Violence in the Americas](#). OEA/Ser.L/V/II. Doc. 68. January 20, 2007; I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 16, 2009. Series C No. 205; I/A Court H.R., *Case of Fernández Ortega et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 30, 2010. Series C No. 215; I/A Court H.R., *Case Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010. Series C No. 216.

<sup>557</sup> IACHR. Report No. 80/11. Case 12.626. Merits. *Jessica Lenahan (Gonzales) et al.* United States. July 21, 2011. Para. 110. See also, United Nations. General Assembly. [Declaración sobre la eliminación de la violencia contra la mujer](#). Resolution 48/104. September 20, 1993. A/RES/48/104; United Nations. General Assembly. [Beijing Declaration and Platform for Action](#). The Fourth World Conference on Women. A/CONF.177/20/Rev.1. September 15, 1995; United Nations. CEDAW. [General Recommendation 19: Violence against Women](#). ONU Doc.A/47/38.1. 11<sup>o</sup> Period of Sessions 1992.

<sup>558</sup> IACHR. Report No. 80/11. Case 12.626. Merits. Jessica Lenahan (Gonzales) et al. United States. July 21, 2011. Para. 110; IACHR. Report No. 28/07. Cases 12.496-12.498. Claudia Ivette González et al. Mexico. March 9, 2007. See also, IACHR. Report No. 54/01. Case 12.051. Maria Da Penha Maia Fernandes. Brazil. April 16, 2001. IACHR. [Access to Justice for Women Victims of Violence in the Americas](#). OEA/Ser.L/V/II. Doc. 68. January 20, 2007; I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 16, 2009. Series C No. 205; I/A Court H.R., *Case of Fernández Ortega et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 30, 2010. Series C No. 215; I/A Court H.R., *Case Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010. Series C No. 216.

be found in the provisions of the “Convention of Belém do Pará,” which establishes that all women have the right to a life free from violence,<sup>559</sup> to be free of all forms of discrimination, to be valued and educated free from stereotypical patterns,<sup>560</sup> to equal protection before the law and of the law, and to have a simple and quick remedy available through the competent courts when their rights are violated.<sup>561</sup>

254. Similarly, the Commission has noted “the close relationship between discrimination, violence and due diligence”<sup>562</sup> and emphasized that this duty includes “the obligation to organize the structure of the State –including the laws, public policy, organs charged with enforcing the law, like the police, and the judicial system- so that it is capable of adequately and effectively preventing and responding to these problems.”<sup>563</sup> Likewise, it has observed that State inaction in the area of violence against women constitutes not only a form of discrimination but also a violation of the rights to life and personal integrity”.<sup>564</sup> This is particularly relevant due to the fact that the practice of journalism remains a male-dominated activity in which stereotypes and traditional gender roles are reproduced. Although the participation of women has admittedly increased significantly over the years, studies show that the assignment of women to the highest levels of decision-making or to issues that warrant the most important media coverage remains low.<sup>565</sup>

255. There is little documentation on the situation of women journalists and the violence that they face as a result of the exercise of their profession in the Americas. No exhaustive regional or local studies have been done, and it is assumed that the information that is available does not reflect the depth of the problem.<sup>566</sup> This is no surprise. In general, instability and lack of coordination between

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<sup>559</sup> Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women “Convention of Belem do Pará”. Article 3. It should be noted that “[f]or the purposes of this Convention, violence against women shall be understood as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.”

<sup>560</sup> Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women “Convention of Belem do Pará”. Article 6.

<sup>561</sup> Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women “Convention of Belem do Pará”. Article 4.

<sup>562</sup> IACHR. Report No. 80/11. Case 12.626. Merits. *Jessica Lenahan (Gonzales) et al.* United States. July 21, 2011. Para. 111; IACHR. Report No. 28/07. Cases 12.496-12.498. *Claudia Ivette González et al.* Mexico. March 9, 2007; I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205.

<sup>563</sup> IACHR. [Access to Justice for Women Victims of Sexual Violence in Mesoamerica](#). OEA/Ser.L/V/II. Doc. 63. December 9, 2011. Para. 41.

<sup>564</sup> IACHR. Report No. 80/11. Case 12.626. Merits. *Jessica Lenahan (Gonzales) et al.* United States. July 21, 2011. Para. 111. *See also*, I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205; European Court of Human Rights. *Case of Opuz c. Turquía*. Application No. 33401/02. Judgment. June 9, 2009; European Court of Human Rights. *Kontrová c. Slovakia*. Application No. 7510/04. September 24, 2007; United Nations. CEDAW. Comments on the Communication No. 5/2005, *Sahide Goekce c. Austria*. C/39/D/5/2005. August 6, 2007.

<sup>565</sup> International Women Media Foundation. Global Report on the Status of Women in the News Media. 2011. Available for consultation at: <http://www.iwmf.org/global-report/>. *See also*, United Nations. General Assembly. [Beijing Declaration and Platform for Action](#). The Fourth World Conference on Women. A/CONF.177/20/Rev.1. September 15, 1995. Strategic Objective J. Women and Media. Para. 235.

<sup>566</sup> Committee to Protect Journalists (CPJ). June 7, 2011. [Special Report: The silencing crime: Sexual violence and journalists](#); CIMAC. [Informe diagnóstico. Violencia contra mujeres periodistas. México 2010-2011](#). September 7, 2012. P. 11.

information systems to collect statistics on incidents in cases of violence against women has been identified by the IACHR as a relevant obstacle to examining the causes of this phenomenon and relevant trends.<sup>567</sup> In its thematic reports on violence against women, the Commission has identified among some of the most important challenges obstructing effective access to justice: (i) the lack of studies or statistics on the prevalence of violence against women, and the little information there is on its magnitude and (ii) the severe problem of under-reporting and failure to file complaints of incidents, because victims fear stigmatization by their communities and reprisals on the part of the assailant.<sup>568</sup>

256. The preliminary results of the first global survey on the issue launched in 2013 by civil society organizations in collaboration with UNESCO show that women journalists are victims of intimidation and threats, sexual violence and harassment, cyber-bullying, among other attacks. According to the data published, only a minority of cases are reported and investigated.<sup>569</sup>

257. For a number of years, nongovernmental organizations in Mexico have made a significant effort to document the situation of women journalists there.<sup>570</sup> Their diagnosis is that the increase in violence in general has also exacerbated gender violence. According to available information, in this context, the number of cases of women journalists who are victims of femicide and sexual violence - from harassment to rape - has increased. However, the reports released highlight that due to the nature of the phenomenon and distrust of the legal remedies available, these incidents are not reported by Mexican women journalists. This type of violence remains invisible and in silence for many, and when it is reported, they receive negligent treatment that is inconsistent and inequitable for the women involved. The women are subjected to stereotypical treatment and their private (sexual) lives are questioned. The experience thus brings with it a significant professional cost.<sup>571</sup> In its final observations for Mexico, the Committee on the Elimination of Discrimination against Women expressed deep concern at the risks faced by women journalists exercising their profession in that country. The Committee observed that it had received information indicating that women journalists in that country are “subjected to a variety of manifestations of violence, including threats and defamatory campaigns, sexual abuse, harassment and femicide.” Other causes for concern indicated by the Committee include the delays by competent authorities in adopting measures to guarantee the human rights of journalists; the fact that the majority of cases of violence against journalists have been perpetrated by State agents; and the lack of measures to prevent, investigate, charge and try the guilty parties.<sup>572</sup>

<sup>567</sup> IACHR. [Access to Justice for Women Victims of Violence in the Americas](#). OEA/Ser.L/V/II. Doc. 68. January 20, 2007.

<sup>568</sup> IACHR. [Access to Justice for Women Victims of Sexual Violence in Mesoamerica](#). OEA/Ser.L/V/II, Doc. 63. December 9, 2011. Para. 5.

<sup>569</sup> International Women Media Foundation. [Global research project investigates violence against women journalists](#) December 2, 2013. See also, UNESCO/International Women Media Foundation. August 26, 2013. [Global survey on violence against female journalists launched](#).

<sup>570</sup> CIMAC. [Informe diagnóstico. Violencia contra mujeres periodistas. México 2010-2011](#). September 7, 2012; CENCOS. [¿Porque tanto silencio?. Daño reiterado a la libertad de expresión en México 2012](#). May 2013. P. 121- 129; CENCOS/Article 19. [Violencia en México y el derecho a la Información. Análisis de las cifras](#). April 2011.

<sup>571</sup> CIMAC. [Informe diagnóstico. Violencia contra mujeres periodistas. México 2010-2011](#). September 7, 2012; CENCOS. [¿Porque tanto silencio?. Daño reiterado a la libertad de expresión en México 2012](#). May 2013. P. 121- 129; CENCOS/Article 19. [Violencia en México y el derecho a la Información. Análisis de las cifras](#). April 2011.

<sup>572</sup> United Nations. CEDAW. [Concluding Observation of the Committee on the Elimination of Discrimination Against Women Mexico](#). CEDAW/C/MEX/CO/7-8. August 7, 2012. Para. 24.

258. The Office of the Special Rapporteur has received information suggesting that this problem is also affecting other countries in the region that have high levels of violence against journalists.<sup>573</sup> States therefore need to adopt specific, adequate, full and effective measures toward making the attacks and other forms of abuse perpetrated against women journalists visible, preventing those attacks, and investigating them.

259. Effectively, as indicated throughout this report, States have an obligation to prevent, protect and investigate, and try and punish those responsible for these crimes. According to the inter-American case law, in cases of violence against women the States have—in addition to the abovementioned general obligations—a reinforced obligation to act with due diligence based on the existing provisions on the rights of women, such as the Convention of Belém do Pará.<sup>574</sup>

260. With regard to the obligation to prevent, the Inter-American Court has recognized that States “should have an appropriate legal framework for protection that is enforced effectively, and prevention policies and practices that allow effective measures to be taken in response to the respective complaints.” As has been indicated, in order to prevent violence against journalists and media workers, it is indispensable for legal systems to punish this conduct in a manner that is proportional to the damage committed. In this regard, an amendment to the Federal Mexican Penal Code stands out according to which the punishment of crimes against journalists is increased by up to half when “the victim is a woman and gender forms part of the motive for the commission of the crime.”<sup>575</sup>

261. That said, establishing a legal framework is not by itself enough; the prevention strategy must be complete - that is, it should “prevent the risk factors and, at the same time, strengthen the institutions that can provide an effective response in cases of violence against women.”<sup>576</sup> The Inter-

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<sup>573</sup> United Nations. CEDAW. [Concluding Observation of the Committee on the Elimination of Discrimination Against Women Mexico](#). CEDAW/C/MEX/CO/7-8. August 7, 2012.

<sup>573</sup> For example, on June 2, 2000 the IACHR granted precautionary measures and requested that the Colombian State take steps to protect the life and physical integrity of Jineth Bedoya Lima, a journalist for *El Espectador*. According to the IACHR “[t]he available information indicates that on May 24, 2000, Jineth Bedoya received a call from an individual nicknamed “the baker” (“*el Panadero*”), who expressed interest in having a journalistic piece done on the paramilitary’s version of the outbreak of violence on April 27, 2000 in the National Model Prison of Bogotá. The journalist was approached at the door of the facilities, surrounded, sedated, and driven to a nearby house where several individuals gagged and beat her and subjected her to degrading treatment. She was then left in an unpopulated sector”. IACHR. [Annual Report 2000](#). Chapter III (The petitions system and individual cases). OEA/Ser.L/V/II.111 Doc. 20 re. Para. 20. Likewise, on 2010 the Office of the Special Rapporteur received information that indicated that Claudia Julieta Duque, an independent correspondent in Colombia with the Internet human rights broadcaster *Radio Nizkor*, received threats. IACHR. [Annual Report 2010. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 149-152.

<sup>574</sup> IACHR. Report No. 80/11. Case 12.626. Merits. Jessica Lenahan (Gonzales) et al. United States. July 21, 2011. Para. 110-111; IACHR. Report No. 28/07. Cases 12.496-12.498. Claudia Ivette González et al. Mexico. March 9, 2007. *See also*, IACHR. Report No. 54/01. Case 12.051. Maria Da Penha Maia Fernandes. Brazil. April 16, 2001. IACHR. [Access to Justice for Women Victims of Violence in the Americas](#). OEA/Ser.L/V/II. Doc. 68. January 20, 2007; I/A Court H.R. *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 16, 2009. Series C No. 205; I/A Court H.R. *Case of Fernández Ortega et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 30, 2010. Series C No. 215; I/A Court H.R. *Case of Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010. Series C No. 216.

<sup>575</sup> Estados Unidos Mexicanos. [Código Penal Federal](#). November 30, 2012. Article 51.

<sup>576</sup> I/A Court H.R. *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 16, 2009. Series C No. 205. Para. 258.

American Commission has stated that this obligation necessarily means executing initiatives to collect information, including statistics, research and studies on the various manifestations of violence against women journalists.<sup>577</sup> In this respect, recognizing the need to consider the intersection of different forms of discrimination that women may experience for other related reasons, such as race, national origin, sexual orientation, and others, the IACHR has recommended that States include data in the pertinent studies broken down by sex, race, and other variables that expose women to violence.<sup>578</sup> Similarly, the IACHR has found that given the relevance to the public interest of statistical information related with the problem of violence against women, States “must have appropriate legal and administrative mechanisms to ensure ample access to that information, establish vehicles for circulating it, and encourage public debate and scrutiny of the policies being implemented in that realm”.<sup>579</sup>

262. Likewise, based on Inter-American case law and doctrine, the bodies of the Inter-American system have indicated that States have an obligation to adopt protective measures in specific cases in which individual journalists are at special risk of becoming victims of violence. In this regard, the UN Human Rights Council acknowledged “the specific risks faced by women journalists in the exercise of their work”, and underlining, in this context, the importance of taking a gender-sensitive approach when considering measures to address the safety of journalists.<sup>580</sup> Also, on analyzing the situation of human rights defenders, the IACHR found that during the risk assessment, a gender perspective must be taken into account with regard to applicants for protection and urged States to evaluate the specific context in which applicants perform their duties and whether it could have a differential impact on the level of risk based on that category.<sup>581</sup> In so doing, the States must also take account of the particular risk of human rights violations faced by different sectors of women because of the intersection of different forms of discrimination for other related reasons, including their race, ethnicity, age, sexual orientation, among others.

263. In these circumstances, according to the Commission, the risk measured by the assessment must be qualified as higher.<sup>582</sup> This is particularly important in the case of women journalists, as they are exposed to a two-fold risk for exercising journalism in situations of significant conflict or violence and in contexts that reinforce gender subordination.

264. As has been highlighted, special protection programs for journalists in Colombia and Mexico have protocols and directives that require the mechanism to be applied from a gender perspective and with emphasis on the human rights of women. Thus, in a follow-up of Resolution No.

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<sup>577</sup> IACHR. [Access to Justice for Women Victims of Violence in the Americas](#). OEA/Ser.L/V/II. Doc. 68. January 20, 2007. Para. 42-43; *See also*, United Nations. CEDAW. [General Comment No. 19: Violence against Women](#). Doc.A/47/38.1. 1992; CEPAL. [Cuaderno 99. Si no se cuenta, no cuenta: Información sobre la violencia contra las mujeres](#). April 2012.

<sup>578</sup> IACHR. [Access to Justice for Women Victims of Sexual Violence in Mesoamerica](#). OEA/Ser.L/V/II, Doc. 63. December 9, 2011. Para. 20.

<sup>579</sup> IACHR. [Access to Justice for Women Victims of Violence in the Americas](#). OEA/Ser.L/V/II. Doc. 68. January 20, 2007. Para. 43.

<sup>580</sup> United Nations. Human Rights Council. [Resolution 23/2. The role of freedom of opinion and expression in women’s empowerment](#). A/HRC/RES/23/2. June 24, 2013.

<sup>581</sup> IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 512.

<sup>582</sup> IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 512.



0805 of May 14, 2012 adopted by the Ministry of Interior of Colombia, the government issued a “specific protocol focusing on gender and the rights of women,” adopting, among other things, principles of preferential and special attention for women and the participation of women's organizations in the program. The Protocol establishes the creation of a Risk Assessment and Measure Recommendation Committee (CERREM) for Women, which includes the participation of women's organizations, State agencies that work on issues of gender, the High Presidential Council on Women's Equality, and representatives of international organizations such as UN Women. The CERREM for Women meets specially and exclusively to examine cases of in which women are requesting protection. According to the Protocol, the beneficiary can choose to have her case analyzed by the CERREM for Women or the CERREM created to examine situations of risk in the other segment of the population to which she belongs, such as for example journalists. Likewise, the Protocol establishes the adoption of complementary measures with a differential approach when they are requested by the beneficiary or found necessary in the risk assessment. These include measures to ensure the health, social safety and well-being of women human rights defenders and their family members; measures aimed at providing support to the beneficiary and her family members for accessing the education system; and measures for aiding mothers who are nursing, pregnant, or have minors in their care. The Protocol also establishes the need for training and sensitizing the agencies and officials with the program on the issue of gender and women's rights.<sup>583</sup>

265. In the case of Mexico, the rules of procedure of the Government Council of the Mechanism for the Protection of Human Rights Defenders and Journalists establish that its resolutions must hew to “*pro persona* principles, a gender perspective, the higher interest of the child and other human rights criteria.”<sup>584</sup> Likewise, the Mechanism for the Prevention and Protection of Journalists of the Federal District included a gender focus in its protocols and respect for the principle of nondiscrimination.

266. As far as the obligation to investigate, it is relevant to highlight that it has additional meaning in cases of women journalists and of violence that seeks to restrict the exercise of freedom of expression. In this sense, the Inter-American Court has expressed that “when an act of violence against a woman occurs, it is particularly important that the authorities in charge of the investigation carry it out [...] in a determined and effective manner, taking into account society’s obligation to reject violence against women and the State’s obligation to eliminate it and to ensure that victims trust the State institutions there for their protection.”<sup>585</sup>

267. The Court has in its recent case law specified the content of this obligation. In the specific case of the duty to investigate complaints of sexual violence, the Court has found it necessary that in “the course of a criminal investigation for rape: i) the victim’s statement should be taken in a safe and comfortable environment, providing privacy and trust; ii) the victim’s statement should be recorded so as to avoid or limit the need for repetition; iii) the victim should be provided with medical, psychological and hygienic treatment, both on an emergency basis, and continuously if required, under

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<sup>583</sup> Estado de Colombia. Ministerio del Interior. [Resolución 0805. Protocolo específico con enfoque de género y de los derechos de las mujeres](#). May 14, 2012.

<sup>584</sup> Estados Unidos Mexicanos. [Reglamento de la Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). November 30, 2012. Article 22.

<sup>585</sup> I/A Court H.R. *Case of Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010. Series C No. 216. Para. 177.

a protocol for such attention aimed at reducing the consequences of the rape; iv) a complete and detailed medical and psychological examination should be made immediately by appropriately trained personnel, of the sex preferred by the victim insofar as this is possible, and the victim should be informed that she can be accompanied by a person of confidence if she so wishes; v) the investigative measures should be coordinated and documented and the evidence handled with care, including taking sufficient samples and performing all possible tests to determine the possible perpetrator of the act, and obtaining other evidence such as the victim's clothes, immediate examination of the scene of the incident, and guaranteeing the proper chain of custody of the evidence, and vi) access to free legal assistance at all stages of the proceedings should be provided to the victim.”<sup>586</sup>

268. In order for this to be possible, it is crucial for the authorities in charge to be duly trained on issues of gender. As has been broadly recognized, when those investigations are not carried out by trained authorities, they are marred by indifference and deficiencies, which negatively affect a case's procedural future. Specifically, the lack of training is frequently demonstrated by the fact that these types of investigations turn to discriminatory gender stereotypes to question the credibility of the complaint that has been filed.<sup>587</sup> In this regard, the IACHR has pointed out that “when victims turn to the state institutions with which complaints are to be filed –mainly the police or prosecutors- they generally encounter an atmosphere of gender-based discrimination. Because of the stereotypes and biases that members of law enforcement and officers of the court harbor, they give little credence to the victim's version of what happened, put the blame on her, justify what happened by pointing to the victim's attitude or behavior or her previous relationships, question the woman's honor, or use a sexist vocabulary. The discrimination is often a function of the victim's sexual [orientation], the color of her skin, her ethnic origins, her low level of education, her nationality, and other factors.”<sup>588</sup>

269. In sum, the Office of the Special Rapporteur expresses its concern with regard to the situation of women journalists and the differential risks that they face over their exercise of the profession in the Americas. Especially concerning is the lack of attention that has thus far been paid to the phenomenon and the obstacles to denouncing and understanding it. For this reason, States are reminded of the need to improve mechanisms of prevention, protection and judicial responses in order to fully comply with the obligations described in this report and guarantee women the full exercise of their freedom of expression.

### **G. The role of other actors: third-party States, media outlets and NGOs**

270. International obligations to prevent attacks against journalists, put in place measures of protection, and punish crimes against journalists are, pursuant to regional human rights law, dependent on the States in their corresponding territories. Nevertheless, the Office of the Special Rapporteur believes it pertinent to mention the significant role that other actors can play in the work of preventing and punishing violence against journalists.

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<sup>586</sup> I/A Court H.R. *Case of Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010. Series C No. 216. Para. 178.

<sup>587</sup> I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 16, 2009. Series C No. 205. Para. 401.

<sup>588</sup> IACHR. [Access to Justice for Women Victims of Sexual Violence in Mesoamerica](#). OEA/Ser.L/V/II. Doc. 63. December 9, 2011. Para. 181.

271. The international community is a crucial actor in the protection of journalists, particularly those third-party States where an at-risk journalist has fled or seeks to be received in order to escape an imminent threat to their life or safety. Regarding the extreme situation of violence affecting journalists on some States, the Office of the Special Rapporteur has observed that bilateral and multilateral cooperation should focus a significant portion of its efforts on the defense of journalists and human rights defenders, including financial resources to guarantee their protection, technical assistance to aid with ongoing investigations, and international solidarity in the sheltering of journalists or activists who have been displaced individually or with their families as a result of their opinions, allegations or investigations.<sup>589</sup> Regarding the latter group, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has praised the Swedish government's decision to create a refuge<sup>590</sup> for journalists facing serious and urgent threats in the context of that government's Special Initiative for Democratisation and Freedom of Expression.<sup>591</sup>

272. A second actor that undoubtedly plays a critical role in the safety of journalists is the media itself. In its 2010 Special Report on Freedom of Expression in Mexico, the Office of the Special Rapporteur called on media company owners to "provide appropriate support to journalists, including security protocols and the training required to minimize the risks" to their safety.<sup>592</sup> 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 made a similar point in their 2012 Joint Declaration on Crimes against Freedom of Expression, stressing that "[m]edia organizations 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."<sup>593</sup> The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has similarly stated that "[m]edia agencies should provide appropriate basic and advanced security training for journalists and media personnel [...]. They should also provide safety and self-protection guidance for their employees, giving them security equipment as necessary and offering training to both their permanent and freelance employees."<sup>594</sup> Similarly, the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity points to the importance of urging "the media industry and its professional associations, to establish general safety provisions for journalists,

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<sup>589</sup> IACHR Office of the Special Rapporteur for Freedom of Expression. [Press Release R28/10. Office of the Special Rapporteur strongly condemns murder and kidnapping of journalists in Mexico](#). March 15, 2010.

<sup>590</sup> Fojo Safe House. [Safe House Guidelines](#).

<sup>591</sup> United Nations. General Assembly. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns. A/HRC/20/22. April 10, 2012. Para. 88. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96)

<sup>592</sup> IACHR. [Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 833.

<sup>593</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 25, 2012. [Joint Declaration on Crimes Against Freedom of Expression](#).

<sup>594</sup> United Nations. General Assembly. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns. A/HRC/20/22. April 10, 2012. Para. 145. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96)

including but not limited to safety training courses, health care and life insurance, access to social protection and adequate remuneration for free-lance and full-time employees.”<sup>595</sup>

273. One example of a media outlet that has taken important steps in this regard is Brazil’s *TV Globo*. Following the murder of investigative reporter Tim Lopes in 2002, *TV Globo* created an internal commission to reevaluate its coverage of violence in Rio de Janeiro and reinforce its existing security measures.<sup>596</sup> For more than a decade, the company has invested in safety training for its entire crew.<sup>597</sup> It has also provided security measures such as temporary relocation and personal bodyguards to employees who are under threat.<sup>598</sup> In addition, *TV Globo* is a member of the International News Safety Institute (INSI), a coalition of news organizations, journalist support groups and individuals exclusively dedicated to the safety of news media staff working in dangerous environments. INSI’s purpose is to create a global safety network of advice and assistance to journalists and other news gatherers who may face danger covering the news on international assignment or in their own countries.<sup>599</sup> In this regard, organizations like Article 19 have developed security courses aimed at journalists located in dangerous areas that include basic security measures, first aid, risk identification and the preparation of safety and self-defense protocols, and information technology security.<sup>600</sup>

274. In addition to safety measures adopted within media organizations, experience in the region shows that solidarity and cooperation among media outlets can contribute significantly to journalist safety. The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions also highlighted the importance of this type of cooperation between media outlets, noting that, “while recognizing the often competitive nature of the relationships among media workers worldwide, it is important to set competition aside where issues of safety are involved.”<sup>601</sup> For example, in Colombia, competing media outlets have at various times collaborated to report and publish stories that could be dangerous in order to reduce the exposure of any one reporter or media outlet while sending a defiant message to those who would seek to silence the press through violence.<sup>602</sup> Following the 1986 murder of *El Espectador* newspaper director Guillermo Cano by the drug cartel headed by Pablo Escobar, for example, the entire Colombian press corps instituted a 24 hour blackout in protest.<sup>603</sup> In the following

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<sup>595</sup> United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). International Programme for the Development of Communication. [United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity](#). Point 5.22.

<sup>596</sup> Proyecto Impunidad. June 2, 2002. [Muerte de Tim Lopes denuncia el poder de los traficantes](#).

<sup>597</sup> Proyecto Impunidad. June 2, 2002. [Muerte de Tim Lopes denuncia el poder de los traficantes](#).

<sup>598</sup> Proyecto Impunidad. June 2, 2002. [Muerte de Tim Lopes denuncia el poder de los traficantes](#).

<sup>599</sup> International News Safety Institute. Available for consultation at: <http://www.newssafety.org/>

<sup>600</sup> Article 19. 5 de noviembre de 2012. [Curso de Seguridad para Periodistas en línea](#); Article 19. 25 de junio de 2013. [Invitación: Curso de Seguridad para periodistas en zonas de riesgo](#); Article 19. [Asesoría para la Elaboración de Protocolos de Seguridad](#); Article 19. [Capacitación para periodistas sobre cobertura de alto riesgo](#).

<sup>601</sup> United Nations. General Assembly. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns. A/HRC/20/22. April 10, 2012. Para. 144. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96)

<sup>602</sup> Center for International Media Assistance. [Dangerous Work: Violence Against Mexico’s Journalists and Lessons from Colombia](#). April 11, 2012. Pp. 23-25; Committee to Protect Journalists (CPJ). September 8, 2010. [Silence or Death in Mexico’s Press: How Colombian Media Met Dangerous Times](#).

<sup>603</sup> Center for International Media Assistance. [Dangerous Work: Violence Against Mexico’s Journalists and Lessons from Colombia](#). April 11, 2012. Pp. 23-25; Committee to Protect Journalists (CPJ). September 8, 2010. [Silence or Death in Mexico’s Press: How Colombian Media Met Dangerous Times](#).

months, *El Espectador*, its main competitor *El Tiempo*, and other media outlets worked together to investigate and publish stories about drug trafficking.<sup>604</sup>

275. In 2004, a similar strategy was employed whereby 19 Colombian magazines and newspapers investigated and simultaneously published dangerous investigative stories on issues such as paramilitary infiltration in gambling.<sup>605</sup> On this note, the “Proyecto Manizales”, was designed to report the very stories that had been thwarted when the initial reporters were threatened, murdered or forced into exile.<sup>606</sup> This project was initially created by seven leading Colombian newspapers and magazines (*La Patria*, *El Colombiano*, *El Tiempo*, *El Espectador*, *Cambio* and *Semana*, among others) in response to the 2002 murder of journalist Orlando Sierra.<sup>607</sup> The media outlets collaborated on an investigation into Sierra’s murder and simultaneously published their findings, helping to establish the political motives of the crime.<sup>608</sup> The Proyecto Manizales was reactivated on subsequent occasions in order to carry out the work being done by journalists who suffered acts of violence. This was done, for example, in order to conclude the investigations being carried out by journalist Guillermo Bravo at the time he was killed in 2003,<sup>609</sup> as well as the investigations that led to death threats against the investigative editor of *El Diario* of Huila, Germán Hernández, in 2007.<sup>610</sup>

276. In 2012, a similar initiative was carried out by online media from different countries throughout the region. Twice they simultaneously published investigative journalism reports on organized crime’s involvement in displacement and human trafficking. The initiative included the cooperation of online media sources *El Faro* (from El Salvador), *Plaza Pública* (from Guatemala), *Verdad Abierta* (from Colombia) and *Animal Político* (from Mexico), in coordination with the organizations Internews and InSight Crime, and sought, among other objectives, to decrease the level of risk faced by each one of the media outlets involved in publishing the reports. To do this, prior to the beginning of the investigations, the media outlets reached an agreement on strategies to keep their sources safe, which security protocols to use in hostile environments, and the purchase of life insurance for the journalists participating in the project. A subsequent analysis of the initiative published by PBS concluded that despite the security procedures, the lack of mechanisms for digital security put the media outlets at risk when they were exchanging information. They recommended that future initiatives involving this type

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<sup>604</sup> Center for International Media Assistance. [Dangerous Work: Violence Against Mexico’s Journalists and Lessons from Colombia](#). April 11, 2012. Pp. 23-25; Committee to Protect Journalists (CPJ). September 8, 2010. [Silence or Death in Mexico’s Press: How Colombian Media Met Dangerous Times](#).

<sup>605</sup> Center for International Media Assistance. [Dangerous Work: Violence Against Mexico’s Journalists and Lessons from Colombia](#). April 11, 2012. Pp. 23-25; Committee to Protect Journalists (CPJ). September 8, 2010. [Silence or Death in Mexico’s Press: How Colombian Media Met Dangerous Times](#).

<sup>606</sup> Center for International Media Assistance. [Dangerous Work: Violence Against Mexico’s Journalists and Lessons from Colombia](#). April 11, 2012. Pp. 23-25; Committee to Protect Journalists (CPJ). September 8, 2010. [Silence or Death in Mexico’s Press: How Colombian Media Met Dangerous Times](#).

<sup>607</sup> *Semana*. May 3, 2007. [En el Día de la Libertad de Expresión denuncian “impunidad total” contra los casos de periodistas muertos o amenazados](#); *Semana*. March 29, 2011. [Profieren medida de aseguramiento a Ferney y Dixon Tapasco por el asesinato de Orlando Sierra](#).

<sup>608</sup> Hechos de Callejón. [Un periodismo que denuncie y dé garantías](#); *El Colombiano*. [Cadena criminal en el caso de Orlando Sierra](#).

<sup>609</sup> *Semana*. May 1, 2005. [La última cuartilla de un periodista asesinado](#); Hechos de Callejón. [Un periodismo que denuncie y dé garantías](#).

<sup>610</sup> *Semana*. April 14, 2007. [¿Qué esconden en Huila?](#); Hechos de Callejón. [Un periodismo que denuncie y dé garantías](#).

of collaboration conduct an exhaustive prior analysis of both physical and digital security and develop a security protocol for the parties involved.<sup>611</sup>

277. The Office of the Special Rapporteur also observes that more than 50 Mexican media outlets signed an agreement on March 24, 2011, on coverage of the violence in order to protect journalists and avoid being used as instruments of propaganda by organized crime. The document establishes objectives, guiding principles, and common editorial standards and, among other provisions, proposes guaranteeing the safety of the reporters covering issues related with violence and insecurity through joint coverage, not to conduct live reporting from the most violent areas, and not placing bylines on news items on subjects related to organized crime. Among other points, it also calls for encouraging citizen participation and complaints in the fight against crime, noninterference in combating crime, protecting victims and minors, and the creation of a citizen body for monitoring the media to prepare regular reports on the degree to which the media have followed the terms of the agreement.<sup>612</sup>

278. The media also have a fundamental role to play in responding to an attack against a journalist. As demonstrated in the aforementioned case of the murder of journalist Tim Lopes, the condemnation of the attacks by the media, their reports on the facts, and their monitoring of the measures taken by the State to protect journalists and investigate attacks are fundamental for guaranteeing that the State complies with its obligations to prevent violence against communicators, put in place measures of protection, and combat impunity in the crimes committed.<sup>613</sup>

279. Likewise, in media systems that allow it, media and journalist organizations can play an important role as civil or intervenor parties.<sup>614</sup> An example of this practice the case of the April 28, 2012, murder of journalist Regina Martínez, with the magazine *Proceso*. The crime was strongly repudiated by journalists, organizations and the media. They demanded the resolution of the case and justice in the murder of Regina Martínez and other journalists in the region. Following the murder, members of the press and civil society organizations held demonstrations and marches and wrote open letters to state authorities, which were published by a number of media outlets.<sup>615</sup> Also, journalist Jorge Carrasco, also

<sup>611</sup> PBS. January 10, 2013. [Lessons Learned From A Collaboration Without Borders in Latin America](#); InterNews. October 29, 2012. [Collaborative Reporting Project Examines Organized Crime and Human Rights Issues in Latin America](#); InSight Crime. September 30, 2012. [The Displaced of Sinaloa](#); InSight Crime. September 30, 2012. [The Legion of the Displaced](#); InSight Crime. September 30, 2012. [Running from Your Own Shadow](#); InSight Crime. [La Sombra del Crimen en las Américas](#); Animal Político. [Esclavos del Narco](#); InSight Crime. October 29, 2012. [Esclavos del Crimen en América Latina](#); El Faro. October 1, 2012. [La legión de los desplazados](#).

<sup>612</sup> Mexicodeacuerdo.org. March 24, 2011. [Acuerdo para la Cobertura Informativa de la Violencia](#). Available for consultation at: [http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/media\\_standards/Art%2019%20memorandum%20on%20the%20mexican%20draft%20federal%20act%20Acuerdo\\_Medios\\_23\\_marzo\\_2011.pdf](http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/media_standards/Art%2019%20memorandum%20on%20the%20mexican%20draft%20federal%20act%20Acuerdo_Medios_23_marzo_2011.pdf); WRadio. March 23, 2011. [Firman acuerdo editorial directivos de medios de comunicación](#); El Economista. March 24, 2011. [Unifican criterios ante la violencia](#).

<sup>613</sup> United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). [San José Declaration](#). May 2-4, 2013.

<sup>614</sup> UPRIMY, R. and PUYANA, G. [Injusticia Premiada: Un análisis de la impunidad de los crímenes contra periodistas en Colombia vinculada a la justicia premial, a partir del estudio del proceso contra el autor material del homicidio de Orlando Sierra](#). Realizado para El Proyecto Contra la Impunidad – Sociedad Interamericana de Prensa y para la Asociación Colombiana de Editores de Diarios y Medios Informativos (ANDIARIOS). Bogotá, August 2008. P. 73.

<sup>615</sup> La Política. May 2, 2012. [Homenaje a Regina en España](#); Astillero TV. April 29, 2012. [Comunicado de periodistas veracruzanos sobre crímenes impunes](#); Animal Político. April 30, 2012. [Anuncian creación de comisión especial para investigar muerte de Regina Martínez](#); CNN México. April 29, 2012. [Gobierno de Veracruz crea comisión especial por asesinato de](#)

with *Proceso*, became part of a Special Investigative Commission created by the government of the state of Veracruz to investigate the crime.<sup>616</sup>

280. In particular, *Proceso* rejected the hypothesis of the Office of the State's Attorney of Veracruz that the murder had been the result of a burglary at Regina Martínez' home and that there was no connection to her work. Based on that approach to the investigation, the State's Attorney's Office brought a man to trial for perpetrating the alleged robbery and murder. He was convicted and sentenced to 38 years and two months in prison in April 2013 by a trial court. *Proceso* questioned the capture of the accused and his confession to the crime. It alleged inconsistencies in the investigation of the homicide, for example the fact that the fingerprints found at the scene of the crime did not match those of the accused. The magazine also reported that the individual allegedly responsible had accused the Mexican authorities of torturing him to make him to confess to the crime.<sup>617</sup>

281. Faced with that situation, the magazine named an attorney in the trial to participate as intervenor and requested a series of measures, such as the broadening and correction of testimony. The media outlet also submitted the reporter's articles as evidence to be incorporated into the case file. According to the information received, the governor of the state of Veracruz committed to facilitating the magazine's participation in the investigations. Nevertheless, *Proceso* identified a number of challenges it faced in its role as intervenor in the proceeding, such as difficulty accessing the case file and obtaining copies.<sup>618</sup> According to the information received, on August 8, 2013, the Seventh Criminal Chamber of the Superior Tribunal of Justice of the State of Veracruz annulled the judgment and the sentence of 38 years in prison of the man who had initially been convicted for the supposed robbery and murder of Regina Martínez. The Tribunal's decision was based, among other things, on the fact that due process guarantees had been violated and that the conviction of the defendant was based only on his

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*periodista*; El Sur de Campeche. May 4, 2012. [Periodistas Campechanos Protestan en Contra del Asesinato de Regina Martínez](#); Diario de Yucatán. May 1, 2012. [Protestan en desfile por asesinato de Regina Martínez en Veracruz](#); La Política. May 1, 2012. [Crece repudio por asesinato de Regina Martínez](#); CNN México. April 28, 2013. [Ciudadanos marchan para exigir justicia por la muerte de Regina Martínez](#).

<sup>616</sup> Animal Político. April 30, 2012. [Anuncian creación de comisión especial para investigar muerte de Regina Martínez](#); El Universal. April 29, 2012. [Integran comisión especial por crimen de periodista](#); CNN México. April 29, 2012. [Gobierno de Veracruz crea comisión especial por asesinato de periodista](#).

<sup>617</sup> *Proceso*. November 3, 2012. [Caso Regina Martínez: solución inverosímil](#); *Proceso*. April 28, 2012. [Asesinan a la corresponsal de Proceso en Veracruz, Regina Martínez](#); *Proceso*. April 17, 2013. ["Infundada" la versión de Proceso: Procurador de Veracruz](#); *Proceso*. August 8, 2013. [La de "El Silva", una sentencia encubridora](#); *Proceso*. March 14, 2013. [Caso Regina: Sin avances, sin explicaciones, sin credibilidad...](#); *Proceso*. May 28, 2012. [Caso Regina, un mes y nada](#); *Proceso*. May 1, 2012. [Proceso se suma a investigaciones de la PGR sobre caso Regina](#); *Proceso*. July 3, 2012. [Mentiras, filtraciones e incompetencia en el caso Regina](#); *Proceso*. November 12, 2012. [Insiste gobierno de Veracruz en robo como único móvil en caso Regina](#); *Proceso*. April 9, 2013. [Proceso y el caso Regina: "No les creímos y no les creemos"](#); *Proceso*. August 28, 2012. [Caso Regina: cuatro meses de impunidad y desinterés](#).

<sup>618</sup> *Proceso*. November 3, 2012. [Caso Regina Martínez: solución inverosímil](#); *Proceso*. April 28, 2012. [Asesinan a la corresponsal de Proceso en Veracruz, Regina Martínez](#); *Proceso*. April 17, 2013. ["Infundada" la versión de Proceso: Procurador de Veracruz](#); *Proceso*. August 8, 2013. [La de "El Silva", una sentencia encubridora](#); *Proceso*. March 14, 2013. [Caso Regina: Sin avances, sin explicaciones, sin credibilidad...](#); *Proceso*. May 28, 2012. [Caso Regina, un mes y nada](#); *Proceso*. May 1, 2012. [Proceso se suma a investigaciones de la PGR sobre caso Regina](#); *Proceso*. July 3, 2012. [Mentiras, filtraciones e incompetencia en el caso Regina](#); *Proceso*. November 12, 2012. [Insiste gobierno de Veracruz en robo como único móvil en caso Regina](#); *Proceso*. April 9, 2013. [Proceso y el caso Regina: "No les creímos y no les creemos"](#); *Proceso*. August 28, 2012. [Caso Regina: cuatro meses de impunidad y desinterés](#).

confession, which had been obtained under torture. As of the closing of this report, the journalist's murder has still not been solved.<sup>619</sup>

282. Finally, with regard to voluntary adherence to rules and ethical codes and its role in the safety of journalists, the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression indicated that, "by voluntarily adhering to global standards of professionalism, journalists can also enhance their credibility in the eyes of society and their legitimate protection concerns."<sup>620</sup> Also, the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions noted that "the fairness, objectivity and professionalism of the reporting done by journalists in exercising their role of informing the world remains the bedrock of the profession. Various media initiatives to maintain this credibility are welcomed."<sup>621</sup> The Office of the Special Rapporteur observes that by voluntarily following rules and codes of ethics, journalist and media outlets have a generally positive impact on their safety and diminishing violence against them. Principle 6 of the Declaration of Principles on Freedom of Expression, establishes, *inter alia*, that "journalistic activities must be guided by ethical conduct, which should in no case be imposed by the State."

283. The third actor who plays a valuable role in the prevention of attacks, the protection of journalists, and the struggle against impunity in crimes against journalists is civil society and its various organizations. Indeed, the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has highlighted the importance of keeping the question of violence against journalists on the agenda of NGOs, especially in cases of murders.<sup>622</sup> For its part, the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression has recommended that civil society organizations "work to raise awareness of the risks faced by journalists, the international standards which exist to protect them, and how these might be implemented through campaigns and training initiatives."<sup>623</sup>

284. The actions of NGOs in the matter at hand can vary according to their nature. Generally speaking, local and international organizations play a fundamental role by monitoring the measures taken by States with regard to their duties to prevent crimes against journalists, protect journalists, investigate these crimes, and punish those responsible. In this sense, important NGOs and journalists' organizations do the crucial work of monitoring violence committed against the press in countries throughout the region, intervening in specific cases, and denouncing any shortcomings in the actions of

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<sup>619</sup> Proceso. August 8, 2013. [Revocan la condena a "El Silva", sentenciado por el crimen de Regina Martínez](#); Knight Center for Journalism in the Americas. August 12, 2013. [Court revokes sentence of man accused of killing Mexican journalist after torture claims, lack of evidence.](#)

<sup>620</sup> General Assembly. Report of the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/20/17. June 4, 2012. Para. 60. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>621</sup> United Nations. General Assembly. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns. A/HRC/20/22. April 10, 2012. Para. 148. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96)

<sup>622</sup> United Nations. General Assembly. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns. A/HRC/20/22. April 10, 2012. Para. 64. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96)

<sup>623</sup> General Assembly. Report of the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/20/17. June 4, 2012. Para. 111. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)



States to guarantee the rights to life, personal integrity, access to justice, judicial guarantees and freedom of expression. Some of these organizations also dedicate themselves to monitoring attacks against women journalists, analyzing their situation from a gender perspective. In many countries, the monitoring work of these organizations constitutes the only source of statistics on violence against journalists.

