

# **ANNUAL REPORT OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS 2014**

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



OEA/Ser.L/V/II.  
Doc. 13  
March 9, 2015  
Original: Spanish

# Annual Report of the Inter-American Commission on Human Rights 2014

## VOLUME II

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

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ORGANIZATION OF AMERICAN STATES  
WASHINGTON, D.C.

OAS Cataloging-in-Publication Data

Inter-American Commission on Human Rights. Office of the Special Rapporteur for Freedom of Expression.

Annual Report of the Office of the Special Rapporteur for Freedom of Expression: Annual Report of the Inter-American Commission on Human Rights, 2014, vol.2 / Edison Lanza, Special Rapporteur for Freedom of Expression.

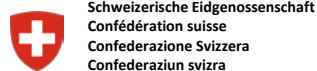
v. ; cm. (OAS. Official records ; OEA/Ser.L)

ISBN 978-0-8270-6379-2

1. Freedom of information--America. 2. Freedom of Speech--America. 3. Civil rights—America. 4. Human rights--America.

I. Lanza, Edison. II. Title. III. Series. OAS. Official records ; OEA/Ser.L.

OEA/Ser.L/V/II Doc.13/15, v.2



Document prepared and printed thanks to the financial support of Swedish International Development Cooperation Agency, and the governments of Costa Rica, Chile, France, Finland, Switzerland, United States and Uruguay

Approved by the Inter-American Commission on Human Rights on March 9, 2015

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





**ANNUAL REPORT OF THE OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION  
2014**

**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 2014 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 2014.

4. Chapter II presents the now-customary evaluation of the situation of freedom of expression in the hemisphere. In 2014, 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 of the progress and challenges being faced by States in the region. In particular, Chapter II of this report highlights the adoption by national courts of judicial rulings that represent progress at the domestic level in the recognition and protection of the right to freedom of expression. Similarly, the report highpoints the enactment of regulatory frameworks in the area of broadcasting and Internet, that introduced improvements in relation to the previous situation in countries such as Brazil, Argentina, Uruguay and México. However, there are still limitations that could unnecessarily restrict the right to freedom of expression and challenges for implementation. The report also notes the existence of media regulatory frameworks that are incompatible with the American Convention such as the case of Ecuador. Given the context of the region, during 2014 the Office of the Special Rapporteur gave special attention to legislative measures in these areas. Likewise, this Office found there was also some 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.

6. Indeed, this section of the report places emphasis on the murders, detentions, attacks, and threats against journalists for the exercise of their profession. The report also points to numerous attacks and

threats in the context of protests. According to the information received by the Office of the Special Rapporteur, at least 25 people, most of them journalists, 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. 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 obstacles to the exercise 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 the use of mechanisms of direct and indirect censorship to restrict the free flow of information. The report also identifies some of the obstacles that remain in the region to achieve diversity and pluralism of voices in broadcasting.

7. Chapter III of this report offers States and civil society in the region general principles for the protection of the right to freedom of thought and expression in the context of the transition to digital broadcasting. These principles aim to serve as a guide to governments, legislative and administrative bodies, the courts, and civil society, so as to pave the way for handling this conceptually and technologically groundbreaking situation and to promote the review and adoption of legislation and practices with a view to ensuring full respect for the right to freedom of thought and expression, along with the inclusion of more participants in this process. The report provides States with a series of recommendations so that they can benefit from the technological change to provide better diversity and pluralism in the media.

8. Chapter IV of the report deals with the most important aspects of the institutional design available to the oversight, compliance and adjudication of disputes regarding the full exercise of the right to access public information in some member States to the OAS that have agencies that guarantee access to public 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.

9. 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[.]”

10. On July 2014, after a public and open competition, the IACHR appointed Uruguayan lawyer and journalist Edison Lanza as new Special Rapporteur for Freedom of Expression. Lanza began his mandate on October 6, after succeeding Colombian lawyer Catalina Botero, who headed the Office of the Special Rapporteur since 2008 for two consecutive three-year periods, according to the Rules of Procedure of the IACHR.

11. The new Special Rapporteur, Edison Lanza, is grateful for the confidence of the IACHR and expresses his gratitude towards the Office’s staff for the committed and exemplary work that they have carried out. This annual report is the product of their effort and dedication.