285. Likewise, civil society organizations can play an important role by counseling journalists and media outlets so that they are able to access their States' preventative and protective mechanisms and the precautionary measures handed down by international bodies. In that sense, it is crucial for expert organizations to play a role in government initiatives to establish protective mechanisms and in the operation of those mechanisms.<sup>624</sup> Legal counsel provided by civil society organizations during the criminal prosecution of attacks against journalists is also crucial, especially in legal systems that allow the victim to act as a civil or auxiliary party in criminal proceedings.<sup>625</sup>

286. The work of NGOs and expert institutions in journalist security and self-defense should also be mentioned. A variety of organizations have developed guides and security codes for communicators.<sup>626</sup>

#### IV. Conclusions and recommendations

287. Acts of violence against journalists have a threefold effect: They violate the right of victims to express and disseminate their ideas, opinions and information; they have a chilling and silencing effect on their peers; and they violate the right of persons and society in general to seek and receive information and ideas of any kind. Its consequences for democracy - which depends on the free, open and dynamic exchange of ideas and information - are particularly serious.

288. Throughout the region, this type of violence takes place with alarming frequency. Between the years of 2010 and 2013 at least 78 journalists were murdered in the region, according to reported data. Many more journalists suffer threats or assaults, while others are forced to self censor as the only way to protect themselves.

289. In this context, it is crucial for States to take concrete measures to comply with their obligation to protect the lives, physical integrity and freedom of expression of journalists. This means at least three kinds of obligations. As explained in this report, States have the duty to prevent violence, protect at-risk journalists, and seriously investigate the crimes committed.

290. The obligation to prevent requires States to adopt a public discourse that contributes to avoid violence against journalists; instruct its security forces to respect the oversight role that the media

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<sup>624</sup> General Assembly. Report of the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/20/17. June 4, 2012. Para. 112. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>625</sup> United Nations. General Assembly. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns. A/HRC/20/22. April 10, 2012. Para. 138. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96)

<sup>626</sup> Reporters Without Borders. February 17, 2006. *Handbook for Journalists*; International News Safety Institute. *The INSI Safety Code*; Committee to Protect Journalists (CPJ). *Journalist Security Guide*; Article 19. *Guía de Seguridad para Periodistas Audiovisuales*; Fundación para la Libertad de Prensa (FLIP). *Manual de Autoprotección para Periodistas*.

performs; respect the right of journalists to the confidentiality of their sources, notes and personal and professional files; and collect and maintain precise statistics regarding violence against journalists, among other things.

291. The obligation to protect requires States to take concrete measures when journalists are facing real and imminent danger due to the exercise of their profession. In particular, the measures adopted must be adequate to the individual circumstances of the person at risk, including the person's gender, the need or desire to continue carrying out the same professional activities, and the person's social and economic circumstances.

292. In situations in which violence against journalists is particularly common, the State may need to establish specialized protection programs that take into account local needs and obstacles and that are adequately implemented pursuant to the principles mentioned in this report. In order for these programs to be effective, special emphasis must be put on the importance of guaranteeing the financial resources and personnel required for the mechanism's adequate implementation; the need to ensure effective coordination among the entities responsible for the implementation of measures of prevention, protection and justice; the demand to define adequately the measures of protection included in the mechanism and the procedure for adopting them; the need to guarantee the effective participation of journalists, civil society and beneficiaries in the implementation and operation of the mechanism; and the benefits of seeking support from the international community for its operation. Other indispensable elements for the adequate implementation of specialized protection programs include a political commitment from States; an adequate definition of potential beneficiaries; a clear recognition of the grounds on which the potential beneficiary may seek protection; an adequate risk analysis that allows the State to determine the most effective way to comply with its obligation to protect, taking into account the circumstances specific to the particular context and allowing for the active participation of the beneficiary; the provision of appropriate and effective measures of protection that are specifically designed to protect both the life and the safety of the beneficiaries and allow them to continue with their professional activities; and the adoption of clear criteria and procedures for monitoring the danger facing the beneficiary.

293. The obligation to investigate, try and criminally punish requires States to investigate violence against journalists without delay and using all legal measures available in order to establish the truth and ensure that attackers are identified, tried and punished. States therefore must adopt an adequate institutional framework that provides their agencies with sufficient independence and capacity to investigate, try and punish violence against journalists, including, where necessary, specialized investigative units or specialized courts. State authorities must act with due diligence during the investigations, exhaust all possible lines of investigation connected with the victim's journalism work, and carry out investigations within a reasonable period of time. States must also refrain from creating legal obstacles, such as prescription periods, that affect the investigation of the most serious crimes against journalists and the possibility of justice being done. States must also guarantee that the punishments effectively applied are proportional to the seriousness of the crimes. Finally, journalists who are victims of violence and/or their close relatives must be allowed to participate as broadly as possible in the investigation and in any pertinent legal proceedings initiated, and all barriers must be eliminated that block women journalists from exercising their right to justice.

294. Likewise, other actors can play a crucial role in the protection of journalists who have received threats. These actors include the media companies that employ journalists, civil society

organizations, and third-party States to which journalists exposed to grave danger temporarily or permanently relocate.

295. In situations of armed conflict or of social unrest, States have a special duty to protect journalists covering these events, because of the special risk they face in these contexts. States must guarantee that journalists and media workers who are reporting these facts are not detained, threatened, attacked or have their rights limited in any way for the exercise of their profession. Furthermore, during armed conflict, journalists 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. Also, in situations of armed conflict of social unrest, it is specially important, among others, that States respect journalists' rights to keep their sources, notes, and personal and professional archives confidential, and ensure that authorities do not make declarations that could constitute forms of direct or indirect interference with the rights of those that seek to contribute to public deliberation through expression and dissemination of information.

296. Some States in the Americas have taken important steps to meet these obligations. As has been mentioned, some States have trained their security services on respect for the media and freedom of expression, created specialized protection programs for journalists, and established dedicated prosecutorial units and tribunals to investigate and try the perpetrators of violence against journalists. These initiatives represent important expressions of political will and in some cases have achieved significant results. They also provide important lessons for States that wish to take decisive steps to meet their international obligations in this area. Nonetheless, it is much more that can and must be done to ensure that journalists in the region can freely and securely carry out their work, and to guarantee the free flow of information so essential for healthy democratic societies.

297. Taking into account the content of this report and the recommendations made to the Member States of the OAS on recent Annual Reports, the Office of the Special Rapporteur closes this 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 improvement of the circumstances for exercising the right of freedom of expression throughout the region:

- a. Adopt adequate preventive mechanisms in order to avert violence against media workers, including the public condemnation of all acts of aggression, omitting any statement that may increase the risk for journalists; the respect for journalists' right to keep their sources of information; the training of public officials, particularly police and security forces, and, if necessary, the adoption of operation manuals or guidelines on the respect for the right of freedom of expression, determining appropriate sanctions proportionate to the damage done; as well as the development of accurate statistics on violence against journalists.
- 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. Measures or protection programs must be suitable and sufficient for its purpose, in accordance with the views expressed in this report.

- c. Carry out serious, impartial, and effective investigations into the murders, attacks, threats, and acts of intimidation committed against journalists and media workers, in accordance with this report. 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, remove legal obstacles to the investigation and punishment of these crimes, and provide the victims and their family members ample participation during the investigation and prosecution, as well as adequate compensation, and eliminate gender barriers that obstruct access to justice.
- 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.
- f. Adopt special measures to protect journalists who are reporting on situations of armed conflict and social unrest, and guarantee that they are not detained, threatened, attacked or have their rights limited in any way for the exercise of their profession; that their work materials and tools are not destroyed nor confiscated by the authorities, according to what was laid out in this report; and create special protocols to protect the press in circumstances of social unrest.
- g. Adopt specific, adequate and effective measures to prevent attacks and other forms of violence perpetrated against women journalists, and prosecute and punish those responsible. States must adopt effective measures to encourage reporting of cases of violence against women journalists and combat the impunity that characterizes those crimes.



## CHAPTER IV FREEDOM OF EXPRESSION AND THE INTERNET

### A. Introduction

1. Freedom of thought and expression is the cornerstone of any democratic society.<sup>1</sup> The inter-American human rights system in particular gives it a very broad scope<sup>2</sup>: Article 13 of the American Convention guarantees the right of all persons to freedom of expression and establishes that 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. Article 13 applies fully to communications, ideas and information distributed through the Internet.<sup>3</sup> The Internet has not only made it easier for citizens to express themselves freely and openly, but has also provided ideal conditions for innovation and the exercise of other fundamental rights such as the right to education and free association.<sup>4</sup> As the OAS General Assembly has stated, information and communications technologies (ICT) are crucial for political, economic, social and cultural development, as well as essential factors in the reduction of poverty, job creation, environmental protection, and prevention and mitigation of natural disasters.<sup>5</sup>

3. In this document the Office of the Special Rapporteur endeavors to make available to all States in the region, general principles for the protection of the right to freedom of thought and expression online. These principles are intended to provide guidance to governments, legislative and regulatory bodies, the courts and civil society in order to clear the way for this conceptually and technically new territory, and stimulate the revision and adoption of legislation and practices in view to achieving the full realization of the right to freedom of thought and expression through the Internet.

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<sup>1</sup> IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 8; 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. Para. 70; 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. 85; I/A Court H.R. *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Para. 112; I/A Court H.R. *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. Para. 82; 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. 105; 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. 116.

<sup>2</sup> IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 3.

<sup>3</sup> United Nations. Human Rights Council. The promotion, protection and enjoyment of human rights on the Internet. A/HRC/20/L.13. June 29, 2012. Para. 1. Available for consultation at: [http://ap.ohchr.org/documents/alldocs.aspx?doc\\_id=20280](http://ap.ohchr.org/documents/alldocs.aspx?doc_id=20280)

<sup>4</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/66/290. August 10, 2011. Para. 61. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>5</sup> OAS. General Assembly. [Use of Telecommunications/Information and Communication Technologies to Build an Inclusive Information Society](#). AG/RES. 2702 (XLII-O/12). June 4, 2012.

4. In preparing this report, the Office of the Special Rapporteur looked at the progress that has taken place in international<sup>6</sup> and domestic law and specialized scholarship on the subject, as well as those important documents suggested by multi-sectorial forums such as the UN's Internet Governance Foru.<sup>7</sup> Similarly, the legislative, administrative and legal progress that has been made in the region on the issue has been fundamental, usually as a result of multi-stakeholder and democratic processes of deliberation around Internet governance issues.

5. As explained in detail later on, some countries in the region have begun to adapt their domestic legislation to international human rights principles that extend to the right to freedom of expression on the Internet. For example, Mexico recently approved a bill to amend its Political Constitution in the area of telecommunications. The amendment states in its Article 7 that protections of the right to disseminate opinions, information and ideas through any media includes a prohibition on restricting this right using indirect measures “such as the abuse of government or private controls over [...] equipment used in the dissemination of information, or by any other means and information and communications technologies tending to impede the communication and circulation of ideas and opinions.”<sup>8</sup>

6. Important laws have been passed in Chile to protect freedom of expression on the Internet, including changes to the Law on Intellectual Property that limit intermediary liability for the content produced by third parties, and establish a legal standard for eliminating content that violates

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<sup>6</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, and Organization of American States (OAS) Special Rapporteur on Freedom of Expression. November 20, 2001. [Joint Declaration about Countering Terror, Broadcasting and The Internet](#); UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media and OAS Special Rapporteur on Freedom of Expression. December 10, 2002. [Joint Declaration on Freedom of Expression and the Administration of Justice, Commercialisation and Freedom of Expression, and Criminal Defamation](#); United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, and Organization of American States (OAS) Special Rapporteur on Freedom of Expression. December 18, 2003. [Joint Declaration On the regulation of the Media, On the Restrictions on Journalists, and On Investigating Corruption](#); UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media and OAS Special Rapporteur on Freedom of Expression. December 21, 2005. [Joint Declaration on the Internet and on Anti-Terrorist Measures](#); United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. February 2, 2010. [Tenth Anniversary Joint Declaration: Ten Key Challenges to Freedom of Expression in the Next Decade](#); UN Special Rapporteur on the Promotion and Protection the Right to Freedom of Opinion and Expression and Inter-American Commission on Human Rights Special Rapporteur for Freedom of Expression. December 21, 2010. [Joint Statement On Wikileaks](#); United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and 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](#); UN Special Rapporteur for Freedom of Opinion and Expression and IACHR-OAS Special Rapporteur on Freedom of Expression. January 20, 2012. [UN and IACHR Special Rapporteurs for Freedom of Expression Joint Declaration about Free Speech on the Internet](#); United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. June 21, 2013. [Joint Declaration on surveillance programs and their impact on freedom of expression](#).

<sup>7</sup> United Nations. Internet Governance Forum. [About the Internet Governance Forum](#).

<sup>8</sup> Cámara de Diputados. [Constitución Política de los Estados Unidos Mexicanos](#). February 5, 1917. Last reforms published on December 27, 2013. Art. 7.

the Law. It also creates new exceptions to the need for consent of rights holders.<sup>9</sup> In addition, in exemplary fashion, Law 20,453, also from Chile, enshrining the principle of net neutrality for Internet consumers and users, by prohibiting blocking, interference, discrimination, throttling, and the restriction of the right of any user to “use, send, receive or offer any lawful content, application or service through the Internet, as well as any other type of lawful activity on or use of the web.”<sup>10</sup>

7. Elsewhere, Argentina enshrined Law 26,032 on Internet Services, which explicitly enshrines the guarantees of the protection of freedom of expression in the searching, receiving and circulation of information and ideas of all kinds through Internet services.<sup>11</sup>

8. Other more recent legislative initiatives in the region that seek to apply human rights standards to the Internet include a civil law Internet bill in Brazil. This bill, which at the time of this report was before Congress, contains, in its original version, a number of provisions that would be highly effective in protecting the right to freedom of expression on the Internet, such as a provision to limit intermediary liability for content produced by third parties.<sup>12</sup>

9. Finally, without attempting to be exhaustive, it should be mentioned that Canada passed Bill C-11: The Copyright Modernization Act of 2012, which establishes safeguards for Internet providers and implements a private system for issuing complaints notifications over for illegal content, but without requiring Internet providers to remove that content without a court order.<sup>13</sup>

## **B. Freedom of expression on the Internet: guiding principles**

10. Currently, the right to freedom of expression has found in the Internet a unique tool for incrementally extending its enormous potential to broad sectors of the population. According to the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, the Internet, like no other means of communication before, has allowed individuals to communicate instantly and at a low cost, and has had a dramatic impact on journalism and the way in which we share and access information and ideas.<sup>14</sup>

11. The configuration and architecture of the Internet are relevant insofar as the Internet offers space for strengthening the exchange of information and opinions. The Internet has been developed using design principles which have fostered and allowed an online environment that is

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<sup>9</sup> Biblioteca del Congreso Nacional de Chile. [Ley núm. 20.435](#). Modifica la [Ley N° 17.336](#) sobre Propiedad Intelectual of August 28, 1970. May 4, 2010. Art. 85L to 85U and 71A to 71S.

<sup>10</sup> Biblioteca del Congreso Nacional de Chile. [Ley núm. 20.453](#). Consagra el principio de neutralidad en la red para los consumidores y usuarios de Internet. August 26, 2010. Art. 24 H a).

<sup>11</sup> Congreso de la Nación Argentina. [Ley 26.032](#). Servicio de Internet. Establécese que la búsqueda, recepción y difusión de información e ideas por medio del servicio de Internet se considera comprendida dentro de la garantía constitucional que ampara la libertad de expresión. June 16, 2005. Art. 1.

<sup>12</sup> Câmara de Deputados. Proyecto de ley N° 2126/2011. [Marco Civil da Internet](#). August 24, 2011. Available for consultation at: [http://www.camara.gov.br/sileg/Prop\\_Detalhe.asp?id=517255&st=1](http://www.camara.gov.br/sileg/Prop_Detalhe.asp?id=517255&st=1).

<sup>13</sup> Parliament of Canada. [Copyright Modernization Act](#). June 29, 2012. Articles 35 (31.1), 47 (41.25 and 41.27).

<sup>14</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/66/290. August 10, 2011. Para. 10. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)



decentralized, open and neutral. It is important for all regulation to be based on dialog among all actors and to maintain the basic characteristics of the original environment, strengthening the Internet's democratizing capacity and fostering universal and nondiscriminatory access.

12. This means that on one hand, that the original and special characteristics of the Internet should be taken into account before making any regulation that would affect its architecture or interaction with society. In this respect, 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, have recognized that "[a]pproaches to regulation developed for other means of communication – such as telephony or broadcasting – cannot simply be transferred to the Internet but, rather, need to be specifically designed for it."<sup>15</sup> In other words, the special characteristics that have made the Internet a perfect medium for growing the democratic, open, plural and expansive exercise of freedom of expression should be taken into account when establishing any measure that could impact upon it.

13. In this regard, the Office of the Special Rapporteur deems of particular importance that public policy and regulations seek to preserve the original architecture of the Internet, not only directly but also through the private parties that influence and develop it. Regarding this, the Council of the Organisation for Economic Co-operation and Development recommends that States promote "the open, distributed and interconnected nature of the Internet."<sup>16</sup>

14. This means that not just any type of interconnected network would serve the same goals of freedom of expression in the broad terms of Article 13 of the American Convention. The digital environment should develop according to certain guiding principles that inform the State's work, the development of public policies, and the actions of private parties. These principles, which will be laid out further on, include equal conditions of access, pluralism, nondiscrimination and privacy. Any measures which could, in one way or another, affect the access to and use of the Internet must be interpreted according to the primacy of the right to freedom of expression, at all times, especially in regard to speech that is protected pursuant to the terms of Article 13 of the American Convention.

## **1. Access**

15. Principle 2 of the Declaration of Principles on Freedom of Expression states that, "[a]ll 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." The Office of the Special Rapporteur considers that this principle should be interpreted so as to derive the following consequences: steps should be taken to progressively promote universal access not only to

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<sup>15</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and 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](#). Point 1 (c).

<sup>16</sup> Organisation for Economic Co-Operation and Development (OECD). [OECD Council Recommendation on Principles for Internet Policy Making](#). December 13, 2011. Recommendation 2.

infrastructure but also the technology necessary for its use and to the greatest possible amount of information available on the Internet; to eliminate arbitrary barriers to access to infrastructure, technology and information online, and to adopt measures of positive differentiation to allow for the effective enjoyment of this right for individuals or communities who face marginalization and discrimination.

16. The principle of universal access refers to the need to guarantee connectivity and access to the Internet infrastructure and other ICT services that is universal, ubiquitous, equitable, truly affordable, and of adequate quality, all throughout the State's territory, as it has been recognized by the heads of State in the Summits of the Americas.<sup>17</sup> It is up to the State to decide which means are the most appropriate under the circumstances to ensure implementation of this principle.<sup>18</sup> However, as will be addressed later on, this Office attaches particular importance to measures that ensure that price structures are inclusive in order to facilitate access; that connectivity extends throughout the States territory, in order to effectively promote access for rural users and marginal communities; that communities have access to information technology and communications centers and other options for public access; and that efforts for training and education are reinforced, especially for poor, rural and older segments of the population.<sup>19</sup> Universal access also places a priority on ensuring equitable access when it comes to gender, as well as inclusive access for disabled individuals and/or individuals belonging to marginalized communities.<sup>20</sup>

17. Closing the "digital divide" goes hand-in-hand with the need for States to ensure that private parties do not erect disproportionate or arbitrary barriers to Internet access or use of its principal services. In other words, the Internet must maintain its intrinsically accessible character.

## 2. Pluralism

18. Maximizing the number and diversity of voices that are able to participate in the public debate is both a means and an end of the democratic process. In this sense, robust guarantees of the

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<sup>17</sup> Organization of American States. Sixth Summit of the Americas. April 14 and 15, 2012. Cartagena de Indias, Colombia. [Mandates Arising from the Sixth Summit of the Americas](#). May 23, 2012. OEA/Ser.E CA-VI/doc.6/12 Rev.2. Access to and Use of Information and Communication Technologies. Para. 1-4; Organization of American States. Fifth Summit of the Americas. April 17 to 19, 2009. Port of Spain, Trinidad and Tobago. [Declaration of Commitment of Port of Spain Securing Our Citizens' Future by Promoting Human Prosperity, Energy Security and Environmental Sustainability](#). OEA/Ser.E CA-V/DEC.1/09. April 19, 2009. Para. 43.

<sup>18</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/66/290. August 10, 2011. Para. 66. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>19</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Cooperation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. February 2, 2010. [Tenth Anniversary Joint Declaration: Ten Key Challenges to Freedom of Expression in the Next Decade](#). Point 10.

<sup>20</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 60-61. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

exercise of freedom of expression through the Internet are currently a condition for opening up the public sphere.<sup>21</sup>

19. It is up to the State to preserve the Internet's ideal conditions for promoting and maintaining informational pluralism. This means ensuring that changes are not made to the Internet that result in a reduction in the number of voices and amount of content available. Public policies on these subjects should protect the multidirectional nature of the Internet and promote platforms that allow for the search for and circulation of information and ideas of all kinds, without regard to borders, pursuant to the terms of Article 13 of the American Convention.

### **3. Non-discrimination**

20. Pursuant to articles 1.1 and 24 of the American Convention, States are required to "adopt affirmative measures (legislative, administrative, or in any other nature), in a condition of equality and non-discrimination, to reverse or change existing discriminatory situations that may compromise certain groups' effective enjoyment and exercise of the right to freedom of expression."<sup>22</sup> This obligation of nondiscrimination means that, among other things, the State must remove obstacles that prevent individuals – or a particular sector – from disseminating their opinions and information.

21. When it comes to the Internet, the obligation of nondiscrimination means that in addition to the duties of access and pluralism mentioned above, steps need to be taken by all appropriate means to guarantee that all persons – especially those belonging to vulnerable groups or who express criticism with regard to matters of public interest – are able to disseminate content and information under equal conditions.<sup>23</sup> In these terms, it is necessary to guarantee that there is no discriminatory treatment of certain content over the Internet that is favored over those distributed by certain sector of society. One development of this principle is the principle of net neutrality, which will be examined later on in this report (*infra*, para. 25 *et seq.*).

### **4. Privacy**

22. Article 11 of the American Convention on Human Rights states that, "[n]o one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation," and that, "[e]veryone has the right to the protection of the law against such interference or attacks." Thus, the State must respect the privacy of individuals and ensure that third parties do not act in a way that could arbitrarily affect it.

23. As the United Nations General Assembly has observed in the resolution "The Right to Privacy in the Digital Age," adopted without a vote, States have the duty to respect and protect the right

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<sup>21</sup> IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 199.

<sup>22</sup> IACHR. [Annual Report 2008. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II.134 Doc. 5 rev. 1. February 25, 2009. Para. 230.

<sup>23</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 87. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

to privacy according to international human rights law, including in the context of digital communication.<sup>24</sup> In effect, as will be developed further on the authorities should on one hand refrain from interfering arbitrarily with individuals, their personal information and their communications, and on the other hand, should guarantee that other actors refrain from such abusive conduct as well. For example, online spaces where people's activities and identities are not observed or documented should be promoted. This includes, for instance, the preservation of anonymous platforms for the exchange of content and use of proportionate authentication services.<sup>25</sup> This point is closely linked to the State's obligation to create a safe environment for the exercise of freedom of expression, as violation of communication privacy has a chilling effect and hampers the full exercise of the right to communicate.<sup>26</sup> In this sense, the aforementioned Resolution adopted without a vote by the General Assembly of the United Nations states that practices of surveillance and the interception and unlawful or arbitrary collection of personal data not only affect the right to privacy and freedom of expression but also may contradict the tenets of a democratic society.<sup>27</sup>

24. Finally, the defense of individual privacy should be carried out pursuant to reasonable and proportional standards that do not end up arbitrarily restricting the right to freedom of expression. In this sense, it is important to recall that as Principle 10 of the Declaration of Principles on Freedom of Expression states, “[p]rivacy laws should not inhibit or restrict investigation and dissemination of information of public interest.”

### C. Net neutrality

25. In their Joint Declaration on Freedom of Expression and the Internet, 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 stated

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<sup>24</sup> According to the resolution, the General Assembly calls upon States to, among others, “respect and protect the right to privacy, including in the context of digital communication; to take measures to put an end to violations of those rights and to create the conditions to prevent such violations, including by ensuring that relevant national legislation complies with their obligations under international human rights law; to review their procedures, practices and legislation regarding the surveillance of communications, their interception and collection of personal data, including mass surveillance, interception and collection, with a view to upholding the right to privacy by ensuring the full and effective implementation of all their obligations under international human rights law; to establish or maintain existing independent, effective domestic oversight mechanisms capable of ensuring transparency, as appropriate, and accountability for State surveillance of communications, their interception and collection of personal data”. United Nations. General Assembly. Resolution adopted by the General Assembly on 18 December 2013. 68/167. The right to privacy in the digital age. A/RES/68/167. January 21, 2014. Para. 4. Available for consultation at: [http://www.un.org/Depts/dhl/resguide/r68\\_en.shtml](http://www.un.org/Depts/dhl/resguide/r68_en.shtml); General Assembly. Department of Public Information. *General Assembly Adopts 68 Resolutions, 7 Decisions as It Takes Action on Reports of Its Third Committee*.

<sup>25</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/23/40. April 17, 2013. Para. 47. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85); United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 53, 82 and 84. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>26</sup> IACHR. Report No. 82/10. Case No. 12.524. Fontevecchia y D'Amico. Argentina. July 13, 2010. Para. 91 *et seq.*

<sup>27</sup> United Nations. General Assembly. Resolution adopted by the General Assembly on December 18, 2013. 68/167. The right to privacy in the digital age. A/RES/68/167. January 21, 2014. Para. 4. Available for consultation at: [http://www.un.org/Depts/dhl/resguide/r68\\_en.shtml](http://www.un.org/Depts/dhl/resguide/r68_en.shtml); General Assembly. Department of Public Information. *General Assembly Adopts 68 Resolutions, 7 Decisions as It Takes Action on Reports of Its Third Committee*.

that net neutrality is a principle according to which there “[s]hould be no discrimination in the treatment of Internet data and traffic, based on the device, content, author, origin and/or destination of the content, service or application.”<sup>28</sup> The purpose of this principle is to ensure that free access and user choice to use, send, receive or offer any lawful content, application or service through the Internet is not subject to conditions, or directed or restricted, such as blocking, filtering or interference.<sup>29</sup> This is a necessary condition for exercising freedom of expression on the Internet pursuant to the terms of Article 13 of the American Convention. At the same time, it is a transversal component of the guiding principles outlined above.

26. The Office of the Special Rapporteur deems it important that authorities guarantee the validity of this principle through adequate legislation. For example, Law 20,453 from Chile enshrines the principle of net neutrality by prohibiting the blocking, interference, discrimination, throttling and restriction of the right of “any Internet user to use, send, receive or offer any lawful content, application or service through the Internet, as well as any other type of lawful activity on or use of the web.”<sup>30</sup>

27. Net neutrality is part of the original design of the Internet. It facilitates access to and circulation of content, applications and services freely and without any distinction. At the same time, the lack of disproportionate barriers to entry for offering new services and applications over the Internet constitutes a clear incentive for creativity, innovation and competition.<sup>31</sup>

28. The protection of net neutrality is fundamental for guaranteeing the plurality and diversity of the flow of information. The Inter-American Court has indicated that “the State must not only minimize restrictions on the dissemination of information, but also extend equity rules, to the greatest possible extent, to the participation in the public debate of different types of information, fostering informative pluralism. Consequently, equity must regulate the flow of information.”<sup>32</sup> For its part, Principle 5 of the Declaration of Principles establishes that, “[r]estrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.” By the same token, steps should be taken to prevent the establishment of private sector controls from resulting in a violation of freedom

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<sup>28</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and 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](#). Point 5 (a).

<sup>29</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and 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](#). Point 5 (a).

<sup>30</sup> Biblioteca del Congreso Nacional de Chile. [Ley núm. 20.453](#). Consagra el principio de neutralidad en la red para los consumidores y usuarios de Internet. August 26, 2010. Article 24 H a).

<sup>31</sup> Council of Europe. Committee of Ministers. [Declaration of the Committee of Ministers on network neutrality](#). September 29, 2010. Point 3; Belli, Luca. [Council of Europe Multi-Stakeholder Dialogue on Network Neutrality and Human Rights. Outcome Paper](#). CDMSI(2013)Misc 18. December 3 to 6, 2013. Para. 16-17

<sup>32</sup> I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008. Series C No. 177. Para. 57; I/A Court H.R. *Case of Fontevecchia y D’Amico v. Argentina. Merits, Reparations and Costs*. Judgment of November 29, 2011. Series C No. 238. Para. 45.

of expression.<sup>33</sup> As established in Article 13(3), the actions of private parties can also result in the violation of this right. States should take on the role of ensuring the right in response against these abuses.<sup>34</sup>

29. Neutrality rules should apply without distinction to all ways of accessing the Internet, regardless of the technology or platform used to transmit the data.<sup>35</sup> Users have the right to connect to or use the Internet, according to their choice, with any type of compatible device, as long as the devices do not adversely affect the network or the quality of service.<sup>36</sup>

30. Traffic over the Internet should not be discriminated against, restricted, blocked or interfered with unless strictly necessary and proportional in order to preserve the integrity and security of the network; to prevent the transmission of online content at the express request - free and not incentivized - of the user; and to temporarily and exceptionally manage network congestion. In this latter case, the measures employed should not discriminate between types of applications or services. Similarly, some norms have established that traffic management measures must be necessary for the efficient and safe use of the Internet and cannot discriminate arbitrarily against a particular content provider or service provider, or a group thereof, in favor of other providers.<sup>37</sup> Also, the European Commission proposal for the regulation of the European single market for electronic communications recognizes that “[r]easonable traffic management encompasses prevention or impediment of serious crimes, including voluntary actions of providers to prevent access to and distribution of child pornography.”<sup>38</sup>

31. Net neutrality rules should require Internet service providers to be transparent in the practices they use for managing traffic or information. Any relevant information on these practices should be made available to the public and to the agency in charge of monitoring compliance with the principle of net neutrality in a format that is accessible to all interested parties.<sup>39</sup>

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<sup>33</sup> 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. Para. 48.

<sup>34</sup> 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. 367; 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. 340.

<sup>35</sup> Council of Europe. Committee of Ministers. [Declaration of the Committee of Ministers on network neutrality](#). September 29, 2010. Point 4; Access. September, 2011. *The importance of net neutrality in the emerging and developing world*. P. 8 Available for consultation at: [https://s3.amazonaws.com/access.3cdn.net/6d698a85cebaff26c1\\_szm6ibxc7.pdf](https://s3.amazonaws.com/access.3cdn.net/6d698a85cebaff26c1_szm6ibxc7.pdf); Center for Democracy and Technology. May, 2013. [CDT Recommendations for EU Net Neutrality Policy](#). Pp. 6-9; Centro de Estudios en Libertad de Expresión y Acceso a la Información (CELE). [La neutralidad de la red, la tensión entre la no discriminación y la gestión](#). P. 21.

<sup>36</sup> Biblioteca del Congreso Nacional de Chile. [Ley núm. 20.453](#). Consagra el principio de neutralidad en la red para los consumidores y usuarios de Internet. August 26, 2010. Article 24 H a).

<sup>37</sup> Biblioteca del Congreso Nacional de Chile. [Decreto 368](#). Reglamento que regula las características y condiciones de la neutralidad de la red en el servicio de acceso a Internet. March 18, 2011. Articles 8, 10 and *considerando* d).

<sup>38</sup> European Commission. Proposal for a regulation of the European Parliament and of the Council for laying down measures concerning the European single market for electronic communications and to achieve a Connected Continent, and amending Directives 2002/20/EC, 2002/21/EC and 2002/22/EC and Regulations (EC) No 1211/2009 and (EU) No 531/2012. COM(2013) 627 final 2013/0309 (COD). September 11, 2013. Available for consultation at: <https://ec.europa.eu/digital-agenda/en/news/regulation-european-parliament-and-council-laying-down-measures-concerning-european-single>

<sup>39</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Cooperation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special

32. It is the responsibility of States, through laws passed by the Legislative and through the oversight of the competent agencies, to make the principle of net neutrality valid pursuant to the terms expressed heretofore. The agencies in charge of supervising and applying these rules should be independent of political and economic powers and should proceed in a manner that is transparent and respects due process.<sup>40</sup>

33. The importance of net neutrality is increasingly recognized throughout the world. Chile<sup>41</sup> and The Netherlands,<sup>42</sup> among other countries, have passed laws specifically to protect it. Likewise, the Council of Europe and telecommunications regulatory agencies have declared their commitment to the principle.<sup>43</sup> The principle has also been recognized by some domestic courts.<sup>44</sup>

#### D. Access to the Internet

34. Article 13 of the American Convention establishes that the right to freedom of expression includes the “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.” At the same time, Principle 2 of the Declaration of Principles states that, “[a]ll 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.”

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Rapporteur on Freedom of Expression and 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](#). Point 5 (b).

<sup>40</sup> IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 50 *et seq.*

<sup>41</sup> Biblioteca del Congreso Nacional de Chile. [Ley núm. 20.453](#). Consagra el principio de neutralidad en la red para los consumidores y usuarios de Internet. August 26, 2010; Biblioteca del Congreso Nacional de Chile. [Decreto 368](#). Reglamento que regula las características y condiciones de la neutralidad de la red en el servicio de acceso a Internet. March 18, 2011. Articles 8, 10 and *considerando d*). In its pertinent part, the cited law states: “[c]oncessionaires of public telecommunications services that provide services to internet services providers and internet service providers themselves [...] [c]annot arbitrarily block, interfere with, discriminate, throttle or restrict the right of any internet user to use, send, receive or offer any legal content, application or service over the Internet, nor any other type of legal activity or use via the Internet. In this sense, they must offer each user Internet access service or access to the Internet access provider, as appropriate, that does not arbitrarily distinguish between content, applications or services based on source or ownership, taking into account the different configurations of Internet connections according to the contract with users in force.”

<sup>42</sup> Bits of Freedom. [Translations of Key Dutch Internet Freedom Provisions](#); IRIS Merlin. Netherlands. [Amendment of the Telecommunications Act](#).

<sup>43</sup> Post-og teletilsynet. Norwegian Post and Telecommunications Authority. February 24, 2009. [Network neutrality: Guidelines for Internet neutrality](#); Council of Europe. Committee of Ministers. [Declaration of the Committee of Ministers on network neutrality](#). September 29, 2010.

<sup>44</sup> Republica de Chile. Tribunal de Defensa de la Libre Competencia. C 60-05 - Demanda de Voissnet S.A. y requerimiento de la FNE en contra de CTC. [Sentencia No 45/2006](#). October 26, 2006. In this case, the Chilean Court protected net neutrality by prohibiting a telecommunications and Internet service provider of adopting measures to restrict or hinder the use of network bandwidth in providing Internet telephony services. *See also*, Corte Suprema de Chile. Tercera Sala. No. 6236-2006. VOISNETT S.A. Y REQUERIMIENTO DE LA FNE CONTRA CTC. Judgment of July 4, 2007 Available for consultation at: [http://suprema.poderjudicial.cl/SITSUPPORWEB/?opc\\_menu=7](http://suprema.poderjudicial.cl/SITSUPPORWEB/?opc_menu=7)

35. As has been developed by inter-American case law, freedom of expression is characterized as a right with two dimensions: an individual dimension and a collective or social dimension.<sup>45</sup> Taking this dual dimension into account, freedom of expression is a means of exchanging information and ideas among people and for mass communication among human beings. This means both the right to communicate to others one's point of view and any information or opinion desired, as well as the right of everyone to receive and hear those points of view, information, opinions, stories and news, freely and without interference that would distort or block it.<sup>46</sup>

36. Given the Internet's multidirectional and interactive nature, its speed, and its global scope at a relatively low cost, as well as its decentralized and open design,<sup>47</sup> access to it presents an unprecedented potential for effective realization of the right to seek, receive, and disseminate information in both its individual and collective dimensions.<sup>48</sup> The Internet also serves as a platform for fulfilling other human rights, such as the right to participate in cultural life and enjoy the benefits of scientific and technological progress (article 14 of the Protocol of San Salvador), the right to education (article 13 of the Protocol of San Salvador), the right to assembly and association (articles 15 and 16 of the American Convention), political rights (article 23 of the American Convention), and the right to health (article 10 of the Protocol of San Salvador), among other rights.<sup>49</sup>

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<sup>45</sup> I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008 Series C No. 177. Para. 53; 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. 75; I/A Court H.R. *Case of López-Álvarez v. Honduras. Merits, Reparations and Costs*. Judgment of February 1, 2006. Series C No. 141. Para. 163; I/A Court H.R. *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Para. 101.1 a); I/A Court H.R. *Case of Ivcher-Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. Para. 146; I/A Court H.R. *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. Para. 77; I/A Court H.R. *Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile. Merits, Reparations and Costs*. Judgment of February 5, 2001. Series C No. 73. Para. 64; 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. Para. 30; IACHR. [Annual Report 1994](#). Chapter V (Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights). Title III. OEA/Ser. L/V/II.88. doc. 9 rev. February 17, 1995; IACHR. Report No. 130/99. Case No. 11.740. Víctor Manuel Oropeza. Mexico. November 19, 1999. Para. 51; IACHR. Report No. 11/96. Case No. 11.230. Francisco Martorell. Chile. May 3, 1996. Para. 53.

<sup>46</sup> I/A Court H.R. *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Para. 110; I/A Court H.R. *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. Para. 79; I/A Court H.R. *Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile. Merits, Reparations and Costs*. Judgment of February 5, 2001. Series C No. 73. Para. 66; 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. Para. 32; IACHR. [Annual Report 1994](#). Chapter V (Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights). Title III. OEA/Ser. L/V/II.88. doc. 9 rev. February 17, 1995; IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 14.

<sup>47</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 19, 23 and 27. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>48</sup> UN Special Rapporteur for Freedom of Opinion and Expression and IACHR-OAS Special Rapporteur on Freedom of Expression. January 20, 2012. [UN and IACHR Special Rapporteurs for Freedom of Expression Joint Declaration about Free Speech on the Internet](#).

<sup>49</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Cooperation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on



37. Thus to ensure the effective and universal enjoyment of the right to freedom of expression, steps should be taken to progressively guarantee access to the Internet for all persons.<sup>50</sup> This includes at least three types of measures: positive measures to ensure inclusion or closing the digital divide; efforts to develop plans to ensure that infrastructure and services tend to progressively pursue universal access; as well as measures to prohibit blocking or limiting access to the Internet or any part of it, pursuant to the conditions indicated below.

38. The first of these measures is intended, among other things, to close the so-called “digital divide,” that being “the gap between people with effective access to digital and information technologies, in particular the Internet, and those with very limited or no access at all.”<sup>51</sup>

39. The Office of the Special Rapporteur deems it important that authorities make efforts to progressively close the digital divide, broadly recognized by States<sup>52</sup>, whether it is the result of wealth, gender, geography or social group, between States and within them.<sup>53</sup> Likewise, the “digital divide” is

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Freedom of Expression and Access to Information. June 1, 2011. [Joint Declaration on Freedom of Expression and the Internet](#). Point 6 (a).

<sup>50</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and 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](#). Point 6 (a). Some States in the region have enshrined access to the Internet and other information and communication technologies as a fundamental right in their domestic legal systems. Ecuador’s Constitution recognizes in Article 16 that “[a]ll persons, individually or collectively, have the right to: [...] universal access to information and communication technologies.” Asamblea Constituyente. [Constitución del Ecuador](#). October 20, 2008. The Constitution of Mexico, for its part, establishes in Article 6 that “the State will guarantee the right to access to information and communication technologies, as well as radio broadcasting and telecommunications services, including broadband and Internet.” Cámara de Diputados del H. Congreso de la Unión. [Constitución Política de los Estados Unidos Mexicanos](#). February 5, 1917. Likewise, the Constitutional Chamber of the Corte Suprema de Justicia of Costa Rica found in a judgment issued in 2010 that access to the Internet and information technologies constitutes a fundamental right. Sistema Costarricense de Información Jurídica. Sala Constitucional de la Corte Suprema de Justicia. Exp: 09-013141-0007-CO. Res. N° 2010012790. [Sentencia: 12790](#). June 30, 2010; United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 65 and 66. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

The Office of the Special Rapporteur agrees with UNESCO on this issue. It has argued for a comprehensive concept of the universality of the Internet. In this sense, the term “accessible to all” is part of a more general concept of the universality of the Internet referring to both issues of infrastructure and connectivity (including technical issues and the digital divide) and “accessibility” (in the sense of social exclusion based on issues of language, gender or disability). “Accessibility” also presupposes the critical empowerment of all sectors, including consumers and producers of content and services. United Nations Educational, Scientific and Cultural Organization (UNESCO). [Internet Universality: A Means Towards Building Knowledge Societies and the Post-2015 Sustainable Development Agenda](#). September 2, 2013.

<sup>51</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 60-61. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>52</sup> Organization of American States. General Assembly. AG/RES.2440 (XXXIX-O/09). [Telecommunication Development in the Region to Reduce the Digital Divide](#). Adopted at the fourth plenary session, held on June 4, 2009; Inter-American Telecommunications Commission. [Agenda for Connectivity in the Americas. Plan of Action of Quito](#). November 25, 2003; World Summit on the Information Society. [Declaration of Principles](#). December 12, 2003. C.66.

<sup>53</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 61 and 62. Available for consultation at:

not only related to the availability of Internet access, but also to the quality, information, and technical knowledge necessary in order for access to the Internet to be useful and beneficial for users.<sup>54</sup> In order to reach this goal, the Office considers important that States adopt effective and specific policies and strategies, prepared in consultation with persons and organizations from all sectors of society.<sup>55</sup>

40. The commitment to close the "digital divide", recognized by States<sup>56</sup>, has inspired the adoption of measures intended to increase the availability of information and communication technologies, such as programs to distribute affordable portable computers.<sup>57</sup> Additionally, some States have established public access points, which are important for facilitating access for the most vulnerable groups, which often do not have personal computers in their homes.<sup>58</sup>

41. In addition, there is also a gender divide separating women and men in the access to and use of information and communication technology.<sup>59</sup> States should take measures to promote the participation of women in the information society in order to contribute to their empowerment and gender equality.<sup>60</sup>

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[http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85); Organisation for Economic Co-Operation and Development (OECD). *Understanding the Digital Divide*. 2001. P. 5.

<sup>54</sup> United Nations. General Assembly. [Information and communications technologies for development](#). A/RES/66/184. February 6, 2012.

<sup>55</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 66. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85); Organization of American States. General Assembly. [Declaration of Santo Domingo: Good Governance and Development in the Knowledge-Based Society](#). AG/DEC. 46 (XXXVI-O/06). Adopted at the fourth plenary session, held on June 6, 2006. Para. 21.

<sup>56</sup> Organization of American States. General Assembly. AG/RES.2440 (XXXIX-O/09). [Telecommunication Development in the Region to Reduce the Digital Divide](#). Adopted at the fourth plenary session, held on June 4, 2009; Inter-American Telecommunications Commission. [Agenda for Connectivity in the Americas. Plan of Action of Quito](#). November 25, 2003; World Summit on the Information Society. [Declaration of Principles](#). December 12, 2003. C.66.

<sup>57</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 63. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>58</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 64. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85); Regional Preparatory Ministerial Conference of Latin America and the Caribbean for the World Summit on the Information Society. [Bávaro Declaration](#). Bávaro, Punta Cana, Dominican Republic, January 29-31, 2003. Section 2, b.

<sup>59</sup> United Nations. UN Women. [Gender equality and empowerment of women through ICT](#). September, 2005. P. 3; INTEL Corporation/ Dalberg Global Development Advisors/ GlobeScan. [Women and the Web](#). P. 10; United Nations. General Assembly. [Information and communications technologies for development](#). A/RES/66/184. February 6, 2012. Para. 3.

<sup>60</sup> Organization of American States. General Assembly. [Declaration of Santo Domingo: Good Governance and Development in the Knowledge-Based Society](#). AG/DEC. 46 (XXXVI-O/06). Adopted at the fourth plenary session, held on June 6, 2006. Para. 13; United Nations. General Assembly. [Information and communications technologies for development](#). A/RES/66/184. February 6, 2012. Para. 3; The Association for Progressive Communications. 2009. [The APC ICT Policy Handbook. ICTs and Gender. Chapter 30](#).

42. Universal access to the Internet also means an obligation to design policies that grant equal opportunity of access and efficient use for all sectors, and in particular for people with disabilities.<sup>61</sup>

43. In this regard, it is pertinent to recall that Article III, 1 c) of the Inter-American Convention on the Elimination of all Forms of Discrimination against Persons with Disabilities establishes a State commitment to implement “[m]easures to eliminate, to the extent possible, architectural, transportation, and communication obstacles to facilitate access and use by persons with disabilities.” Likewise, Articles 9 and 21 of the United Nations Convention on the Rights of Persons with Disabilities establishes specific obligations for States to: “[p]romote access for persons with disabilities to new information and communications technologies and systems, including the Internet;” “[p]romote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost;” and ensure that “persons with disabilities can exercise the right to freedom of expression.” Based on this, universal access to the Internet and other information and communication technologies for people with disabilities should be promoted.<sup>62</sup>

44. In order for Internet access to constitute an authentic instrument to increase informational pluralism and cultural diversity, it is necessary to guarantee the participation of linguistic minorities, as well as the availability of local content on the Internet.<sup>63</sup> As the Inter-American Court has indicated, the right to freedom of expression necessarily includes the right of individuals to use the language of their choosing to express themselves.<sup>64</sup> Based on this, measures should be adopted to reduce linguistic obstacles to guaranteeing that different cultures are able to express themselves on and access the Internet. At the same time, the production of original local and indigenous content on the Internet needs to be promoted.<sup>65</sup>

45. Now, a second kind of measure derived from the right to universal access involves the need to adopt multi-year, detailed action plans to make the Internet broadly available, accessible and

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<sup>61</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/66/290. August 10, 2011. Para. 51-53 and 85. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>62</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and 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](#). Point 6 (e); Organization of American States. General Assembly. [Declaration of Santo Domingo: Good Governance and Development in the Knowledge-Based Society](#). AG/DEC. 46 (XXXVI-O/06). Adopted at the fourth plenary session, held on June 6, 2006. Para. 21; International Telecommunication Union. [e-Accessibility Policy Toolkit for Persons with Disabilities A Joint ITU/G3ict Toolkit for Policy Makers Implementing the Convention on the Rights of Persons with Disabilities](#).

<sup>63</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 87. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85); United Nations Educational, Scientific and Cultural Organization. [Recommendation Concerning Promotion and Use of Multilingualism and Universal Access to Cyberspace](#); World Summit on the Information Society. [Declaration of Principles](#). December 12, 2003. B8, para. 52.

<sup>64</sup> I/A Court H.R. *Case of López-Álvarez v. Honduras. Merits, Reparations and Costs*. Judgment of February 1, 2006. Series C No. 141. Para. 164.

<sup>65</sup> United Nations Educational, Scientific and Cultural Organization (UNESCO) [Recommendation Concerning Promotion and Use of Multilingualism and Universal Access to Cyberspace](#).

affordable.<sup>66</sup> In this sense, States should adopt and promote the necessary public policies to establish infrastructure for universal access that allows for the construction of a society of knowledge, preventing, as mentioned before, arbitrary situations of social exclusion.<sup>67</sup> As has been noted during a number of multilateral forums, this includes the preparation of national broadband plans and promotion of the expansion of physical infrastructure, as well as adopting measures to develop mobile Internet.<sup>68</sup>

46. In this same sense and in order to comply with the mandate established in Article 13 of the Convention, according to which the right to freedom of expression is the right to express oneself and receive information regardless of borders, regulations and public policies that promote Internet interoperability and interconnection on a global scale needs to be adopted. In this way, the free flow of information, ideas and expression is fomented, thus preventing the erection of territorial or technological barriers or barriers of any other kind that would result in the fragmentation of the Internet on a national or regional level and the subsequent limitation of freedom of expression and access to information.

47. Similarly, according to the principle of universal access, that is, the rights to equality and nondiscrimination, regulatory mechanisms need to be established - including pricing regimens, universal service requirements and licensing agreements - to foment broad access to the Internet, including for vulnerable sectors of society and the most isolated rural areas.<sup>69</sup> For these purposes, all necessary efforts should be made to provide direct support to facilitate access, for example, as mentioned before, through programs to distribute affordable computers<sup>70</sup> and the creation of community information technology centers and other points of public access.<sup>71</sup>

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<sup>66</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 66. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>67</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 85 and 87. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85); United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/66/290. August 10, 2011. Para. 88. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>68</sup> Organization of American States. General Assembly. AG/RES.2440 (XXXIX-O/09). [Telecommunication Development in the Region to Reduce the Digital Divide](#). Adopted at the fourth plenary session, held on June 4, 2009. Resolution 4; Third Ministerial Conference on the Information Society in Latin America and the Caribbean. Lima, November 21-23, 2010. [Plan of Action for the Information and Knowledge Society in Latin America And The Caribbean \(eLAC2015\)](#). November 23, 2010; United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/66/290. August 10, 2011. Para. 75 and 91. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>69</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Cooperation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and 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](#). Point 6 (e).

<sup>70</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 63. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85). See also, Uruguay. Plan Ceibal. [Acerca del Plan](#).

<sup>71</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Cooperation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and 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](#). Point 6 (e).

48. In addition, authorities should foment educational measures intended to promote the training of all individuals in the autonomous, independent and responsible use of the Internet and digital technologies ("digital literacy").<sup>72</sup> This is because full access to information and communications technologies, particularly the Internet, is closely related to the capacity to make effective use of these tools.<sup>73</sup>

49. Finally, the right to access does not only involve the adoption of positive measures. This right also includes the right of all persons to not have their ability to access the network or any part of it blocked or interrupted arbitrarily.<sup>74</sup> In this sense, as has been recognized, the interruption of access to the Internet or any part of it is prohibited whether applied to all populations or specific segments of the public. Also prohibited are the denial of the right to access the Internet as a form of punishment and measures to reduce the speed of the Internet or parts of it for reasons other than the reasonable administration of traffic. All of these things would radically violate the right to freedom of expression on the Internet.<sup>75</sup>

50. In this sense for example, the Office of the Special Rapporteur has expressed concern with regard to information on the suspension of mobile telephone and Internet services in areas where protests are being held against major infrastructure projects, thus affecting the ability of demonstrators and journalists to communicate regarding events that are in the public interest.<sup>76</sup>

51. In addition, with regard to their obligation to guarantee the right to freedom of expression, States should adopt measures to prevent or remove the illegitimate restrictions to Internet access put in place by private parties and corporations, such as policies that threaten net neutrality or foster anticompetitive practices.<sup>77</sup>

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<sup>72</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and 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](#). Point 1 (f).

<sup>73</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/66/290. August 10, 2011. Summary and para. 84. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>74</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 29 and 78. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>75</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and 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](#). Point 6 (b), (c).

<sup>76</sup> IACHR. [Annual Report 2012. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. Para. 403.

<sup>77</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/23/40. April 17, 2013. Para. 76. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85); United Nations. Office of the United Nations High Commissioner for Human Rights. [Guiding Principles on Business and Human Rights](#). HR/PUB/11/04. Principle 1.

**E. Legislative limitations and subsequent liability: Standards of legitimacy and deliberative factors for resolving online rights conflicts**

52. Freedom of expression is a fundamental right in a democratic society<sup>78</sup> and an invaluable instrument for protecting and guaranteeing other human rights. For these reasons, the right to freedom of expression in all its manifestations plays a central role in the American Convention. Nevertheless, the right to freedom of expression is not an absolute right.<sup>79</sup> This right can be subjected to certain restrictions that - in order to be legitimate - must meet a series of requirements that have been clearly developed by the bodies of the inter-American human rights protection system.<sup>80</sup>

53. That said, as previously mentioned, the Internet has special characteristics that make it a "unique transformational tool,"<sup>81</sup> given its unprecedented potential for the effective fulfillment of the right to seek, receive and disseminate information, and its enormous capacity to serve as an effective platform for the fulfillment of other human rights.<sup>82</sup> Consequently, when it comes to the Internet, it is crucial to evaluate all legitimacy conditions of the limitations of the right to freedom of expression based on these unique and special characteristics. Thus for example, when establishing the proportionality of a

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<sup>78</sup> IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 8; *See also*, 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. Para. 70; 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. 85; I/A Court H.R. *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Para. 112; I/A Court H.R. *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. Para. 82; 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. 105; 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. 116.

<sup>79</sup> I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008. Series C No. 177. Para. 54; I/A Court H.R. *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. Para. 79; I/A Court H.R. *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Para. 120; 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. 110; 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. 106; 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. 117; IACHR. [Annual Report 1994](#). Chapter V (Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights). Title IV. OEA/Ser. L/V/II.88. doc. 9 rev. February 17, 1995.

<sup>80</sup> I/A Court H.R. *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Para. 120; 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. Para. 35; IACHR. Report No. 11/96. Case No. 11.230. Francisco Martorell. Chile. May 3, 1996. Para. 55; IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 68 *et seq.*

<sup>81</sup> UN Special Rapporteur for Freedom of Opinion and Expression and IACHR-OAS Special Rapporteur on Freedom of Expression. January 20, 2012. [UN and IACHR Special Rapporteurs for Freedom of Expression Joint Declaration about Free Speech on the Internet](#)

<sup>82</sup> UN Special Rapporteur for Freedom of Opinion and Expression and IACHR-OAS Special Rapporteur on Freedom of Expression. January 20, 2012. [UN and IACHR Special Rapporteurs for Freedom of Expression Joint Declaration about Free Speech on the Internet](#).

particular restriction, it is crucial to assess the impact (or cost) of that restriction not only from the point of view of the private parties directly affected by the measure, but also from the perspective of the impact on the functioning of the Internet. In effect, as explained hereinafter, a particular restrictive measure may seem minor if it is examined only from the perspective of the individual affected. However, the same measure may have a seriously devastating impact on the general operation of the Internet and, as a consequence, on the right to freedom of expression of all users. In this sense, it is crucial to evaluate each measure in a specialized way, from what one could call a systemic digital perspective.

54. On evaluating the proportionality of a restriction to freedom of expression on the Internet, one must weigh the impact that the restriction could have on the Internet's capacity to guarantee and promote freedom of expression against the benefits that the restriction would have in protecting other interests.<sup>83</sup>

55. The essential requirements that must be met by any restriction of the right to freedom of expression are contained in Articles 13, 8 and 25 of the American Convention. As noted, when applied to measures that could compromise the Internet, the requirements should be evaluated from a systematic digital perspective. This is explained briefly in the following paragraphs, but can be summarized as (1) legal enshrinement; (2) seeking a crucial goal; (3) necessity, suitability and proportionality of the measure for achieving the aim sought; (4) judicial guarantees; and (5) satisfaction of due process, including user notifications.

56. In all cases, restrictive measures should be transparent and subjected to rigorous oversight by autonomous and specialized agencies with the technical capacity and sufficient guarantees to protect from possible structural threats to the Internet or the integrity of communications.

57. The following paragraphs develop in a little more detail each of these guarantees and explain how they can be applied to specific conflicts between rights, principles and values protected under international law, such as privacy, the higher interest of the child, and public order, among other things.

58. As previously noted, the first condition of the legitimacy of any restriction of freedom of expression - on the Internet or in any other area - is the need for the restrictions to be established by law, formerly and in practice, and that the laws in question be clear and precise.<sup>84</sup> Substantive restrictions set forth in administrative orders or broad or ambiguous regulations that create uncertainty with regard to the scope of the right protected and whose interpretation could lead to arbitrary rulings that could arbitrarily compromise the right to freedom of expression would be incompatible with the American Convention. The latter regulations, for example, could have a particular chilling effect on individual users who participate in public debate without support of any kind other than the force of

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<sup>83</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and 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](#). Point 1 b).

<sup>84</sup> IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 70 *et seq.*

their arguments.<sup>85</sup> Vague and ambiguous laws can particularly impact the growing universe of individuals whose inclusion in the public debate is one of the principle advantages offered by the Internet as a space for global communication.

59. Second, it is crucial for the restrictions to be oriented toward achieving urgent objectives authorized under the American Convention, such as the protection of the rights of others, national security, public order, or public health or morals.<sup>86</sup> On this point, it is important to clarify that States are not free to interpret the content of these objectives in any way they please when justifying limitation on freedom of expression. At all times, these concepts must be interpreted pursuant to the principles of a democratic society.<sup>87</sup>

60. Thus for example, protection of national security can be invoked to place restrictions on the right to freedom of expression. Nevertheless, a restriction of freedom of expression that seeks to justify itself on grounds of national security cannot be based on an idea of national security that is not compatible with democratic society. In that case, it would not have a legitimate goal if by invoking defense of national security it intercepts, captures or uses private information of dissidents, journalists and defenders of human rights for political purposes, or to prevent or compromising their investigations or complaints.

61. Third, the limitation must be necessary in a democratic society for achieving the urgent goal it seeks, strictly proportional to the end sought and suitable to achieve its objective.<sup>88</sup> This requirement is called the standard of "necessity" and requires that any restriction be adequate and sufficiently justified.

62. Thus for example, invoking public order so as to place restrictions on an individual (subsequent liability) based on the person's exercise of the right to distribute information over the Internet requires proving the existence of real and objectively verifiable causes that present at the very least a sure and credible threat of a potentially serious disturbance of the basic conditions for the operation of democratic institutions. In this sense, in order to impose subsequent liability for the exercise of the fundamental right to freedom of expression on the Internet - or in any other area - it is not sufficient to invoke mere conjecture of eventual violations of order, nor hypothetical circumstances derived from interpretations of the authorities regarding facts that are not clearly defined - for example, a clear and objective risk of grave disturbances ("anarchic violence") pursuant to the terms of Article 13(5) of the Convention.

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<sup>85</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/23/40. April 17, 2013. Para. 26. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>86</sup> IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 75 *et seq.*

<sup>87</sup> IACHR. [Annual Report 2010. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Access to Information on Human Rights Violations). OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 12 *et seq.*

<sup>88</sup> IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 84 *et seq.*



63. At all times, on evaluating the necessity and proportionality of any restrictive measure, a systemic digital perspective must be applied that takes into account the impact the measure would have on the operation of the Internet as a decentralized and open network. In this regard, the United Nations (UN) Special Rapporteur on the Promotion and Protection of the Right to 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 have recognized that "[a]pproaches to regulation developed for other means of communication – such as telephony or broadcasting – cannot simply be transferred to the Internet but, rather, need to be specifically designed for it."<sup>89</sup> This includes the need to formulate alternative and specific focuses for imposing restrictions to freedom of expression on the Internet that have been adapted to its singular characteristics, while at the same time recognizing that special restrictions should not be made to the content of the material distributed over the Internet.<sup>90</sup>

64. At the same time, it is necessary to take into account the availability of measures that are less restrictive to freedom of thought and expression that can be more easily available on the Internet than in analog environments. Thus for example, as indicated by the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, it is extremely important to address the possibility of more effective and rapid exercise of the right to correction or response established in Article 14 of the American Convention.<sup>91</sup>

65. A fourth condition of the legitimacy of restrictive measures in the context imposing subsequent liability for the exercise of freedom of expression on the Internet has to do with respect for guarantees of due process and judicial remedy (articles 8 and 25 of the American Convention).

66. Finally, the global nature of the Internet represents a fifth general safeguard. Effectively, in order to prevent the existence of indirect barriers that disproportionately discourage or directly limit the right to freedom of expression on the Internet, jurisdiction over cases connected to Internet expression should correspond exclusively to States to which the cases are most closely associated, normally because the perpetrator resides there, the expression was published from there, or the expression is aimed directly at a public located in the State in question. Private parties may only launch

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<sup>89</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and 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](#). Point 1 (c).

<sup>90</sup> IACHR. [Annual Report 2012. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. Para. 263; UN Special Rapporteur for Freedom of Opinion and Expression and IACHR-OAS Special Rapporteur on Freedom of Expression. January 20, 2012. [UN and IACHR Special Rapporteurs for Freedom of Expression Joint Declaration about Free Speech on the Internet](#); United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and 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](#). Point 1 (d).

<sup>91</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 27. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

court action in the jurisdiction in which they can demonstrate having suffered substantial damages, thereby preventing what is known as “forum shopping.”<sup>92</sup>

67. In this sense, it is important to warn that States’ right to jurisdiction or the prosecution of crimes should not become an indirect limitation that threatens the free circulation of information due to the threat of multiple layers of litigation and punishments in different jurisdiction. The Office of the Special Rapporteur deems it important that authorities adopt jurisdictional rules that are compatible with the notion of single publication that prevents both the undesirable effects of forum shopping and redundant trials over a single case (*non bis in idem*).<sup>93</sup>

68. As stated in the Joint Declaration of the Rapporteurs on Freedom of Expression and the Internet, in the case of similar content, published in the same form and at the same place, the time limits for bringing legal action should start to run from the first time of its initial publication. Similarly, only one action for damages should be allowed to be brought in respect of that content and, where appropriate, damages suffered in all jurisdictions should be allowed to be recovered at one time (“single publication” rule).<sup>94</sup>

69. Recent years have raised significant challenges in applying the international standards just mentioned (*supra*, paras. 55 and *et seq*) to cyberspace when dealing with conflicts between the right to freedom of expression and other rights, such as the rights to honor, privacy, copyright, and higher interest of children and adolescents. The following paragraphs give some examples for how the standards can be adopted to the special conditions of the Internet.

70. When it is alleged that a violation of honor or reputation has been committed through the use of the Internet, protection of these rights must respond in general to similar grounds as used in other areas of communication. Specifically, as the IACHR has held repeatedly, the application of criminal law is disproportionate when dealing with speech that is especially protected, that being information or expression regarding matters of public interest and public officials or individuals voluntarily involved in matters of public interest.<sup>95</sup>

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<sup>92</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and 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](#). Point 4 (a).

<sup>93</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and 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](#). Point 4 (a) and (c).

<sup>94</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and 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](#). Point 4 (c).

<sup>95</sup> IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 101 *et seq*.

71. When it comes to information that has been circulated using any of the Internet's multiple platforms, and in order to define whether damage has taken place that should be redressed, it is fundamental to take into account the circumstances of a particular case without making assumptions that cannot be technically supported and that make unjustified distinctions based exclusively on the nature of the media used to disseminate a particular expression. Similarly, when defining the remedy to be handed down, it is necessary to identify the features of the Internet that could allow an individual to exercise his or her right to rectification and response immediately and effectively. Effectively, the imposition of subsequent liability that that could be legitimate in a traditional context may not actually be so in an online environment, as noted by the United Nations Special Rapporteur.<sup>96</sup>

72. For a freedom of expression perspective, the correction of erroneous information is the least costly measure for redressing damage related to it. In this sense, this Office of the Special Rapporteur has said that when the rectification "insufficient to repair the harm that has been inflicted may recourse be made to the imposition of legal liabilities more costly for those who have abused their right to freedom of expression, and –while doing so- have produced an actual and serious damage to the rights of others or to juridical assets specially protected by the American Convention."<sup>97</sup> From this point of view, the rectification should exclude other types of liability, especially when the speech is specially protected. In these cases, there can only be liability if it can be demonstrated that the speaker acted with "actual malice" at the time of publishing the false information that produced the damage.<sup>98</sup> It should also be recalled that IACHR standards discourage the use of criminal law as a response to damage caused by the exercise of freedom of expression<sup>99</sup> and recommend that in the event that the rectification is not sufficient, proportional civil liability should apply.<sup>100</sup>

73. As stated in the Joint Declaration of the Rapporteurs on Freedom of Expression and the Internet, self-regulation is a very effective tool for addressing harmful speech.<sup>101</sup>

74. On this issue, it should be noted that a law that specifically penalizes crimes against honor online and imposes harsher punishments than for off-line perpetrators would not be

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<sup>96</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 27. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>97</sup> IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 109.

<sup>98</sup> IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 110.

<sup>99</sup> IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 112.

<sup>100</sup> IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 111.

<sup>101</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Cooperation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and 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](#). Point 1 (e).

acceptable.<sup>102</sup> This would represent a disproportionate restriction of Internet expression under a paradigm that considers it more risky than other media. These types of measures would effectively restrict and limit the Internet as a space for the free exchange of ideas, information and opinions.<sup>103</sup>

75. Copyright protection is without a doubt a legitimate end that can lead to the imposition of limits to the right to freedom of expression.<sup>104</sup> Nevertheless, this protection needs to be provided while respecting all of the safeguards mentioned in earlier paragraphs and while taking into account the unique nature of the Internet. Specifically, this protection cannot be pursued in a way that chills creativity or the free exchange of information on the Internet.<sup>105</sup> The Internet has established unprecedented conditions for the exercise of freedom of thought and expression and other human rights, including economic, social and cultural rights, including the right to education and the right to participate in cultural life and enjoy the benefits of scientific progress and its applications. The Internet has become a transformative instrument that allows billions of people to access, share, exchange and enjoy cultural production on a global scale, instantly and at a relatively low cost.<sup>106</sup> In this way, the Internet empowers the right to participate in cultural life,<sup>107</sup> which includes a State obligation to facilitate and provide access to cultural production.<sup>108</sup>

76. In this sense, it should be recalled that the public has an interest in defending copyright, but also in maintaining the Internet as a free and open space and in the promotion of the right to culture, education and information. These public interests also form part of the social dimension of the right to freedom of thought and expression. It is consequently necessary that restrictions to the right to freedom of expression on the Internet that have to do with copyright violations comply with the requirements established in the American Convention and be designed so as to not affect the unique

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<sup>102</sup> Article 19. 2013. [The Right to Blog](#). Pp. 31-32.

<sup>103</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 72. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>104</sup> UN Special Rapporteur for Freedom of Opinion and Expression and IACHR-OAS Special Rapporteur on Freedom of Expression. January 20, 2012. [UN and IACHR Special Rapporteurs for Freedom of Expression Joint Declaration about Free Speech on the Internet](#); European Court of Human Rights. *Affaire Ashby Donald et autres c. France*. Requête no 36769/08. Arrêt. 10 janvier 2013. Para. 36.

<sup>105</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and 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](#). Point 1 (b); UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media and OAS Special Rapporteur on Freedom of Expression. December 21, 2005. [Joint Declaration on the Internet and on Anti-Terrorist Measures](#).

<sup>106</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 19 and 22. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>107</sup> The concept of cultural life is developed in: United Nations. Committee on Economic, Social and Cultural Rights. [General comment No. 21. E/C.12/GC/21](#). December 21, 2009. Para. 15 (a) and 32.

<sup>108</sup> United Nations. Committee on Economic, Social and Cultural Rights. [General comment No. 21. E/C.12/GC/21](#). December 21, 2009. Para. 6.

capacity of the Internet to promote freedom of expression and access to knowledge and cultural production.<sup>109</sup>

77. On previous occasions, the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression and the Special Rapporteur on Freedom of Expression of the Inter-American Commission on Human Rights of the OAS have had the opportunity to address some issues related to the protection of copyrights on the Internet.<sup>110</sup> They have noted that the laws against Internet-based piracy have the legitimate aim of seeking to protect copyrights. Nevertheless, when such laws are drafted broadly or ambiguously, they raise serious concerns with respect to their potential impact on the right to freedom of expression. In this regard, ambiguous prohibitions can lead to the silencing of speech that is absolutely lawful and deserving of protection because it is not covered by copyrights.<sup>111</sup>

78. The Rapporteurs have maintained that in considering domestic laws and international treaties—such as the Anti-Counterfeiting Trade Agreement—“the States must bear in mind that although freedom of expression can be restricted to meet legitimate aims, such as the prevention of crimes or the protection of the rights of others, those limitations must be drafted clearly and precisely, and infringe upon the right to freedom of expression to the least extent possible. Any measure that affects speech that circulates on the Internet must be designed with the specific aim of preserving the singular capacity of this medium to promote freedom of expression through the free exchange of information and ideas instantaneously and at a low cost, without regard to borders.”<sup>112</sup>

79. The Rapporteurs have also expressed their concern over the establishment of a non-judicial process of “notification and termination,” which does not meet the requirements of Articles 8 and 25 of the Convention.<sup>113</sup>

80. Also of concern are laws that require intermediaries to control user-generated content in order to identify copyright violations.<sup>114</sup> The four Rapporteurs on Freedom of Expression indicated

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<sup>109</sup> UN Special Rapporteur for Freedom of Opinion and Expression and IACHR-OAS Special Rapporteur on Freedom of Expression. January 20, 2012. [UN and IACHR Special Rapporteurs for Freedom of Expression Joint Declaration about Free Speech on the Internet](#).

<sup>110</sup> UN Special Rapporteur for Freedom of Opinion and Expression and IACHR-OAS Special Rapporteur on Freedom of Expression. January 20, 2012. [UN and IACHR Special Rapporteurs for Freedom of Expression Joint Declaration about Free Speech on the Internet](#); United States House of Representatives. [H.R. 3261. Stop Online Piracy Act \(SOPA\)](#). October 26, 2011; United States Senate. [S. Preventing Real Online Threats to Economic Creativity and Theft of Intellectual Property Act of 2011 \(PROTECT IP Act\)](#).

<sup>111</sup> UN Special Rapporteur for Freedom of Opinion and Expression and IACHR-OAS Special Rapporteur on Freedom of Expression. January 20, 2012. [UN and IACHR Special Rapporteurs for Freedom of Expression Joint Declaration about Free Speech on the Internet](#).

<sup>112</sup> UN Special Rapporteur for Freedom of Opinion and Expression and IACHR-OAS Special Rapporteur on Freedom of Expression. January 20, 2012. [UN and IACHR Special Rapporteurs for Freedom of Expression Joint Declaration about Free Speech on the Internet](#).

<sup>113</sup> UN Special Rapporteur for Freedom of Opinion and Expression and IACHR-OAS Special Rapporteur on Freedom of Expression. January 20, 2012. [UN and IACHR Special Rapporteurs for Freedom of Expression Joint Declaration about Free Speech on the Internet](#).

<sup>114</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 39 and 40. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

that intermediaries should not be required to monitor user-generated content, and they emphasized the need to protect intermediaries from any liability, provided that they do not intervene specifically in the content or refuse to comply with a court order for its removal.<sup>115</sup>

81. Finally, it is worrying that these types of laws can affect different forms of protected speech involving an entire website even if only a small portion of its contents are considered unlawful.<sup>116</sup>

82. In particular, disconnecting Internet users as a punishment for a copyright violation, including through mechanisms of "graduated response," constitutes a radical measure that disproportionately restricts the right to freedom of expression, as noted by the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression.<sup>117</sup> Similar warnings should be made in the case of civil liability: Awards need to be strictly related to the actual damage suffered by the holder of the copyright and shall not be so large as to have a chilling effect.<sup>118</sup> This analysis should be taken into account in the context of specific cases in order to establish whether such damage has effectively taken place or not, and, where applicable, its magnitude.

83. The prohibition of the use of circumvention tools to legitimately protect the right to anonymous communication or for the legitimate use of a person's property shall not be considered a legitimate copyright protection measure.<sup>119</sup>

#### **F. Filters and blocking**

84. As has been observed in the Joint Declaration on Freedom of Expression and the Internet, forcing the blocking or suspension of entire websites, platforms, channels, IP addresses, domain name extensions, ports, network protocols, or any other kind of application, as well as measures intended to eliminate links, information and websites from the servers on which they are stored, all constitute restrictions that are prohibited and exceptionally admissible only strictly pursuant to the terms of Article 13 of the American Convention.<sup>120</sup>

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<sup>115</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Cooperation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and 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](#). Point 2.

<sup>116</sup> UN Special Rapporteur for Freedom of Opinion and Expression and IACHR-OAS Special Rapporteur on Freedom of Expression. January 20, 2012. [UN and IACHR Special Rapporteurs for Freedom of Expression Joint Declaration about Free Speech on the Internet](#).

<sup>117</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 49 and 78. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>118</sup> 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.

<sup>119</sup> Article 19. 2013. [The Right to Share: Principles on Freedom of Expression and Copyright in the Digital Age](#). Principle 12.3; EFF. March, 2013. [Unintended Consequences: Fifteen Years under the DMCA](#).

<sup>120</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Cooperation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and 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](#).

85. In exceptional cases of clearly illegal content or speech that is not covered by the right to freedom of expression (such as war propaganda and hate speech inciting violence, direct and public incitement to genocide, and child pornography)<sup>121</sup> the adoption of mandatory measures to block and filter specific content is admissible. In these cases, the measure must be subjected to a strict balance of proportionality and be carefully designed and clearly limited so as to not affect legitimate speech that deserves protection. In other words, filtration or blocking should be designed and applied so as to exclusively impact the illegal content without affecting other content.<sup>122</sup>

86. The Special Rapporteur considers that in the aforementioned exceptional cases, the measures must be authorized or put in place pursuant to the appropriate procedural guarantees, in the terms of articles 8 and 25 of the American Convention. In this regard, the measures should only be adopted after the illegal content to be blocked has been fully and clearly identified, and when necessary to achieve a pressing aim. In any case, these measures must not be applied to legal content.

87. Restrictive measures should at all times include safeguards to prevent abuse, such as transparency with regard to the content whose removal has been ordered, as well as detailed information regarding the measures' necessity and justification. At the same time, a measure of this kind should be adopted only when it is the only measure available for achieving an imperative end and is strictly tailored to achieve it.<sup>123</sup>

88. At no time can an *ex ante* measure be put in place to block the circulation of any content that can be assumed to be protected. Content filtering systems put in place by governments or commercial service providers that are not controlled by the end-user constitute a form of prior censorship and do not represent a justifiable restriction on freedom of expression.<sup>124</sup>

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Point 3 (a); IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 149; IACHR. [Annual Report 2010](#). Volume I. Chapter IV (Human Rights Developments in the Region). OEA/Ser.L/V/II. Doc. 5, rev. 1. March 7, 2011. Para. 822.

<sup>121</sup> IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 58 *et seq.*

<sup>122</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 25, 26 and 32. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>123</sup> IACHR. [Annual Report 2010](#). Volume I. Chapter IV (Human Rights Developments in the Region). OEA/Ser.L/V/II. Doc. 5, rev. 1. March 7, 2011. Para. 822; United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and 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](#). Point 1 (a) (b) and 3 (a); UN Special Rapporteur for Freedom of Opinion and Expression and IACHR-OAS Special Rapporteur on Freedom of Expression. January 20, 2012. [UN and IACHR Special Rapporteurs for Freedom of Expression Joint Declaration about Free Speech on the Internet](#).

<sup>124</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and 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](#). Point 3 (b); UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media and OAS Special Rapporteur on Freedom of Expression. December 21, 2005. [Joint Declaration on the Internet and on Anti-Terrorist](#)

89. Products intended to facilitate filtration by end users should be required to be accompanied by clear information intended to inform those users on how the filters work and the possible disadvantages should filtering turn out to be excessive.<sup>125</sup>

90. Measures to block content cannot be used to control or limit the circulation of speech that is specially protected or is assumed to be protected when that assumption has not been contradicted by a competent authority that provides sufficient guarantees of independence, autonomy and impartiality, pursuant to the above-mentioned terms.<sup>126</sup> In this regard, it should be noted that systems for blocking and filtering Internet content frequently block legitimate websites and content. Some governments have used them to prevent their populations from accessing information that is fundamentally in the public's interest but that governments are interested in hiding.<sup>127</sup>

## G. Intermediaries

91. The exercise of the right to freedom of expression on the Internet depends, to a large extent, on a broad range of actors—mainly private ones—who act as intermediaries by providing a range of services such as access and interconnection; transmission, processing and routing of Internet traffic; hosting and providing access to material posted by others, searching or referencing materials on the Internet; financial transactions; and connecting users through social networks, among other things.<sup>128</sup> There are many intermediaries and different ways to classify them; the most relevant include Internet service providers (ISP), website hosting providers, social networking platforms, and search engines.<sup>129</sup>

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*Measures*; UN Special Rapporteur on the Promotion and Protection the Right to Freedom of Opinion and Expression and Inter-American Commission on Human Rights Special Rapporteur for Freedom of Expression. December 21, 2010. [Joint Statement On Wikileaks](#). Point 5.

<sup>125</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and 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](#). Point 3 (c).

<sup>126</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 70. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>127</sup> United Nations. Human Rights Committee. [Consideration of reports submitted by States parties under article 40 of the Covenant Concluding observations of the Human Rights Committee](#). CCPR/C/IRN/CO/3. November 29, 2011. Para. 27; United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/23/40. April 17, 2013. Para. 32. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85); The Sydney Morning Herald. June 5, 2013. [How ASIC's attempt to block one website took down 250,000](#); IT- Politisk Forening. [Google and Facebook blocked by Danish child porn filter on March 1, 2012](#); Eupean Digital Rights (EDRI). [Internet Blocking. Crimes should be punished, not hidden](#).

<sup>128</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 38. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>129</sup> The Organisation for Economic Co-Operation and Development (OECD) defines Internet Intermediaries as those entities that "give access to, host, transmit and index content, products and services originated by third parties on the Internet or provide Internet-based services to third parties." Organisation for Economic Co-Operation and Development (OECD). April, 2010. [The Economic and Social Role of Internet Intermediaries](#). P. 9.



92. The circulation of information and ideas on the Internet would be impossible without these actors, who play an essential role in the exercise of the right to search for and receive information online, fostering the social dimension of freedom of expression in the terms of the Inter-American Court.<sup>130</sup> At the same time, as explained further below, because of their position and the role they play, intermediaries have become points through which it is technically possible to exercise control over Internet content.<sup>131</sup>

93. Indeed, with the objective of controlling different types of expression, both the State and private actors have sought to take advantage of the position held by intermediaries as points of control over access to and use of the Internet.<sup>132</sup> The interest in using intermediaries as points of control is motivated, among other things, by the fact that it is easier for States and private actors to identify and coerce intermediaries than those directly responsible for the expression they seek to inhibit or control. This is due to the number of users, and the fact that they are frequently unidentified or may be located in multiple jurisdictions. There is also greater financial incentive in seeking to impose liability on an intermediary rather than on an individual user.<sup>133</sup> Accordingly, some States have adopted frameworks that impose liability on intermediaries for the expression generated by the users of their services.<sup>134</sup>

94. As held repeatedly not only in the Joint Declaration on Freedom of Expression and the Internet but also in national legal decisions,<sup>135</sup> “[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 (‘mere conduit principle’).”<sup>136</sup>

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<sup>130</sup> 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. Para. 32; United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 38. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>131</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 74. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>132</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 74. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>133</sup> Center for Democracy and Technology. December, 2012. [Shielding the Messengers: Protecting Platforms for Expression and Innovation](#). P. 4.

<sup>134</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 39 and 40. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>135</sup> Supreme Court of Canada. [Crookes v. Newton, 2011 SCC 47, \[2011\] 3 S.C.R. 269](#). October 19, 2011; Corte Suprema de Justicia de la Nación. [S. 755.-XLVI. Sujarchuk, Ariel Bernardo c/ Warley, Jorge Alberto s/ daños y perjuicios](#). Judgment of August 1, 2013.

<sup>136</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Cooperation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and 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](#). Point 2 (a). This rule is taken up in its greatest extension by the United States Communications Decency Act (CDA). US Government Printing Office. United States Code. Section 47, §230 (c)(1).

95. The above rule assumes the exclusion of a model of strict liability according to which intermediaries are held liable for unlawful content generated by third parties. Indeed, a system of strict liability in the sphere of electronic or digital communications is incompatible with minimum standards of freedom of expression, at least for the reasons discussed below.

96. First, the application of strict liability criteria is exceptional in contemporary law, and is only justified in narrowly defined cases in which it can be assumed that the person found to be liable failed to perform a legal duty or was able to exercise control over the risk factor that caused the harm. In cases involving Internet intermediaries, it is conceptually and practically impossible, without distorting the entire architecture of the Web, to assert that intermediaries have the legal duty to review all of the content that flows through their conduits or to reasonably assume, in all cases, that it is within their control to prevent the potential harm a third party could cause by using their services. In this respect, it is clear that intermediaries must not be required to supervise user-generated content in order to detect and filter unlawful expression.<sup>137</sup>

97. In this respect, applying strict liability to this issue would be to radically discourage the existence of the intermediaries necessary for the Internet to retain its features of data flow circulation. To hold an intermediary liable in the context of an open, plural, universally accessible, and expansive Web would be like holding the telephone companies liable for the threats one person makes to another over the phone, thus causing uncertainty and extreme distress. Accordingly, no democratic legal system today extends strict liability to Internet intermediaries. On the contrary, as discussed below, most States have established systems of liability conditioned on notice of the existence of unlawful content and the intermediary's ability to remove it. Such systems, as discussed below need to have certain requirements to be legitimate from the point of view of protection of freedom of expression.

98. In addition, a system of strict liability like the one mentioned would run against the State's duty to favor an institutional framework that protects and guarantees the right to seek, receive, and disseminate information and opinions freely, as stipulated by Article 13 of the Inter-American Convention. Indeed, as the IACHR has stated, the right of every person to be afforded equal opportunities to receive, seek and impart information by any means of communication without discrimination for reasons of religion, language, political opinions, or any other reason is derived from Article 13.<sup>138</sup> For the reasons briefly explained below, the application of strict liability to the activities of Internet intermediaries creates strong incentives for the private censorship of a wide range of legitimate expression.<sup>139</sup>

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<sup>137</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and 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](#). Point 2 (b); Court of Justice of the European Union. *Scarlet Extended SA v. Société belge des auteurs, compositeurs et éditeurs SCRL (SABAM)*. C-70/10. Judgment of November 24, 2011. Para. 49-53; Court of Justice of the European Union. *Belgische Vereniging van Auteurs, Componisten en Uitgevers CVBA (SABAM) v. Netlog NV*. C-360/10. Judgment of February 16, 2012. Para. 47-51.

<sup>138</sup> IACHR. [Declaration of Principles on Freedom of Expression](#). Principle 2.

<sup>139</sup> For example, in Thailand, Turkey or China. United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 39-40. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85); Center for Democracy and Technology. December, 2012. [Shielding the Messengers: Protecting Platforms For Expression and Innovation](#). Pp. 14-15.

99. As just mentioned, in most cases, intermediaries do not have—and are not required to have—the operational/technical capacity to review content for which they are not responsible. Nor do they have—and nor are they required to have—the legal knowledge necessary to identify the cases in which specific content could effectively produce an unlawful harm that must be prevented. Even if they had the requisite number of operators and attorneys to perform such an undertaking, as private actors, intermediaries are not necessarily going to consider the value of freedom of expression when making decisions about third-party produced content for which they might be held liable.<sup>140</sup> In view of the uncertainty about potential liability, intermediaries can be expected to end up suppressing all of the information that they think, from any point of view, could potentially result in a judgment against them. A system of this kind would seriously affect small and medium-sized intermediaries, as well as those who operate under authoritarian or repressive regimes. It would also jeopardize the right of all persons to use the media they deem appropriate for the transmission of ideas and opinions.

100. It is precisely for this reason that the United Nations (UN) Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression stated that “[h]olding intermediaries liable for the content disseminated or created by their users severely undermines the enjoyment of the right to freedom of opinion and expression, because it leads to self-protective and over-broad private censorship, often without transparency and the due process of the law.”<sup>141</sup>

101. It bears recalling that the Inter-American Court has emphasized that freedom of expression is not limited to the abstract right to speak or write; rather, it inseparably encompasses the right to disseminate thoughts, information, ideas, and opinions through any appropriate media chosen for such purpose, and it includes the right to reach the greatest number of recipients.<sup>142</sup> In order to safeguard this freedom effectively, the State must not restrict dissemination by disproportionately or unreasonably prohibiting or regulating media. Disproportionate limitations that distort the workings of the Internet and limit its democratizing potential as a medium within the reach of a wide world of individuals constitutes directly, and to the same extent, a violation of freedom of expression.<sup>143</sup>

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<sup>140</sup> MELÉNDEZ JUARBE, H. *Intermediarios y libertad de expresión: apuntes para una conversación. En: Hacia una Internet libre de censura. Propuestas para América Latina*. Eduardo Bertoni, compiler. Editorial Universidad de Palermo, 2012. P. 111. On the roles and incentives to intermediaries: Centro de Estudios en Libertad de Expresión y Acceso a la Información (CELE). *Las llaves del ama de llaves: la estrategia de los intermediarios en Internet y el impacto en el entorno digital*; United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 42. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>141</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 40. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>142</sup> I/A Court H.R. *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. Para. 73; I/A Court H.R. *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Para. 109; I/A Court H.R. *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. Para. 78; I/A Court H.R. *Case of Ivcher-Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. Para. 147; I/A Court H.R. *Case of “The Last Temptation of Christ” (Olmedo-Bustos et al.) v. Chile. Merits, Reparations and Costs*. Judgment of February 5, 2001. Series C No. 73. Para. 65; 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. Para. 31.

<sup>143</sup> I/A Court H.R. *Case of López-Álvarez v. Honduras. Merits, Reparations and Costs*. Judgment of February 1, 2006. Series C No. 141. Para. 164. I/A Court H.R. *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Para. 109; I/A Court H.R. *Case of Ricardo Canese v. Paraguay. Merits,*

102. For all of the above reasons, this Office of the Special Rapporteur has indicated that subsequent liability should be imposed only on the authors of the online expression—that is, those directly responsible for the offensive expression.<sup>144</sup>

103. This principle was taken into account, for example, by the Supreme Court of Canada in the case of *Crookes v. Newton*, which examined whether a person can be found liable for defamation when his website contains links to another site that contains allegedly defamatory content about third parties.<sup>145</sup> The Court held that a link or hyperlink, by itself, should never be viewed as the publication of the content to which it refers, and therefore the person who creates the link cannot, in principle, be sued for defamation, as the creator of a hyperlink has no control over the referenced content. The Court assessed the potential chilling effect that could arise, given that the authors of articles would not risk liability by linking to other articles over which they have no content control.<sup>146</sup> Similarly, the Argentine Supreme Court of Justice of the Nation recently ruled that liability could not be imposed for third party-produced content that was hosted and reproduced on a blog that indicated the websites from which the information had been taken.<sup>147</sup> Similarly, a court in Peru found no liability in the case of a blogger who reproduced the links to several articles in which the actions of a public servant were called into question, clearly indicating the author of that content.<sup>148</sup>

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*Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. Para. 78; I/A Court H.R. *Case of Ivcher-Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. Para. 147; I/A Court H.R., *Case of “The Last Temptation of Christ” (Olmedo-Bustos et al.) v. Chile. Merits, Reparations and Costs*. Judgment of February 5, 2001. Series C No. 73. Para. 65; United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and 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](#). Point 1 (c).