12. Likewise, the Special Rapporteur highlights the work of his predecessors in the consolidation of the Office of the Special Rapporteur. In particular, the Special Rapporteur joins the recognition given by the IACHR and the Secretary General of the OAS, José Miguel Insulza to Catalina Botero's "outstanding work as Rapporteur for Freedom of Expression during the time she held the position". The Commission recognized that, "under Catalina Botero's leadership, the Office of the Special Rapporteur made substantial progress to strengthen the right to freedom of expression in the inter-American legal framework. Her mandate was marked by significant accomplishments in the development of inter-American standards on this issue, by the promotion of their implementation in national law and by strengthening the capacity of States and civil society in promoting the exercise and scope of the right to freedom of expression".

13. Similarly, the OAS Secretary General recognized "the brave and tireless work developed over six years of her work for the defense and promotion of freedom of expression". In his own words "[t]he respect for freedom of expression in its many dimensions is an indispensable element in the democratic life of our nations. Catalina has been its great defender and deserves our gratitude".

14. The Office of the Special Rapporteur thanks the various Member States that have collaborated with it during 2014, 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.

15. Also, the Office of the Special Rapporteur expresses its appreciation for financial contributions made by the Republic of Costa Rica, the Republic of Chile, the United States of America, the Swedish Agency for International Development Cooperation, the Swiss Confederation, Finland and France, which allowed for the implementation of the Office's 2014 program. The Office of the Special Rapporteur invites other States to add to this necessary support.

16. 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:

*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>*

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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.

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

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 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

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<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.

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> 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. 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.

12. 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.

13. 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.

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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.

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



14. In 2011, in resolution 2661 (XLI-O/11), in 2012 in resolution AG/RES. 2727 (XLII-O/12) and in 2013 in resolution AG/RES 2811 (XLIII-O/13), the General Assembly, among other matters, has entrusted the Office of the Special Rapporteur of the IACHR to continue to include in the annual IACHR report a report on the situation or status of access to public information in the region and its effect on exercise of the right to freedom of expression.

15. In 2014, the General Assembly of the OAS approved resolution AG/RES. 2842 (XLIV-O/14) on Access to Information and Protection of Personal Data, which, among other things, includes entrusting the Office of the Special Rapporteur for Freedom of Expression to continue including in the annual IACHR report a report on the situation/status of access to public information in the region and its effect on exercise of the right to freedom of expression.

16. 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**

17. 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>

18. 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;

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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.

- 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.

19. 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 selection process ended on June 1, 2008 and on July 21, 2008, the IACHR chose Colombian attorney Catalina Botero Marino as Special Rapporteur,<sup>9</sup> who served in that post for two consecutive periods, from October 6, 2008 until October 5, 2014. On December 19, 2013, the IACHR began a selection process to choose the Rapporteur for a new period. The process ended on February 20, and the candidates preselected to hold this position were interviewed during the 151st Period of Sessions. On July 22, 2014, the IACHR chose Uruguayan attorney and journalist Edison Lanza as Special Rapporteur, pursuant to article 15.4 of its Regulation.

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

20. 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

21. 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**

22. 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.

23. 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.

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

- *Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile*. Judgment of February 5, 2001. This case dealt with prohibition of prior censorship. The Court's decision led to an exemplary constitutional reform in Chile and to the establishment of an important hemispheric standard in this area.

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<sup>9</sup> IACHR. July 21, 2008. [Press Release No 29/08. IACHR Elects Catalina Botero Marino as Special Rapporteur for Freedom of Expression](#)

- *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 provision 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.

- *Norin Catriman and Others Case (leaders, members and activists of the Mapuche Indigenous People) vs Chile*. Sentence of May 29, 2014. The case refers to criminal proceedings and sentences imposed on eight leaders, members and activists of the Mapuche Indigenous People, as perpetrators of crimes classified as terrorism in the application of Law 18,314 (known as the "Antiterrorist Law" [*Ley Antiterrorista*]), in a context of social protest aimed at recovering the ancestral territories of the Mapuche People and respect for the use and enjoyment of their lands and natural resources. In its ruling, the Court examined the compatibility of accessory penalties imposed in the present case against the victims, leaving them disqualified for 15 years from "making use of a social communications medium or being the director or administrator of one, or performing duties associated with the issuance or dissemination of opinions or information." The Court determined that the referred-to accessory penalty implies undue restriction of the victims' exercise of the right to freedom of thought and expression, "not only for having been imposed based on sentences that applied criminal law in violation of the principle of legality and of various procedural guarantees, but also because, in the circumstances of the present case, it is contrary to the principle of proportionality of the penalty." The Court added that, given that the victims are traditional authorities of the Mapuche Indigenous people who "are responsible for playing a determining role in communicating the interests and in the political, spiritual and social leadership of their respective communities," the imposition of the referred-to accessory penalty "has restricted the possibility of participating in the dissemination of opinions, ideas and information by carrying out duties in the social communications media, which could limit the sphere of action of their right to freedom of thought and expression in the exercise of their duties as leaders or representatives of their communities. At the same time, this negatively affects the social dimension of the right to freedom of thought and expression, which, as established by the Court in its jurisprudence, implies the right of everyone to know