<sup>144</sup> IACHR. [Annual Report 2010](#). Volume I. Chapter IV (Human Rights Developments in the Region). OEA/Ser.L/V/II. Doc. 5, rev. 1. March 7, 2011. Para. 822; UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media and OAS Special Rapporteur on Freedom of Expression. December 21, 2005. [Joint Declaration on the Internet and on Anti-Terrorist Measures](#); United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and 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](#). Point 2 (a).

<sup>145</sup> Supreme Court of Canada: [Crookes v. Newton, 2011 SCC 47, \[2011\] 3 S.C.R. 269](#). October 19, 2011.

<sup>146</sup> Supreme Court of Canada. [Crookes v. Newton, 2011 SCC 47, \[2011\] 3 S.C.R. 269](#). October 19, 2011; IACHR. [Annual Report 2012. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Domestic Case Law on Freedom of Expression). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. Para. 121-122.

<sup>147</sup> Corte Suprema de Justicia de la Nación. [S. 755.-XLVI. Sujarchuk, Ariel Bernardo c/ Warley, Jorge Alberto s/ daños y perjuicios](#). Judgment of August 1, 2013. For a study of cases on Argentine jurisprudence and the challenges on intermediaries liability, see: UGARTE, R. y RABINOVICH, E., [Los intermediarios y los desafíos para la libertad de expresión en Internet](#). Revista Cuestión de Derechos N°4, first semester of 2013.

<sup>148</sup> 33º Juzgado Penal – Reos Libres. Expediente 24304-2009-0-1801-JR-PE-33. Resolución Nro. 38 of June 18, 2012. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression. Corte Superior de Justicia de Lima. Sexta Sala de lo Penal. Expediente 24304-2009-0-1801-JR-PE-33. Judgment of January 31, 2013. Available for consultation at: <http://www.scribd.com/doc/134562556/Sentencia-Segunda-Instancia-Caso-Mufarech>; Instituto Prensa y Sociedad (IPYS). July 10, 2012. [Absuelven en primera instancia a blogger denunciado por ex ministro](#).

104. Another model for the imposition of liability is that of the fault-based liability regimes, in which liability is based on compliance with extra-judicial mechanisms such as “notice and takedown.”<sup>149</sup> Under these provisions (called “safe harbor”), in exchange for protection from liability, intermediaries are required to take down content that a third party (more or less qualified according to the respective judicial system), alleges to be unlawful.<sup>150</sup>

105. In general, save for in extraordinarily exceptional cases, this type of mechanism puts private intermediaries in the position of having to make decisions about the lawfulness or unlawfulness of the content, and for the reasons explained above, create incentives for private censorship. Indeed, extrajudicial notice and takedown mechanisms have frequently been cause for the removal of legitimate

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<sup>149</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Cooperation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and 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](#). Point 2 (b).

<sup>150</sup> In some cases, the imposition of liability on intermediaries requires that the “notice” or notification come from specially qualified subjects (such as the alleged owner of a copyright) or that it contain certain substantive elements other than the simple assertion of the legality of the content, such as actual knowledge of the unlawful nature of the material or activity for which the material is used. Section 512 of the Digital Millennium Copyright Act (DMCA) of the United States, enacted in 1998, stipulates that in order for liability to be imposed against an intermediary the notice or notification must be sent in writing to the intermediary by the copyright holder or his or her duly identified representative, who must provide sufficient contact information; it must identify the material allegedly protected by copyright as well as information reasonably sufficient to locate the material; and it must contain a good faith statement making clear that the use of the material has not been authorized by the copyright holder or by law, among other things. According to the law, the intermediary cannot be held liable if the content is removed or blocked upon receiving the notification. According to Section 512, the author of the original content can reply to the notice and initiate proceedings to reinstate the material. Nevertheless, the requirements to successfully pursue such a claim are not easily accessible for most Internet users. House of Representatives. [H.R. 2281 The Digital Millennium Copyright Act](#). October 8, 1998; United States Copyright Office. December, 1998. [The Digital Millennium Copyright Act](#). On this matter, see: Center for Democracy and Technology. Diciembre de 2012. [Shielding the Messengers: Protecting Platforms For Expression and Innovation](#). P. 6-13; Center for Democracy and Technology. October 12, 2010. [Report on Meritless DMCA Takedowns of Political Ads](#); Berkman Center Research Publication No. 2010-3; URBAN, J. & QUILTER, L. [Efficient Process or “Chilling Effects”? Takedown notices under Section 512 of the Digital Millennium Copyright Act](#). 22 Santa Clara Comp. & High Tech. L. J. 621, 677 (2006). In addition, Article 14 of the European Directive on Electronic Commerce of the European Parliament and of the Council of the European Union adopted in 2000, establishes that intermediaries shall not be liable for illegal activity or information unless they have actual knowledge of such illegality. European Parliament and Council of the European Union. [Directiva 2000/31/CE](#). July 17, 2000. This Directive has been interpreted in various ways, and some States have required as a condition of actual knowledge that the notice come from a judge or similar authority, except in the case of grave and imminent danger. Regarding the concept of actual knowledge, the Court of Justice of the European Union has said that not every private notice or complaint will be sufficient to establish actual knowledge: “a [private] notification admittedly cannot automatically preclude the exemption from [host] liability [...] given that notifications of allegedly illegal activities or information may turn out to be insufficiently precise or inadequately substantiated.” The Court went on to note that “such notification represents, as a general rule, a factor of which the national court must take account when determining [...] whether the [operator] was actually aware of facts or circumstances on the basis of which a diligent economic operator should have identified the illegality”. Court of Justice of the European Union. *L’Oréal SA v. eBay*, Case C-324/09. July 12, 2011. Para. 122.

Advocate General Jääskinen presented similar arguments in the same case: “[f]irst it is evident that the service provider must have actual knowledge of, and not a mere suspicion or assumption regarding, the illegal activity or information. It also seems to me that legally ‘knowledge’ may refer only to past and/or present but not to the future. [...] Secondly the requirement of actual knowledge seems to exclude construed knowledge. It is not enough that the service provider ought to have known or has good reasons to suspect illegal activity. This is also in line with Article 15(1) of [the ECD] which forbids the Member States to impose on service providers general obligations to monitor the information they transmit or store or to actively seek facts or circumstances indicating illegal activity.” Court of Justice of the European Union. *L’Oréal SA v. eBay*, Case C-324/09. Opinion of Advocate General Jääskinen. December 9, 2010. Para. 162-163.

content, including specially protected content.<sup>151</sup> As noted above, leaving the removal decisions to the discretion of private actors who lack the ability to weigh rights and to interpret the law in accordance with freedom of speech and other human rights standards can seriously endanger the right to freedom of expression guaranteed by the Convention. For this reason, provisions for the imposition of liability on intermediaries should have sufficient judicial safeguards so as not to cause or encourage private censorship mechanisms.<sup>152</sup>

106. Indeed, provisions for *conditional immunity* are compatible with the framework of the Convention to the extent that they establish sufficient safeguards for the protection of the users' freedom of expression and due process, and do not impose vague or disproportionate obligations on intermediaries. Specifically, the requirement that intermediaries remove content, as a condition of exemption from liability for an unlawful expression, could be imposed only when ordered by a court or similar authority that operates with sufficient safeguards for independence, autonomy, and impartiality, and that has the capacity to evaluate the rights at stake and offer the necessary assurances to the user.<sup>153</sup> The Rapporteurs for Freedom of Expression have already addressed this topic in their Joint Declaration on Freedom of Expression and the Internet.<sup>154</sup>

107. In these cases, the orders or notices need to state precisely which content must be removed, thus keeping legitimate expression from being affected, and they should be preceded by a determination on the illegality of the content in accordance with due process of law.<sup>155</sup> Finally, States ought to establish the necessary safeguards, such as obligations of transparency and access to an effective remedy, so as to limit the risk of abuse in the adoption of these types of measures.<sup>156</sup>

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<sup>151</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 42. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85); Eupean Digital Rights (EDRi). January, 2011. *The slide from "self-regulation" to corporate censorship: The scale and significance of moves to entrust internet intermediaries with a cornerstone of democracy –open electronic communications networks*. Pp. 32-34; Electronic Frontier Foundation (EFF). *Takedown Hall of Shame*. Center for Democracy and Technology. October 12, 2010. *Report on Meritless DMCA Takedowns of Political Ads*; SELTZER, W. *Free Speech Unmoored in Copyright's Safe Harbor: Chilling Effects of the DMCA on the First Amendment*. Harvard Journal of Law & Technology, Vol. 24. P. 171, 2010; Berkman Center Research Publication No. 2010-3; URBAN, J. & QUILTER, L. *Efficient Process or "Chilling Effects"? Takedown notices under Section 512 of the Digital Millenium Copyright Act*. 22 Santa Clara Comp. & High Tech. L. J. 621, 677 (2006); Open Business. Latin America & Caribbean. April 3, 2013. *La DMCA como forma de censura. El caso del documental del Presidente Correa*.

<sup>152</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 42, 43 and 75. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>153</sup> Biblioteca del Congreso Nacional de Chile. *Ley núm. 20.435*. Modifica la *Ley No 17.336* sobre Propiedad Intelectual of August 28, 1970. May 4, 2010. Articles 85L *et seq*; United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 75 and 76. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>154</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Cooperation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and 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*. Point 2.

<sup>155</sup> IACHR. *Annual Report 2010*. Volume I. Chapter IV (Human Rights Developments in the Region). OEA/Ser.L/V/II. Doc. 5, rev. 1. March 7, 2011. Para. 822.

<sup>156</sup> IACHR. *Annual Report 2010*. Volume I. Chapter IV (Human Rights Developments in the Region). OEA/Ser.L/V/II. Doc. 5, rev. 1. March 7, 2011. Para. 822; United Nations. General Assembly. Report of the Special Rapporteur on the promotion

108. The system of immunity subject to court notice has been used, among others, in Chilean law, which regulates disputes involving alleged copyright infringements on the Internet.<sup>157</sup>

109. In addition, for some specific cases, some regulatory systems establish “notice and notice” mechanisms through which intermediaries have the obligation to convey to the user notices of the alleged unlawfulness of a particular expression.<sup>158</sup> In order for these mechanisms to really make it possible to exercise the right of defense with respect to the challenged expressions and to prevent abuses, it is essential that they meet certain conditions. In particular, they have to include a detailed notice about the location of the material considered unlawful and the legal basis for the unlawfulness, as well as an adequate option for counter-notice to the user who produced the content, with judicial oversight guarantees. In all cases, users have the right to remain anonymous and any dispute on this point need to be resolved exclusively in court.<sup>159</sup>

110. Given the importance of private actors as intermediaries for access to and use of the Internet,<sup>160</sup> authorities need to give them the safeguards to operate transparently before the rest of the system’s actors (especially the end users), and they should create the conditions to be able to effectively serve as a vehicle for the exercise of the universal right to freedom of expression. In this respect, it is relevant to mention the Guiding Principles on Business and Human Rights,<sup>161</sup> endorsed by the UN Human Rights Council, which recognize the complementary, yet different, roles of States and companies in relation to the validity of human rights.<sup>162</sup>

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and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 75 and 76. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>157</sup> Biblioteca del Congreso Nacional de Chile. [Ley núm. 20.435](#). Modifica la [Ley No 17.336](#) sobre Propiedad Intelectual of August 28, 1970. May 4, 2010. Articles 85L *et seq* For a greater explanation of Chilean Law, see, among others: International Centre for Trade and Sustainable Development. December, 2011. [En Busca de Equilibrios Regulatorios: Chile y las Recientes Reformas al Derecho de Autor](#). Pp. 3-4; Derechos Digitales. [Responsabilidad de los prestadores de servicios de Internet](#). Pp. 20-23.

<sup>158</sup> Biblioteca del Congreso Nacional de Chile. [Ley núm. 20.435](#). Modifica la [Ley No 17.336](#) sobre Propiedad Intelectual of August 28, 1970. May 4, 2010. Article 85U; Parliament of Canada. [Copyright Modernization Act](#). June 29, 2012. Article 41.26.

<sup>159</sup> Article 19. 2013. [Internet intermediaries: Dilemma of Liability](#). P. 19.

<sup>160</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 44. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85); United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/23/40. April 17, 2013. Para. 73-75. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85). For more examples of the different scenarios in which the conduct of private actors may impact the right to freedom of expression, see also, European Digital Rights (EDRi). January, 2011. [The slide from “self-regulation” to corporate censorship: The scale and significance of moves to entrust internet intermediaries with a cornerstone of democracy –open electronic communications networks](#); BSR. February, 2011. [Protecting Human Rights in the Digital Age: Understanding Evolving Freedom of Expression and Privacy Risks in the Information and Communications Technology Industry](#); Access. March, 2012. [Telco Action Plan. Respecting human rights: Ten steps and implementation objectives for telecommunications companies](#). Available for consultation at: [https://s3.amazonaws.com/access.3cdn.net/1f9ab2891a86f3f081\\_uom6iil1w.pdf](https://s3.amazonaws.com/access.3cdn.net/1f9ab2891a86f3f081_uom6iil1w.pdf); European Commission. [ICT Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights](#).

<sup>161</sup> United Nations. Office of the United Nations High Commissioner for Human Rights. [Guiding Principles on Business and Human Rights](#). HR/PUB/11/04.

<sup>162</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 45. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

111. Intermediaries must thus keep their activities from provoking or helping to provoke negative consequences on the right to freedom of expression.<sup>163</sup> So, for example, the adoption of voluntary measures by intermediaries that restrict the freedom of expression of the users of their services—for example, by moderating user-generated content—can only be considered legitimate when those restrictions do not arbitrarily hinder or impede a person’s opportunity for expression on the Internet.

112. Private actors must also establish and implement service conditions that are transparent, clear, accessible, and consistent with international human rights standards and principles, including the conditions that might give rise to infringements of users’ rights to freedom of expression or privacy.<sup>164</sup> Companies must seek to ensure that any restriction derived from the application of the terms of service does not unlawfully or disproportionately restrict the right to freedom of expression.<sup>165</sup>

113. With respect to the duty of transparency, intermediaries should have sufficient protection to disclose the requests received from government agencies or other legally authorized actors who infringe upon users’ rights to freedom of expression or privacy. It is good practice, in this respect, for companies to regularly publish transparency reports in which they disclose at least the number and type of the requests that could lead to the restrictions to users’ rights to freedom of expression or privacy.<sup>166</sup>

114. Intermediaries should be able to evaluate the legality of the requests that could compromise the freedom of expression and privacy of users, and consider making use of proceedings to challenge them when they find that they are being made in violation of the law or internationally recognized human rights. In this respect, the joint initiatives taken by different companies seeking to resist attempts to improperly restrict or control the use of the Internet or to compromise the privacy of their users are a positive development.<sup>167</sup>

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<sup>163</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 48 and 76. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>164</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 48. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>165</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media and OAS Special Rapporteur on Freedom of Expression. December 21, 2005. [Joint Declaration on the Internet and on Anti-Terrorist Measures](#); UN Special Rapporteur on the Promotion and Protection the Right to Freedom of Opinion and Expression and Inter-American Commission on Human Rights Special Rapporteur for Freedom of Expression. December 21, 2010. [Joint Statement On Wikileaks](#). Point 5; United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. June 21, 2013. [Joint Declaration on surveillance programs and their impact on freedom of expression](#). Point 11.

<sup>166</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 46. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85); Global Network Initiative. [A Call for Transparency from Governments and Telecommunications Companies](#); Global Information Society Watch. [Don’t censor censorship: Why transparency is essential to democratic discourse](#). For example, see also, Google. [Informe de transparencia](#); Twitter. [Transparency Report. Communicate fearlessly to build trust](#); Microsoft. [Law Enforcement Requests Report](#).

<sup>167</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media and OAS Special Rapporteur on Freedom of Expression. December 21, 2005. [Joint Declaration on the Internet and on Anti-Terrorist Measures](#); United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and



115. In principle, persons affected by restrictive measures or interference (and, when appropriate, the general public) should be given advance notice of those measures, save when in properly justified exceptional cases. Users affected by any measure that restricts freedom of expression as a result of the decisions of intermediaries should have, depending on the specific domestic regulations, legal remedies to contest such decision and mechanisms for reparations in the event of the violation of their rights.<sup>168</sup> It is good practice to have non-judicial domestic remedies for the expedited resolution of conflicts that may arise between users and intermediaries.

116. Finally, companies whose activities impact the exercise of the right to freedom of expression or the right to privacy on the Internet should take proactive protective measures such as—for example—taking part in multi-stakeholder initiatives, which can be useful for learning and developing good business practices consistent with respect for human rights.<sup>169</sup>

## H. Cybersecurity, privacy, and freedom of expression

117. The Office of the Special Rapporteur has recognized on various occasions that the right to freedom of expression is favored when States protect the privacy of digital communications, as well

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Expression and Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. June 21, 2013. [Joint Declaration on surveillance programs and their impact on freedom of expression](#). Point 11.

The companies AOL, Apple, Microsoft, Yahoo!, Facebook, LinkedIn, Twitter and Google publicly urged the US government and members of Congress “to take the lead and make reforms that ensure that government surveillance efforts are clearly restricted by law, proportionate to the risks, transparent and subject to independent oversight.” AOL, Microsoft, Yahoo, Facebook, LinkedIn, Twitter and Google called on States to endorse a set of five principles and enact reforms accordingly. The principles endorsed by the companies are: “1. Limiting Governments’ Authority to Collect Users’ Information. Governments should codify sensible limitations on their ability to compel service providers to disclose user data that balance their need for the data in limited circumstances, users’ reasonable privacy interests, and the impact on trust in the Internet. In addition, governments should limit surveillance to specific, known users for lawful purposes, and should not undertake bulk data collection of Internet communications. 2. Oversight and Accountability. Intelligence agencies seeking to collect or compel the production of information should do so under a clear legal framework in which executive powers are subject to strong checks and balances. Reviewing courts should be independent and include an adversarial process, and governments should allow important rulings of law to be made public in a timely manner so that the courts are accountable to an informed citizenry. 3. Transparency About Government Demands: Transparency is essential to a debate over governments’ surveillance powers and the scope of programs that are administered under those powers. Governments should allow companies to publish the number and nature of government demands for user information. In addition, governments should also promptly disclose this data publicly. 4. Respecting the Free Flow of Information. The ability of data to flow or be accessed across borders is essential to a robust 21st century global economy. Governments should permit the transfer of data and should not inhibit access by companies or individuals to lawfully available information that is stored outside of the country. Governments should not require service providers to locate infrastructure within a country’s borders or operate locally. 5. Avoiding Conflicts Among Governments: In order to avoid conflicting laws, there should be a robust, principled, and transparent framework to govern lawful requests for data across jurisdictions, such as improved mutual legal assistance treaty — or “MLAT” — processes. Where the laws of one jurisdiction conflict with the laws of another, it is incumbent upon governments to work together to resolve the conflict”. AOL, Facebook, Google, LinkedIn, Microsoft, Twitter, Yahoo!. [Global Surveillance Reform](#).

<sup>168</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 76. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>169</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 46. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85). See also, Global Network Initiative. [About Us](#).

as the confidentiality, integrity, and availability of data and computer systems.<sup>170</sup> As explained in the paragraphs below, public policies to promote *cybersecurity* and ensure the privacy of information are important measures for reaching those objectives.

## 1. Cybersecurity

118. “Cybersecurity” is usually used as a broad term to refer to various issues, ranging from the security of the national infrastructure and networks through which Internet services are provided, to the security or safety of users. Nevertheless, subsequent developments suggest the need to limit the concept exclusively to the safeguarding of computer data and systems. As explained below, this narrow focus allows for a better understanding of the problem as well as a proper identification of the solutions needed to protect interdependent networks and the information infrastructure.<sup>171</sup>

119. Indeed, this limited focus makes it possible, among other things, to prevent a broad view of the concept of “cybersecurity” from leading to the creation of new “computer crimes,” or to an increase in the penalties of criminal conducts that are not aimed at attacking the integrity of the web and the infrastructure of the Internet, or the integrity and confidentiality of the information they contain. In this respect, the aim is to prevent acts such as defamation or fraud from being considered computer crimes, or the punishment of those offenses from being aggravated in exclusive consideration of the technological medium used to carry them out. In other words, to prevent a broad concept that could lead to the criminalization of the use of the Internet, the concept of cybersecurity is reduced to the protection of a set of legally protected interests, such as infrastructure and information that is stored or in any way administered through the Internet, but not of the technological medium used to commit any kind of crime.

120. Understood properly, the response of States in regard to security in cyberspace need to be limited and proportionate, and designed to meet specific legal aims that do not jeopardize the democratic virtues that characterize the Web. In this respect, governments ought to abstain from favoring the concentrated and centralized use of the criminal law as a fundamental instrument for dealing with all possible threats to online security. As explained in the final section of this report, by virtue of the open and decentralized configuration of the Internet, governments should seek a security model in which there are shared responsibilities among the different actors as well as a diversity of media, from the training of users and the implementation of technical security devices to the sanctioning of acts that in fact threaten or attack the legal interests protected by “cybersecurity.”

121. In any case, when adopting a sanctions policy on this issue, the States should seek a dual outcome. First, as explained below, authorities must be aware of the possible impact of any measure of this kind on the exercise of freedom of expression through the Internet. Second, they ought to aim to have that policy ensure the integrity of the infrastructure and the information online, so that it protects

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<sup>170</sup> See, for example: United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. June 21, 2013. [Joint Declaration on surveillance programs and their impact on freedom of expression](#).

<sup>171</sup> European Commission. High Representative of the European Union for Foreign Affairs and Security Policy. Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. [Cybersecurity Strategy of the European Union: An Open, Safe and Secure Cyberspace](#). Join (2013) 1 final. February 7, 2013. P. 3.

users from cyber-attacks that infringe upon their rights to privacy or freedom of expression and related rights.

122. In the face of any measure that could affect the exercise of freedom of expression through the Internet, States must ensure compliance with the international standards that provide, among other things, that any restriction that can affect this right must be provided for by law in the clearest and most precise terms possible, pursue a legitimate aim recognized by international law, and be necessary to accomplish that objective (“three-part test”). When dealing with limitations imposed by criminal provisions, the Inter-American Court has held that the demands inherent in the principle of strict legality must be additionally satisfied: “If such restriction or limitations are under criminal law, it is important to observe the strict requirements characteristic of the criminal codification to satisfy the principle of legality.”<sup>172</sup> This entails the need to “use strict and unequivocal terms, clearly restricting any punishable behaviors,”<sup>173</sup> which involves “a clear definition of the incriminatory behavior, setting its elements, and defining the behaviors that are not punishable or the illicit behaviors that can be punishable with non-criminal measures.”<sup>174</sup>

123. In terms of the abovementioned principle of necessity, in taking initiatives to protect security in cyberspace, States ought to include explicit safeguards in the law to prevent the criminalization of regular acts or acts inherent in the use of the Internet. They also need to require that the defined acts involve an effective harm and that the harmful acts are carried out with the intent to commit a crime. In addition, periodic updates of the legal regulations are needed to adapt them to the current technological reality, so as not to impose measures that, because they are out-of-date, restrict fundamental rights of Internet users and intermediaries.

124. The public policies on cybersecurity should be proportionate to the risk they address and, in any case, the security objective must be weighed against the protection of fundamental rights.<sup>175</sup> Indeed, computer threats are distinct in nature and have diverse impacts. A cyber-attack against a system to interrupt a critical service such as a city’s electrical power is not the same as one aiming to obtain the passwords of a group of social network users.

125. Although it is desirable, in the interest of preventing and combating Internet crime, for States to establish security standards for public entities, they should not, in principle, do the same thing with private networks and services. To broadly require a particular security standard—whether for networks, applications, or private services—can inhibit innovation on the Internet and especially affect those who cannot assume these changes. To require specific standards would adversely affect the open and decentralized platforms and could lead to a restriction of online freedom of expression, unless, for example, they deal with critical infrastructure services or essential public services, such as electrical power and the banking system.

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<sup>172</sup> I/A Court H.R. *Case of Usón Ramírez v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 55.

<sup>173</sup> I/A Court H.R. *Case of Usón Ramírez v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 55.

<sup>174</sup> I/A Court H.R. *Case of Usón Ramírez v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 55.

<sup>175</sup> Organisation for Economic Co-Operation and Development (OECD). 2012. [Cybersecurity policy making at a turning point: Analysing a new generation of national cybersecurity strategies for the Internet economy](#).

126. Additionally, authorities need to report and be accountable for measures taken with regard to cybersecurity—both those directly implemented and those taken by private intermediaries hired by the State. Civil society learns of many the cyber-attacks after the fact and, little is ever known of their real impact and of the response to prevent similar events in the future. Fearing a negative business impact, private companies are especially reluctant to provide explanations.

127. This duty of transparency and accountability does not in any way mean that it is necessary to reveal information that poses a risk to the success of those programs. States should make known, among other things, the general guidelines of the policies, the agencies are in charge, and what their responsibilities are. In the face of imminent risks or attacks, States should provide detailed information or order investigations to determine the magnitude of the events. Accountability with respect to security matters should operate jointly at the legal, institutional, technological, and social levels.

128. In this respect, official programs and public policies on cybersecurity need to have oversight and control mechanisms where the final authority is a judge. There must also be follow-up procedures with some degree of participation by civil society. The supervision and oversight procedures apply to all actors engaged in cybersecurity activities. The duty of supervision and oversight also means that no State agent, or private individual acting on the State's behalf, may have excessive powers over the operation of the Internet in the country.

129. The above principles cannot be interpreted to diminish the inherent right of the State to investigate when a website is the object of attacks such as, for example, so-called Denial of Service Attacks (DoS); those carried out through computer viruses or worms aimed at the transmitter's equipment, among others. These types of computer attacks can be aimed at particular individuals or media outlets and can be enormously disruptive to the exercise of the right to freedom of expression. Accordingly, the State is obligated to investigate and properly redress such attacks.

## 2. Privacy

130. Respect for online freedom of expression assumes that there is privacy for people's communications. Indeed, without a private sphere, free from the arbitrary interference of the State or private individuals, the right to freedom of thought and expression cannot be exercised fully.<sup>176</sup> The American Convention on Human Rights protects the right to privacy, enshrined in Article 11, that, "[n]o one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence," and that "[e]veryone has the right to the protection of the law against such interference or attacks." The inter-American case law has recognized that the purpose of this right is to ensure that individuals enjoy a private sphere in their lives, protected from the intervention, knowledge, or disclosure of the State or third parties.<sup>177</sup>

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<sup>176</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin. A/HRC/13/37. December 28, 2009. Para. 33. Available for consultation at: <http://www.ohchr.org/EN/Issues/Terrorism/Pages/Annual.aspx>; United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/23/40. April 17, 2013. Para. 24. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>177</sup> I/A Court H.R. *Case of Fontevecchia y D'Amico v. Argentina. Merits, Reparations and Costs*. Judgment of November 29, 2011. Series C No. 238. Para. 48.

131. The Inter-American Commission has observed that the right to privacy encompasses at least four legally protected interests that are closely related to the exercise of other fundamental rights such as freedom of thought and expression. First, the right to have an individual sphere impervious to the arbitrary interference of the State or third parties. Second, the right to govern oneself, in that solitary space, by one's own rules defined autonomously according to one's individual life plan. Third, the right to private life protects the confidentiality of all the data produced in that private space—in other words, it prohibits the disclosure or circulation of information captured, without the consent of their owner, in that space of private protection reserved to the individual. And finally, the protection of private life protects the right to one's own image, meaning the right to not have one's image used without consent.<sup>178</sup>

132. In view of this close relationship between freedom of expression and privacy, States should avoid the implementation of any measure that restricts, in an arbitrary or abusive manner, the privacy of individuals (Article 11 of the American Convention). This privacy is understood in a broad sense as every personal and anonymous space that is free from intimidation or retaliation, and necessary for an individual to be able to freely form an opinion and express his or her ideas as well as to seek and receive information, without being forced to identify him or herself or reveal his or her beliefs and convictions or the sources he or she consults.<sup>179</sup> Nevertheless, the defense of individual privacy must be based on reasonable and proportionate criteria that do not end up arbitrarily restricting the right to freedom of expression. It is thus important to recall, as stated in principle 10 of the Declaration of Principles, that privacy laws should not inhibit or restrict investigation and dissemination of information of public interest.

133. The protection of the right to private life involves at least two specific policies related to the exercise of the right to freedom of thought and expression: the protection of anonymous speech and the protection of personal data. Some basic principles pertaining to this issue are discussed in the paragraphs below.

134. Both the right to freedom of thought and expression and the right to private life protect anonymous speech from government restrictions. Participation in public debate without revealing one's identity is a normal practice in modern democracies. The protection of anonymous speech is conducive to the participation of individuals in public debate since—by not revealing their identity—they can avoid being subject to unfair retaliation for the exercise of a fundamental right. Indeed, those who exercise the right to freedom of thought and expression take part in public debate and the political life of a community. It does not solely entail writing opinion articles or participating in debate forums—it also involves the ability to call for social mobilizations, to call upon other citizens to protest, to organize politically, or to challenge the authorities even in risky situation.

135. It does not, however, mean that anonymity safeguards all types of information. For example, the anonymity of the sender would in no way protect those who disseminate child

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<sup>178</sup> IACHR. Report No. 82/10. Case No. 12.524. Fontevecchia y D'Amico. Argentina. July 13, 2010. Par. 91 *et seq.*

<sup>179</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/23/40. April 17, 2013. Para. 47. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85); United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 53, 82 and 84. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

pornography, engage in pro-war propaganda or the advocacy of hatred that constitutes the incitement of violence, or the direct and public incitement of genocide.<sup>180</sup> This kind of speech is not protected by the American Convention, and anonymity cannot protect its issuers from the legal consequences established—in accordance with international human rights law—in each domestic legal system with respect to each one of those cases. The same thing would occur if the exercise of the right to freedom of thought and expression were subject to the subsequent imposition of liability of the kind authorized by the American Convention. In all of those cases, judicial authorities would be authorized to take reasonable measures to determine the identity of the sender engaged in prohibited acts, in order to take proportionate action in response, as provided by law.<sup>181</sup>

136. Online identification and authentication requirements need to be used exclusively in sensitive and risky transactions and interactions, and not broadly for all services and applications.<sup>182</sup> Authentication requirements must follow the principle of proportionality, which in this case indicate that if the risk is high, the collection of additional information from the user is justified. However, if the risk is low, there is no reason to do so. Among other things, this balance encourages anonymous platforms and services on the Internet, which enable freedom of expression in contexts of repression or self-censorship. Also, the principle of diversity indicates that multiple identification schemes must be encouraged for online users, in order to avoid single or concentrated identifiers that can lead to security abuses and privacy intrusions.

137. The protection of anonymous speech on the Internet is, nevertheless, insufficient to guarantee a private space conducive to the exercise of the right to freedom of expression. To achieve this purpose, the confidentiality of personal data online needs to be guaranteed. Nowadays most online communications between individuals create privacy risks, since everything that happens on the Internet leaves a “digital footprint.” This means that enormous quantities of information about individuals can be intercepted, cached, and analyzed by third parties.<sup>183</sup>

138. Given the impact on the private life of individuals, States should establish systems for the protection of personal data, to regulate their storage, processing, use, and transfer.<sup>184</sup> Principle 3 of

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<sup>180</sup> IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 58 *et seq.*

<sup>181</sup> IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 80.

<sup>182</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 84. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>183</sup> United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. June 21, 2013. [Joint Declaration on surveillance programs and their impact on freedom of expression](#). Point 4-6; United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 56. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>184</sup> United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. June 21, 2013. [Joint Declaration on surveillance programs and their impact on freedom of expression](#). Point 4; United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression,

the IACHR's Declaration of Principles on Freedom of Expression establishes that "[e]very 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."

139. In this respect, States are required to prohibit the use of personal data for purposes inconsistent with the human rights treaties and to establish rights to information, correction and - if necessary and proportioned - deletion of data, as well as to create of effective supervision mechanisms.<sup>185</sup>

140. The right of access to personal data, or *habeas data*, has been recognized and developed in some States of the region. *Habeas data*, in effect, is the common heritage of inter-American constitutional law, insofar as most of the constitutions of the States in the region recognize it, whether in its substantive<sup>186</sup> or its procedural form.<sup>187</sup> In addition, the recognition of this right in the national legal systems has seen diverse moments and paths, depending on the particularities of the Member States. In some cases, the States have regulated *habeas data* as necessary complement and an integral part of the laws on access to public information. Other States have enacted general or special laws on the protection of personal data. Others have regulated *habeas data* within regulations on due process guarantees and codes of constitutional procedure.<sup>188</sup> On the date of writing of this report, at least 12 States that have enacted general laws on the protection of personal data.<sup>189</sup> In this context, the

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Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 56. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>185</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 58. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>186</sup> Senado de la Nación Argentina. [Constitución Nacional](#). 1994 Reform. Art. 43; Gaceta Oficial del Estado Plurinacional de Bolivia. [Constitución Política del Estado](#). February, 2009. Art 130, para. I; Presidência da República Casa Civil Subchefia para Assuntos Jurídicos. [Constituição da República Federativa do Brasil de 1988](#). Art. 5, section LXXII; Colombia. Presidencia de la República. [Constitución Política de Colombia](#). 1991. Art. 15; Asamblea Constituyente. [Constitución del Ecuador](#). October 20, 2008. Art. 66, para. 19 and Art. 92; Corte de Constitucionalidad. República de Guatemala. [Constitución Política de República de Guatemala](#). 1985. Art. 31 and Art. 92; Honduras. [Constitución Política](#). 1982. Article 182; Cámara de Diputados. [Constitución Política de los Estados Unidos Mexicanos](#). February 5, 1917. Art. 6, A, II and III and Art. 16; República de Nicaragua. [Constitución Política de la República de Nicaragua](#). February, 2007. Art. 26, 4; Panamá. [Constitución Política de la República de Panamá](#). 1972. Art. 42 and 44; Convención Nacional Constituyente. [Constitución de la República del Paraguay](#). 1992. Artículo 135; Perú. [Constitución Política de Perú](#). 1993. Art. 2, 5 and 6 and Art. 200, 3; República Dominicana. [Constitución de la República Dominicana](#). 2010. Art. 44, 2 and Art. 70; Asamblea Nacional Constituyente de Venezuela. [Constitución](#). 1999. Art. 28.

<sup>187</sup> Senado de la Nación Argentina. [Constitución Nacional](#). Art. 43; Gaceta Oficial del Estado Plurinacional de Bolivia. [Constitución Política del Estado](#). February, 2009. Art 130, párr. I; Presidência da República Casa Civil Subchefia para Assuntos Jurídicos. [Constituição da República Federativa do Brasil de 1988](#). Art. 5, section LXXII.; Asamblea Constituyente. [Constitución del Ecuador](#). October 20, 2008. Art. 92; Honduras. [Constitución Política](#). 1982. Article 182; Panamá. [Constitución Política de la República de Panamá](#). 1972. Art. 44; Convención Nacional Constituyente. [Constitución de la República del Paraguay](#). 1992. Art. 135; Perú. [Constitución Política de Perú](#). 1993. Art. 200, 3; República Dominicana. [Constitución de la República Dominicana](#). 2010. Art. 70.

<sup>188</sup> Organization of American States. Permanent Council. [Comparative Study: Data Protection in the Americas](#). CP/CAJP-3063/12. April 3, 2012.

<sup>189</sup> Congreso de la República Argentina. [Ley 25.326](#). Protección de Datos Personales. October 4, 2000; Bahamas. [Data Protection \(Privacy of Personal Information Act\)](#). April 11, 2003; Canadá. [Personal Information Protection and Electronic Documents Act](#). April 13, 2000; Biblioteca del Congreso Nacional de Chile. [Ley 19.628](#). Protección de Datos de carácter personal. August 18, 1999. Biblioteca del Congreso Nacional de Chile. [Decreto 779](#) Aprueba reglamento de registro de banco de datos

OAS General Assembly has underscored “the growing importance of privacy and the protection of personal data”.<sup>190</sup>

141. With regard to this matter, the United Nations Human Rights Committee maintained that, “[i]n order to have the most effective protection of his private life, every individual should have the right to ascertain in an intelligible form, whether, and if so, what personal data is stored in automatic data files, and for what purposes. Every individual should also be able to ascertain which public [authorities] or private individuals or bodies control or may control their files. If such files contain incorrect personal data or have been collected or processed contrary to the provisions of the law, every

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personales a cargo de organismos públicos. August 24, 2000; Congreso de Colombia. [Ley 1581](#). Por la cual se dictan disposiciones generales para la protección de datos personales. October 17, 2012; Asamblea Legislativa de la República de Costa Rica. [Ley no. 8968](#). Protección de la Persona frente al Tratamiento de sus Datos Personales. September 5, 2011; Presidenta de la República de Costa Rica. [Decreto Ejecutivo No. 37554-JP](#). Reglamento a la ley de protección de la persona frente al tratamiento de sus datos personales. March 5, 2013; Estados Unidos Mexicanos - Presidencia de la República. [Ley federal de protección de datos personales en posesión de los particulares](#). July 5, 2010; Asamblea Nacional. [Ley No. 787](#). Ley de protección de datos personales. March 29, 2012; Presidencia de la República de Nicaragua. [Decreto No. 36-2012](#). Reglamento de la Ley No. 787 “Ley de protección de datos personales.” October 17, 2012; Poder Legislativo. [Ley No. 1682](#). Que reglamenta la información de carácter privado. January 16, 2001; Congreso de la Nación Paraguaya. [Ley No 1969](#). Que modifica, amplía y deroga varios artículos de la ley N 1682/2001 “Que reglamenta la información de carácter privado.” September 3, 2002; Congreso de la República. [Ley No 29733](#). Ley de protección de datos personales. July 3, 2011. República del Perú. [Decreto Supremo N° 003-2013-JUS](#). March 21, 2013; Republic of Trinidad and Tobago. [Act No. 13 of 2011](#). Data Protection Act. July 22, 2011; República Oriental del Uruguay. Poder Legislativo. [Ley 18.331](#). Protección de datos personales y acción de “habeas data.” August 11, 2008.

<sup>190</sup> Organization of American States. General Assembly. [Access to Public Information and Protection of Personal Data](#). AG/RES. 2811 (XLIII-O/13). June 6, 2013. Given the importance of this issue, the OAS General Assembly has issued several statements on the right to access to personal data or *habeas data*. In 1996, in its resolution 1395 (XXVI-O/96) the General Assembly requested the Inter-American Juridical Committee to give special attention to matters concerning access to information and the protection of personal data. Organization of American States. General Assembly. [Annual Report of the Inter-American Juridical Committee](#). AG/RES. 1395 (XXVI-O/96). June 7, 1996. Ten years later, through resolution 2252 (XXXVI-O/06) the Assembly instructed the Department of International Legal Affairs to prepare “a study with recommendations on the subject of access to information and protection of personal data,” and the Inter-American Juridical Committee to continue to carry out studies “on the protection of personal data.” Organization of American States. General Assembly. [Access to Public Information: Strengthening Democracy](#). AG/RES. 2252 (XXXVI-O/06). June 6, 2006. In 2011, through resolution 2661 (XLI-O/11) instructed the Department of International Law, to “prepare a comparative study of different existing legal regimes, polices, and enforcement mechanisms for the protection of personal data [...] with a view to exploring the possibility of a regional framework in the area” and to the Inter-American Juridical Committee to present “a document of principles for privacy and personal data protection in the Americas,” Organization of American States. General Assembly. [Access to Public Information and Protection of Personal Data](#). AG/RES. 2661 (XLI-O/11). June 7, 2011. In other highlighted documents, the Inter-American Juridical Committee, as instructed by the OAS General Assembly, according to resolution 1395 (XXVI-O/96), prepared the document CJI/doc.25/00 rev.1, on the international and local regulation “of the processing of personal data by the private sector.” Years later, the Inter-American Juridical Committee, through document CJI/doc. 25/00 rev. 2, updated the previous document, as instructed by the General Assembly in resolution 2252 (XXXVI-O/06). Organization of American States. Inter-American Juridical Committee. [Right to Information: Access to and Protection of Information and Personal Data in Electronic Form](#). OEA/Ser.Q CJI/doc.25/00 rev. 2. February 7, 2007. For its part, the OAS Department of International Law, as instructed by the OAS General Assembly in its resolutions 2514 (XXXIX-O/09) and 2661 (XLI-O/11), prepared a document titled Preliminary Principles and Recommendations on Data Protection (the Protection of Personal Data). Organization of American States. Committee on Juridical and Political Affairs. [Preliminary Principles and Recommendations on Data Protection \(the Protection of Personal Data\)](#). OEA/Ser.G CP/CAJP-2921/10 rev.1 corr. 1. October 17, 2011. In 2012, resolution AG/RES.2727 (XLII-O/12) on Access to Public Information and Protection of Personal Data was approved, and in June, 2013 the same was done through resolution AG/RES.2811 (XLIII-O/13). Organization of American States. General Assembly. [Access to Public Information and Protection of Personal Data](#). AG/RES.2727 (XLII-O/12). June 4, 2012; Organization of American States. General Assembly. [Access to Public Information and Protection of Personal Data](#). AG/RES. 2811 (XLIII-O/13). June 6, 2013.



individual should have the right to request rectification or elimination.”<sup>191</sup> The European Parliament has similarly created rules and guidelines for the protection of personal data, paying special attention to the right to privacy enshrined in Article 8 of the European Convention on Human Rights.<sup>192</sup>

142. Regarding the type of obligations the States have in relation to *habeas data* insofar as it is—as previously stated—an indispensable condition for the full enjoyment of the right to freedom of thought and expression on the Internet. The European Directive 95/46/EC establishes, for example, that processing of personal data must be lawful and fair to the individuals concerned; that it is only possible to collect information for legitimate, specific, and explicit purposes; that the data collected must be adequate, relevant and not excessive in relation to the purposes for which they are processed; that the information must be accurate and, where necessary, kept up to date; that inaccurate information must be corrected or eliminated; and that information that allows for the identification of individuals must not be maintained for any longer than is necessary for the purposes for which the data were collected.<sup>193</sup> The Directive also establishes that the processing of data is only allowed if the person who provides personal data give their consent or if it is necessary for the performance of a contract, for compliance with a legal obligation, to protect the vital interests of the data subject, for the performance of a task carried out in the public interest, or for the purposes of the legitimate interests pursued by the controller or third parties.<sup>194</sup>

### 3. Internet communications surveillance and freedom of expression

143. The Special Rapporteurs have acknowledged that the exceptional use of legally established programs or systems for the surveillance of private communications is occasionally legitimate, when necessary to meet compelling objectives such as crime prevention. They have also recalled that such restrictions must be strictly proportionate and consistent with the international standards the right to freedom of expression.<sup>195</sup>

144. Thus, for example, in his recent report on communications surveillance and its implications for the exercise of the rights of privacy and freedom of expression (A/HRC/23/40), the United Nations (UN) Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression recognizes that “concerns about national security [...] may justify the

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<sup>191</sup> United Nations. Office of the High Commissioner for Human Rights. [General Comment No. 16: The right to respect of privacy, family, home and correspondence, and protection of honour and reputation \(Art. 17\)](#). April 8, 1988. Para. 10.

<sup>192</sup> European Parliament and Council of the European Union. Directive 95/46/EC. [On the protection of individuals with regard to the processing of personal data and on the free movement of such data](#). October 24, 1995.

<sup>193</sup> European Parliament and Council of the European Union. Directive 95/46/EC. [On the protection of individuals with regard to the processing of personal data and on the free movement of such data](#). October 24, 1995. Article 6.

<sup>194</sup> European Parliament and Council of the European Union. Directive 95/46/EC. [On the protection of individuals with regard to the processing of personal data and on the free movement of such data](#). October 24, 1995. Article 7.

<sup>195</sup> United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. June 21, 2013. [Joint Declaration on surveillance programs and their impact on freedom of expression](#). Point 1-3 and 9; United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and 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](#). Point 1 (a) and (b).

exceptional use of communications surveillance technology”.<sup>196</sup> This position was reiterated in his joint declaration with the IACHR’s Office of the Special Rapporteur on Joint Declaration on Surveillance Programs and their Impact on Freedom of Expression.<sup>197</sup>

145. Additionally, in their various reports and declarations the Special Rapporteurs have indicated, reflecting the assessments of other international human rights bodies, that terrorism is a real and significant threat against the protection of human rights, democracy, peace, and regional and international security. Given their obligation to guarantee the right of individuals to freely exercise their rights, the States have taken different types of measures to prevent and counteract terrorism, including the implementation of communications surveillance programs.<sup>198</sup>

146. Nevertheless, the Special Rapporteurs have also reiterated in their reports and declarations that it is essential to establish the conditions under which the implementation of such surveillance programs is lawful. Given the dynamic nature of the advances of the Internet and communications technology in general, these kinds of programs can be particularly invasive and can seriously affect the right to privacy and freedom of thought and expression, among others.<sup>199</sup>

147. The Special Rapporteurs have already confirmed that the technology available to capture and monitor private communications has changed in recent years at a dizzying pace. The Internet has created unprecedented opportunities for the free expression, communication, search, possession, and exchange of information. This has also facilitated the capture, storage, and administration of enormous quantities of data that can be highly revealing of even the most intimate aspects of the private lives of individuals. In this respect, as the Special Rapporteurs have noted, it is troublesome that the legal frameworks regulating communications surveillance programs have not been brought into line with the developments of the new technologies in the digital era, and that they have transferred analogous surveillance criteria that are obsolete when applied to the digital sphere.<sup>200</sup>

148. The interception and retention of data on private communications entails both a direct limitation on the right to privacy and an infringement of the right to freedom of thought and

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<sup>196</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/23/40. April 17, 2013. Para. 3. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>197</sup> United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. June 21, 2013. [Joint Declaration on surveillance programs and their impact on freedom of expression](#). Point 3.

<sup>198</sup> United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. June 21, 2013. [Joint Declaration on surveillance programs and their impact on freedom of expression](#). Point 1.

<sup>199</sup> United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. June 21, 2013. [Joint Declaration on surveillance programs and their impact on freedom of expression](#). Point 2 and 3.

<sup>200</sup> United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. June 21, 2013. [Joint Declaration on surveillance programs and their impact on freedom of expression](#). Point 4 and 5; United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/23/40. April 17, 2013. Para. 17. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

expression.<sup>201</sup> The rights to privacy and the free flow of thought and information are protected by international human rights law. The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the American Convention on Human Rights, and the American Declaration of the Rights and Duties of Man expressly recognize the right of all persons, without discrimination, to freely express their thoughts and to seek and receive information of all kinds. They also prohibit arbitrary or abusive interference in private life, including communications, and recognize the right to obtain protection from the State from such interference.

149. With respect to the right to privacy, the resolution “The Right to Privacy in the Digital Age.” adopted on December 18, 2013 by the General Assembly of the United Nations.<sup>202</sup> This document underscores the value of the right to privacy in communications and expresses concern at the negative impact the surveillance of communications may have on the exercise of human rights. In particular, it reaffirms the right to privacy as a right to which individuals are entitled both offline and when they are connected to the Internet. It also calls for measures to put a stop to arbitrary interference in the privacy of individuals and to prevent future abuses in that respect.<sup>203</sup>

150. As far as freedom of expression is concerned, the violation of the privacy of communications can give rise to a *direct* restriction when—for example—the right cannot be exercised anonymously as a consequence of the surveillance activity. In addition, the mere existence of these types of programs leads to an *indirect* limitation that has a chilling effect on the exercise of freedom of expression.<sup>204</sup> Indeed, the violation of the privacy of communications makes people cautious of what they say and—therefore—of what they do; it instills fear and inhibition as part of the political culture, and it forces individuals to take precautions in communicating with others. Moreover, the people most affected are those who take unpopular positions, or the members of political, racial, or religious minorities who are often unjustifiably classified as “terrorists,” which makes them the object of surveillance and monitoring without proper oversight.<sup>205</sup> A democratic society requires that individuals

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<sup>201</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/23/40. April 17, 2013. Para. 81. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>202</sup> United Nations. General Assembly. Resolution adopted by the General Assembly on December 18, 2013. 68/167. The right to privacy in the digital age. A/RES/68/167. January 21, 2014. Available for consultation at: [http://www.un.org/Depts/dhl/resguide/r68\\_en.shtml](http://www.un.org/Depts/dhl/resguide/r68_en.shtml); General Assembly. Department of Public Information. [General Assembly Adopts 68 Resolutions, 7 Decisions as It Takes Action on Reports of Its Third Committee](#).

<sup>203</sup> United Nations. General Assembly. Resolution adopted by the General Assembly on December 18, 2013. 68/167. The right to privacy in the digital age. A/RES/68/167. January 21, 2014. Available for consultation at: [http://www.un.org/Depts/dhl/resguide/r68\\_en.shtml](http://www.un.org/Depts/dhl/resguide/r68_en.shtml); General Assembly. Department of Public Information. [General Assembly Adopts 68 Resolutions, 7 Decisions as It Takes Action on Reports of Its Third Committee](#).

<sup>204</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 53 and 55. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85); United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin. A/HRC/13/37. December 28, 2009. Para. 33. Available for consultation at: <http://www.ohchr.org/EN/Issues/Terrorism/Pages/Annual.aspx>

<sup>205</sup> IACHR. [Report on Terrorism and Human Rights](#). Chapter III (Norms and Principles of International Human Rights and Humanitarian Law Applicable in Terrorist Situations). OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr. October 22, 2002. Para. 371; United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 54, 79 and 89. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

be able to communicate without undue interference, which means that their communications must be private and secure.<sup>206</sup>

151. These programs can have a serious negative impact on rights such as privacy and freedom of expression, and on the entire architecture of the Web. Accordingly, there is an urgent need for States to revise their laws to set limits on the authority to monitor online communications, as well as its necessity and proportionality, in accordance with individual rights and the principles of international law reflected in, *inter alia*, the Report on Terrorism and Human Rights of the Inter-American Commission on Human Rights (OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr);<sup>207</sup> the Report on the Implications of States' Surveillance of Communications on the Exercise of the Human Rights to Privacy and to Freedom of Opinion and Expression (A/HRC/23/40) of the United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression;<sup>208</sup> and the joint declarations on freedom of expression and the Internet,<sup>209</sup> Wikileaks,<sup>210</sup> and surveillance programs and their impact on freedom of expression.<sup>211</sup>

152. The paragraphs below systematize the most important recommendations that have been made with regard to this issue in the international case law and doctrine, so that communications surveillance programs can be designed and implemented bearing in mind the set of fundamental rights involved.

153. First, the limitations on those rights must be established beforehand in a law, and set forth expressly, exhaustively, precisely, and clearly,<sup>212</sup> both substantively and procedurally.<sup>213</sup> This

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<sup>206</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/23/40. April 17, 2013. Para. 23. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>207</sup> IACHR. [Report on Terrorism and Human Rights](#). Chapter III (Norms and Principles of International Human Rights and Humanitarian Law Applicable in Terrorist Situations). OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr. October 22, 2002.

<sup>208</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/23/40. April 17, 2013. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>209</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Cooperation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and 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](#).

<sup>210</sup> UN Special Rapporteur on the Promotion and Protection the Right to Freedom of Opinion and Expression and Inter-American Commission on Human Rights Special Rapporteur for Freedom of Expression. December 21, 2010. [Joint Statement On Wikileaks](#).

<sup>211</sup> United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. June 21, 2013. [Joint Declaration on surveillance programs and their impact on freedom of expression](#).

<sup>212</sup> I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008 Series C No. 177. Para. 63; I/A Court H.R. *Case of Usón Ramírez v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 55; 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. Para. 39-40; I/A Court H.R. *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. Para. 79; I/A Court H.R. *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Para. 120; 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. 117; IACHR. [Annual Report 1994](#). Chapter V (Report on the Compatibility of "Desacato" Laws with the American

means that it must be a law that results from the deliberation of a legislative body, which precisely defines the causes and conditions that would enable the State to intercept the communications of individuals, collect communications data or “metadata,” or to subject them to surveillance or monitoring that invades spheres in which they have reasonable expectations of privacy.<sup>214</sup>

154. As this Office of the Special Rapporteur has already indicated, clandestine espionage conducted unlawfully or without legal support is an act that is highly offensive to fundamental rights and seriously compromises the actions of the State, its international responsibility, and even the very basis of democracy.<sup>215</sup>

155. Nevertheless, the existence of a law is not enough for a program to be legitimate. As previously mentioned, vague or ambiguous legal provisions that grant very broad discretionary powers are incompatible with the American Convention, because they can serve as the basis for potential arbitrary acts that translate into violations of the right to privacy or the right to freedom of thought and expression guaranteed by the Convention.<sup>216</sup>

156. The laws that authorize the interception of communications must establish clearly and precisely the reasons the State can invoke to request that interception, which can only be authorized by a judge.<sup>217</sup> Additionally, must be established by law safeguards pertaining to the nature, scope, and duration of the surveillance measures; the facts that could justify these measures, and the authorities

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Convention on Human Rights). Title III. OEA/Ser. L/V/II.88. doc. 9 rev. February 17, 1995; IACHR. Report No. 11/96. Case No. 11.230. Francisco Martorell. Chile. May 3, 1996. Para. 55; I/A Court H.R. *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. Para. 72. a).

<sup>213</sup> The definition of the Inter-American Court in Advisory Opinion OC-6/86, according to which the word “laws” does not mean any rule of law, but general normative acts adopted by the legislature provided for constitutionally and democratically-elected, according to the procedures established in the Constitution, tight to the common good is applicable. I/A Court H.R. *The Word “Laws” in Article 30 of the American Convention on Human Rights*. Advisory Opinion OC-6/86 of May 6, 1986. Series A No. 6. Para. 34 *et seq.*

<sup>214</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/23/40. April 17, 2013. Para. 83.a. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85); Necessary and Proportionate. July 10, 2013. [International Principles on the Application of Human Rights to Communications Surveillance](#).

<sup>215</sup> United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. June 21, 2013. [Joint Declaration on surveillance programs and their impact on freedom of expression](#). Point 10; IACHR. [Annual Report 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). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 135 *et seq.*; IACHR. [Annual Report 2010. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 140 *et seq.*; IACHR. [Democracy and Human Rights in Venezuela](#). Chapter VI (The Right to Life, to Humane Treatment, and to Personal Liberty and Security). OEA/Ser. L/V/II. Doc. 54. December 30, 2009. Para. 703.

<sup>216</sup> IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 71.

<sup>217</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/23/40. April 17, 2013. Para. 81. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

competent to authorize them, carry them out, and supervise them.<sup>218</sup> The law must be clear with regard to the possible remedies for abuses committed in the exercise of those powers.<sup>219</sup>

157. Second, limitations to the rights guaranteed by the American Convention must pursue compelling objectives agreed to by the States through their signature of international human rights law instruments. In the case of State surveillance activities—on the Internet or in any other sphere—reasons of national security and the fight against crime or organized crime tend to be invoked. The Office of the Special Rapporteur has maintained that when national security is invoked as a reason for monitoring personal data and correspondence, in order to prevent discretionary interpretations the law must clearly specify the criteria to be applied in determining the cases in which these types of limitations are legitimate, and it must be careful to define that concept precisely. In particular, the Office of the Special Rapporteur has asserted that the concept of national security cannot be interpreted haphazardly and must be defined from a democratic perspective.<sup>220</sup>

158. The inter-American system for the protection of human rights has ruled, for example, on inadmissible interpretations of the concept of national security. In the case of *Molina-Theissen v. Guatemala*, the Inter-American Court of Human Rights held that the so-called “national security doctrine” makes it possible to characterize a person as ‘subversive’ or as an ‘internal enemy,’ for the sole fact that they genuinely or allegedly supported the fight to change the established order.<sup>221</sup> Similarly, in the case of *Goiburú et al. v. Paraguay* the Court found that “[m]ost of the Southern Cone’s dictatorial governments assumed power or were in power during the 1970s [...]. The ideological basis of all these regimes was the ‘National Security Doctrine,’ which regarded leftist movements and other groups as ‘common enemies’.”<sup>222</sup> Even today, it has been reported that national security reasons tend to be invoked to place human rights defenders, journalists, members of the media, and activists under surveillance, or to justify excessive secrecy in the decision-making processes and investigations tied to surveillance issues.<sup>223</sup> Clearly, this kind of interpretation of the “national security” objective cannot be

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<sup>218</sup> United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. June 21, 2013. [Joint Declaration on surveillance programs and their impact on freedom of expression](#). Point 8.

<sup>219</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/23/40. April 17, 2013. Para. 81. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>220</sup> IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 76 *et seq*; IACHR. [Annual Report 2010. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Access to Information on Human Rights Violations). OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 4, 12 *et seq*.; United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. June 21, 2013. [Joint Declaration on surveillance programs and their impact on freedom of expression](#). Point 9.

<sup>221</sup> I/A Court H. R. *Case of Molina-Theissen v. Guatemala. Merits*. Judgment of May 4, 2004. Series C No. 106. Para. 40.2.

<sup>222</sup> I/A Court H. R. *Case of Goiburú et al. v. Paraguay. Merits, Reparations and Costs*. Judgment of September 22, 2006. Series C No. 153. Para. 61.5.

<sup>223</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/23/40. April 17, 2013. Para. 60. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85); United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. June 21, 2013. [Joint Declaration on surveillance programs and their impact on freedom of expression](#). Point 10 and 12; IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of](#)

the basis for the establishment of surveillance programs of any kind, including, naturally, online communications surveillance programs.

159. In any event, in order for an online communications surveillance program to be appropriate, States must demonstrate that the limitations to the rights to privacy and freedom of expression arising from those programs are strictly necessary in a democratic society to accomplish the objectives they pursue.

160. The opinion of strict necessity with respect to communications surveillance assumes that it is insufficient for the measure to be “useful,” “reasonable,” or “opportune.”<sup>224</sup> In order for the restriction to be legitimate, the true and compelling need to impose the limitation must be clearly established; that is, said legitimate and compelling aim cannot be reasonably accomplished by any other means less restrictive of human rights.<sup>225</sup>

161. In any case, as has been mentioned, in order to define if a measure is proportioned, its impact on the capacity of the Internet to guarantee and promote freedom of expression should be evaluated.<sup>226</sup>

162. Given the importance of the exercise of these rights in a democratic system, the law must authorize access to personal data and communications only under the most exceptional circumstances defined in the law. When fairly open-ended grounds such as national security are invoked as the reason to monitor personal data and correspondence, the law must clearly specify the criteria to be applied in determining those cases in which such limitations are legitimate.<sup>227</sup> Their application should be authorized solely when there is a definite risk to the protected interests, and when that harm

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[Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 135 *et seq.*; IACHR. [Annual Report 2010. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 140 *et seq.*; IACHR. [Democracy and Human Rights in Venezuela](#). Chapter VI (The Right to Life, to Humane Treatment, and to Personal Liberty and Security). OEA/Ser. L/V/II. Doc. 54. December 30, 2009. Para. 703.

<sup>224</sup> 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. Para. 46; I/A Court H.R. *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Para. 122; IACHR. [Annual Report 1994](#). Chapter V (Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights). Title III. OEA/Ser. L/V/II.88. doc. 9 rev. February 17, 1995.

<sup>225</sup> IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 86.

<sup>226</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and 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](#). Point 1 (b); United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. June 21, 2013. [Joint Declaration on surveillance programs and their impact on freedom of expression](#). Point 6.

<sup>227</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/23/40. April 17, 2013. Para. 81. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

is greater than society's general interest in maintaining the rights to privacy and the free expression of thought and the circulation of information.<sup>228</sup>

163. When establishing such limitations, States must abstain from perpetuating prejudice and discrimination. Accordingly, limitations to the exercise of fundamental rights cannot be discriminatory or have discriminatory effects, as this would also be inconsistent with Articles 1.1 and 24 of the American Convention. It bears recalling that, under Article 13 of the American Convention, freedom of expression is a right that belongs to "everyone," and by virtue of Principle 2 of the Declaration of Principles, "[a]ll 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."

164. Furthermore, any restriction to freedom of expression or privacy on the Internet as a result of a State security measure should respect the procedural requirements imposed by inter-American law. Indeed, Article 8 of the American Convention is not limited to judicial remedies, but rather must be understood as "the set of requirements that must be observed in proceedings so that individuals can defend themselves properly from any type of State act that might affect their rights."<sup>229</sup> As discussed below, the Special Rapporteurs have already underscored the need for effective controls to ensure that online surveillance programs are designed and implemented taking account of all of the rights at stake, including the procedural guarantees.<sup>230</sup>

165. In light of the above, decisions to undertake surveillance activities that invade the privacy of individuals must be authorized by independent judicial authorities, who must state why the measure is appropriate for the accomplishment of the objectives pursued in the specific case; whether it is sufficiently restricted so as not to infringe upon the right in question more than necessary; and whether it is proportionate in relation to the interests pursued. In this respect, the European Court of Human Rights has held that "in a field where abuse is potentially so easy in individual cases and could have such harmful consequences for democratic society as a whole, it is in principle desirable to entrust supervisory control to a judge."<sup>231</sup> States must ensure that the judicial authority is specialized and competent to make decisions on the legality of the communications surveillance, the technologies used, and its impact on the sphere of rights that could be involved.<sup>232</sup>

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<sup>228</sup> United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. June 21, 2013. [Joint Declaration on surveillance programs and their impact on freedom of expression](#). Point 9.

<sup>229</sup> I/A Court H.R. *Case of Ivcher-Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. Para. 102; I/A Court H.R. *Case of the Constitutional Court v. Peru. Merits, Reparations and Costs*. Judgment of January 31, 2001. Series C No. 55. Para. 69; I/A Court H.R. *Case of Baena-Ricardo et al. v. Panama. Merits, Reparations and Costs*. Judgment of February 2, 2001. Series C No. 72. Para. 124.

<sup>230</sup> United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. June 21, 2013. [Joint Declaration on surveillance programs and their impact on freedom of expression](#). Point 9.

<sup>231</sup> European Court of Human Rights. *Affaire Ashby Donald et autres c. France*. Requête no 36769/08. Arrêt. 10 janvier 2013. Para. 36; European Court of Human Rights. *Case of Klass and others v. Germany*. Application no. 5029/71. Judgment 6 September 1978. Para. 56.

<sup>232</sup> Necessary and Proportionate. July 10, 2013. [International Principles on the Application of Human Rights to Communications Surveillance](#)



166. The State must be transparent with respect to the laws regulating communications surveillance and the criteria used for their application.<sup>233</sup> The principle of “maximum disclosure” is applicable to this issue, and indeed governs all State acts: they are public and can only be kept secret from the public under the strictest circumstances, provided that this confidentiality is established by law, seeks to fulfill a legitimate aim under the American Convention, and is necessary in a democratic society.<sup>234</sup>

167. As the European Court of Human Rights has held, a secret surveillance system can “undermine or even destroy democracy under the cloak of defending it.”<sup>235</sup> The Court therefore demands that there be “adequate and effective guarantees against abuse.”<sup>236</sup> To determine whether this is being done in a particular case, the Court indicated that it is necessary to examine “nature, scope and duration of the possible measures, the grounds required for ordering them, the authorities competent to authorize, carry out and supervise them, and the kind of remedy provided by the national law.”<sup>237</sup>

168. States should disclose general information on the number of requests for interception and surveillance that have been approved and rejected, and should include as much information as possible, such as—for example—a breakdown of requests by service provider, type of investigation, time period covered by the investigations, etc.<sup>238</sup>

169. The service providers should be able to publicly disclose the procedures they use when they receive requests for information from government authorities, as well as information on at least the types of requests they receive and the number of requests.<sup>239</sup> On this point, it bears noting that

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<sup>233</sup> United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. June 21, 2013. [Joint Declaration on surveillance programs and their impact on freedom of expression](#). Point 12; United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/23/40. April 17, 2013. Para. 91 and 92. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>234</sup> IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (The Right of Access to Information). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 9 and 45.

<sup>235</sup> European Court of Human Rights. *Case of Weber and Saravia v. Germany*. Application no. 54934/00. Decision as to the admissibility of 29 June 2006. Para. 106.

<sup>236</sup> European Court of Human Rights. *Case of Weber and Saravia v. Germany*. Application no. 54934/00. Decision as to the admissibility of 29 June 2006. Para. 106.

<sup>237</sup> European Court of Human Rights. *Case of Weber and Saravia v. Germany*. Application no. 54934/00. Decision as to the admissibility of 29 June 2006. Para. 106.

<sup>238</sup> United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. June 21, 2013. [Joint Declaration on surveillance programs and their impact on freedom of expression](#). Point 12 and 14; United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/23/40. April 17, 2013. Para. 91. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>239</sup> United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. June 21, 2013. [Joint Declaration on surveillance programs and their impact on freedom of expression](#). Point 13; United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression,

various Internet companies have adopted the practice of issuing transparency reports that disclose some aspects of the government requests for access to user information they receive.<sup>240</sup>

170. Finally, States should establish independent supervisory mechanisms over the authorities in charge of conducting surveillance. Along these lines, the resolution “The Right to Privacy in the Digital Age” adopted without a vote by the General Assembly of the United Nations on December 18, 2013. This resolution recommends that States establish or maintain “independent, effective domestic oversight mechanisms capable of ensuring transparency, as appropriate, and accountability for State surveillance of communications, their interception and the collection of personal data.”<sup>241</sup>

171. As previously stated, under no circumstances can journalists, members of the media, or members of civil society who have access to and disseminate confidential information about these types of surveillance programs because they are of the opinion that it is in the public interest be subjected to the subsequent imposition of liability for this sole fact. Similarly, confidential sources and materials related to the disclosure of confidential information must be protected by law. The journalistic mechanisms of self-regulation have contributed significantly to the development of good practices on how to approach and communicate complex and sensitive issues. Journalistic responsibility is especially necessary when reporting information on matters of terrorism and national security. The journalistic codes of ethics are useful for the accomplishment of this aim.<sup>242</sup>

172. As the Special Rapporteurs have stated on repeated occasions, persons connected to the State who, having the legal obligation to maintain the confidentiality of certain information, limit themselves to publicly disclosing, in good faith, what they reasonably consider to be evidence of the commission of human rights violations (“whistleblowers”), must not be subject to legal, administrative, or employment sanctions for the disclosure.<sup>243</sup>

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Frank La Rue. A/HRC/23/40. April 17, 2013. Para. 92. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>240</sup> United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 46. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85); Global Network Initiative. *A Call for Transparency from Governments and Telecommunications Companies*; Global Information Society Watch. *Don't censor censorship: Why transparency is essential to democratic discourse*. See, for example: Google. *Informe de transparencia*; Twitter. *Transparency Report. Communicate fearlessly to build trust*; Microsoft. *Law Enforcement Requests Report*.

<sup>241</sup> United Nations. General Assembly. Resolution adopted by the General Assembly on 18 December 2013. 68/167. The right to privacy in the digital age. A/RES/68/167. January 21, 2014. Para. 4 d). Available for consultation at: [http://www.un.org/Depts/dhl/resguide/r68\\_en.shtml](http://www.un.org/Depts/dhl/resguide/r68_en.shtml); General Assembly. Department of Public Information. *General Assembly Adopts 68 Resolutions, 7 Decisions as It Takes Action on Reports of Its Third Committee*.

<sup>242</sup> UN Special Rapporteur on the Promotion and Protection the Right to Freedom of Opinion and Expression and Inter-American Commission on Human Rights Special Rapporteur for Freedom of Expression. December 21, 2010. *Joint Statement On Wikileaks*. Point 3; United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. June 21, 2013. *Joint Declaration on surveillance programs and their impact on freedom of expression*. Point 15.

<sup>243</sup> United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. June 21, 2013. *Joint Declaration on surveillance programs and their impact on freedom of expression*. Point 16; UN Special Rapporteur on the Promotion and Protection the Right to Freedom of Opinion and Expression and Inter-American Commission on Human Rights Special Rapporteur for Freedom of Expression. December 21, 2010. *Joint Statement On Wikileaks*. Point 3.

173. In the interest of controlling foreign surveillance of personal data, some States have proposed establishing a legal obligation of forced localization with respect to some intermediaries. Forced localization is understood as the legal obligation of the owners of Internet sites, platforms, and services to store the data or information on national users locally (in-country) if they provide their services in that country. The forced localization of data may be a mechanism for the restriction of freedom of expression for various reasons. First, the forced localization of Internet intermediaries substantially reduces the supply of services and platforms that users can freely access. It is important to note that the freedom to choose which services and platforms to access is a prerogative of users in the exercise of their freedom of expression and cannot be restricted by governments without violating the unique nature of the Internet as a free, open, and decentralized medium.<sup>244</sup> This opportunity to choose is essential in many States in which individuals are subjected to arbitrary interference in their privacy by the States. In such cases, the opportunity to choose the intermediaries that offer better security becomes a necessary condition for the uninhibited exercise of freedom of expression. In other words, the absence of adequate local laws or public policies for the protection of data could cause greater insecurity in the access to data if they are located in a specific country, as opposed to being stored in multiple locations or in places that offer better safeguards.

174. In addition, requiring Internet service providers to store data locally can create a barrier to entry into the market for new platforms and services. This would negatively affect the freedom of expression of users, who will see their access to resources for research, education, and communication reduced. Indeed, meeting the requirement of data localization is complex and costly, and harms individual users or new initiatives by potentially depriving them of the conditions of interoperability necessary to connect globally. Freedom of expression and democracy assume the free flow of information and require the prevention of measures that create fragmentation in the Internet.

175. In this respect, the exercise of freedom of expression requires conditions that encourage—rather than discourage—user access to a plurality and diversity of media.

176. It is therefore advisable for those issues to arise from political agreements between countries with the participation of all interested actors (see *infra*), so that any regulation goes beyond local regulatory activities that may have detrimental effects on the basic and democratizing characteristics of the Internet. The solution lies in improving the systems of international cooperation, establishing proper safeguards to ensure the protection of all of the fundamental rights at stake.

#### **I. Principles for the protection of freedom of expression through multi-sector participation in Internet governance**

177. Because the Internet is a special and unique communications medium that enables the free, plural, and democratic exercise of the right to freedom of expression, its governance is a particularly relevant matter. In its statements concerning freedom of expression on the Internet, the Office of the Special Rapporteur has considered the importance of the multi-stakeholder and democratic processes in Internet governance, in which the principle of strengthened cooperation ensures that all

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<sup>244</sup> European Parliament and Council of the European Union. [Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services\(Framework Directive\)](#). March 7, 2002. Article 8, section 4, letter g.

relevant points of view can be taken into account and no actor can assume its regulation exclusively.<sup>245</sup> This issue will be addressed in the final section of this report.

178. In order to make sure that all relevant points of view can be properly considered, the States must ensure the equal participation of all actors relevant to the governance of the Internet, fostering strengthened cooperation among authorities, academia, civil society, the tech community, the private sector, and others, both nationally and internationally.

179. A pioneer experience in this area is the creation and operation of the Internet Management Committee in Brazil (CGI). This committee is responsible for the promotion of technical quality, innovation, and the dissemination of services offered online. It follows the “multi-stakeholder” model, in that it is comprised by members of the government, the business sector, the third sector, and the academic community. Based on the principles of multilateralism, transparency, and democracy, the CGI coordinates and integrates the country’s Internet services. It is thus an innovative experience with respect to society’s participation in decisions involving the implementation, administration, and use of the Web. Since July 2004, the representatives of civil society have been democratically elected and participate directly in the deliberations.<sup>246</sup>

180. In this respect, Principle 20 of the Declaration of Principles of the World Summit on the Information Society stated: “[G]overnments, as well as private sector, civil society and the United Nations and other international organizations have an important role and responsibility in the development of the Information Society and, as appropriate, in decision-making processes. Building a people-centered Information Society is a joint effort which requires cooperation and partnership among all stakeholders.”<sup>247</sup>

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<sup>245</sup> United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. June 21, 2013. [Joint Declaration on surveillance programs and their impact on freedom of expression](#). Point 1-3 and 9; United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and 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](#).

<sup>246</sup> Comitê Gestor de Internet no Brasil. [Comitê Gestor de Internet en Brasil](#).

<sup>247</sup> World Summit on the Information Society. [Declaration of Principles](#). December 12, 2003. Principle 20.



**CHAPTER V**  
**THE RIGHT TO ACCESS TO PUBLIC INFORMATION IN THE AMERICAS<sup>1</sup>**  
**Relevant Inter-American standards and resolutions from specialized rights protection bodies**

**A. Introduction**

1. The right to access to information is a fundamental right protected under Article 13 of the American Convention. The right is a particularly important one for the consolidation, functioning and preservation of democratic systems, for which reason it has received significant attention, both from OAS member States<sup>2</sup> and in scholarship and international case law.<sup>3</sup>

2. The Inter-American Court has established that on explicitly stipulating the rights to “seek” and “receive” “information,” Article 13 of the American Convention protects the right of all persons to access information that is under State control, with exceptions permitted under a strict regime of restrictions established in the Convention.<sup>4</sup>

3. The right to access to information is a fundamental requirement for guaranteeing transparency and good public administration of the government and other State authorities. The full exercise of the right to access to information is crucial for preventing abuses by public officials. It fosters the rendition of accounts and transparency in State administration and prevents corruption and authoritarianism.<sup>5</sup> In addition, free access to information is a measure that allows citizens to adequately

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<sup>1</sup> The right to access to information has been a recurring theme in the Office of the Special Rapporteur’s publications and annual reports. This chapter continues the work of the Office of the Special Rapporteur on the description and systemization of best judicial practices in member States on the issue of the right to access information. That earlier work can be found in its annual reports from 2005 (Chapter IV), 2008 (section F of Chapter III), 2009 (Chapter IV), 2010 (Chapters III and IV), and the report “The Inter-American Legal Framework with regard to the Right to Access to Information, Second Edition,” from 2011.

<sup>2</sup> 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 access to public information for all persons 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 OAS. [Resolution AG/RES. 1932 \(XXXIII-O/03\). Access to Public Information: Strengthening Democracy](#). June 10, 2003. See also, General Assembly of the OAS. [Resolution AG/RES. 2057 \(XXXIV-O/04\). Access to Public Information: Strengthening Democracy](#). June 8, 2004; General Assembly of the OAS. [Resolution AG/RES. 2121 \(XXXV-O/05\). Access to Public Information: Strengthening Democracy](#). June 7, 2005; General Assembly of the OAS. [Resolution AG/RES. 2252 \(XXXVI-O/06\). Access to Public Information: Strengthening Democracy](#). June 6, 2006; General Assembly of the OAS. [Resolution AG/RES. 2288 \(XXXVII-O/07\). Access to Public Information: Strengthening Democracy](#). June 5, 2007; General Assembly of the OAS. [Resolution AG/RES. 2418 \(XXXVIII-O/08\). Access to Public Information: Strengthening Democracy](#). June 3, 2008; General Assembly of the OAS. [Resolution AG/RES. 2514 \(XXXIX-O/09\). Access to Public Information: Strengthening Democracy](#). June 4, 2009; General Assembly of the OAS. [Resolution AG/RES. 2661 \(XLI-O/11\). Access to Public Information and Protection of Personal Data](#). June 7, 2011.

<sup>3</sup> IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (The Right of Access to Information). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 1.

<sup>4</sup> 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. 76 y 78. See also, I/A Court H.R. *Case of López-Álvarez v. Honduras. Merits, Reparations and Costs*. Judgment of February 1, 2006. Series C No. 141. Para. 161 et seq; I/A Court H.R. *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Para. 108.

<sup>5</sup> 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

exercise their political rights in a representative and participatory democracy. Certainly political rights presuppose the existence of a broad and vigorous debate, for which it is crucial to have the public information to allow for the sober evaluation of the progress made and difficulties encountered by different authorities. Only through accessing information held by the State is it possible for citizens to know whether the government is performing adequately.<sup>6</sup> Finally, access to information plays an essential role as a tool. It is only through the proper implementation of this right that people are able to know with precision their rights and the mechanisms that exist to protect them. In particular, the adequate implementation of the right to access information in all of its dimensions is an essential condition for the fulfillment of the social rights of excluded or marginalized sectors of society. Effectively, these sectors often do not have systemic and safe alternatives for learning the scope of the rights that the State has recognized and the mechanisms for demanding them and making them effective.<sup>7</sup>

4. This chapter continues the series of the Office of the Special Rapporteur's reports on the issue of freedom of expression and access to public information, pursuant to its mandate to highlight best practices on the subject that have been recognized and implemented by governments.

5. The Office of the Special Rapporteur has recognized that independent of the legal frameworks of OAS member States, the rulings of the human rights protection bodies have significantly promoted standards on access to public information in the context of the domestic jurisdiction of each of the States.

6. For the above reason, the Office of the Special Rapporteur recognizes the need to bring together and assess the rulings of some of the autonomous bodies of OAS member States in charge of protecting the right to access to public information, such as the Federal Institute on Access to Information and Protection of Personal Information in Mexico (IFAI) and the Council on Transparency in Chile (CPLT). The study of these resolutions is vitally important for taking stock of progress made in perfecting best practices on the issue, as well as for identifying the use of guidelines on the right to access to public information. In certain countries, despite the existence of special legislation on the subject, there is no specialized administrative body, meaning that the courts have been the ones in charge of interpreting and applying the law.

7. Likewise, the Office of the Special Rapporteur continues to highlight the special importance of inter-American comparative law and the role it plays in enriching regional scholarship and case law. Although it is true that one of the objectives of the regional human rights protection bodies is to ensure domestic application of Inter-American standards, it is also true that standards have been raised thanks to developments in institutional practices in OAS member State. The interpretations of

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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. 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. 86-87. See also, IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (The Right of Access to Information). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 4 and 5.

<sup>6</sup> 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. 86 and 87.

<sup>7</sup> IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (The Right of Access to Information). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 5.

civil society and State domestic bodies continue to establish the conditions that allow for the regional system to remain on the path toward strengthening its scholarship and case law on the right to access to information.

8. The following paragraphs summarize some of the recent decisions on access to information of guarantor bodies in major States to which the Office of the Special Rapporteur had access. The decisions are arranged according to the central issues they address. However, it should be noted that the majority of the decisions cited address a variety of issues, and therefore should be read in their entirety.

**B. Specialized guarantor bodies: The obligation to provide a suitable and effective remedy for appealing a refusal to turn over information**

9. States must enshrine the right to appeal an administrative ruling denying access to information through a remedy that is simple, effective, swift and not onerous, and that allows for the challenging of decisions of public officials who deny access to specific information or simply fail to respond to the request.<sup>8</sup> In these cases, remedies must be simple and swift, as the speed with which the information is turned over is often indispensable for accomplishing the functions that this right is associated with.<sup>9</sup>

10. The countries of the region have different types of administrative and judicial remedies for challenging administrative responses or omissions with regard to requests for access to public information.<sup>10</sup> In some states, these remedies consist of a specialized mechanism to guarantee the right to access to information. The mechanism is presented before an administrative, autonomous, independent and specialized entity (this is the case in Chile and Mexico)<sup>11</sup>. In other places, appellants can turn to specialized administrative entities whose rulings are not binding (this is the case in Uruguay and Panama) or to an authority such as the Office of the People's Ombudsman that assume the defense of the right to access as part of their functions (like in the case of Guatemala, Colombia or Peru). In some cases, constitutional judicial remedies exist, such as *amparo* in Peru and *tutela* in Colombia. Finally, some States only have ordinary administrative and/or legal remedies. The following paragraphs briefly explain some of the basic characteristics of the aforementioned specialized appeals bodies.<sup>12</sup>

11. In Mexico, the law [*Ley Federal de Transparencia y Acceso a la Información Pública*

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<sup>8</sup> 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.137; IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 238.

<sup>9</sup> 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. 116-139; IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 205.

<sup>10</sup> IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 241.

<sup>11</sup> IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 208.

<sup>12</sup> IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 241.



*Gubernamental* (LFTAIPG)] created the Federal Institute on Access to Information and Protection of Personal Information in Mexico (IFAI), which is probably one of the most important institutions for the defense of the right to access to information in the whole region. The mandate of the IFAI is to “promote and disseminate the exercise of the right to access to information; resolve denials of requests to access to information; and protect personal information held by offices and agencies”<sup>13</sup>.

12. The Institute functions may be classified as follows: 1. Litigious and regulatory functions to ensure access to public information and to protect personal data, through the resolution of denials of access to information, the interpretation of the Law and to issue guidelines;<sup>14</sup> 2. Coordination and oversight functions to encourage compliance with transparency laws, pursuant to its competency;<sup>15</sup> 3. Responsible for publicizing the benefits of the right to access to public government information and encouraging a culture of transparency and rendering of accounts; 4. Finally, operational and administrative functions necessary for the proper operation of the Institute and to ensure compliance with its other functions.<sup>16</sup>

13. The decree creating it was published on December 24, 2002, in the *Diario Oficial de la Federación*.<sup>17</sup> It established the Institute as a decentralized, non-sectoral body of the Federal Public Administration with operational, budgetary and decision-making autonomy. The legal framework under which it was created, reiterates the purpose of the Institute to “promote and disseminate the exercise of the right to access to information; resolve denials of requests to access to information; and protect personal information held by offices and agencies.”<sup>18</sup>

14. On November 26, 2013, the Chamber of Deputies of the United Mexican States passed an initiative to amend the Constitution that had been sent to it by the Senate. The initiative would give constitutional autonomy to the federal oversight agency on matters of transparency and access to public information. The scope of this autonomy would mean that its rulings are “definitive, binding and cannot be challenged by those legally bound” and that hereinafter it will hear matters resolved by its peer institutions in the federal entities as well as challenges to denials of information resolved by other constitutionally autonomous bodies and other powers, with the exception of the Supreme Court of Justice of the Nation. It also allows federal oversight agency to participate in conflicts over the constitutionality of actions and laws. The ongoing reform also broadens the sources of information considered public<sup>19</sup>.

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<sup>13</sup> Estados Unidos Mexicanos. Cámara de Diputados del H. Congreso de la Unión. [Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental](#). June 11, 2002. Art. 33.

<sup>14</sup> Instituto Federal de Acceso a la Información Pública. [Informe de Labores al H Congreso de la Unión 2003-2004](#). P. 12.

<sup>15</sup> The IFAI should monitor the agencies compliance of the obligations of transparency, proper attention to requests for information and compliance with the resolutions of the plenary and complaints of breach before internal control body. Instituto Federal de Acceso a la Información Pública. [Informe de Labores al H Congreso de la Unión 2003-2004](#). P. 12.

<sup>16</sup> Instituto Federal de Acceso a la Información Pública. [Informe de Labores al H Congreso de la Unión 2003-2004](#). P. 12.

<sup>17</sup> Estados Unidos Mexicanos. [Decreto del Instituto de Acceso a la Información Pública](#). Diario Oficial de la Federación. December 24, 2002.

<sup>18</sup> Estados Unidos Mexicanos. [Decreto del Instituto de Acceso a la Información Pública](#). Diario Oficial de la Federación. December 24, 2002. Art. 2.

<sup>19</sup> Cámara de Diputados. H. Congreso de la Unión. [Minuta. Proyecto de Decreto por el que se reforman y adicionan diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos, en materia de transparencia](#). November 26,

15. Another of the important institutions for the defense of the right to access information in the region is the Transparency Council in Chile (CPLT). This is “an independent public-sector corporate entity with legal personality and its own funding”<sup>20</sup> created by the Transparency Act of Public Service and Access to Information of the State Administration [*Ley de Transparencia de la Función Pública y de Acceso a la Información de la Administración del Estado*]. It was approved in 2008 and has been in force since 2009.

16. In its Article 32, the Law on Access to Public Information establishes the objectives of its creation and the principles that will guide its actions as a guarantor body, establishing “as an objective to promote the transparency of public administration, supervise compliance with laws on transparency and the public nature of the information of State administrative bodies, and guarantee the right to access to information.”<sup>21</sup>

17. Article 33 of the law establishes the functions and attributes of the CPLT. The most relevant are: supervising compliance with the provisions of the law; resolving challenges to authorities’ refusal to turn over information; carrying out promotional and training activities to officials regarding transparency and access to public information; supervising proper classification of information; and supervising compliance with the law on the protection of personal information (Law 19.628) by the organs of state administration.<sup>22</sup> The direction and administration of the CPLT is through a Board of Directors made up of four members, elected by the Senate by a qualified vote (two-thirds) of candidates proposed by the Executive. Appointment terms are for six years, with the possibility of being reelected for one more term immediately afterward. The Board of Directors chooses a President from among its members. In the absence of an agreement, the President is chosen by lottery. The presidency rotates over a period of 18 months. Board members may not be reelected again during a single term.<sup>23</sup>

18. Board members can be removed by the Supreme Court at the request of the President of the Republic, a simple majority of the Chamber of Deputies, or at the request of 10 deputies for incapacity, misbehavior or manifest negligence in the performance of their duties.<sup>24</sup> The main activity of the CPLT is to resolve cases in which applicants challenge a refusal by obligated subjects to turn over information. The Board fulfills this role through plenary sessions where it decides on conflicts over transparency or access to information through a majority vote. In the case of a tie, the Board President

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2013. See also, Cámara de Diputados. H. Congreso de la Unión. November 26, 2013. [Boletín No 2613 Aprueban diputados minuta en materia de transparencia; la remiten a Congresos estatales](#); Cámara de Diputados. H. Congreso de la Unión. November 26, 2013. [Nota No 5131 Aprueban Diputados minuta que regresó el Senado sobre reforma constitucional al IFAI y la turna a los congresos estatales para su eventual ratificación](#).