about opinions, narratives and news expressed by third parties.” It also reiterated its jurisprudence regarding the “intimidating effect on the exercise of freedom of expression that can be caused by the fear of being subjected to an unnecessary or disproportionate criminal or civil sanction in a democratic society, which can lead to self-censorship both by those upon whom the sanctions are imposed as well as other members of society.” In the present case, the Tribunal determined “that the way in which the Antiterrorist Law [*Ley Antiterrorista*] was applied to the members of the Mapuche Indigenous People could have caused reasonable fear among other members of that people involved in actions associated with social protest and claims for their territorial rights or who could possibly wish to participate in them.” It therefore determined that the State had violated the right to freedom of expression, in detriment to the victims.

25. 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

26. 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>10</sup> (ii) Herrera Ulloa v. Costa Rica;<sup>11</sup> (iii) López Ulacio v. Venezuela;<sup>12</sup> (iv) Peña v. Chile;<sup>13</sup> (v) Globovisión v. Venezuela;<sup>14</sup> (vi) Tristán Donoso v. Panama;<sup>15</sup> (vii) Yáñez Morel v. Chile;<sup>16</sup> (viii) Pelicó Pérez v. Guatemala;<sup>17</sup> and (ix) Rodríguez Castañeda v. Mexico;<sup>18</sup> (x) Leo Valladares Lanza and Daysi

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<sup>10</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>11</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.

<sup>12</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>13</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>14</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>15</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>16</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>17</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.



Pineda Madrid v. Honduras;<sup>19</sup> (xi) Journalists of La Voz de Zacate Grande (Honduras),<sup>20</sup> y (xii) Lucia Carolina Escobar Mejia, Cledy Lorena Caal Cumes, Gustavo Girón v. Guatemala,<sup>21</sup> (xiii) Emilio Palacio, Carlos Nicolás Pérez Lapentti, Carlos Pérez Barriga and César Pérez Barriga v. Ecuador<sup>22</sup>; (xiv) 15 workers of Progreso Radio v. Honduras<sup>23</sup>; and (xv) Yoani María Sánchez Cordero v. Cuba<sup>24</sup>.

27. During 2014, the Office of the Special Rapporteur collaborated in the study of 21 applications for precautionary measures among which the following were awarded: Fernando Alcibíades Villavicencio Valencia and others with respect to Ecuador<sup>25</sup>; Men and Women Leaders of Peasant Communities and Peasant Patrols of Cajamarca with respect to Peru [*Líderes y lideresas de Comunidades Campesinas y Rondas Campesinas de Cajamarca respecto de Perú*];<sup>26</sup> Members of the Magazine *Contralínea* with respect to Mexico;<sup>27</sup> Ángel Lázaro Santiesteban Prats with respect to Cuba;<sup>28</sup> Gener Jhonathan Echeverry

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<sup>18</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>19</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>20</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>21</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.

<sup>22</sup> IACHR decision of February 21, 2012, requesting that the State of Ecuador immediately suspend the effects of the judgment of February 15, 2012, in order to ensure the right to freedom of expression. On March 9, 2012, the IACHR lifted these precautionary measures and archived the file after receiving a communication dated February 29, 2012, in which the petitioners asked that the measures be lifted, given that the reasons of immediate urgency that had motivated them had ceased.

<sup>23</sup> Amplification of precautionary measure. IACHR decision of May 25, 2012, requesting that the State of Honduras inform the IACHR on the consultation with the beneficiaries to agree on implementation of PM 399/09, which protects several workers at Radio Progreso in Honduras and which was separated from PM 196/09 on April 1, 2011.