31. <sup>20</sup> Biblioteca del Congreso Nacional de Chile. [Ley 20.285 sobre Acceso a la Información Pública](#). August 20, 2009. Art.

32. <sup>21</sup> Biblioteca del Congreso Nacional de Chile. [Ley 20.285 sobre Acceso a la Información Pública](#). August 20, 2009. Art.

33. <sup>22</sup> Biblioteca del Congreso Nacional de Chile. [Ley 20.285 sobre Acceso a la Información Pública](#). August 20, 2009. Art.

36. <sup>23</sup> Biblioteca del Congreso Nacional de Chile. [Ley 20.285 sobre Acceso a la Información Pública](#). August 20, 2009. Art.

38. <sup>24</sup> Biblioteca del Congreso Nacional de Chile. [Ley 20.285 sobre Acceso a la Información Pública](#). August 20, 2009. Art.

casts the deciding vote.<sup>25</sup>

19. In Chile, the obligated subjects and applicants seeking information can file a claim of illegality [*reclamo de ilegalidad*] against the CPLT resolutions that deny the access to information, before the Court of Appeals of his/her domicile.<sup>26</sup>

20. The Access to Public Information Act of Uruguay, Law 18,381, establishes in its Article 19 a “decentralized body of the Agency for the Development of an Electronic Administration Government and Information and Knowledge Society (AGESIC) imbued with the broadest of technical autonomy, the Unit on Access to Public Information [*Unidad de Acceso a la Información Pública*] (UAIP).”<sup>27</sup>

21. The same article establishes that the UAIP “will be directed by an Executive Council made up of three members: the Executive Director of the AGESIC and two members designated by the Executive Branch between persons [...] who are independent in terms of criteria, efficiency, objectivity and impartiality.” With the exception of the Executive Director of the AGESIC, members will serve for four years and can be renominated. As established by the Law “[t]hey can only be removed following the expiration of their terms or by the Executive Branch in cases of ineptitude, negligence or crime [...]. The presidency of the Executive Council will rotate annually between the two members named to that body by the executive branch. The president will be in charge of representing the Council and carrying out the activities necessary for compliance with its resolutions.”<sup>28</sup>

22. Article 20 establishes that the “Executive Council of the the Unit on Access to Public Information will be assisted by an Advisory Council made up of five members: a) A person with a recognized career in the promotion and defense of human rights, nominated by the Legislative Branch, and who cannot be a current legislator. b) A representative of the Judicial Branch. c) A representative of the Office of the Public Prosecutor. d) A representative from academia and e) [a] representative of the private sector. The Advisory Council may be consulted by the Executive Council on any aspect related to its competency and shall be consulted when the Executive Council exercises its authority to establish rules.”<sup>29</sup>

23. In El Salvador, the Law on Access to Information orders in Article 51, the creation of the “Institute on Access to Public Information as a public law institution with legal personality and its own funding, with administrative and financial autonomy, in charge of supervising the application of this law.” Pursuant to Article 52, the Institute “will be made up of five Commissioners and their corresponding substitutes, who will be named by the President of the Republic. Their terms will last six

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<sup>25</sup> Biblioteca del Congreso Nacional de Chile. [Ley 20.285 sobre Acceso a la Información Pública](#). August 20, 2009. Art. 40.

<sup>26</sup> State administrative bodies may not bring a claim before the Court of Appeals when they have invoked, on confidentiality grounds to oppose the release of information, the argument that releasing it would hamper their ability to properly carry out their institutional functions (Art. 21 N°1). Biblioteca del Congreso Nacional de Chile. [Ley 20.285 sobre Acceso a la Información Pública](#). August 20, 2009. Art. 28.

<sup>27</sup> República Oriental del Uruguay. Unidad de Acceso a la Información Pública. [Ley N° 18.381. Acceso a la Información Pública](#). October 7, 2008. Art. 19.

<sup>28</sup> República Oriental del Uruguay. Unidad de Acceso a la Información Pública. [Ley N° 18.381. Acceso a la Información Pública](#). October 7, 2008. Art. 19.

<sup>29</sup> República Oriental del Uruguay. Unidad de Acceso a la Información Pública. [Ley N° 18.381. Acceso a la Información Pública](#). October 7, 2008. Art. 20.

years and they cannot be renominated. The substitute commissioners will replace the commissioners in cases of death, resignation, absence, inability to participate, recusal in the case of conflicts of interest, or any other valid reason. The Institute will make its decisions by simple majority.”<sup>30</sup>

24. The Law on Access to Information establishes that “private parties shall be able to challenge denials of their requests before the Contentious Administrative Chamber of the Supreme Court of Justice.”<sup>31</sup> The process is governed in a suppletive quality, by the rules established in the Law on Contentious Administrative Jurisdiction of 1978.<sup>32</sup> The Access to Public Information Act was published in El Salvador’s *Diario Oficial de La República* on April 8, 2011.

25. The procedure for electing the commissioners and their substitutes, regulated by Article 53 of the law, indicates that they will be chosen from a shortlist proposed by duly registered business associations; duly registered professional associations; the Universidad de El Salvador and duly authorized private universities; duly registered journalist associations; and by the unions authorized by the Ministry of Labor and Social Security [*Ministerio de Trabajo y Previsión Social*].

26. In Panama, the National Assembly approved in April 2013, the Law No. 33, which created a National Authority of Transparency and Access to Information.<sup>33</sup> The new authority is constituted as the “guiding body in the field of the right to petition and gain access to public information, protection and of personal data, transparency, ethics and prevention of corruption at the governmental level” (Art. 4.2). It is to be a decentralized institution “with full functional, administrative and independent authority” (Art. 1). Its main powers include overseeing compliance with the Law on Transparency (Arts. 4.6 y 6.6); to periodically providing statistics, reports and evaluative reports on the compliance of all institutions with the law (Art. 6.7); coordinating and facilitating the requests of interested parties their requests for access to public information when an institution has not responded regarding the requested information (Art. 6.11); training public servants regarding transparency and access to information (Art. 6.16) and dealing with claims, complaints and matters involving the right to petition and the right of access to information and “to press the respective institutions to eliminate practices that prevent people from fully exercising their rights” (Art. 6.24). The law stipulates that all persons can “petition the Authority when the established measures for the effective exercise of the right to petition and the right of access to public information held by the state” are not being met (Art. 36) and that “once a claim has been admitted, the Authority must verify and resolve the complaint” (Art. 38). The Authority may sanction the public official responsible if it is proven that they did not comply with the law (Arts. 40 y 41). The Authority will be directed and administered by a director general nominated by the executive branch and confirmed by the National Assembly for a period of seven years, renewable for one time only (Art. 10 and 12). The Law also provides for establishment of information officials in various state institutions, which are to serve as liaisons with the Authority to coordinate implementation of the Law on Transparency (Arts. 7 and 8).

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<sup>30</sup> Asamblea Legislativa de El Salvador. [Ley de Acceso a la Información Pública](#). Diario Oficial. Tomo Nº 391. April 8, 2011. Arts. 51 and 52. The Act was approved by Decree 534 dated April 8, 2011 and became effective on May 8, 2011.

<sup>31</sup> Asamblea Legislativa de El Salvador. [Ley de Acceso a la Información Pública](#). Diario Oficial. Tomo Nº 391. April 8, de 2011. Art. 101.

<sup>32</sup> Asamblea Legislativa de El Salvador. [Ley de la Jurisdicción Contencioso Administrativa. Decreto Nº 81](#). Published on December 19, 1978.

<sup>33</sup> OEA/Gobierno Nacional de Panamá. [Gaceta Oficial Digital No. 27275-A](#). 26 de abril de 2013.

27. In Guatemala, the Access to Public Information Act (Decree of the Congress Number 57-2008) of 2008 does not establish a guarantor body. Article 53 of this law states that “the highest authority of each obligated subject will be the court with authority to rule on the writs of review brought against actions or resolutions of the obligated subjects indicated in this law on the subject of access to public information and *habeas data*.”<sup>34</sup>

28. The remedy of review is envisioned as a legal defense instrument that allows, among other things, for the guarantee of compliance with the right to access information as established in applicable law. Also, Article 52 stipulates that the remedy of review “is a measure for legal defense whose purpose is to guarantee that the actions and resolutions of obligated subjects respect the guarantees of legality and legal certainty.”

29. Although the Act does not establish a specialized guarantor body, it does give the Office of the Office of the Ombudsman for Human Rights the status of regulatory authority and protector of the human right to access to information. Article 46 establishes that access to public information “as a fundamental human right provided for in the Political Constitution of the Republic of Guatemala and international treaties or conventions on the subject ratified by the State of Guatemala shall be protected by the Human Right Ombudsman pursuant to the terms of the Law on the Congress of the Republic Human Rights Commission and Human Rights Ombudsman.”

30. The Human Rights Ombudsman intervenes to ensure compliance with the law. One of the Ombudsman’s main tasks is to present a report every year on his/her activities and the human rights situation to the Congress of the Republic.<sup>35</sup> The Access Act establishes that “those subject to the law must present the Human Rights Ombudsman with a report in writing corresponding to the previous year,”<sup>36</sup> which may be included by the Ombudsman in his/her annual report to the Plenary of the Congress.<sup>37</sup>

31. In this sense, governmental Accord number SG-033-2012 instructs the Executive Secretariat of the Commission on Access to Public Information of the Office of the Ombudsman for Human Rights to develop the obligations established in Subhead Three, Chapter I (Intervention of Human Rights Ombudsman) of the Access to Public Information Act.<sup>38</sup>

32. The Presidential Commission on Transparency and Electronic Governance was established in December of 2012 through Governmental Accord 360-2012.<sup>39</sup> One of its central objectives is to implement public policies on transparency, fight corruption, and work for electronic and open

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<sup>34</sup> Congreso de la República de Guatemala. [La Ley de Acceso a la Información Pública. Decreto No. 57-2008](#). Law passed by Congress on September 23 and published on October 23, 2008.

<sup>35</sup> Procurador de los Derechos Humanos. [Ley de la Comisión de los Derechos Humanos del Congreso de la República y del Procurador de los Derechos Humanos. Decreto 45-86](#). Art. 15.

<sup>36</sup> Congreso de la República de Guatemala. [La Ley de Acceso a la Información Pública. Decreto No. 57-2008](#). Law passed by Congress on September 23 and published on October 23, 2008. Art. 48.

<sup>37</sup> Congreso de la República de Guatemala. [La Ley de Acceso a la Información Pública. Decreto No. 57-2008](#). Law passed by Congress on September 23 and published on October 23, 2008. Art. 49.

<sup>38</sup> Procurador de los Derechos Humanos. [Acuerdo número SG-033-2012](#). September 17, 2012.

<sup>39</sup> Gobierno de Guatemala. Comisión Presidencial de Transparencia y Gobierno Electrónico. [Acuerdo Gubernativo 360-2012](#). December 26, 2012.

government. The Commission's work clearly aids the implementation of measures for complying with and strengthening the Access to Information Act.

33. In Colombia, the recent Transparency and Access to Public Information Act does not establish a technical, autonomous, independent and specialized entity for resolving conflicts on the issue. However, it does assign the Office of the Ombudsman of the Nation responsibility for complying with its provisions. The Ombudsman's Office must establish methodology in order to perform the following functions: “[d]evelop preventative actions to enforce” the law; “[p]repare reports on compliance with protective actions on access to information”; “[p]ublish rulings of protection and regulatory rulings on access to public information;” “[p]romote the knowledge and application of the law and its provisions; “[a]pply disciplinary sanctions” set forth in the law; “[m]ake disciplinary decisions in the cases of discretionary exercise of power, cases of offenses or misconduct derived from the right to access to information;” “[p]romote transparency in public administration, access and disclosure of information held by State entities through any publication method;” “[r]equire obligated subjects to adjust their procedures and systems for providing service to citizens to the legislation;” “[t]rain public officials - directly or through third parties - on transparency and access to information;” “[p]repare statistics and reports on transparency and access to the information of State administrative bodies and regarding compliance” with the law; “[p]roperly submit responses to petitions made with requests to maintain anonymity;” “[i]mplement and manage information systems.”<sup>40</sup>

34. In Brazil, the law on access to public information has created a Mixed Commission for the Reevaluation of Information that is responsible for deciding on the “handling and classification” of confidential information in the public federal administrative realm. The Mixed Commission has authority to request clarifications from authorities responsible for classifying information as top secret and secret or classifying information fully or partially; reviewing the classification of top-secret or secret information *ex officio* or at the request of an interested party; and extending the classification deadline of information classified as top-secret, always for a set period of time. The Mixed Commission is also in charge of reviewing remedies brought against decisions of the General Audit Office of the Union that deny access to information and resolving disputes over refusals by State Ministries in response to requests to un-classify information.<sup>41</sup> According to Decree 7724 of 2012, the Commission is composed of the heads of the Civil House of the Presidency of the Republic (which will preside it), the Justice Ministry, the Foreign Affairs Ministry, the Defense Ministry, the Treasury Ministry, the Planning, Budget and Management Ministry, the Human Rights Secretariat of the Presidency of the Republic, Cabinet of Institutional Security of the Presidency, the Attorney General of the Union, and the General Audit Office of the Union.<sup>42</sup>

35. The Office of the Special Rapporteur has recognized that the creation of an autonomous and specialized agency for supervision, responsible for promoting implementation of legislation in the field of access to public information and for reviewing negative responses by the administration with the aim of adopting a decision in this respect is of fundamental importance to achieve effective satisfaction

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<sup>40</sup> Congreso de la República de Colombia. [Informe de conciliación al proyecto de ley 228 de 2012 Cámara, 156 de 2011 Senado](#). June 19, 2012. Art. 24; Corte Constitucional. May 9, 2013. [Comunicado No. 18. Norma Revisada: Proyecto de ley número 156 de 2011 Senado, 228 de 2012 Cámara](#). IV. Expediente PE-036 - sentencia C-274/13.

<sup>41</sup> Estado do Brasil. Controladoria-Geral da União. [Lei 12.527](#). November 18, 2011. Art. 16, para. 3, 17, and 35.

<sup>42</sup> Estado do Brasil. Câmara dos Deputados. [Decreto 7.724](#). May 16, 2012. Art. 46.

of the right<sup>43</sup>. Experience and compared practice have shown the importance of the existence of this type of independent and specialized authorities in the diverse legal systems to avoid weakening efforts to comply with laws regarding access to public information. All of the above, naturally, notwithstanding timely judicial control with respect to decisions denying access to information. In this sense, the Office of the Special Rapporteur has urged the countries to adapt their legislation to strengthen the institutional structure for supervision of the implementation of laws regarding access to public information, pursuant to the highest standards in this field, such as those adopted by the General Assembly of the OAS, in its Resolution AG/RES. 2607 (XL-O/10), by means of which it adopts the “Model Inter-American Law on Access to Information”<sup>44</sup>.

36. In effect, the Model Law provides for the creation of a specialized agency that it denominates “Information Commission”<sup>45</sup>, which is to be in charge of promoting effective implementation of the Law in each Member State and the review of appeals of rulings adopted regarding its nonfulfillment. Among other specifications, the Model Law stipulates that said agency must have full legal standing, operational, budgetary and decision-making autonomy, and be composed of at least three commissioners, designated by means of a public, open and transparent process. Also, as a means to guarantee the effectiveness of the supervisory agency’s decisions, the Model Law stipulates that, independently of its mediating role, in resolving appeals, the agency shall have the power to “require the public authority to take necessary measures to comply with its obligations under [...] Law, such as, but not limited to, providing information or reduction of costs” and to “file a complaint before the competent court to obtain compliance” with its decisions. Practice has shown that systems that have an autonomous and specialized “Information Commission”, as provided for in the Model Law, are in a better position to guarantee adequate implementation and supervision of norms in the field of access to information.

### **C. Resolutions of specialized bodies**

#### **1. Resolutions of application bodies specializing in access to information and the principle of maximum disclosure**

37. The Inter-American Court has established in its case law that “in a democratic society, it is essential that the State authorities are governed by the principle of maximum disclosure”<sup>46</sup> such that “all information in State power is presumed public and accessible, subject to a limited regime of exceptions”<sup>47</sup>. Likewise, the IACHR has explained that, by virtue of Article 13 of the American

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<sup>43</sup> IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 208. In this regard, Permanent Council of the OAS. Committee on Juridical and Political Affairs. [Commentary and Guide for Implementation for the Model Inter-American Law on Access to Information](#). OEA/Ser.G. CP/CAJP-2841/10. April 23, 2010. P. 14.

<sup>44</sup> General Assembly of the OAS. [Resolution AG/RES. 2607 \(XL-O/10\). Model Inter-American Law on Access to Public Information](#). June 8, 2010.

<sup>45</sup> General Assembly of the OAS. [Resolution AG/RES. 2607 \(XL-O/10\). Model Inter-American Law on Access to Public Information](#). June 8, 2010.

<sup>46</sup> 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.92.

<sup>47</sup> I/A Court H.R. *Case of Gomes-Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 230.

Convention, the right to access to information is governed by the principle of maximum disclosure.<sup>48</sup> By the same token, subsection 1 of Resolution CJI/RES.147 (LXXIII-O/08) (“Principles on the Right to Access to Information”) of the Inter-American Juridical Committee has established that, “in principle, all information is accessible. Access to information is a fundamental human right which establishes that everyone can access information from public bodies, subject only to a limited regime of exceptions.”<sup>49</sup>

38. Likewise, the Transparency in Public Administration and Access to Administrative Information Act in Chile incorporates the principle of maximum disclosure, meaning that “the State’s administrative bodies shall provide information in the broadest terms possible, excluding only the information that is subject to constitutional or legal exceptions.”<sup>50</sup>

39. For its part, the Federal Transparency and Access to Public Government Information Act (LFTAIPG)<sup>51</sup> in Mexico also establishes that the right to access to public information shall be interpreted pursuant to the international treaties signed on the issue, thereby ensuring the validity of the principle.

40. In a Resolution dated September 18, 2013,<sup>52</sup> in case file 25-A-2013, the Institute for Access to Information in El Salvador ruled a request for information with regard to the “name, surname and salary of advisors to the Legislative Assembly,” indicating that “it has been recognized that the right to access to information holds the indisputable position as a fundamental right, anchored in the constitutional recognition of the right to freedom of expression (art. 6 of the Constitution), which presupposes the right to investigate or seek and receive information of all kinds, public and private, that is in the public interest, and under the democratic principle of the Rule of Law - of the Republic as a State - (art. 85 Cn.) that requires the government to guarantee the transparency and public account of its Administration, as well as accounting for the expenditure of resources and public funding.”

41. The Institute found that the law establishes “‘citizen oversight of public administration’ (art. 3 subparagraph d) and its principles require ‘those with State responsibilities [...] to give an account to the public [...] regarding their administration’ (art. 4 subparagraph h).” It found that “given that the remuneration or salaries of the advisors comes from public funds, and given citizen oversight of the exercise of public administration and the duty to give an account thereof, should there be any doubt as to whether information is public or subject to one of the exceptions, this Institute shall apply the principle of maximum disclosure and as a consequence, shall order said information be turned over to the applicant (arts. 4 subparagraph a. and 5 of the LAIP).”<sup>53</sup>

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<sup>48</sup> 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 c); IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (The Right of Access to Information). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 9.

<sup>49</sup> The Inter-American Juridical Committee. [Resolution CJI/RES. 147 \(LXXIII-O/08\). Principles on the Right of Access to Information](#). August 7, 2008. Operative paragraph 1.

<sup>50</sup> Biblioteca del Congreso Nacional de Chile. [Ley 20.285 sobre Acceso a la Información Pública](#). August 20, 2009. Art. 1, literal d).

<sup>51</sup> Estados Unidos Mexicanos. Cámara de Diputados del H. Congreso de la Unión. [Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental](#). June 11, 2002. Art. 6.

<sup>52</sup> República de El Salvador. Gobierno Abierto. Proceso 25-A- 2013 contra la Asamblea Legislativa. Available for consultation at: <http://www.gobiernoabierto.gob.sv/pages/instituto-de-acceso-a-la-informacion-publica>

<sup>53</sup> República de El Salvador. Gobierno Abierto. Proceso 25-A- 2013 contra la Asamblea Legislativa. Available for consultation at: <http://www.gobiernoabierto.gob.sv/pages/instituto-de-acceso-a-la-informacion-publica>



42. Chile's Transparency Council (CPLT) has reiterated the principle of maximum disclosure , including in cases involving information having to do with private parties. In a ruling dated October 26, 2012, it ruled on tax debt information after weighing an appeal to the right to access to information (Rol C1028-12). The case had to do with a request from an appellant who sought documentation on debt forgiveness granted to a company. The appellant asked for information regarding the original amount of the debt, the fines that were applied, interest on arrears, the original date of the debt, annual payments, and the nature of the collections.

43. The Council found that the scope of secrecy or confidentiality "is an exceptional rule in our legal system, reason why it should be interpreted restrictively [...] establishing the corollary that '[...] tax confidentiality should be understood to cover the personal wealth information of taxpayers and not all the general information held by the Service [...]' (Considering 5 of the decision ruling on the remedy to resubmit against the A117-09 *amparo* ruling and Considering 7 of the Record C315-09 *amparo* ruling)." <sup>54</sup> The Council held that the subject of tax forgiveness is in the public interest, as tax debts "constitute a reflection of public responsibility, whose compliance has a clear public interest that justifies its publication, something that is especially true with regard to tax debts that have been forgiven." <sup>55</sup>

44. On another occasion, the Council established the scope of the presumption of disclosure established in Article 11, subparagraph c, of the Transparency Act. In its ruling on Record C457-10, the Council found in continuation of the previously mentioned criteria that "the right to access to public information's status as a fundamental right and the condition of the general rule that Article 8 of the Constitution grants to the disclosure of Administrative acts -and [that] Article 5 extends to information that it holds-, pursuant to the burden of proof of the circumstances on which a claim of secrecy or confidentiality depends that lifts or relieves the entity of the duty to turn over information sits with the party arguing as such, that is, the public body." <sup>56</sup>

45. In a ruling in case C533-09 dated April 6, 2010, the CPLT based on the prior criteria issued on June 30, 2009, and confirmed that publicizing administrative actions is particularly relevant for oversight of discretionary authorities. On this point, the Council stated that the exercise of discretionary authority does not mean exemption from the duty to offer grounds for the decisions taken. According to the Council, "these cases require special and careful compliance with the legal necessity that the Administration provide justification for its actions, a requirement whose purpose is to ensure that the Administration's actions do not deviate from the end established by the law that grants it its corresponding authorities, that they have a rational basis and that they are fully in line with the constitutional and legal provisions in force. This certainly prevents making arbitrary distinctions between individuals who are in the same situation." <sup>57</sup>

46. In Mexico, the IFAI has also interpreted the scope of the principle of maximum

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<sup>54</sup> República de Chile. Consejo para la Transparencia. Decisión de amparo ROL C1028-12. October 26, 2012. Available for consultation at: <http://productos3.legalpublishing.cl/CPLT/modulos/pages/busqueda.asp>

<sup>55</sup> República de Chile. Consejo para la Transparencia. Decisión de amparo ROL C1028-12. October 26, 2012. Available for consultation at: <http://productos3.legalpublishing.cl/CPLT/modulos/pages/busqueda.asp>

<sup>56</sup> República de Chile. Consejo para la Transparencia. [Decisión de amparo ROL C457-10](#). November 16, 2010.

<sup>57</sup> República de Chile. Consejo para la Transparencia. [Decisión de amparo ROL C533-09](#). April 6, 2010.

disclosure as a guiding standard for revealing private information on individuals who receive public funds. By the Resolution of Remedy [*Resolución del Recurso*] 2431/09 regarding the case of the names of beneficiaries of social programs and access to electoral registries containing personal information, the Institute found that based on Article 12 of the Transparency Act, divulging such information would be lawful. In the Remedy mentioned, it analyzed specifically the request to access to databases with the names of the members of the System of Social Protection in Health [*Sistema de Protección Social en Salud*] (*Seguro Popular*). The Institute ruled on the balance between access to information and protection of personal information, finding that although a rule establishes that it is legal to reveal the information, the sub-offices can use their judgment to determine which information is relevant for publicizing from the perspective of access to information.<sup>58</sup>

47. The balance between the protection of specific sensitive information and the public nature of activities in which private individuals and government agencies take part has also been studied by the IFAI. In this case, the Institute has found that pursuant “to Article 7, section XIII of the Federal Transparency and Access to Public Government Information Act, the information on contracts that have been signed is public in nature and making that information available constitutes an obligation for sub-offices and entities. According to this line of reasoning, financial and technical proposals received as part of a bidding process generally constitute information of a public nature. Nevertheless, in cases in which the proposals contain confidential information, a public version shall be produced that omits aspects of a commercial, industrial or financial nature pursuant to the grounds provided for in Article 18, section I of the Act in question, such as the characteristics or uses of the product; methods or processes of production; or means or forms of distribution or sale of products, among other things, addressed in the technical proposal. With regard to the financial proposal, certain aspects may be omitted - such as the cost and price structure offered, the way in which sales will be carried out or the acquisition of the project will be negotiated, among other things - that provide their owner with an advantage over its competitors; however, information such as the document number, the amount of product offered, the measurement unit, the generic description of the product, the unit price of each item, the total amount of each item, and the sum of the amount of all the items, among other things, shall not be omitted.”<sup>59</sup>

48. In Uruguay, Article 2 of the Access to Public Information Act (LAIP) includes the principle of disclosure and establishes a presumption of access to public information: “Everything that is produced by or in possession of any public body, whether or not it is part of the State, shall be considered public information, save for exceptions or secrecy established by law, as well as classified or confidential information.” Likewise, Article 4 presumes public all information “produced, obtained, in the possession or under the control of the obligated subjects, regardless of the medium in which they are contained.”<sup>60</sup>

49. In its Resolution 29/2012, Uruguay's Unit on Access to Public Information established specific obligations regarding certain information that must be made available to the public periodically. Based on articles 2 and 4 of the LAIP, it found that the National Telecommunications Administration had failed to comply with the obligations set forth in Law number 18,381 of October 17, 2008, on refusing to

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<sup>58</sup> Estados Unidos Mexicanos. Instituto Federal de Acceso a la Información (IFAI). [Recurso de Revisión. Expediente 2431/09](#). July 15, 2009.

<sup>59</sup> Estados Unidos Mexicanos. Instituto Federal de Acceso a la Información (IFAI). [Expediente 0127/10](#).

<sup>60</sup> República Oriental del Uruguay. Unidad de Acceso a la Información Pública. [Ley Nº 18.381. Acceso a la Información Pública](#). October 7, 2008. Arts. 2 and 4.

turn over public information. In the case, the Unit on Access to Public Information ordered the public entity to “distribute the requested information through a website to be updated periodically, pursuant to the active transparency obligation established in Article 5 of Law No. 18,381 and Article 38 of regulatory Decree 232/010 of August 2, 2010.”<sup>61</sup>

## 2. Preeminence of the right to access to information in the event of conflicting laws or lack of regulation

50. As has been broadly recognized by this Office of the Special Rapporteur given conflicting laws, the law on access to information should prevail over other legislation.<sup>62</sup> This is because the right to access to information has been recognized as an indispensable requirement for the very functioning of democracy.<sup>63</sup> This requirement helps to encourage States to effectively comply with the obligation to establish a law on access to public information and that the interpretation of the law is effectively favorable to the right to access.<sup>64</sup> The OAS General Assembly has therefore recommended in the aforementioned Model Law that the legislation explicitly state that “In case of any inconsistency, this Law prevails over any other law.”<sup>65</sup>

51. Chile’s Transparency Council heard a case on the application of the “damage test” in the

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<sup>61</sup> República Oriental del Uruguay. [Resolución 29/2012](#). December 28, 2012.

<sup>62</sup> UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression. December 6, 2004. [Joint Declaration by the Rapporteurs on freedom of Expression of the UN, OAS and OSCE \(2004\)](#); IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (The Right of Access to Information). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 14; IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 72.

<sup>63</sup> General Assembly of the OAS. [Resolution AG/RES. 1932 \(XXXIII-O/03\). Access to Public Information: Strengthening Democracy](#). June 10, 2003. *See also*, General Assembly of the OAS. [Resolution AG/RES. 2057 \(XXXIV-O/04\). Access to Public Information: Strengthening Democracy](#). June 8, 2004; General Assembly of the OAS. [Resolution AG/RES. 2121 \(XXXV-O/05\). Access to Public Information: Strengthening Democracy](#). June 7, 2005; General Assembly of the OAS. [Resolution AG/RES. 2252 \(XXXVI-O/06\). Access to Public Information: Strengthening Democracy](#). June 6, 2006; General Assembly of the OAS. [Resolution AG/RES. 2288 \(XXXVII-O/07\). Access to Public Information: Strengthening Democracy](#). June 5, 2007; General Assembly of the OAS. [Resolution AG/RES. 2418 \(XXXVIII-O/08\). Access to Public Information: Strengthening Democracy](#). June 3, 2008; General Assembly of the OAS. [Resolution AG/RES. 2514 \(XXXIX-O/09\). Access to Public Information: Strengthening Democracy](#). June 4, 2009; General Assembly of the OAS. [Resolution AG/RES. 2661 \(XLI-O/11\). Access to Public Information and Protection of Personal Data](#). June 7, 2011; IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (The Right of Access to Information). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 14; IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 72.

<sup>64</sup> 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 d). IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (The Right of Access to Information). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 14; IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 72.

<sup>65</sup> General Assembly of the OAS. [Resolution AG/RES. 2607 \(XL-O/10\). Model Inter-American Law on Access to Public Information](#). June 8, 2010; Permanent Council of the OAS. Committee on Juridical and Political Affairs. [Commentary and Guide for Implementation for the Model Inter-American Law on Access to Information](#). OEA/Ser.G. CP/CAJP-2841/10. April 23, 2010; Permanent Council of the OAS. Committee on Juridical and Political Affairs. [Model Inter-American Law on Access to Information](#). OEA/Ser.G. CP/CAJP-2840/10 Corr. 1. April 29, 2010. Chapter I (Definitions, Scope and Rights of Access). Art. 4; IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 72.

revealing of information on the investigative powers of banking and financial authorities on tax issues, determining that the principle of transparency prevails over the expectation of confidentiality. The case would require a balance be struck between legislation on transparency issues and a provision in the General Banking Act (LGB), which in Article 7 establishes that: “all employees, delegated agents or individuals of any title who provide services to the Superintendency are prohibited from revealing any detail of the information that has been issued or giving individuals outside the organization any notice regarding any facts, business activities or situations of which they have learned while performing their duties. Violations of this provision will incur the penalty indicated in articles 246 and 247 of the Penal Code”.

52. In ruling C1266-11 of January 27, 2012, the Council ruled on an injunction (*amparo*) filed against the Superintendency of Banks and Financial Institutions (SBIF) for having denied access to information regarding the number of inspections or audits of banks and other financial institutions carried out in 2010 and 2011, under the terms required. The Council reiterated the principle of maximum disclosure and stated that “as the information requested is of a statistical nature, and as the SBIF has not provided specific facts that would make it possible to determine how the release of the information would infringe on the legal rights being invoked or hamper its ability to carry out its functions, this Council deems that it does not agree with the grounds for confidentiality argued by the agency being challenged. [W]ithout prejudice to the preceding conclusion, it should be added that the meaning of the first paragraph of the aforementioned Article 7 of the General Banking Act may not lead to an interpretation that assumes that all reports prepared by Superintendency officials, or that any facts, business, or situations they may have handled in the course of performing their functions, would be secret or confidential. This Council has reasoned along these same lines in previous decisions (such as the *amparo* decisions in Record C486-09, dated January 22, 2010, and Record C203-10, dated August 10, 2010), in establishing the criterion that, with respect to other similar legal provisions, an interpretation such as that being claimed by the defendant ‘[w]ould mean inverting, through interpretation, the constitutional rule requiring the legislature to positively establish the cases in which confidentiality applies and base them on one of the grounds in paragraph 2 of Article 8 [...]’ [F]urthermore, to deny access to a particular piece of information, it is not enough for there to be a case considered secret or confidential as provided under a law approved by qualified quorum and for this case to meet one of the grounds established in the second paragraph of Article 8 of the Constitution; rather, the party affected by the disclosure of the information being requested must establish how its disclosure would harm that party or infringe on the legal rights protected in the aforementioned constitutional rule.”<sup>66</sup>

53. In Mexico, the Federal Institute for Access to Public Information and Protection of Information heard a case on borrowing by states and municipalities and the lack of federal regulation on the issue. The federal authority argued that the Federal Government does not have power or jurisdiction over debts incurred by states and municipalities and that the information requested was classified and constituted a banking secret based on articles 13, section III and 14, sections I and II of the Transparency Act. In its ruling (Remedy 3211/12), the Institute ordered the Office of the Secretary of the Treasury and Public Credit (SHCP) to revoke the classification invoked with regard to the Registration of Obligations and Public Loans of Federated Entities and Municipalities on finding, among other things, that the condition for bank secrecy established in the Lending Institutions Act was not applicable to the case in question as it dealt with the information that clients (federative entities and municipalities) delivered directly to the SHCP in compliance with the Fiscal Coordination Act and “that the circulation of the true,

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<sup>66</sup> República de Chile. Consejo para la Transparencia. [Decisión de amparo ROL C1266-11](#). January 27, 2012.

timely, complete and sufficient information on the public debt incurred by states and municipalities guarantees society's confidence in its authorities and in the decisions regarding how public money is spend.”<sup>67</sup>

### 3. Purpose or scope of the right

54. The right to access to information applies to information that is in the custody, administration or possession of the State; information that the State produces, or information that it is legally required to produce; information in the possession of persons who exercise or manage public duties, services, or funds, solely with respect to those services, duties, or funds; and information that the State obtains, and that it is required to collect in the discharge of its duties.<sup>68</sup>

55. In Mexico, the IFAI ruled that “the entities and agencies of the Federal Government must distinguish between information that in and of itself documents the deliberative process or the meaning of the decision to be made, and information that is not directly related to decision-making, such as briefing or support materials used in the deliberative process. In the case of the former, it is understood that the information is directly linked to the deliberative processes, and its dissemination could possibly interrupt, undermine, or inhibit the design, negotiation, and implementation of the object of the process; whereas briefing or support materials do not form part of the opinions, recommendations, or points of view of the deliberative process, and therefore their dissemination does not affect the decision that might eventually be made.”<sup>69</sup>

56. The Institute has also found that statistical information, even when it refers to other information that does have reason to be classified, is public in nature. In resolving a dispute about information on the seizure of weapons and communications equipment in the context of counter-narcotics efforts, the IFAI determined that the information that the authorities produce for statistical or administrative purposes is also subject to public access. It argued in this case that “the confidentiality cannot be considered to refer to all of the documents that bear some relationship to the preliminary investigation, without regard to their relevance in proving the *corpus delicti* and the responsibility of the perpetrator, since that would entail noncompliance with other legal provisions on access to government information, and it would be logically inconsistent.” Information that exists for administrative purposes is also, under the IFAI’s interpretation, subject to access. In its decision, the Institute held that “the requested information is found in statistical documentation or in the records of seized assets kept by the Seized Assets Registration and Oversight Office [*Dirección General de Control y Registro de Aseguramientos Ministeriales*], which contain a description of the weapons, explosives, and communications equipment referred to in the request. It is plain to see that these documents are not essential to knowing the historical truth of the punishable act, and to prove the *corpus delicti* and responsibility of the perpetrator; rather, they are generated by Office of the Attorney General of the

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<sup>67</sup> Estados Unidos Mexicanos. Instituto Federal de Acceso a la Información (IFAI). [Recurso de Revisión. Expediente RDA 3211/12](#); Estados Unidos Mexicanos. Instituto Federal de Acceso a la Información (IFAI). [10° Informe de Labores al H. Congreso de la Unión 2012](#). Pag 40.

<sup>68</sup> IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (The Right of Access to Information). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 21; IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 149.

<sup>69</sup> Estados Unidos Mexicanos. Instituto Federal de Acceso a la Información (IFAI). [Criterio 16/13. Insumos Informativos o de Apoyo. Resolución RDA 3156/12](#).

Republic in the course of its duties relating to the administration of assets, which are different from those performed in the investigation and prosecution of crimes.”<sup>70</sup>

57. In Chile, the Council on Transparency [*Consejo para la Transparencia*] has found that information on private individuals that has been turned over to government agencies in a legal proceeding can also be requested. In a case of a request for information, over the opposition of third parties, to the Metropolitan Housing and Urbanization Service [*Servicio de Vivienda y Urbanización Metropolitana*] (SERVIU) related to information pertaining to a subsidy from the program Solidarity Housing Fund [*Fondo Solidario de la Vivienda*] to the “La Estrella” community organization, the Council indicated that the requested information was directly related to an administrative act of the SERVIU and therefore formed part of the information covered by article 3, subsection g) of the Regulations of the Transparency Law (support or direct object) [*Reglamento de la Ley de Transparencia*].

58. In this case, the Council found in its decision “that the information to which the opposing party refers is directly related to the granting of the subsidy. In light of the requirements of the applicable law, the background information is part of the basis for the decision that contains the SERVIU’s administrative act with a view to granting and paying the subsidy, in addition to the associated transfer of public funds, its direct and essential complement in the terms established in the [...] Regulations to the Transparency Act.” The Council further stated that the information requested is part of the Service’s obligations of active transparency with regard to the design, sums, and criteria for access to the subsidy programs.<sup>71</sup>

59. The case is also highly relevant insofar as it broadens the transparency standards based on the idea of the oversight of public resources received by private individuals, considering that “the act of receiving benefits from the State of Chile reduces the sphere of privacy of the individuals who enjoy them, since appropriate public oversight over those to whom such benefits are granted must be allowed.”

#### **4. Parties bound by the right to access to information**

60. The right to access to information creates obligations for all public authorities in all branches of government and at all levels of government. This right also binds those who discharge public duties, provide public services, or spend public funds on behalf of the State. With respect to the latter, the right to access information requires them to provide information exclusively with respect to the management of public funds, the satisfaction of the services under their responsibility, and the fulfillment of the previously mentioned public duties.<sup>72</sup>

61. In its judgment of October 26, 2012 in Case No. C1028-12, on the protection of the right to access information, the Council on Transparency acknowledged that access to information is also

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<sup>70</sup> Estados Unidos Mexicanos. Instituto Federal de Acceso a la Información (IFAI). Resolución. Recurso de Revisión 3284/12. Available for consultation at: <http://buscador.ifai.org.mx/buscador/buscar.do>

<sup>71</sup> Consejo para la Transparencia. República de Chile. Decisión de amparo ROL C206-13. April 3, 2013. Available for consultation at: <http://productos3.legalpublishing.cl/CPLT/modulos/pages/busqueda.asp>

<sup>72</sup> IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (The Right of Access to Information). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 19; IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 119.

applicable to the functions of authorities such as the Investigative Committee of the House of Representatives, which is investigating the forgiveness of Internal Revenue Service (SII) [*Servicio de Impuestos Internos*] fines owed by large taxpayers.<sup>73</sup>

62. The Council itself has underscored the importance of having access to information in the possession of municipal authorities. In a case dated August 29, 2012 related to access to the project based on which permits were granted for the construction of an event center, a mayor stated that because the disclosure of the information was affecting third parties, the Director of Public Works contacted the owner of the property for which the building permit was granted, who did not authorize the disclosure of the information requested.

63. The Council stated that the Transparency Law stipulates that all information referring to administrative acts is public, including information that is the direct basis for or direct and essential complement and the procedures that are used for such acts, and that the requested project is the type of information that is the basis for an administrative act, in this case, the granting of permits by the Office of Municipal Public Works. It also advocated that in this case “any rights of third party involved [...] yield in order to create a procedure that sheds light on the government management of construction. In addition, the public nature of this background information makes it possible for the citizens to oversee the granting of permits by the Offices of Municipal Public Works, which demonstrates the public benefit of its disclosure.”<sup>74</sup>

64. The IFAI determined that information provided for the granting, renewal, or maintenance of concessions and the information derived from their operation, is public, with the exception of trade secrets or industrial information. The Institute held that “the purpose of a concession is to confer upon a private party the exercise of certain public prerogatives for the provision of a public good or service. Therefore, all information derived from the proceeding conducted for their granting, renewal, or maintenance, and the information relating to their operation, in principle, is public.”

65. The IFAI later found that the disclosure of such information “makes it possible to directly evaluate the performance and use of the good that is the object of the concession, as well as the actions of the granting entity. Nevertheless, in exceptional cases, when the information includes economic or financial facts or acts of private individuals that could be useful to a competitor—for example, details about the owner’s management of the business, about his investment decision-making processes, or information that could affect his negotiations with suppliers or clients—a public version should be drafted.”<sup>75</sup>

## **5. Obligation to respond to requests in a timely, complete, and accessible manner**

66. The State has the obligation to respond substantially to the requests for information it receives. Indeed, Article 13 of the American Convention, by protecting the right of individuals to access

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<sup>73</sup> República de Chile. Consejo para la Transparencia. Decisión de amparo ROL C1028-12. October 26, 2012. Available for consultation at: <http://productos3.legalpublishing.cl/CPLT/modulos/pages/busqueda.asp>

<sup>74</sup> República de Chile. Consejo para la Transparencia. Decisión de amparo ROL C704-12. August 29, 2012. Available for consultation at: <http://productos3.legalpublishing.cl/CPLT/modulos/pages/busqueda.asp>

<sup>75</sup> Estados Unidos Mexicanos. Instituto Federal de Acceso a la Información (IFAI). [Criterio 11/13. Concesiones. Resolución RDA 3284/12.](#)

information in the possession of the State, creates a positive obligation for the State to provide the requested information in a timely, complete, and accessible manner; otherwise, it must provide within a reasonable period of time the legitimate reasons that prevent such access.<sup>76</sup>

67. On Resolution 01/2013, Uruguay's Unit for Access to Public Information [*Unidad de Acceso a la Información Pública*] reiterated that the procedure for handling requests for information sets specific time limits and imposes special requirements for information to be deemed secret. On this point, in reviewing the treatment of information of a tape of an extraordinary session by the Municipality of Cardona, it determined that the municipal government had not met its obligations under Law No. 18.381 of October 17, 2008. It noted in particular that entities governed by the Law have "[obligations] pertaining to the classification of information (art. 9) such as the imposition of a deadline for responding to requests for access (art. 15)." It determined that "the secret nature of the information can only be established by statute, approved by the Legislative Branch and ordered for reasons of general interest, as an exception and limitation to the right to access public information (art. 7 of the Constitution of the Republic);" and the obligation "to establish that keeping certain information from public knowledge requires compliance with the current laws on the classification of information."<sup>77</sup>

68. In Mexico, the IFAI has laid out detailed obligations that must be met before declaring certain information nonexistent. Thus, in a case dealing with a request for information from *Petróleos Mexicanos*, in which the public sector entity argued a technicality asserting legal nonexistence at the time in question, the Institute determined that "although the time period during which the incidents referred to by the appellant occurred, PEMEX Refining had still not been created and the terminal in question was under the responsibility of *Petróleos Mexicanos*, the obligated party should have received the records generated by the other entity based on the powers it exercised until 1992, including that related to the requested information."