<sup>24</sup> IACHR decision of November 9, 2012, asking the State of Cuba to adopt the necessary measures to guarantee the life and physical integrity of Yoani María Sánchez and her family; to come to an agreement with the beneficiary and her representatives on the measures to be adopted; and to inform the IACHR on the actions taken to investigate the facts that gave rise to the adoption of precautionary measures.

<sup>25</sup> IACHR decision of March 24, 2014 in which it requested that the State of Ecuador immediately suspend the effects of the decision of January 14, 2014, issued by the Cassation Tribunal of the Specialized Criminal, Military Criminal, Police Criminal and Transit Chamber of the National Court of Justice [*Tribunal de Casación de la Sala Especializada de lo Penal, Penal Militar, Penal Policial y Tránsito de la Corte Nacional de Justicia*], until the IACHR has ruled on the individual petition. The beneficiaries of the precautionary measure, Fernando Alcibíades Villavicencio Valencia and Cléver Jiménez, were sentenced to an effective penalty of 18 months imprisonment for the crime of “judicial slander” [*injuria judicial*] for expressions contained in a complaint filed against the President of the Republic of Ecuador with the Attorney General’s Office [*Fiscalía General de la Nación*]. Union leader Carlos Eduardo Figueroa Figueroa was sentenced to six months in prison and the beneficiaries were also sentenced to pay economic reparations equivalent to the monthly salary of president Rafael Correa, for each of the months from the filing of the claim against them (August 4, 2011) and until notification of the sentence. IACHR. March 24, 2014. [Resolución 6/2014. Medida Cautelar No. 30-14.](#)

<sup>26</sup> IACHR decision of May 5, 2014 in which it requested that the State of Peru adopt necessary measures to preserve the life and personal integrity of the identified men and women beneficiaries and their representatives; agree upon the measures to be adopted with the beneficiaries and their representatives; and report on actions adopted to investigate the events that gave rise to adoption of the precautionary measure and thus avoid their repetition. The beneficiaries include 46 men and women leaders of the communities and peasant patrols, members of the Chaupe family and patrol member Luis Mayta, who found themselves in a context of physical aggressions, intimidation and threats due to the work they carry out in opposition to the execution of a mining project. The beneficiaries also include social communicator César Estrada who was in the same context of physical aggressions, intimidations and threats due to his journalistic work. IACHR. May 5, 2014. [Resolución 9 de 2014. Medida Cautelar No. 452-11.](#)

<sup>27</sup> IACHR decision of July 18, 2014 in which it requested that the State of Mexico adopt necessary measures to preserve the life and integrity of the identified members of the Magazine *Contralínea*; agree upon the measures to be adopted with the beneficiaries and their representatives; and report on actions adopted to investigate the events that gave rise to adoption of the precautionary measure and thus avoid its repetition. The members of the Magazine *Contralínea*, consisting of Flor Irais Maldonado Goche, Rosa Elva López Mendoza, Mauricio Gabriel Romero Patiño, Marcos Chávez Maguey, Erika Soemi Ramírez Pardo, Nancy Paola Flórez Nández, Zósimo

Ceballos and family with respect to Colombia;<sup>29</sup> Julio Ernesto Alvarado with respect to Honduras;<sup>30</sup> Kaieteur News with respect to Guyana.<sup>31</sup> A more detailed description of these measures can be consulted in the 2014 Annual Report of the IACHR.

28. 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

29. 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.

30. In the framework of the 150<sup>th</sup> period of sessions held between March 20 and April 4, 2014, various hearings were held dealing with topics of freedom of expression. On Monday, March 24, a hearing was held on the “Situation of the right to freedom of expression and concentration of media outlet ownership in Peru.” The hearing was requested by the National Human Rights Coordinator of Peru [*Coordinadora Nacional de Derechos Humanos (CNDDHH) de Perú*], Instituto de Defensa Legal (IDL). Representatives of the organizations and of the State were present at the hearing. On March 25, a hearing was held on the “Situation of human rights of journalists in Cuba” with participation by representatives of the State of Cuba, Centro de Información Legal “Cubalex” and the Centro de Información Hablemos Press (CIPRESS). That same day there was a hearing on “Denunciations of murders of journalists and impunity in Honduras” which was requested by PEN International, PEN American Center, PEN Canada, University of Toronto Law School's International Human

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Camacho Ibarra, José Nicolás Reyes Hernández and Agustín Miguel Badillo Cruz, were the targets of threats and aggressions due to their status as journalists and the exercise of their right to freedom of expression. IACHR. [Resolución 21/2014. Medida Cautelar 252-14.](#)

<sup>28</sup> IACHR decision of September 26, 2014 in which it requested that the State of Cuba adopt necessary measures to guarantee the life and personal integrity of Ángel Lázaro Santiesteban Prats and his son; agree upon the measures to be adopted with the beneficiaries and their representatives; and report on actions adopted to investigate the events that gave rise to the adoption of the precautionary measure and thus prevent its possible repetition. Santiesteban Prats was in a situation of risk, due to a series of physical aggressions, threats, harassments and intimidating actions by state agents, as a result of his work as a writer and his critical position towards the current Cuban government. The IACHR determined that the information provided suggests that the alleged acts of violence against Ángel Lázaro Santiesteban Prats would be in retaliation and as a way to terrorize him for his multiple opposition activities, through his publications on the blog “los hijos que nadie quiso.” IACHR. September 26, 2014. Resolution 26/2014. Precautionary Measure No. 206-13.

<sup>29</sup> IACHR decision of October 21, 2014 in which it requested that the State of Colombia adopt necessary measures to preserve the life and personal integrity of Gener Jhonathan Echeverry Ceballos and his nuclear family; necessary measures to guarantee that Gener Jhonathan Echeverry Ceballos may carry out his activities as a human rights defender and journalist without being the target of acts of violence and harassment due to carrying out his duties; agree upon measures with the beneficiaries; and report on the actions adopted to investigate the events that gave rise to adoption of the precautionary measure and thus prevent its possible repetition. Echeverry Ceballos was the target of alleged threats and acts of violence by “illegal armed groups,” due to his activities as a human rights defender and journalist. IACHR. October 21, 2014. [Resolución 31/2014. Medida Cautelar No. 336/14.](#)

<sup>30</sup> IACHR decision of November 5, 2014 in which it requested that the State of Honduras suspend execution of the conviction [*sentencia condenatoria*] of December 9, 2013 handed down by the Supreme Court of Justice [*Corte Suprema de Justicia*] and abstain from carrying out any action to disqualify journalist Julio Ernesto Alvarado from exercising his profession until the IACHR has ruled on the individual petition. Alvarado was sentenced to 16 months imprisonment, civil interdiction [*interdicción civil*] and accessory penalties which included the prohibition against practicing journalism for the same time period as the prison sentence. Alvarado was convicted for committing the crime of defamation for expressions constituting slander [*“difamación por expresiones constitutivas de injurias”*] for a report made on his television program. IACHR. November 5, 2014. [Resolución 33/2014. Medida Cautelar No. 196-14.](#)

<sup>31</sup> IACHR decision of November 18, 2014 in which it requested that the State of Guyana adopt necessary measures to preserve the life and integrity of Glenn Lall, Adam Harris and Leonard Gildharie, identified members of the newspaper Kaieteur News; agree upon measures to be adopted with the beneficiaries and their representatives; and report on actions adopted to investigate the alleged events that gave rise to adoption of the present precautionary measure and thus avoid its repetition. The proposed beneficiaries were the target of threats due to their status as journalists and exercise of their right to freedom of expression. IACHR [Resolución 35/2014. Medida Cautelar No. 458/14.](#)