69. On this basis, it indicated that in the case it was "proper to revoke the nonexistence asserted by PEMEX Refining" and instruct it to conduct "an exhaustive search of the information relating to the causes of the explosions that took place on November 18, 1984 and November 23, 1990 at the PEMEX facilities in San Juan Ixhuatepec, municipality of Tlalnepantla, State of Mexico, in the archives of the administrative units that would have such information in their possession."<sup>78</sup>

70. In Mexico, assertions of nonexistence entail substantial obligations and specific acts and not a mere statement of justification. The IFAI itself has detailed this scope in the order corresponding to Motion for Review 3658/07, in which it adjudicated a dispute concerning budget information about expenditures made by the Office of the Presidency.

71. In this specific case, the Institute determined that it was not enough to assert

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<sup>76</sup> 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. 77; CIDH. 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) and b); IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (The Right of Access to Information). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 24; IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 172.

<sup>77</sup> República Oriental del Uruguay. [Resolución 01/2013](#). January 3, 2013.

<sup>78</sup> Estados Unidos Mexicanos. Instituto Federal de Acceso a la Información (IFAI). Resolución Recurso de Revisión 3369/11. Available for consultation at: <http://buscador.ifai.org.mx/buscador/buscar.do>



nonexistence; rather, material proof of it had to be provided. In its order, the Institute held “that the obligated party failed to prove that it had conducted a search in each and every one of its competent administrative units to obtain the requested information. It is thus proper to modify the obligated party’s response, and it is instructed to conduct an exhaustive search in accordance with the Federal Transparency and Access to Government Information Act and the Regulations thereto, and to deliver the requested information to the appellant; otherwise, it must turn over any document that records public expenditures, the use of federal human resources, financial resources, and materials, particularly if there has been any expenditure included in the budget item relating to official services.”<sup>79</sup>

## **6. Obligation to have an administrative remedy to satisfy the right to access to information**

72. The adequate satisfaction of the right to access to information requires the inclusion in the legal system of an effective and suitable remedy that can be used by all persons to request information. To guarantee the true universality of the right to access, this remedy must have certain characteristics: (a) it must be a simple remedy, easily accessible to all persons, and must only require basic conditions such as the reasonable identification of the information requested and the data needed for the government to be able to turn the information over to the interested party; (b) it must be free or low-cost, so as not to discourage requests for information; (c) it must establish short but reasonable time periods for the authorities to provide the requested information; (d) it must allow requests to be made verbally when it is not possible to do so in writing, for example, because a person does not know the language or cannot write, or in situations of extreme urgency; (e) it must establish the obligation of the government to advise the requesting party of the manner in which to make the request, including advice about the authority authorized by law to respond, even to the point of the authority itself making the respective submission and informing the interested party of its processing; and (f) it must establish the requirement that a denial must be well-founded, accessible, and subject to challenge before a higher or autonomous body, and subsequently subject to judicial review.<sup>80</sup>

73. With respect to the obligation to create a special mechanism for enforcing the right to access, the Inter-American Court has underscored that the State “guarantee of the effectiveness of an appropriate administrative procedure for processing and deciding requests for information, which establishes time limits for taking a decision and providing information, and which is administered by duly trained officials.”<sup>81</sup>

74. In Mexico, the IFAI held that for purposes of enforcing the remedy for handling requests for access to information in due time and proper form, responses to requests for access made outside the time limits established in the Act carry the obligation of covering the copying costs, when it is proper to turn over the information. The Institute determined that “in accordance with Article 53 of the Federal

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<sup>79</sup> Estados Unidos Mexicanos. Instituto Federal de Acceso a la Información (IFAI). [Resolución Recurso de Revisión 3658/07](#). August 20, 2007.

<sup>80</sup> IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (The Right of Access to Information). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 26; IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 172.

<sup>81</sup> 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. 163; IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (The Right of Access to Information). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 27.

Transparency and Access to Government Information Act, in the event that the response to a request for access is granted outside the time limits established in Article 44 of the Act and the disclosure of the requested government information is proper, the government entities and agencies shall be required to cover all costs arising from the reproduction of the information.”<sup>82</sup>

75. In another decision, ruling on Motion for Review 0973/12, the Institute found that “when there is a justified impediment to disclosing the information in the manner chosen by the requesting party, it is proper to offer all other options provided for in the Act. According to Articles 42 and 44 of the Federal Transparency and Access to Government Information Act, and Article 54 of the Regulations thereto, the information must be turned over, to the extent possible, in the format requested by the interested party, unless there is a justified impediment to doing so, in which case the reasons must be stated for which it is not possible to use the requested means of reproduction. In this respect, the delivery of the information in a form other than the one chosen by the requesting party is only appropriate when complying with that request is demonstrated to be impossible.” In the same decision, the Institute held that “when the impediment is justified, the obligated parties must notify the requesting party of the availability of the information in all of the possible forms of delivery, such as direct viewing, certified and uncertified copies, as well as its reproduction in any other format. It must also inform the requesting party, if appropriate, of the cost of reproducing and sending it, so that he or she may choose the method that is convenient or in his or her interest.”<sup>83</sup>

76. On the other hand, the Council on Transparency in Chile, in deciding a dispute involving the declaration of nonexistence of information relating to pregnant women’s right to education broken down by years, region, neighborhood, etc., as well as actions of the Ministry of Education, related to programs and regulations, set an interpretive standard with respect to the legal limits that do not require the production of information.

77. The Council held in *amparo* [Petition for a Constitutional Remedy] Decision C186-12 that the Law refers exclusively to the creation of information and not to its processing. The CPLT cited its own precedent and noted the applicability of “the decision handed down by this Council in *Amparo* A80-09, which held that the collection, processing, and systematization of information, for delivery in the requested terms, does not entail the creation of information.” That decision cited case law of the UK’s Information Commissioner’s Office (<http://www.ico.gov.uk/>), establishing that “although there is no obligation to create information under the Freedom of Information Act (2000), a government authority is not creating information when it is asked to process it in the form of a list of the information it has, to handle information that it is in its archives, or to extract information from an electronic database through a search,”<sup>84</sup> and that even when it comes to creating information, it would have to do so if it would not be an “excessive cost or expense not budgeted.”

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<sup>82</sup> Estados Unidos Mexicanos. Instituto Federal de Acceso a la Información (IFAI). [Resolución RDA 2200/12](#).

<sup>83</sup> Estados Unidos Mexicanos. Instituto Federal de Acceso a la Información (IFAI). [Resolución Recurso de Revisión. Expediente: RDA 0973/12](#).

<sup>84</sup> República de Chile. Consejo para la Transparencia. Decisión de amparo ROL C186-12. Available for consultation at: <http://productos3.legalpublishing.cl/CPLT/modulos/pages/busqueda.asp>

## 7. Limitations on the right to access to information. Legal establishment and regulation of exceptions

78. As an essential element of the freedom of expression protected by the American Convention, the right to access to information is not an absolute right; rather, it can be subject to limitations. Nevertheless, such limitations must strictly comply with the requirements of Article 13.2 of the American Convention—that is, they must be truly exceptional, be clearly established in a law, pursue legitimate aims, and be necessary for the accomplishment of the aim pursued.<sup>85</sup>

79. In March 2013, the Chilean Police [*Carabineros de Chile*] were asked to provide “protocols for the use of lethal weapons in counter-drug operations, protocols for the use of weapons against civilians, and protocols for the use of lethal weapons in public disturbances.” The authority refused to disclose the information on the grounds that it was confidential for national security reasons. In its deliberation of the case, the CPLT mentioned that confidentiality cannot simply be asserted without demonstrating the specific and present harm.

80. During the case proceedings, the Chilean Police alleged the probable and specific harm of disseminating the protocols named in the request. After weighing the specific harm identified by the Police, the Council affirmed the confidentiality of one protocol and denied the grounds for confidentiality of the document entitled “Complementary Directive to the Regulations on Weapons and Ammunition of the Chilean Police, No. 14,” finding that “it does not pose the national security threat asserted by the Police, that is, the possibility that the Police could be undermined in what they do to maintain law and order.”<sup>86</sup>

81. It further stated that given its nature, the public interest in seeing the protocol outweighs the generalities of its content. The Council asserted that “there is a public interest involved in the disclosure of the aforementioned documents, especially with respect to knowledge of the general precautions or methodology of action with which police personnel must proceed when using institutional weaponry and when weapons should be used in the protection of law and order, and that interest sufficiently justifies its disclosure.”<sup>87</sup>

82. In terms of legal establishment, because this issue concerns a right enshrined in Article 13 of the American Convention, the limitations on the right to seek, receive, and impart information must be expressly set forth in advance in a law, to ensure that they do not remain within the government’s discretion. Additionally, their establishment must be sufficiently clear and precise, to ensure that an excessive degree of discretion is not conferred upon the public servants who decide whether or not to disclose the information.<sup>88</sup>

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<sup>85</sup> IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (The Right of Access to Information). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para.45.

<sup>86</sup> República de Chile. Consejo para la Transparencia. [Decisión de amparo ROL C354-13](#). October 23, 2013.

<sup>87</sup> República de Chile. Consejo para la Transparencia. [Decisión de amparo ROL C354-13](#). October 23, 2013.

<sup>88</sup> 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 f); IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 343.

83. In Uruguay, the Unit for Access to Public Information, held in Order 01/2013 that government entities have the obligation to inform the requesting parties that “the secret nature of the information can only be established by statute, approved by the Legislative Branch and ordered for reasons of general interest, as an exception and limitation to the right to access public information (art. 7 of the Constitution of the Republic), [and] to establish that keeping certain information from public knowledge requires compliance with the current laws on the classification of information.”<sup>89</sup>

84. On a Motion for Review (Case File No. 3971/12) on which it was argued that certain environmental information was confidential, the IFAI considered that, as a general rule, this type of information is not subject to classification because it is of public and collective interest. The Institute found that under Article 4 of the Constitution of Mexico, as well as under various international instruments signed and ratified by Mexico, “the right to adequate environmental protection has been recognized as a fundamental right, which involves a number of obligations to the Mexican State.” The Institute affirmed the previously developed criteria, stating that “said provisions confer a collective character upon this human right, and therefore all members of society are entitled to this right, in addition to the fact that the environment is a phenomenon in which everyone has a stake and an interest, and the action of any person, entity, or group directly affects society as a whole. Accordingly, government entities and agencies must grant access to the environmental information contained in their records, in view of the collective and public interest in having information about issues that could affect the community or the environment in general. The government may only protect information that could be considered classified under the Federal Transparency and Access to Government Information Act.”<sup>90</sup>

85. In another case (Motion for Review 0583/13), the Institute held that in cases of information on private individuals in the possession of public entities, the fact that such information was provided confidentially is insufficient for it to be so. In this case, the Institute found that “[s]ubparagraph I of Article 18 of the Federal Transparency and Access to Public Government Information Act protects confidential information provided as such by private persons to those subject to the law; [i]ndividuals who turn in such information may consider it classified only when they have the right to do so, pursuant to the provisions that expressly [so] determine [...]. Information concerning a private legal person that may be considered confidential is that which relates to the person’s assets; that which includes facts that could be useful for the person’s competitors; and that which may be expressly prohibited by a confidentiality clause or agreement.”<sup>91</sup>

86. On the issue of public safety and the application of restrictions, the Institute has also set standards governed by the principle of maximum disclosure and has held that it must be applied to restrictions that are not specifically regulated, including those related to safety, because the information can be disclosed without causing harm. For example, in Motion for Review 3215/13 concerning the criminal cases that had been opened and closed against a person accused of serious crimes, as well as the documents related to the case, the IFAI found that it was possible to protect the confidentiality of information with the disclosure of public information (the dissemination of which does not involve the

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<sup>89</sup> República Oriental del Uruguay. [Resolución 01/2013](#). January 3, 2013.

<sup>90</sup> Estados Unidos Mexicanos. Instituto Federal de Acceso a la Información (IFAI). [Resolución. Recurso de Revisión 3971/12](#).

<sup>91</sup> Estados Unidos Mexicanos. Instituto Federal de Acceso a la Información (IFAI). [Resolución. Recurso de Revisión 0583/13](#).

opening of a preliminary investigation), about open criminal cases, “such as records or documents related to the dissemination of information on the actions of the Office of the Attorney General of the Republic or the oversight of matters for which it is responsible, such as press releases and, specifically, the court orders containing the convictions.”<sup>92</sup>

#### **D. Conclusions**

87. In this report, the Office of the Special Rapporteur presents a summary of some of the most relevant decisions of guarantor bodies that regulate and interpret the right to access to public information in the States of the region that have laws on access to information. This report is limited to pointing out some of the best practices identified in the direct interpretation of the transparency laws.

88. The systematization made reaffirms the importance of the work performed by specialized autonomous bodies that guarantee the right to access to public information. In addition, a general conclusion of this study is that it is crucial for these bodies to have the specific and precise mandate of resolving disputes concerning the implementation of the laws on this subject. The influence of these bodies on the full guarantee of the right is clear. The regulatory frameworks that grant authority to specialized, autonomous, and independent units to adjudicate disputes arising from access to or the denial of public information tend to produce more robust and exhaustive decisions. Therefore, it is advisable to follow the example of those States such as Mexico and Chile that have a vigorous practice of protecting the right of access through such institutions.

89. The Office of the Special Rapporteur notes that some of the decisions studied tend to broaden and specify the scope of the principles governing the right of access to information. Of the decisions examined, those that stand out are the ones that define and specify the scope of recognition of the right to access to information as a fundamental right and the obligation of States to be governed by the principle of maximum disclosure. In most of the countries studied, the grounds for confidentiality and classification are generally restricted to those provided for by law, and the interpretative bodies have developed criteria to weigh those grounds against the public interest.

90. The study makes it possible to show some of the most recent decisions of the supervisory bodies that advance the interpretation of the right to access to information. Most notable are the judgments that broaden the consideration of the types of documents that can be accessed and those that determine the conditions under which information must be disclosed, both in terms of procedure and with respect to the requirements that must be met.

91. The Office of the Special Rapporteur underscores the importance of simplifying the administrative procedures for accessing information, as well as the subsequent judicial guarantees. The experience and practice of the supervisory bodies has been enormously important in making progress toward the effective guarantee of the right to access, and demonstrates the importance of the existence of these types of authorities specialized in the implementation, interpretation, and resolution of disputes. In all cases it is essential to ensure the specialization and autonomy of these entities<sup>93</sup>, which

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<sup>92</sup> Estados Unidos Mexicanos. Instituto Federal de Acceso a la Información (IFAI). [Resolución. Recurso de Revisión 3215/13.](#)

<sup>93</sup> The Office of the Special Rapporteur made the following specific recommendations: preserve the advances made with respect to access to information, ensuring that the transparency bodies are autonomous, have appropriate and stable budgets, and that their decisions are final and unchallengeable; continue to expand real access to the right of access to public

exists to varying degrees in the bodies whose decisions were examined.

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information, strengthening the institutional capacity at every level of government so as to respond appropriately and in a timely manner to requests for information and establishing simple mechanisms (which include, but are not limited to, the Internet) to make such requests; deepen transparency in the justice system, guaranteeing access to the judgments of the courts and to a public version of pretrial investigations that have either concluded or have been inactive for an unreasonable period of time. IACHR. [Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 831.



## CHAPTER VI 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 18 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 2013 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. The Office of the Special Rapporteur also views with concern the manner in which certain state authorities reacted to social protests in the Americas in 2013. In particular, information was received about dozens of detentions, threats and aggressions committed against journalists, communicators, protesters and users of social networks who reported on demonstrations.

5. On this point, as in previous years and in terms of chapter III of this Report, 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, omitting any statement that may increase the risk for journalists; the respect for journalists' right to keep their sources of information; the training of public officials, particularly police and security forces, and, if necessary, the adoption of operation manuals or guidelines on the respect for the right of freedom of expression, determining appropriate sanctions proportionate to the damage done; as well as the development of accurate statistics on violence against journalists.
- 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. Measures or protection programs must be suitable and sufficient for its purpose, in accordance with the views expressed in this report.
- c. Carry out serious, impartial, and effective investigations into the murders, attacks, threats, and acts of intimidation committed against journalists and media workers, in



accordance with this report. 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, remove legal obstacles to the investigation and punishment of these crimes, and provide the victims and their family members ample participation during the investigation and prosecution, as well as adequate compensation, and eliminate gender barriers that obstruct access to justice.
- 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.
- f. Adopt special measures to protect journalists who are reporting on situations of armed conflict and social unrest, and guarantee that they are not detained, threatened, attacked or have their rights limited in any way for the exercise of their profession; that their work materials and tools are not destroyed nor confiscated by the authorities, according to what was laid out in this report; and create special protocols to protect the press in circumstances of social unrest.
- g. Adopt specific, adequate and effective measures to prevent attacks and other forms of violence perpetrated against women journalists, and prosecute and punish those responsible. States must adopt effective measures to encourage reporting of cases of violence against women journalists and combat the impunity that characterizes those crimes.

**B. Criminalization of expression and proportionality of subsequent liability**

6. 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. In others, however, judges issued 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.

7. 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.

8. 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 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**

9. In 2013, the Office of the Special Rapporteur continued to receive information on statements made by high-ranking State officials discrediting and stigmatized the journalistic work of some communicators, media outlets and non-governmental organizations. 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.

10. 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**

11. 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.

12. 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**

13. 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.

14. 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. Internet**

15. The Office of the Special Rapporteur observes that various States in the region have promoted attempts to regulate some aspect of Internet use and access or have adopted decisions in this regard, in response to the need to prevent crime and protect the fundamental rights of third parties. It must be pointed out that many of these initiatives fail to take into account the special characteristics of this technology and, as a result, unduly restrict freedom of expression. In evaluating the proportionality of a restriction on freedom of expression on the Internet, the impact that said restriction could have on the capacity of the Internet to guarantee and promote freedom of expression must be weighed against the benefits that the restriction would provide for the protection of other interests.

16. In this sense, in terms of the Joint Declaration on Freedom of Expression and the Internet, and Chapter IV of this report, the Office of the Special Rapporteur recommends that the Member States:

- a. Abstain from applying regulatory approaches to the Internet that have been developed for other communications media – such as telephony or radio and television – and design an alternative regulatory framework specifically for this medium, addressing its particularities, pursuant to currently-in-effect international standards in the field of freedom of expression.
- b. Encourage self-regulation as an effective tool to deal with defamatory expressions that could be disseminated on the Internet.
- c. Protect the actors who participate as Internet intermediaries and provide technical services from any responsibility for contents generated by third parties and which are disseminated through these services, pursuant to international standards on the matter.
- d. Promote universal Internet access to guarantee universal and effective enjoyment of the right to freedom of expression through this medium.

**G. Surveillance programs and confidential sources**

17. The Office of the Special Rapporteur has expressed concern over the existence of security programs and practices that can generate serious damage to the universal rights to privacy and freedom of thought and expression. As a result, the Office of the Special Rapporteur has urged the corresponding authorities to review relevant legislation and modify their practices, with the aim of ensuring their adjustment to international principles in the field of human rights.

18. In the terms of the Joint Declaration on Surveillance Programs and their Impact on Freedom of Expression, the Office of the Special Rapporteur recommends that the Member States:

- a. Review their legislation to establish limits on the power to oversee private communications, their necessity and proportionality, pursuant to the public's universal rights and the principles of international law that have been taken up in this report.
- b. Ensure that the public can have access to information on programs for surveillance of private communications, their scope and the existing controls to guarantee that they cannot be used arbitrarily. In any case, States must establish independent control mechanisms to ensure the transparency and accountability of these programs.
- c. Abstain from punishing journalists, members of the media or members of civil society who have access to and disseminate reserved information about this type of surveillance programs, considering it to be of public interest. Confidential sources and materials associated with dissemination of reserved information must be protected by law.
- d. Establish regulations to guarantee that a person associated with the State, who, having the legal obligation to maintain the confidentiality of certain information, merely makes

public that which they reasonably consider to be of notable public interest (“whistleblower”) will not be the target of legal, administrative or labor sanctions as long as they have acted in good faith, pursuant to international standards on the matter.

#### **H. Progress on access to information**

19. 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.

20. 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.

#### **I. Allocation of radio frequencies**

21. 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.

22. 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.

23. The Office of the Special Rapporteur thanks the various Member States that have collaborated with it during 2013, 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 THE PROTECTION OF FREEDOM OF EXPRESSION AND DIVERSITY IN THE DIGITAL TERRESTRIAL TRANSITION

**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 Pretoria on 5 April 2013 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, 1 June 2011 and 25 June 2012;

*Emphasising*, once again, the fundamental importance of freedom of expression both in its own right and as an essential tool for the defence of all other rights, as a core element of democracy and as indispensable for advancing development goals;

*Recognising* the potential of a robust, diverse media to promote the free flow of information and ideas in society, through both providing voice opportunities and satisfying information needs and other interests, thereby contributing to democracy, social cohesion and broad participation in decision-making;

*Concerned* about the fact that, in many countries, commercial and political considerations have dominated discussions and policy making regarding the transition to digital terrestrial broadcasting (switchover or digital transition), to the detriment of human rights, and particularly freedom of expression considerations, including diversity, and the protection of the rights of viewers and listeners;

*Recalling* that the airwaves are a public and freedom of expression resource, and that States are under an obligation to manage this resource, including the 'digital dividend', carefully so as best to give effect to the wider public interest;

*Stressing* that States have an obligation to promote and protect the right to freedom of expression, and equality and media diversity, and to provide effective remedies for violations of these rights, including in the digital transition process;

*Noting* that, if not carefully planned and managed, the digital transition can exacerbate the risk of undue concentration of ownership and control of the broadcast media;

*Mindful of* the risk that a poorly managed digital transition process may result in diminished access to broadcasting services by less advantaged segments of the population (a form of digital divide) and/or in

the inability of less well-resourced broadcasters, in particular local and community services, to continue to operate, undermining media pluralism and diversity;

*Cognisant* that, while a planned approach to overall spectrum allocation is always important, it takes on even greater importance in the context of the digital transition, given the increasing competition for spectrum resources, including for mobile uses, as well as the distribution of channels via multiplexes;

*Stressing* the need for decision-making processes relating to the digital transition to be as transparent and participatory as possible, given the broad impact of these decisions, including on freedom of expression;

*Aware of* the enormous complexity of the choices that need to be made in the context of the digital transition, which involve human rights, commercial, technological, public resource, consumer interest and other public interest considerations, which vary considerably from State to State, thereby precluding a one-size-fits-all approach;

*Cognisant of* a number of relevant international standards on freedom of expression, as well as specific international and regional standards and recommendations on the digital transition;

*Adopt*, in San José, Costa Rica, on 3 May 2013, the following Joint Declaration on Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition:

## **1. General Principles**

- a. States should ensure that respect for freedom of expression, including diversity in the airwaves, is ensured in the digital terrestrial transition process.
- b. States should ensure that decision-making processes relating to the digital terrestrial transition take place in a transparent and fully consultative manner, allowing for all stakeholders and interests to be heard. One option here is to create a multi-stakeholder forum to oversee the consultative process.
- c. States should make sure that the digital terrestrial transition takes place in a planned, strategic manner which maximises the overall public interest, taking into account local circumstances. This may include decision-making which involves trade-offs between quality (such as the availability of high definition television) and quantity (such as number of channels), depending on the degree of pressure on the spectrum.
- d. While key policy decisions regarding the digital terrestrial transition need to be taken by government, implementation of those decisions is legitimate only if it is undertaken by a body which is protected against political, commercial and other forms of unwarranted interference, in accordance with international human rights standards (i.e. an independent regulator).
- e. The process for allocating broadcasting licenses should be strictly regulated by law and be guided by clear, objective, transparent and democratic criteria. This includes the need for the legal framework to be sufficiently clear to prevent arbitrary actions, including actions based on the editorial line of a broadcaster, to require decisions to be justified and published, and to allow for judicial review of decisions.

- f. While the International Telecommunications Union (ITU) has set indicative switch-off deadlines for analogue terrestrial television, no such global process is in place for analogue radio services. States should consider whether the broader public interest would be served by putting in place a digital transition process, and specifically a process leading to an analogue switch-off, for radio broadcasting services, whether this should be left to be considered in due course, or whether part of the spectrum should be reserved for analogue radio broadcasting for at least the near future.

## **2. Core Policy Processes**

- a. Core policy decisions – such as what technological backbone to use for digital terrestrial transmission, overall spectrum planning, the approach towards the allocation of multiplexes, and the respective roles played by the regulator, existing broadcasters and free market forces – should ensure respect for freedom of expression and a balance between the various competing interests, taking into account national circumstances.
- b. Regulators should have the necessary mandate and resources – in terms of human and technological capacity, and monitoring and enforcement powers – to implement core policy decisions.
- c. Whether multiplexes are run by content service providers or independent operators, clear rules should be in place regarding the allocation of capacity (or additional capacity) on the multiplex, including, as appropriate, to ensure that this is done in a fair, transparent and non-discriminatory manner. This takes on particular importance in countries with only one multiplex.

## **3. Promoting Diversity and Related Goals**

- a. State policies and licensing processes relating to the digital terrestrial transition should promote media diversity.
- b. As a general principle, the digital terrestrial transition should enable the continued provision of existing broadcasting services. Reasonable and proportionate must-carry and must-offer rules for multiplexes should, as necessary, be put in place to promote this goal.
- c. States should ensure that independent public service broadcasters are able to continue to distribute their existing services terrestrially through and after the digital transition (and that any government or State broadcasters are transformed into public service broadcasters). This should include measures to ensure that they have the necessary legal, technological, financial and organisational resources for this. Where necessary, special financial or other measures may be needed to ensure that public service broadcasters are able to obtain or use the necessary equipment to disseminate their signals digitally.
- d. States should also ensure that community and local broadcasting services are able to continue through and after the digital terrestrial transition. Consideration should be given to various measures to this end, as necessary, including the following:

- i. Allowing certain types of broadcasters – in particular low power local and community services – to continue to distribute via analogue terrestrial signals, insofar as this is consistent with international standards.
  - ii. Allowing certain types of broadcasting services to be provided without a licence in certain designated spectrum bands.
  - iii. Regulatory measures to reduce and/or spread the costs of digital terrestrial dissemination, for example by prescribing shared or otherwise more efficient distribution networks.
  - iv. The provision of subsidies or other forms of support to assist community and local broadcasters to obtain the necessary equipment to be able to distribute their terrestrial signals digitally, provided that subsidies should be allocated by an independent body, based on objective criteria.
  - v. Measures to use the resources generated by the digital dividend to defray infrastructure costs.
- e. The promotion of diversity should be a mandatory criterion to be taken into account in decision-making in relation to the specific services that are provided on digital multiplexes, whether, or to the extent, that these decisions are taken by multiplex operators or regulators.
- f. The potential of digital broadcasting to improve access for people with hearing and visual disabilities should be given due priority in the planning and decision-making process for the digital terrestrial transition.
- g. The need to promote diversity in broadcasting should be an important consideration to be taken into account in decision-making in relation to the broad reallocation of the spectrum freed up by the switch-off of analogue broadcasting (the digital dividend). Considerations to be taken into account in this regard include:
- i. The extent to which the broadcasting environment caters to the interests of all groups in society, including cultural and linguistic minorities, and people living in different areas and regions.
  - ii. The diversity of types of content which are available through the broadcasting system.
  - iii. The interest in and capacity of existing and aspirant broadcasters to provide new channels.
  - iv. The financial resources available within the broadcasting system as a whole, including any public or cross-subsidies, to support new content production.
  - v. The diversity benefits of requiring multiplex operators to carry local, community and/or independent broadcasting services.
  - vi. The diversity benefits of allocating new channel and other capacity to public service broadcasters.
  - vii. The possibility of providing public funding for the development of new broadcast content or channels.
- h. Special measures should be put in place, as necessary, to prevent the digital terrestrial transition from promoting greater or undue concentration of media ownership or control. This might include regulatory measures regarding the way in which multiplexes are run, clear pricing and competition rules regarding multiplexes and distribution networks, and the separation of distribution and content operations within the same business, among other things.

#### 4. Cost Considerations and Universal Access

- a. States should put in place measures to limit the cost to end users of the digital terrestrial transition, specifically with a view to limiting the number of individuals and households which are unable to afford to make the transition and to ensuring that these costs do not lead to a 'digital divide' between those who can afford to access new services and those who cannot. These measures may include:
- i. The imposition of technical standardisation to lower the production costs of devices such as set top boxes (STBs).
  - ii. Regulatory measures to ensure the interoperability and compatibility of reception, decoding and decryption devices.
  - iii. Subsidy programmes for poorer households.
  - iv. Appropriate trade-offs between, and technological solutions for, meeting the interests of better and less well off end users.
- b. Regulatory approaches and decisions regarding free and pay services should strike an appropriate balance between commercial needs and ensuring broad access to a core platform of services.
- c. States should create and support a multi-strand public educational outreach programme throughout the digital transition process to ensure that users are aware of the process and of what they need to do to prepare for it, and have at least the basis technical knowledge they need. As part of this outreach programme, consideration should be given to the following elements:
- i. Special outreach efforts to ensure appropriate information is provided to hard-to-reach users.
  - ii. Special outreach efforts to ensure that users who may be technologically challenged – for example elderly or rural users – have the knowledge and understanding they need.
  - iii. Support programmes, such as call centres or training programmes, for people who need help.
  - iv. More intensive outreach as the analogue switch-off approaches.
- d. States should make an effort to ensure that, by the time the switch-off takes place, the geographic reach of digital services is, overall, at least comparable to and preferably greater than the reach of pre-existing analogue services.
- e. Support services, including electronic programme guides, should be available in user-friendly and non-discriminatory formats, including availability in different languages spoken in the coverage area.

Frank LaRue  
UN Special Rapporteur on Freedom of Opinion and Expression

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OSCE Representative on Freedom of the Media



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OAS Special Rapporteur on Freedom of Expression

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ACHPR Special Rapporteur on Freedom of Expression and Access to Information

## 2. JOINT DECLARATION ON SURVEILLANCE PROGRAMS AND THEIR IMPACT ON FREEDOM OF EXPRESSION

### *United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression*

### *Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights*

*June 21, 2013*— In response to the release of information on secret surveillance programs used in the fight against terrorism and the defense of national security that could severely affect the right to freedom of thought and expression and the right to privacy, the United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression and the Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights consider it necessary to highlight a series of international legal principles on the issue.

In recent days, the scope of certain U.S. National Security Agency of the United States (NSA) programs used to collect digital content and the metadata of telephonic communications has come to light. According to the information available, the programs are being carried out under the Foreign Intelligence Surveillance Act (FISA) and the USA Patriot Act. They are supervised by an independent court that operates in secrecy and are subject to the classified oversight of special committees in the United States Congress. Nevertheless, as indicated hereinafter, the information available on the scope of these programs highlights the risks their implementation poses to the right to privacy and freedom of expression, as well as the need to amend the corresponding legislation and establish improved mechanisms for transparency and public debate on these practices.

At the same time, according to the information collected in thematic and country reports issued by the special rapporteurs, other states in the Americas have also intercepted communications from private parties under intelligence laws or outside the bounds of existing legal regulations. The resulting information was in many cases used for political purposes, or even distributed broadly through state media without the authorization of the people affected by it. The special rapporteurs have also learned of significant progress in the judicial investigations of some of these cases of illegal surveillance.

In this context, the special rapporteurs reiterate their concern at the existence of programs and security policies that could cause serious harm to the rights to privacy and to freedom of thought and expression. Consequently, they urge the corresponding authorities to amend the pertinent legislation and modify their policies in order to ensure that these programs measure up to international human rights principles. As a reminder of its doctrine in this area and to assist states in fulfilling their corresponding international legal obligations, the special rapporteurs have decided to prepare and disseminate this Joint Declaration containing the basic principles of international law that guide the design and implementation of surveillance programs intended to combat terrorism and defend national security.

#### **Importance of guaranteeing national security while following international human rights standards**

1. In their various reports and declarations on terrorism and freedom of expression, the special rapporteurs have stated - taking into account the assessments of other international human rights

bodies - that terrorism is a clear and significant threat to the protection of human rights, democracy and regional and international peace and security. Based on their obligation to ensure that people can freely exercise their rights, states have taken a variety of measures to prevent and combat terrorism, including the formulation of domestic laws and policies to prevent, investigate, try and punish these activities. These efforts have also included the negotiation of multilateral treaties on state cooperation in the struggle against terrorism.

2. When taking action to prevent and combat terrorist activities, states must comply with their international obligations, including those assumed within the frameworks of international human rights law and international humanitarian law. Both the IACHR Special Rapporteur for Freedom of Expression and the United Nations Special Rapporteur on Freedom of Opinion and Expression have in previous country reports, thematic reports, and joint declarations evaluated the implications for freedom of expression of the counter-terrorism initiatives pursued by states. The special rapporteurs have systematically emphasized that unconditional respect for the full enjoyment of human rights or for rights that have not been legitimately suspended in emergency situations must be a fundamental part of any counter-terrorism strategy.

3. In his recent report on communications surveillance and its implications for the exercise of the rights to privacy and freedom of expression (A/HRC/23/40), the United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression recognizes that the protection of national security may justify in exceptional cases the surveillance of private communications. However, it is crucial to understand that given the dynamic character of the Internet and of communications technology in general, this type of surveillance may constitute a particularly invasive act that seriously affects the right to privacy and freedom of thought and expression.

4. Effectively, in recent years, the technology available to states for capturing and monitoring private communications has been changing very rapidly. The Internet has created unprecedented opportunities for the free expression, communication, possession, search for, and exchange of information. It has thereby facilitated the development of large amounts of data on persons, including their locations, online activities, and with whom they communicate. All of this information, which is maintained in archives that are accessible and systematized, can be highly revealing. Because of this, its use by police and security forces running surveillance programs intended to combat terrorism and defend national security has increased without adequate regulation in the majority of the states in our region.

5. It is concerning that legislation on intelligence and security has remained inadequate as new technologies have been developed in the digital era. It is especially concerning that indiscriminate access to information on communication between persons can have a chilling effect on the free expression of thought and the search for and distribution of information in the region.

6. It is urgently necessary for states to amend their laws to establish limits on the power to carry out surveillance of private communications, including the need for such limits and their proportionality, pursuant to the rights of persons and the principles of international law reflected in, for example, in the report on communications surveillance and its implications for the exercise of the rights to privacy and freedom of expression (A/HRC/23/40) issued by the United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and the report on Terrorism and Human Rights issued by the Inter-American Commission on Human Rights (OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr).

### **The need to place limits on surveillance programs**

7. The rights to privacy and to the free circulation of thought and information are protected by international human rights law. The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man explicitly recognize the right of all persons, without discrimination, to freely express their thoughts and to seek and receive information of all kinds. Likewise, they prohibit arbitrary or abusive interference in private life, including communications, setting forth as well the right to state protection from such interference.

8. In keeping with this, states must guarantee that the interception, collection and use of personal information, including all limitations on the right of the affected person to access this information, be clearly authorized by law in order to protect them from arbitrary or abusive interference with their private interests. The law must establish limits with regard to the nature, scope and duration of these types of measures; the reasons for ordering them; the authorities with power to authorize, execute and monitor them; and the legal mechanisms by which they may be challenged.

9. Given the importance of the exercise of these rights for a democratic system, the law must authorize access to communications and personal information only under the most exceptional circumstances defined by legislation. When national security is invoked as a reason for the surveillance of correspondence and personal information, the law must clearly specify the criteria to be used for determining the cases in which such surveillance is legitimate. Its application shall be authorized only in the event of a clear risk to protected interests and when the damage that may result would be greater than society's general interest in maintaining the right to privacy and the free circulation of ideas and information. The collection of this information shall be monitored by an independent oversight body and governed by sufficient due process guarantees and judicial oversight, within the limitations permissible in a democratic society.

10. Any surveillance of communications and interference with privacy that exceeds what is stipulated by law, has ends that differ from those which the law permits, or is carried out clandestinely must be harshly punished. Such illegitimate interference includes actions taken for political reasons against journalists and independent media.

11. Companies that provide Internet services, advertising or related services must make an effort to ensure that the rights of their clients to the protection of their data is respected, along with their right to use the Internet without arbitrary interference. These companies are encouraged to work together to resist attempts to implement mass surveillance programs in contravention of the principles established herein.

### **Duties of public accountability and transparency**

12. All persons have the right to access information held by the state, including information having to do with national security. The law may establish specific exceptions as long as those exceptions are necessary in a democratic society. Specifically, the law must ensure that the public can access information on private communications surveillance programs, including their scope and any regulation that may be in place to guarantee that they cannot be used arbitrarily. Consequently, states should, at

the very least, make public information regarding the regulatory framework of surveillance programs; the entities in charge of their implementation and oversight; the procedures for authorizing, choosing targets, and using the data collected; and the use of these techniques, including aggregate information on their scope. At all times, the state must maintain independent oversight mechanisms that are capable of ensuring program transparency and accountability.

13. The state must allow service providers to inform their customers about the procedures that they implement in response to state surveillance requests. They must provide customers as soon as possible with aggregated information on the number and scope of the requests they receive. In this context, states must make efforts to raise people's awareness over their rights and the operation of new communication technologies such they can determine, manage, mitigate and make informed decisions on using such technologies.

14. The state has the obligation to divulge information regarding the existence of illegal programs of surveillance of private communication broadly. This duty must be satisfied given due consideration to the rights of the persons affected. In every case, states must carry out exhaustive investigations to identify and punish those who pursue these types of practices and report in a timely fashion to those who may have been victims of them.

#### **Protection from sanctions for the disclosure of confidential information**

15. Under no circumstances may journalists, members of the media, or members of civil society who have access to and distribute classified information on these types of surveillance program because they consider to be in the public interest be subjected to subsequent punishment. Likewise, confidential sources and material related to the disclosure of classified information must be protected by law. Journalistic self-regulatory mechanisms have contributed significantly to developing best practices as far as how to address and communicate complex and sensitive subjects. Journalists must be especially responsible when reporting information related to terrorism and national security. Their codes of ethics are useful for this.

16. As the special rapporteurs have stated repeatedly, a person with a connection to the state who, having a legal obligation to keep certain information confidential, only discloses to the public information that she reasonably believe to prove the commission of human rights violations ("whistleblowers") shall not be subjected to legal, administrative or disciplinary sanctions as long as that person has acted in good faith, pursuant to international standards on the subject.

17. Any attempt to impose subsequent punishment on those who reveal classified information must be based on previously established laws applied by impartial and independent bodies with full due process guarantees, including the right to appeal the ruling. The imposition of criminal sanctions must be exceptional and strictly limited according to necessity and proportionality.

### 3. JOINT DECLARATION ON VIOLENCE AGAINST JOURNALISTS AND MEDIA WORKERS IN THE CONTEXT OF PROTESTS

*United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression*

*Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights*

September 13, 2013 - The United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression, Frank La Rue, and the Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights, Catalina Botero, have observed with concern the manner in which some State authorities have reacted to protests in the Americas in recent months. The protesters have by and large demonstrated peacefully, although acts of violence have been reported. In this context, the Special Rapporteurs have been informed of dozens of arrests, threats, and assaults committed against journalists, media workers, protesters, and users of social networks who were reporting on the demonstrations.

The Special Rapporteurs note that in the context of demonstrations and situations of social unrest, the work of journalists and media workers, as well as the free flow of information through alternative media such as the social networks, is essential to keeping the public informed of the events. At the same time, it plays an important role in reporting on the conduct of the State and of law enforcement authorities toward the protesters, preventing the disproportionate use of force and the abuse of authority.

Attacks against journalists who cover these events violate both the individual aspect of freedom of expression—insofar as they prevent journalists from exercising their right to seek and disseminate information, and creates a chilling effect—as well as its collective aspect—in that they deprive society of the right to know the information that journalists obtain. The Offices of the Special Rapporteurs have thus acknowledged that, given the importance of the work done by journalists who cover these events, the State must afford them the highest degree of protection in order for them to perform their duties. This obligation is not limited to granting specific protective measures to journalists; it also includes the duty to create the necessary conditions to mitigate the risks of practicing their profession in such situations.

The State has the duty to ensure that journalists and media workers reporting on public demonstrations are not arrested, threatened, assaulted, or limited in any manner in their rights as a result of practicing their profession. Their work materials and tools must not be destroyed or confiscated by the authorities. As affirmed in the [statement concerning the arrests and assaults against journalists at the Occupy protests in the United States](#), the protection of freedom of expression requires authorities to ensure the necessary conditions for journalists to be able to cover noteworthy events of interest to the public, such as the social protests mentioned. The disproportionate restrictions on access to the scene of the events, the arrests, and the criminal charges resulting from the performance of professional duties by reporters violate the right to freedom of expression. It is incumbent upon the authorities to reestablish the affected guarantees and ensure full respect for the right to freedom of expression.

The Special Rapporteurs note that in order to do their jobs effectively, journalists must be perceived as independent observers and not as potential witnesses for the courts. Otherwise, the safety of both journalists and their sources could be threatened. In situations of social unrest, the perception that

journalists can be forced to testify not only limits their ability to access sources of information but also increases their risk of being targeted by violent groups. In addition, the authorities must not require journalists to demonstrate that statements from eyewitnesses are accurate or to prove before a judge the veracity of complaints reported.

The State must not prohibit or criminalize live broadcasts of events, and must abstain from imposing measures that regulate or limit the free circulation of information via the Internet, and other communications platforms. Moreover, the authorities must not stigmatize or stereotype demonstrators and their demands. They must refrain from making generalizations based on isolated events or the conduct of particular groups. In this respect, the authorities must bear in mind that public servants are meant to be guarantors of the fundamental rights of individuals, and therefore, their statements cannot interfere directly or indirectly in the rights of those who aim to contribute to public debate through the expression and dissemination of information. This duty is particularly accentuated in situations of social unrest, disturbances of public order, or social or political polarization, precisely because of the set of risks they can entail for certain individuals.

In this regard, the Special Rapporteurs maintain that it is essential for authorities to vigorously condemn assaults against journalists and media workers and to act with due diligence and swiftness to establish the facts and punish those responsible. The Special Rapporteurs also note that properly educating State security forces on the role of the press in a democratic society is an important step in preventing violence against journalists and media workers in situations of social unrest.

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

**D. PRESS RELEASES****1. PRESS RELEASE R 12/13****OFFICE OF THE SPECIAL RAPPORTEUR CONDEMNS MURDER OF JOURNALIST IN BRAZIL**

Washington, D.C., February 28, 2013 - The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murder of journalist Mafaldo Bezerra Goes, host of a radio program on the station FM Rio Jaguaribe, which occurred on February 22 in the city of Jaguaribe, state of Ceará, 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, on the morning of Friday the 22nd, Bezerra was attacked by two unknown individuals who shot him five times as he left his house to go to the radio station. The journalist had reportedly received several threats which were related to his reports on crimes committed in the area.

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.



## 2. PRESS RELEASE R 15/13

### OFFICE OF THE SPECIAL RAPPORTEUR CONDEMNS MURDER OF JOURNALIST IN MEXICO

Washington D.C., March 6, 2013. – The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murder of journalist and director of the online news outlet Ojinaga Noticias, Jaime Guadalupe González Domínguez, which occurred on March 3, in the city of Ojinaga, state of Chihuahua, in Mexico. The Office of the Special Rapporteur expresses its concern and urges the Mexican authorities to take urgent action to establish the motive of the crime and to activate all the legal instruments available to identify and punish both the perpetrators and masterminds behind this crime.