Rights Program. The hearing was attended by representatives of the State, of the requesting organizations and by a Honduran journalist. On March 27, a hearing was held on “Impunity for violations of the right to freedom of expression in the Americas,” which was requested by International Exchange for the Freedom of Expression (IFEX-ALC), Foro de Periodismo Argentino (FOPEA) of Argentina, Associação Brasileira de Jornalismo Investigativo (Abraji), Artículo 19 of Brasil, Asociación Nacional de la Prensa (ANP) of Bolivia, Association of Caribbean Mediaworkers (ACM) of the Caribbean, Fundación por la Libertad de Prensa (FLIP) of Colombia, Asociación Mundial de Radios Comunitarias (AMARC), Fundación Andina para la Observación and Estudio de Medios (Fundamedios) of Ecuador, Centro de Reportes Informativos sobre Guatemala (Cerigua) of Guatemala, Comité por la Libre Expresión (C-Libre) of Honduras, Centro Nacional de Comunicación Social (Cencos), Artículo 19 of Mexico, Instituto Prensa y Sociedad (IPYS) of Perú; Espacio Público, Instituto Prensa y Sociedad (IPYS) of Venezuela. There was participation at the hearing by members of FLIP, IPYS Venezuela, Espacio Público, CAINFO, Artículo 19 de Brasil, IFEX of Canada, Fundación Andina para la Observación y Estudio de Medios (Fundamedios) of Ecuador and ACM of the Caribbean. On March 28, there was a hearing on the “Situation of the right to freedom of expression in Ecuador” which was requested by the Asociación Ecuatoriana de Editores de Periódicos (AEDEP), Fundación Andina para la Observación y Estudio de Medios (Fundamedios) and a group of journalists, independent activists and defenders. There was participation at the hearing by representatives of the State and of those requesting the hearing. On March 28, a hearing was held on the “Situation of human rights and social protest in Brazil” with participation by representatives of the State of Brazil and representatives of the organizations Justiça Global, Conectas, Brasil, Articulação Nacional do Comitês Populares (ANCOP), Instituto de Defensores de Direitos Humanos (DDH), Serviço de Assessoria Jurídica da Universidade Federal do Rio Grande do Sul (SAJU/UFRS), Artigo 19, Sindicato dos Jornalistas do Rio de Janeiro, United Rede Internacional de Direitos Humanos (URIDH), Quilombo Xis - Ação Comunitária Cultural. That same day there was a hearing on the “Situation of the right to freedom of expression and information in Venezuela” with participation by representatives of the State of Venezuela and the requesting organizations: Centro de Derechos Humanos de la Universidad Católica Andrés Bello (UCAB), Asociación Civil Espacio Público, Colegio Nacional de Periodistas de Venezuela, Sindicato Nacional de Trabajadores de la Prensa, Venezuela (SNTP), Instituto Prensa y Sociedad (IPS) <sup>32</sup>.

31. In the framework of the 153<sup>rd</sup> period of sessions, which took place from October 23 until November 7, 2014, diverse hearings were held on topics associated with the right of freedom of expression. On October 28, there was a hearing on “Human rights and Internet in the Americas.” This hearing was requested by the Centro de Estudios en Libertad de Expresión y Acceso a la Información de la Universidad de Palermo (CELE), Derechos Digitales, Fundación Karisma, Asociación para el Progreso de las Comunicaciones (APC), Centro de Tecnología y Sociedad de la Fundación Getulio Vargas and Asociación por los Derechos Civiles (ADC). Representatives from each of these organizations participated at the hearing. On October 28, there was a hearing on the situation of defenders and human rights in Guatemala that referred to the situation of journalists and social communicators and diverse situations that affect freedom of expression. The hearing was requested by the Unidad de Protección Defensores y Defensores de Derechos Humanos de Guatemala (UDEFEFUGUA), the Centro Internacional para Investigaciones en Derechos Humanos (CIID) and Seguridad Democrática (SEDEM). Representatives of the State of Guatemala were present as well as representatives of UDEFEFUGUA, SEDEM, of the Asociación CIVITAS, Centro de Medios Independientes CMI Guatemala. That same day, there was a hearing on the “Situation of the right to freedom of expression and access to information in Venezuela.” The hearing was requested by the organizations Espacio Público, Colegio Nacional de Periodistas, Centro de Derechos Humanos de la Universidad Católica Andrés Bello, Sindicato Nacional de Trabajadores de la Prensa (SNTP) and the Instituto Prensa y Sociedad de Venezuela (IPYS Venezuela). Representatives of the requesting organizations and of the State of Venezuela took part in the hearing. On October 30, a hearing was held on “Human rights and social protest in Mexico.” This hearing was requested by a group of organizations consisting of the Colectivo de Abogadas y Abogados Solidarios (CAUSA), the Centro de Derechos Humanos Fr. Francisco de Vitoria (Centro Vitoria), Centro de Derechos Humanos Miguel A. Pro Juárez (PRODH), ARTICLE 19 - Oficina para México y Centroamérica (A19), Centro de Justicia para la Paz y el Desarrollo (CEPAD), Centro de Análisis e Investigación (FUNDAR), Instituto Mexicano de Derechos Humanos

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<sup>32</sup> IACHR. Period of Session. Available for consultation at: <http://www.oas.org/es/cidh/actividades/sesiones.asp>

y Democracia (IMDHD), Propuesta Cívica, Red Nacional de Organismos Civiles de Derechos Humanos 'Todos los Derechos para Todas y Todos' (RED TDT) and Servicios y Asesoría para la Paz (SERAPAZ).

#### **4. Seminars and Workshops with Strategic Actors in the Region**

32. 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.

33. 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.

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

35. The following is a summary of the principal seminars and workshops held by the Office of the Special Rapporteur during 2014.

36. From February 5 to 14, 2014, the Special Rapporteurship undertook an academic visit to Colombia. During the visit, the Special Rapporteur developed various promotional and training activities and conducted various meetings, discussions with journalists and members of organizations in the field of the freedom of expression and representatives of state authorities.

37. On February 5 to 8, 2014 the Special Rapporteur held meetings with the following organizations: Andiaros, the Electoral Observation Mission and Nuevo Arco Iris and with journalists subject to precautionary measures and protection measures. On February 10, he met with officials of the judiciary and directors and journalists from the public media. On February 11, the Special Rapporteurship participated in the event organized by FLIP to launch the report "*PROTESTS: no guarantees for cover.*" That same day he attended a meeting with representatives of the Attorney General's Office and the FLIP organization.

38. On February 12, 2014 the Office of the Special Rapporteur held an event jointly with Transparency for Colombia on Prospects for the implementation of the Law on Transparency and Access to Public Information in Colombia - Contributions from the Inter-American System, whose purpose was to review the main challenges facing the implementation of the Law on Transparency and Access to Public Information. Also present as representatives of civil society were the Electoral Observation Mission (EOM), the Antonio Nariño Project (PAN), the Friedrich Ebert Stiftung in Colombia (FESCOL), the OCASA Corporation, Dejusticia, the Foundation for Press Freedom (FLIP), the Colombian Confederation of Religious Freedom of Conscience and Religion CONFERILEC representing the National Citizens Commission for the Fight Against Corruption and Transparency for Colombia. Also present were representatives from leading public entities of the Law such as the Secretariat of Transparency, the General Archive of the Nation, the Attorney General's Office, the National Planning Department, the Department of Civil and Public Administration, the Ministry of Information and Communication Technology - Online Government and other entities such as the District Overseer and the Bank of the Republic.

39. On February 13, 2014 the Special Rapporteur participated in the annual Assembly of IFEX and met with several of IFEX organization members.

40. On February 14, 2014 the Office of the Special Rapporteur held a Seminar on Reparations and freedom of expression in the Inter-American System, organized jointly with the FLIP organization. The event was attended by 43 journalists, 24 of whom were journalists and media from Bogota, 19 were journalists who are part of the Support Committee for the Collective Reparation of Journalists, originating from different regions of Colombia. That day she also met with Peace Process Journalists and the authorities responsible for the National Protection Unit and the Unit for the Comprehensive Care and Reparations for Victims.

41. From February 24 to 26, 2014 the Special Rapporteur held several meetings with representatives of the National Center of Historical Memory, IFEX and the Karisma Foundation and also with some journalists subject to protection measures and various Media Directors in Colombia. On February 25, the Special Rapporteur met with representatives of the Guillermo Cano Foundation and conducted an interview on violence against journalists and mechanisms of prevention, protection and the pursuit of justice. On February 26, the Special Rapporteur met with the Director of Andiaros and directors of various print media such as *El Tiempo*, *La Patria*, and *El Meridiano de Córdoba*, among others, to discuss with national and local media the issue of *freedom of expression and post conflict*.

42. On February 27, 2014 the Special Rapporteur held the Conference on Justice and Freedom of Expression in Colombia in coordination with the Andiaros and FLIP organizations. At this event the Special Rapporteur developed the topic of Inter-American Standards on the freedom of expression and access to information, and also participated in the panel on "Justice and freedom of expression" along with other local experts and representatives of human rights organizations. The same day she held a technical assistance meeting prosecutors, lawyers and journalists on the application of standards of the freedom of expression in Colombia.

43. On February 28, 2014 the Special Rapporteur met with Researchers from the National Center for Historical Memory working in the recovery of the memory of 36 years of murder, oppression and intimidation against the press in Colombia. That same day, the Special Rapporteur met with Juanita Goebertus Maria Estrada, Advisor to the Office of the High Commissioner for Peace.

44. From March 5 to 8, 2014, the Office of Special Rapporteur for Freedom of Expression held an academic visit to Peru. On March 5 to 6, the Special Rapporteur held various meetings with representatives of social organizations such as IDL, the National Human Rights Coordinator, IPYS Peru and the Peruvian Press Council, as well as journalists and media representatives.