According to the information received, on March 3, González Domínguez was attacked by armed men who shot him at least 17 times. After the shooting, the attackers stole his camera. According to the information available, before working for the web portal Ojinaga Noticias, González Domínguez worked for several years as a journalist for the weekly publication Contacto, but renounced his position after receiving threats.

The Office of the Special Rapporteur was informed that the web portal Ojinaga Noticias was suspended after the attack due to fear of future assaults.

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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**3. PRESS RELEASE R 18/13****OFFICE OF THE SPECIAL RAPPORTEUR CONDEMNS MURDER OF JOURNALIST IN BRAZIL**

Washington, D.C., March 12, 2013 - The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murder of journalist Rodrigo Neto de Faria, host of the radio program *Plantão Policial* on the station *Rádio Vanguarda* and police beat reporter for the newspaper *Vale do Aço*, which occurred on Friday, March 8th in the city of Ipatinga, state of Minas Gerais, 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, in the early hours of Friday the 8th the journalist was attacked by two unknown persons who fired at least two shots at him. Neto was taken to a hospital where he later died. Reports indicate that the journalist had received several threats related to his reports on police corruption and crimes that had taken place in the area.

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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#### 4. PRESS RELEASE R 25/13

##### OFFICE OF THE SPECIAL RAPPORTEUR PRESENTS ITS 2012 ANNUAL REPORT

Washington, D.C., April 17, 2013. – On April 16, 2013, the Inter-American Commission on Human Rights presented its 2012 Annual Report to the Organization of American States' (OAS) Committee on Juridical and Political Affairs. The Report includes the [2012 Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#).

In its report, the Office of the Special Rapporteur underscores the most important advances made in the region during 2012 with respect to freedom of expression, and addresses existing challenges. With regard to the advances, the Office of the Special Rapporteur views with satisfaction the enactment of laws on access to information, as well as the furtherance of investigations and court cases that have established responsibility for crimes committed against journalists in previous years. The Report of the Office of the Special Rapporteur also notes the progress made in judicial and legislative areas, as well as the repeal of criminal defamation (*desacato*) laws or criminal provisions that made it possible to prosecute journalists for the publication of information in the public interest that might offend the authorities.

In addition, in Chapter II of the Report, the Office of the Special Rapporteur articulates the most important challenges to freedom of expression and makes the appropriate recommendations according to the doctrine and jurisprudence of the inter-American system for the protection of human rights.

In particular, the Office of the Special Rapporteur calls attention to the significant increase in violence against journalists in connection with the practice of their profession. During 2012, at least 26 individuals were murdered in the region for reasons that may be related to the exercise of their right to freedom of expression. In addition to these deplorable acts, there have been hundreds of reports of acts of violence, assaults, threats, and intimidation against journalists and media workers in retaliation for the exercise of their right to freedom of expression. In most of the cases, the acts of violence against journalists occurred after they reported events related to organized crime or political or police corruption. These acts of violence have resulted in a significant increase in the self-censorship of journalists and the media as a mechanism for protecting their lives and safety. Nevertheless, with a few reported exceptions, they have not been provided with measures designed to bolster prevention efforts or prevent impunity.

In this respect, the Office of the Special Rapporteur recommends that the States adopt appropriate mechanisms to prevent violence against members of the media, including the public condemnation of all acts of violence; adopt effective protection measures to ensure the safety of persons exposed to special risks because of the exercise of their right to freedom of expression; conduct serious, impartial, and effective investigations into acts of violence committed against journalists and media workers; prosecute and convict all perpetrators of such acts, and provide appropriate reparations to victims and their relatives.

The Office of the Special Rapporteur was also able to verify that in some States there has been a notable increase in the number of journalists criminally prosecuted after having disseminated news reports or opinions on issues of significant public interest. In this respect, the Office of the Special Rapporteur points out the need to repeal the offense of *desacato* and encourage the amendment of criminal defamation laws to do away with the use of criminal proceedings to protect honor and reputation when

information in the public interest and regarding public servants or candidates running for public office is disseminated. The protection of privacy or the honor and reputation of public servants or individuals who have voluntarily involved themselves in matters of public interest must be guaranteed only under civil law. The Office of the Special Rapporteur also calls upon the States to modify their civil laws to prevent the disproportionate imposition of pecuniary sanctions for the coverage of events of public interest.

In addition to the increase in cases against journalists, in some States of the region, there is a troubling climate of polarization that has led to the stigmatization of critical journalists, as well as commercial and community media outlets, by high-ranking government officials. The Office of the Special Rapporteur is particularly concerned about the fact that, in some of these cases, statements by government officials have been followed by violent acts or the initiation of disciplinary proceedings that have reportedly threatened to revoke the concessions, permits, and operating licenses of critical media. As noted by the Office of the Special Rapporteur, in those places where there is significant political or social polarization, these types of stigmatizing speeches can lead to greater risks for journalists. In its Report, the Office of the Special Rapporteur urges state authorities to refrain from making public statements or using state media to wage public campaigns that can incite violence against individuals because of their opinions. In particular, they should avoid making statements that can stigmatize journalists, media outlets, and human rights defenders.

The Report of the Office of the Special Rapporteur also raises other markedly important issues related to freedom of expression, including the need to regulate mechanisms that can be used as indirect censorship measures, such as the allocation of government advertising; the importance of enacting laws on access to information and adopting appropriate measures for the implementation of existing laws; and the merits of preventing the public or private concentration of media control and ownership, among other issues.

In Chapters III and IV of the Annual Report, the Office of the Special Rapporteur presents a summary of the judgments handed down by the highest national courts of the region regarding freedom of expression and access to information. This study is a continuation of the Office's practice of documenting and disseminating in its annual reports those national court decisions that represent progress at the domestic level or enrich the regional doctrine and jurisprudence, while at the same time incorporating inter-American standards on freedom of expression into their legal analyses.

Finally, in Chapter V of the Report, the Office of the Special Rapporteur makes several recommendations for dealing with the abovementioned challenges.

The Office of the Special Rapporteur is grateful to the States, civil society organizations, and journalists for their assistance in the preparation of the Report, and in general, in carrying out its mandate.

The Office of the Special Rapporteur's 2012 Annual Report is available at this link: <http://www.oas.org/en/iachr/expression/docs/reports/annual/Annual%20Report%202012.pdf>

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.

**5. PRESS RELEASE R 26/13****OFFICE OF THE SPECIAL RAPPORTEUR CONDEMNS MURDER OF JOURNALIST IN BRAZIL**

Washington, D.C., April 17, 2013 – The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murder of 43 years old journalist Walgney Assis Carvalho, a freelance photographer who worked for the newspaper Vale do Aço, which occurred on Sunday, April 14th, in the city of Coronel Fabriciano, state of Minas Gerais, Brazil. Assis Carvalho is the second journalist from the newspaper Vale do Aço murdered this year. On March 8th journalist Rodrigo Neto de Faria was victim of an attack that ended his life. 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 this new crime, identify and appropriately punish the perpetrators.

According to the information received, on the night of Sunday 14th, Assis Carvalho was having dinner at a local restaurant in the city of Coronel Fabriciano, state of Minas Gerais, when an unknown person arrived to the place in a motorcycle and fired several shots at him. The journalist used to report about law enforcement issues, and often worked with the journalist killed on March, Neto de Faria. The information indicates that both crimes may be related. Assis Carvalho also worked as a photographer for the Civil Police.

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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**6. PRESS RELEASE R 31/13****OFFICE OF THE SPECIAL RAPPORTEUR URGES STATES TO ADOPT EFFECTIVE MEASURES OF PREVENTION, PROTECTION AND INVESTIGATION IN RESPONSE TO VIOLENCE AGAINST JOURNALISTS AND MEDIA WORKERS ON THE 20TH ANNIVERSARY OF WORLD PRESS FREEDOM DAY**

Washington DC, May 3, 2013 – On the 20th anniversary of World Press Freedom Day, the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR), recognizes the valuable work of the women and men who practice journalism in our region and calls on States to adopt effective mechanisms for prevention and protection in response to circumstances that could threaten the life, safety or personal integrity of communicators.

The Office of the Special Rapporteur urges authorities to eradicate the causes of violence against journalists and media workers and to take all necessary measures to end impunity in these crimes.

The inter-American human rights system has recognized that freedom of expression is an essential instrument for the functioning of democratic systems, the denouncement of arbitrariness, and the struggle for the rights of persons. In particular, the Inter-American system has indicated that the media is key to forming the opinion of a public that is informed and aware of its rights, to performing oversight of public administration, and for demanding state officials be held responsible. Without a plural, vigorous, free and independent media, abuse of power remains hidden and authoritarian systems take root. It is not a coincidence that the first measure taken by authoritarian regimes everywhere in the world has historically been to block the exercise of a critical and independent media and prohibit all acts of dissidence.

The Americas have moved forward significantly in the effective enjoyment of the right to freedom of expression. However, this Office of the Special Rapporteur has called attention to a significant increase in recent years in violence against journalists, associated with the exercise of their profession, and the worrying state of impunity of those crimes. The result is that currently, in some areas of our region, those who exercise journalism face extreme risk.

Principle 9 of the Inter-American Commission Declaration of Principles of Freedom of Expression 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."

As established by the UN Plan of Action on the Safety of Journalists and the Issue of Impunity, to which the Office of the Special Rapporteur is fully committed, "Efforts to end impunity with respect to crimes against journalists must be associated with the defence and protection of human rights defenders, more generally. [P]romoting the safety of journalists and fighting impunity must not be constrained to after-the-fact action. Instead, it requires prevention mechanisms and actions to address some of the root causes of violence against journalists and of impunity."

For this reason, and on the occasion of the 20th anniversary of the World Press Freedom Day, this Office of the Special Rapporteur for Freedom of Expression recommends that States:

- Adopt appropriate mechanisms to prevent violence against members of the media, including the public condemnation of all acts of violence;
- Adopt effective protection measures to ensure the safety of persons exposed to special risks because of the exercise of their right to freedom of expression;
- Conduct serious, impartial, and effective investigations into acts of violence committed against journalists and media workers; prosecute and convict all perpetrators of such acts, and provide appropriate reparations to victims and their relatives;
- Repeal the offense of desacato and encourage the amendment of criminal defamation laws to do away with the use of criminal proceedings to protect honor and reputation when information in the public interest and regarding public servants or candidates running for public office is disseminated; and
- Refrain from making public statements or using state media to wage public campaigns that can incite violence against individuals because of their opinions. In particular, they should avoid making statements that can stigmatize journalists, media outlets, and human rights defenders.

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.

## 7. PRESS RELEASE R 36/13

### OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION EXPRESSES ITS CONCERN OVER TELEPHONE RECORDS OBTAINED FROM ASSOCIATED PRESS JOURNALISTS

Washington D.C., May 15, 2013 – The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) expresses its concern that the United States Department of Justice has requested the telephone records of journalists from the news agency The Associated Press (AP) from the telephone companies concerned. This type of practice could affect the free exercise of journalism by putting the confidentiality of journalistic sources at risk.

According to the information received, on May 10, 2013, the AP received a letter from the U.S. Attorney's Office for the District of Columbia, which informed it that the Department of Justice had obtained the telephone records of more than 20 phone lines used by the agency's editors and journalists in April and May of 2012. The records included telephone calls made from the AP offices as well as from the private telephone lines of various staff members. The acts of surveillance purportedly occurred without prior notice to the news agency or its journalists.

On Monday, May 13, the President and CEO of the AP, Gary B. Pruitt, sent a letter of protest to Attorney General Eric Holder, in which he objects "in the strongest possible terms to a massive and unprecedented intrusion by the Department of Justice into the newsgathering activities of The Associated Press." In the letter, the President of the agency expressed that "[t]hese records potentially reveal communications with confidential sources across all of the newsgathering activities undertaken by the AP during a two-month period, provide a road map to AP's newsgathering operations, and disclose information about AP's activities and operations that the government has no conceivable right to know."

Deputy Attorney General, James Cole, said in a response letter to the AP, that the Department of Justice strives "in every case to strike the proper balance between the public's interest in the free flow of information and the public's interest in the protection of national security and effective enforcement of our criminal laws." Attorney General Eric Holder said at a press conference on Tuesday, May 14, that the actions were taken in the context of a "very serious leak" that "put the American people at risk," and therefore "trying to determine who was responsible for that I think required very aggressive action."

In a press conference on Monday, May 13, the White House Press Secretary, Jay Carney, said the White House had no knowledge of any attempt by the Justice Department to seek phone records of the AP. "The president believes that the press as a rule needs to have an unfettered ability to pursue investigative journalism." He added that the president also considers that it cannot be allowed that "classified information, that can do harm to our national security interests or do harm to individuals, to be leaked."

The Office of the Special Rapporteur notes with concern that this type of practice can harm the free exercise of journalism and affect the right of journalists to keep the identity of their sources confidential, as reflected in Principle 8 of the [Declaration of Principles on Freedom of Expression of the IACHR](#): "Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential."



As the Office of the Special Rapporteur has indicated on other occasions, the importance of the right to the confidentiality of sources lies in the fact that in the context of their work and in order to provide the public with the information necessary to satisfy the right to receive information, journalists perform an important service to the public when they collect and publish information that would not otherwise come to light if the confidentiality of their sources were not protected. Thus, confidentiality is an essential element of journalists' work and of the role that they play in society of reporting about matters of public interest.

As a result, when it is completely necessary for the State to carry out this type of action, it is not sufficient to comply with ordinary guarantees of due process. Those who are involved must be notified so that reporters are forewarned about the actions that are being carried out, permitting them to protect their sources of information.

The Office of the Special Rapporteur reminds the State of the need to adopt all necessary measures to avoid putting this fundamental guarantee for the free exercise of journalism at risk.

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.

**8. PRESS RELEASE R 43/13****OFFICE OF THE SPECIAL RAPPORTEUR CONDEMNS MURDER OF MEDIA EXECUTIVE IN BRAZIL**

Washington, D.C., June 17, 2013 - The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murder of José Roberto Ornelas de Lemos, administrative director of newspaper Hora H, and son of the media outlet's owner, José Lemos, which occurred on June 11, in the city Nova Iguaçu, state of Rio de Janeiro, 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 and to identify and appropriately punish the perpetrators.

According to the information received, on the night of Wednesday, June 11, Ornelas de Lemos was in a bakery when he was shot at least forty times by four unknown persons who were inside a vehicle. According to news reports, the victim had received threats previously, which may appear to have been related to the publications of the newspaper Hora H. The daily circulates in the Baixada Fluminense region and covers police beats. Furthermore, in 2005, Ornelas de Lemos had been the victim of an attack.

News reports also indicate that Ornelas de Lemos had been accused of being involved in a murder perpetrated in 2002, for which he had been taken into preventive custody. He was later freed due to lack of evidence against him. Ornela de Lemos was also under investigation for his alleged connection with three crimes perpetrated in the 1990s, but he was never formally charged.

Authorities investigating the case told the press that the police are working on the hypothesis that the crime could have been related to the activities of the newspaper run by the victim.

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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## 9. PRESS RELEASE 44/13

### IACHR EXPRESSES CONCERN OVER ARRESTS AND ATTACKS ON DEMONSTRATORS AND JOURNALISTS DURING PROTESTS IN BRAZIL

Washington D.C., June 20, 2013 - The Inter-American Commission on Human Rights (IACHR) and its Office of the Special Rapporteur for Freedom of Expression express their concern over the acts of violence that reportedly took place against demonstrators and journalists in Brazil during the social protests held in June in several cities across the country. The Commission urges the authorities to investigate the potential excessive use of force and, where applicable, to prosecute and punish those responsible. In addition, the Commission calls upon the State of Brazil to guarantee the physical welfare and safety of the demonstrators and journalists during the protests.

The information received indicates that the protests began on June 6 in the city of São Paulo, following an increase in public transportation fares. During the demonstrations some isolated acts of violence were reported, such as the burning and vandalism of buses, looting and damages to public buildings. Nevertheless, the vast majority of the demonstrations has been peaceful, and has expanded to other regions of the country, in response to different complaints. The Commission notes with concern that these demonstrations, particularly on June 13, may have involved abuses by law enforcement officers against demonstrators and journalists.

According to the information received, at least 200 people were detained on June 13 in the city of São Paulo. According to the information released by demonstration organizers, more than 100 people were reportedly injured by rubber bullets and police batons or affected by tear gas and pepper spray. According to reports, during one demonstration held on June 16 in the city of Rio de Janeiro, military police officers fired tear gas canisters at a group of demonstrators who had taken refuge in a park, also affecting families and children who were not participating in the demonstrations.

The IACHR also received information concerning arrests and attacks against journalists who were reporting on the demonstrations. On June 11, three journalists were arrested. One of them, Pedro Ribeiro Nogueira, of Portal Aprendiz, spent three days in custody. The IACHR was also informed that on Thursday, June 13, at least fifteen reporters were assaulted by alleged members of the Military Police and two other journalists were reportedly detained. Seven reporters from Folha de São Paulo sustained injuries from rubber bullets or were affected by pepper spray. Two of them, journalists Fábio Braga and Giuliana Vallone, were reportedly shot in the face with rubber bullets. Photographer Sérgio Silva of the Futura Press agency is said to be in danger of losing sight in his left eye as a result of having been injured by a rubber bullet. Photographer Filipe Araújo, of the newspaper O Estado de São Paulo, was reportedly struck by a police vehicle while photographing the demonstrations. On June 16 and 17, two journalists were injured while covering demonstrations in Rio de Janeiro and Belo Horizonte. On the other hand, three journalists were reportedly attacked during other demonstrations by protesters.

According to the information received, Brazilian authorities have supported the right of citizens to demonstrate peacefully, and have maintained that the potential abuses by law enforcement officers must be investigated. President Dilma Rousseff stated that, "the size of the demonstrations [...] shows the vitality of democracy" in Brazil. For his part, São Paulo Mayor, Fernando Haddad, stated with respect to the June 13 demonstrations that, "there is no doubt that the image that remained was one of police

violence, and so I understand that the secretary [of public safety] acted correctly by opening an investigation to rigorously ascertain the facts."

The Inter-American Commission welcomes these statements of the Brazilian authorities, which are in agreement with the relevant inter-American standards. The rights of assembly and freedom of expression are fundamental rights guaranteed in the American Convention on Human Rights, and are essential for the existence and functioning of a democratic society. A State may impose reasonable limitations on protests with the objective of ensuring that they are peacefully carried out, or to disperse those that turn violent, so long as such limits are governed by the principles of legality, necessity and proportionality. Moreover, dispersion of a protest may only be justified by the duty to protect people, and the methods to be adopted must be those that are the safest and that cause the least harm to the protesters. The use of force in public demonstrations should be exceptional and strictly necessary in accordance with internationally recognized principles.

## 10. JOINT STATEMENT

***United Nations Special Rapporteur on the Protection  
and Promotion of the Right to Freedom of Opinion and Expression***

***Special Rapporteur for Freedom of Expression  
of the Inter-American Commission on Human Rights***

**JOINT DECLARATION ON SURVEILLANCE PROGRAMS AND THEIR IMPACT ON FREEDOM OF EXPRESSION**

*June 21, 2013* – In response to the release of information on secret surveillance programs used in the fight against terrorism and the defense of national security that could severely affect the right to freedom of thought and expression and the right to privacy, the United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression and the Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights consider it necessary to highlight a series of international legal principles on the issue.

In recent days, the scope of certain U.S. National Security Agency of the United States (NSA) programs used to collect digital content and the metadata of telephonic communications has come to light. According to the information available, the programs are being carried out under the Foreign Intelligence Surveillance Act (FISA) and the USA Patriot Act. They are supervised by an independent court that operates in secrecy and are subject to the classified oversight of special committees in the United States Congress. Nevertheless, as indicated hereinafter, the information available on the scope of these programs highlights the risks their implementation poses to the right to privacy and freedom of expression, as well as the need to amend the corresponding legislation and establish improved mechanisms for transparency and public debate on these practices.

At the same time, according to the information collected in thematic and country reports issued by the special rapporteurs, other states in the Americas have also intercepted communications from private parties under intelligence laws or outside the bounds of existing legal regulations. The resulting information was in many cases used for political purposes, or even distributed broadly through state media without the authorization of the people affected by it. The special rapporteurs have also learned of significant progress in the judicial investigations of some of these cases of illegal surveillance.

In this context, the special rapporteurs reiterate their concern at the existence of programs and security policies that could cause serious harm to the rights to privacy and to freedom of thought and expression. Consequently, they urge the corresponding authorities to amend the pertinent legislation and modify their policies in order to ensure that these programs measure up to international human rights principles. As a reminder of its doctrine in this area and to assist states in fulfilling their corresponding international legal obligations, the special rapporteurs have decided to prepare and disseminate this Joint Declaration containing the basic principles of international law that guide the design and implementation of surveillance programs intended to combat terrorism and defend national security.

**Importance of guaranteeing national security while following international human rights standards**

1. In their various reports and declarations on terrorism and freedom of expression, the special rapporteurs have stated - taking into account the assessments of other international human rights bodies - that terrorism is a clear and significant threat to the protection of human rights, democracy and regional and international peace and security. Based on their obligation to ensure that people can freely exercise their rights, states have taken a variety of measures to prevent and combat terrorism, including the formulation of domestic laws and policies to prevent, investigate, try and punish these activities. These efforts have also included the negotiation of multilateral treaties on state cooperation in the struggle against terrorism.

2. When taking action to prevent and combat terrorist activities, states must comply with their international obligations, including those assumed within the frameworks of international human rights law and international humanitarian law. Both the IACHR Special Rapporteur for Freedom of Expression and the United Nations Special Rapporteur on Freedom of Opinion and Expression have in previous country reports, thematic reports, and joint declarations evaluated the implications for freedom of expression of the counter-terrorism initiatives pursued by states. The special rapporteurs have systematically emphasized that unconditional respect for the full enjoyment of human rights or for rights that have not been legitimately suspended in emergency situations must be a fundamental part of any counter-terrorism strategy.

3. In his recent report on communications surveillance and its implications for the exercise of the rights to privacy and freedom of expression (A/HRC/23/40), the United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression recognizes that the protection of national security may justify in exceptional cases the surveillance of private communications. However, it is crucial to understand that given the dynamic character of the Internet and of communications technology in general, this type of surveillance may constitute a particularly invasive act that seriously affects the right to privacy and freedom of thought and expression.

4. Effectively, in recent years, the technology available to states for capturing and monitoring private communications has been changing very rapidly. The Internet has created unprecedented opportunities for the free expression, communication, possession, search for, and exchange of information. It has thereby facilitated the development of large amounts of data on persons, including their locations, online activities, and with whom they communicate. All of this information, which is maintained in archives that are accessible and systematized, can be highly revealing. Because of this, its use by police and security forces running surveillance programs intended to combat terrorism and defend national security has increased without adequate regulation in the majority of the states in our region.

5. It is concerning that legislation on intelligence and security has remained inadequate as new technologies have been developed in the digital era. It is especially concerning that indiscriminate access to information on communication between persons can have a chilling effect on the free expression of thought and the search for and distribution of information in the region.

6. It is urgently necessary for states to amend their laws to establish limits on the power to carry out surveillance of private communications, including the need for such limits and their proportionality, pursuant to the rights of persons and the principles of international law reflected in, for example, in the report on communications surveillance and its implications for the exercise of the rights to privacy and freedom of expression (A/HRC/23/40) issued by the United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and the report on

Terrorism and Human Rights issued by the Inter-American Commission on Human Rights (OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr).

### **The need to place limits on surveillance programs**

7. The rights to privacy and to the free circulation of thought and information are protected by international human rights law. The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man explicitly recognize the right of all persons, without discrimination, to freely express their thoughts and to seek and receive information of all kinds. Likewise, they prohibit arbitrary or abusive interference in private life, including communications, setting forth as well the right to state protection from such interference.

8. In keeping with this, states must guarantee that the interception, collection and use of personal information, including all limitations on the right of the affected person to access this information, be clearly authorized by law in order to protect them from arbitrary or abusive interference with their private interests. The law must establish limits with regard to the nature, scope and duration of these types of measures; the reasons for ordering them; the authorities with power to authorize, execute and monitor them; and the legal mechanisms by which they may be challenged.

9. Given the importance of the exercise of these rights for a democratic system, the law must authorize access to communications and personal information only under the most exceptional circumstances defined by legislation. When national security is invoked as a reason for the surveillance of correspondence and personal information, the law must clearly specify the criteria to be used for determining the cases in which such surveillance is legitimate. Its application shall be authorized only in the event of a clear risk to protected interests and when the damage that may result would be greater than society's general interest in maintaining the right to privacy and the free circulation of ideas and information. The collection of this information shall be monitored by an independent oversight body and governed by sufficient due process guarantees and judicial oversight, within the limitations permissible in a democratic society.

10. Any surveillance of communications and interference with privacy that exceeds what is stipulated by law, has ends that differ from those which the law permits, or is carried out clandestinely must be harshly punished. Such illegitimate interference includes actions taken for political reasons against journalists and independent media.

11. Companies that provide Internet services, advertising or related services must make an effort to ensure that the rights of their clients to the protection of their data is respected, along with their right to use the Internet without arbitrary interference. These companies are encouraged to work together to resist attempts to implement mass surveillance programs in contravention of the principles established herein.

### **Duties of public accountability and transparency**

12. All persons have the right to access information held by the state, including information having to do with national security. The law may establish specific exceptions as long as those exceptions are necessary in a democratic society. Specifically, the law must ensure that the public can access

information on private communications surveillance programs, including their scope and any regulation that may be in place to guarantee that they cannot be used arbitrarily. Consequently, states should, at the very least, make public information regarding the regulatory framework of surveillance programs; the entities in charge of their implementation and oversight; the procedures for authorizing, choosing targets, and using the data collected; and the use of these techniques, including aggregate information on their scope. At all times, the state must maintain independent oversight mechanisms that are capable of ensuring program transparency and accountability.

13. The state must allow service providers to inform their customers about the procedures that they implement in response to state surveillance requests. They must provide customers as soon as possible with aggregated information on the number and scope of the requests they receive. In this context, states must make efforts to raise people's awareness over their rights and the operation of new communication technologies such they can determine, manage, mitigate and make informed decisions on using such technologies.

14. The state has the obligation to divulge information regarding the existence of illegal programs of surveillance of private communication broadly. This duty must be satisfied given due consideration to the rights of the persons affected. In every case, states must carry out exhaustive investigations to identify and punish those who pursue these types of practices and report in a timely fashion to those who may have been victims of them.

#### **Protection from sanctions for the disclosure of confidential information**

15. Under no circumstances may journalists, members of the media, or members of civil society who have access to and distribute classified information on these types of surveillance program because they consider to be in the public interest be subjected to subsequent punishment. Likewise, confidential sources and material related to the disclosure of classified information must be protected by law. Journalistic self-regulatory mechanisms have contributed significantly to developing best practices as far as how to address and communicate complex and sensitive subjects. Journalists must be especially responsible when reporting information related to terrorism and national security. Their codes of ethics are useful for this.

16. As the special rapporteurs have stated repeatedly, a person with a connection to the state who, having a legal obligation to keep certain information confidential, only discloses to the public information that she reasonably believe to prove the commission of human rights violations ("whistleblowers") shall not be subjected to legal, administrative or disciplinary sanctions as long as that person has acted in good faith, pursuant to international standards on the subject.

17. Any attempt to impose subsequent punishment on those who reveal classified information must be based on previously established laws applied by impartial and independent bodies with full due process guarantees, including the right to appeal the ruling. The imposition of criminal sanctions must be exceptional and strictly limited according to necessity and proportionality.



**11. PRESS RELEASE R 47/13****OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION STATES ITS CONCERN OVER THE ENACTMENT OF THE COMMUNICATIONS ACT IN ECUADOR**

Washington D.C., June 28, 2013 – The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) states its concern over the enactment of the Communications Act in Ecuador and urges authorities to bring Ecuador's laws into line with international standards on freedom of expression.

The Communications Act was passed by the National Assembly of Ecuador on June 14 and signed by the President on June 22, 2013. The provisions of the law contain some important principles regarding the exercise of the right to freedom of thought and expression. Nevertheless, in regulating those principles, the law establishes onerous restrictions that render the aforementioned principles practically ineffective. Such restrictions, examined in a [letter sent to the State by the Office of the Special Rapporteur](#), could severely hinder the exercise of the right to freedom of expression and have a serious chilling effect that is incompatible with a democratic society.

The burdensome regulation imposed on all communications media—press, radio, television, subscription-based audio and video, as well as those media whose content can be created or reproduced via the Internet—is based on the notion that the exercise of freedom of expression through any medium is a public service. In this sense, understood as a public service, the State assumes exorbitant powers to regulate the exercise of the fundamental right to express oneself freely through any medium that a person chooses.

As explained in greater detail in the [letter sent to the State](#), in considering all media to be public service provider companies, the law creates a rigorous regulatory framework that imposes scores of obligations applicable to all media and journalists. It authorizes the administrative bodies to control and intervene in the content of those media; it establishes considerably vague liabilities and grounds for administrative infractions, and grants a public servant—elected by an administrative body from a short list of candidates sent by the President of the Republic—the authority to oversee compliance with the law, implement it, and impose the respective penalties.

This Office of the Special Rapporteur had the opportunity to raise the abovementioned issues with the State in several letters sent over the course of the past three years. Indeed, although the text of the law differs in some substantial respects from the previously published bills, the issues of major concern with regard to freedom of expression had already been set forth in the context of prior drafts. The Office of the Special Rapporteur regrets that the competent authorities failed to take account of the international standards referred to in the letters and reports that were sent at the appropriate time.

The Office of the Special Rapporteur believes it is of the utmost importance that the authorities review the newly enacted law in light of developments in international human rights law and amend the aspects that could seriously jeopardize the right to freedom of expression of all persons in Ecuador. The Office of the Special Rapporteur expresses its absolute willingness to cooperate with the State in any way it deems appropriate in order to make its laws consistent with the above-mentioned international standards.

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.

**12. PRESS RELEASE R 50/13****OFFICE OF THE SPECIAL RAPPORTEUR CONDEMNS MURDER OF KIDNAPPED JOURNALIST  
IN HONDURAS**

Washington, D.C., July 15, 2013 – The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murder of journalist Aníbal Barrow, who was kidnapped on June 24, and whose mutilated body was found on July 9 in the city of Villanueva, department of Cortés. The Office of the Special Rapporteur expresses its deep concern and urges the Honduran authorities to act urgently to establish the motive of this crime and to investigate, prosecute and punish the perpetrators and masterminds responsible for the kidnapping and murder of the journalist.

According to the information received, Barrow, who was the host of the television program 'Aníbal Barrow y nada más' on Globo TV, was kidnapped by armed persons on June 24 in the city of San Pedro Sula, department of Cortés. The journalist was in his car with two family members and a driver when unknown individuals hijacked the vehicle, freed his companions, and then kidnapped him. The vehicle was found hours later and contained blood stains and bullet holes.

The authorities began an intense search to locate the journalist, and he was finally found on July 9 near a lake in the city of Villanueva. According to reports, the body of the journalist was mutilated and partially burned. Police authorities have reported that four suspects have been arrested and that an arrest warrant has been issued for four other suspects for their alleged connection to the crime.

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 family. 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 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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**13. PRESS RELEASE R 53/13****OFFICE OF THE SPECIAL RAPPORTEUR CONDEMNS MURDER OF JOURNALIST IN MEXICO**

Washington D.C., July 22, 2013. – The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murder of journalist Alberto López Bello, with the newspaper El Imparcial, which took place on July 17 in Oaxaca de Juárez, state of Oaxaca, Mexico. The Office of the Special Rapporteur expresses its concern and urges the Mexican authorities to take urgent action to establish the motive of the crime and to activate all the legal instruments available to identify and punish the perpetrators behind this crime.

López Bello was a journalist with the newspaper El Imparcial, and covered police beats. He also collaborated with local radio station Radiorama. According to the information received, on July 17, at approximately 7 AM, the journalist's body was found, alongside the body of another victim. Police authorities informed that the victims had been beaten, and their bodies presented signs of blunt trauma.

According to a press released issued by the Government of the state of Oaxaca, the Governor of Oaxaca has instructed the State General Public Prosecutor to "rule [the crime against the journalist] as a high impact case and to send it to the Special Bureau of Attention to Journalists [Mesa Especial para la Atención a Periodistas], in order to clarify the murder, in cooperation with the Office of the General Public Prosecutor, if applicable".

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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## 14. JOINT STATEMENT

*United Nations (UN) Special Rapporteur on the Protection  
and Promotion of the Right to Freedom of Opinion and Expression*

*Special Rapporteur for Freedom of Expression  
of the OAS Inter-American Commission on Human Rights*

### JOINT DECLARATION ON VIOLENCE AGAINST JOURNALISTS AND MEDIA WORKERS IN THE CONTEXT OF PROTESTS

*September 13, 2013* - The United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression, Frank La Rue, and the Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights, Catalina Botero, have observed with concern the manner in which some State authorities have reacted to protests in the Americas in recent months. The protesters have by and large demonstrated peacefully, although acts of violence have been reported. In this context, the Special Rapporteurs have been informed of dozens of arrests, threats, and assaults committed against journalists, media workers, protesters, and users of social networks who were reporting on the demonstrations.

The Special Rapporteurs note that in the context of demonstrations and situations of social unrest, the work of journalists and media workers, as well as the free flow of information through alternative media such as the social networks, is essential to keeping the public informed of the events. At the same time, it plays an important role in reporting on the conduct of the State and of law enforcement authorities toward the protesters, preventing the disproportionate use of force and the abuse of authority.

Attacks against journalists who cover these events violate both the individual aspect of freedom of expression—insofar as they prevent journalists from exercising their right to seek and disseminate information, and creates a chilling effect—as well as its collective aspect—in that they deprive society of the right to know the information that journalists obtain. The Offices of the Special Rapporteurs have thus acknowledged that, given the importance of the work done by journalists who cover these events, the State must afford them the highest degree of protection in order for them to perform their duties. This obligation is not limited to granting specific protective measures to journalists; it also includes the duty to create the necessary conditions to mitigate the risks of practicing their profession in such situations.

The State has the duty to ensure that journalists and media workers reporting on public demonstrations are not arrested, threatened, assaulted, or limited in any manner in their rights as a result of practicing their profession. Their work materials and tools must not be destroyed or confiscated by the authorities. As affirmed in the [statement concerning the arrests and assaults against journalists at the Occupy protests in the United States](#), the protection of freedom of expression requires authorities to ensure the necessary conditions for journalists to be able to cover noteworthy events of interest to the public, such as the social protests mentioned. The disproportionate restrictions on access to the scene of the events, the arrests, and the criminal charges resulting from the performance of professional duties by reporters violate the right to freedom of expression. It is incumbent upon the authorities to reestablish the affected guarantees and ensure full respect for the right to freedom of expression.

The Special Rapporteurs note that in order to do their jobs effectively, journalists must be perceived as independent observers and not as potential witnesses for the courts. Otherwise, the safety of both journalists and their sources could be threatened. In situations of social unrest, the perception that journalists can be forced to testify not only limits their ability to access sources of information but also increases their risk of being targeted by violent groups. In addition, the authorities must not require journalists to demonstrate that statements from eyewitnesses are accurate or to prove before a judge the veracity of complaints reported.

The State must not prohibit or criminalize live broadcasts of events, and must abstain from imposing measures that regulate or limit the free circulation of information via the Internet, and other communications platforms. Moreover, the authorities must not stigmatize or stereotype demonstrators and their demands. They must refrain from making generalizations based on isolated events or the conduct of particular groups. In this respect, the authorities must bear in mind that public servants are meant to be guarantors of the fundamental rights of individuals, and therefore, their statements cannot interfere directly or indirectly in the rights of those who aim to contribute to public debate through the expression and dissemination of information. This duty is particularly accentuated in situations of social unrest, disturbances of public order, or social or political polarization, precisely because of the set of risks they can entail for certain individuals.

In this regard, the Special Rapporteurs maintain that it is essential for authorities to vigorously condemn assaults against journalists and media workers and to act with due diligence and swiftness to establish the facts and punish those responsible. The Special Rapporteurs also note that properly educating State security forces on the role of the press in a democratic society is an important step in preventing violence against journalists and media workers in situations of social unrest.

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

**15. PRESS RELEASE R 69/13****OFFICE OF THE SPECIAL RAPPORTEUR CONDEMNS MURDER OF LAWYER AND RADIO HOST  
IN COLOMBIA**

Washington D.C., September 20, 2013. – The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murder of the lawyer and radio host Édison Alberto Molina, which took place on September 11, in the municipality of Puerto Berrío, department of Antioquia, Colombia. The Office of the Special Rapporteur expresses its concern and urges the Colombian authorities to act promptly and timely to establish the motive of the crime and to activate all the legal instruments available to identify and punish the perpetrators behind this crime.

40 year-old Molina was a lawyer and politician who hosted a radio show called 'Consultorio Jurídico' at the community radio station Puerto Berrío Stereo. According to the information received, on Wednesday September 11, after finishing his radio broadcast, Molina was going home with his wife on a motorcycle when he was approached by unknown individuals who shot him four times in the face. Molina died on his way to the hospital. His wife suffered minor injuries.

Molina answered inquiries from listeners on legal issues on his radio show, which he hosted every Wednesday. He also frequently denounced corruption within the local government. According to what was reported, in several occasions he had been threatened, allegedly in connection with his reporting. Molina had participated in local politics as councilman and Transit and Sports Secretary of the municipality of Puerto Berrío.

Colombian authorities condemned the crime and the Office of the Public Prosecutor started an investigation. They also offered a reward of 20 million Colombian pesos (some US \$10.400) to whoever submits information that contributes to the apprehension of those responsible.

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

The Office of the Special Rapporteur for Freedom of Expression was created by the Inter-American Commission on Human Rights (IACHR) to encourage the defense of the right to freedom of thought and expression in the hemisphere, given the fundamental role this right plays in consolidating and developing the democratic system.

**16. PRESS RELEASE R 75/13****OFFICE OF THE SPECIAL RAPPORTEUR CALLS FOR CANDIDATES FOR THE FELLOWSHIP ORLANDO SIERRA 2014**

Washington, D.C., October 10, 2013. – The Office of the Special Rapporteur for Freedom of Expression is pleased to announce that the application period for Fellowship Orlando Sierra 2014 is now open.

The fellowship [Orlando Sierra](#) provides the opportunity for young journalists and lawyers from OAS Member States to understand and apply the mechanisms of protection of the inter-American system of human rights in the area of freedom of expression.

The Office of the Special Rapporteur for Freedom of Expression established the Orlando Sierra fellowship as a tribute to the exemplary courage of Orlando Sierra and the journalists who have been murdered or who have risked their lives and their freedom to defend society's right to be fully informed.

[Orlando Sierra](#) was a writer and journalist. During his last years Sierra was Deputy Director of daily newspaper La Patria, in Manizales, Colombia. He wrote a column called Punto de encuentro (Focal Point) in which he critically analyzed issues of national and regional interest, especially cases of corruption involving local politicians. In his columns, Orlando Sierra also criticized human rights violations committed by the guerrillas, paramilitary groups, and State security forces. Despite the threats he received as a consequence of his work, Sierra never stop writing, nor did he lower the volume of his allegations.

On January 30, 2002, journalist Orlando Sierra Hernández was murdered by hit men in front of La Patria newspaper's office where he worked.

*"An attempt to silence the media is doubly a terrorist act because it instills silence through fear. We are already facing a war of weapons, why do we also have to put up with a battle of silence?"* This was one of his last thought hours before murdered.

The call is open until November 15, 2013. Application requirements can be found in the website of the Special Rapporteur at the following [link](#).

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.



## 17. PRESS RELEASE R 85/13

### OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION COMMENDS JAMAICA'S RECENT LEGISLATIVE REFORM REGARDING FREEDOM OF EXPRESSION

Washington, D.C., November 11, 2013 – The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) commends the important legislative reform enacted by the Jamaican Parliament to decriminalize defamation offenses. The new law is a significant advance for the protection and strengthening of freedom of expression in the region, and underscores the importance of bringing national laws into line with the highest international standards on the issue. The Office of the Special Rapporteur congratulates the State for this decision and undertakes to disseminate it widely, within the framework of its mandate to promote freedom of expression in the Americas.

According to the information received, on November 5 the House of Representatives of the Jamaican Parliament passed the [2013 Defamation Bill](#), which eliminates the use of the criminal law in defamation matters. The bill was unanimously approved last July by the Senate, and will amend the defamation laws currently in effect in the country, which were enacted in 1851 and 1961. The amendment decriminalizes defamation offenses and establishes advanced criteria for the resolution of civil cases in accordance with the highest principles of international law on the subject. Thus, for example, it provides that the civil judge must consider principles such as *exceptio veritatis*, fair and accurate reports, innocent dissemination, and malice when dealing with media outlets that publish specially protected speech regarding matters of public interest. In this respect, the reform represents significant progress in the advancement of International Human Rights Law in civil proceedings pertaining to freedom of expression.

The Office of the Special Rapporteur views this legislative advance positively, and finds that it contributes decisively to the protection of freedom of expression and the promotion of more vigorous democratic debate throughout the Americas.

Laws criminalizing defamation have been repealed in many States of the region. [Mexico](#) repealed the federal norms that permitted individuals 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 July 2012, the Parliament of [Grenada](#) passed the Law Amending the 2012 Criminal Code, which repealed

the offenses of negligent and intentional defamation. Similarly, in September 2012, [Bolivia](#) declared Article 162 of the Criminal Code unconstitutional, which provided for an aggravated prison sentence for the commission of criminal defamation against a public servant.

Finally, the Office of the Special Rapporteur calls upon the OAS Member States to follow these important advances and to bring their legal frameworks into line with the highest Inter-American standards on freedom of expression.

The Office of the Special Rapporteur for Freedom of Expression was created by the Inter-American Commission on Human Rights (IACHR) to encourage the defense of the right to freedom of thought and expression in the hemisphere, given the fundamental role this right plays in consolidating and developing the democratic system.

**18. PRESS RELEASE R 98/13****OFFICE OF THE SPECIAL RAPPORTEUR CONDEMNS MURDER OF JOURNALIST IN HONDURAS**

Washington, D.C., December 11, 2013 – The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murder of journalist Juan Carlos Argeñal, which took place on December 7, in the city of Danlí, department of El Progreso, Honduras. The Office of the Special Rapporteur expresses its deep concern and urges the Honduran authorities to act urgently to establish the motive of this crime and to investigate, prosecute and punish the perpetrators and masterminds responsible for the murder of the journalist.

According to the information received, Argeñal was attacked by armed persons, who allegedly broke into his house and shot him at least two times. Argeñal was the owner of local TV station *Vida Televisión*, and the correspondent in Danlí for radio and television network *Globo*. According to the information received, the journalist had received threats related to his journalistic work.

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 family. 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 since 2009, 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 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.