45. On March 7, 2014 the Special Rapporteur met with representatives of press associations from Peru, Ecuador, Colombia, Argentina and Chile, to discuss the current situation of the media in the Americas.

46. On March 8, 2014, the Office of Special Rapporteur held a seminar "Inter-American standards on freedom of expression and the current challenges in the Americas" in coordination with the Legal Defense Institute (IDL). The event was aimed at journalists and human rights defenders in the regions of Lima and Ancash.

47. On March 10, 2014, the Special Rapporteur participated in the "Americas Lecture Series" organized by the Department of International Affairs in coordination with the University San Martin de Porres (USMP). The Special Rapporteur gave a lecture on "Challenges to Freedom of Expression in the Americas" (OAS).

48. On April 7-8, 2014, The Special Rapporteur, Catalina Botero, made an academic visit to Brazil along with Frank La Rue, the U.N. Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression. The Rapporteurs met on April 7 with Minister Joaquim Barbosa, President of the Federal Supreme Court and with High Court Judge Leila Maria Carrilo Cavalcante Ribeiro Mariano, President of the Court of Justice of Rio de Janeiro, as well as other Judicial Branch officials. On April 8, the Rapporteur

participated in a training event for judges on criminal law and freedom of expression: public deliberation, democracy and criminal law as part of the session on freedom of expression and the judicial branch.

49. From April 7 to 11 Attorney Ona Flores gave a course on “*Safety of Journalists and the Issue of Impunity: a human rights approach*” to law and communications students at the Universidad para la Paz in Costa Rica.

50. On April 24, 2014, the Special Rapporteur Catalina Botero presented the 2013 annual report of the Special Rapporteurship and also participated in the world conference “Global Multistakeholder Meeting” in Sao Paulo, Brazil, on the future of Internet governance. The Rapporteur participated in the panel on the principles of freedom of expression in Internet governance.

51. On May 5-6, 2014 the Special Rapporteur participated in events commemorating the World Press Freedom Day, in which Frank La Rue, the then-U.N. Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression also participated. Within the context of these events, the IACHR Special Rapporteurship for Freedom of Expression, the U.N. Special Rapporteurship for Freedom of Opinion and Expression, the Representative on Freedom of the Media for the Organization for Security and Co-operation in Europe (OSCE), and the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and People’s Rights (ACHPR) issued a joint declaration on universality and the right to freedom of expression.

52. On May 29 and 30, the Special Rapporteur and attorney Ona Flores took part in hearings for Granier and others vs. Venezuela case during the 103<sup>rd</sup> period of ordinary sessions of the Inter-American Court of Human Rights held in San José, Costa Rica.

53. From June 3 to 5, the Special Rapporteur and attorney Sofia Jaramillo took part in the activities of the General Assembly of the OAS in Asunción Paraguay, along with the delegation from the IACHR.

54. On June 3, 2014 the Special Rapporteur conducted a workshop on Access to Public Information for senior managers of the Supreme Court of Justice of Paraguay and the magistrates and ministers of that court. Participants also included the president and first vice president of the court, and 40 magistrates and judges who serve in Asunción. The Special Rapporteur also held a meeting with the full chamber of the Court.

55. On June 4, 2014 the Special Rapporteur conducted a seminar on “the right of access to information in the inter-American system of human rights” organized in collaboration with the Institute for Environmental Law and Economics (IDEA), the Public Policies Center of the Universidad Católica, the Chair of Information Law at the School of Philosophy of the Universidad UNA, and the Gaii Organization. The event was held at the Universidad Católica “Nuestra Señora de la Asunción” in Asunción, Paraguay. It was attended by 35 representatives from academia, journalists, media employees, and opinion leaders.

56. From June 9 to 13, 2014, the Special Rapporteur participated in a Course on Freedom of Information developed by the Academy on Human Rights and Humanitarian Law at the American University Washington College of Law.

57. On June 16, 2014 the Special Rapporteur carried out a simultaneous event in four countries, Colombia, Argentina, Venezuela, and Chile, to publicize the launch of the 2013 Annual Report – Internet Chapter. Participants included representatives from organizations in seven of the region’s countries: Association for Civil Rights - ADC (Argentina); the Karisma Foundation (Colombia); Public Space [*Espacio Público*] (Venezuela); Digital Rights (Chile); Article 19 (Mexico); Public Knowledge (USA), Electronic Frontier Foundation - EFF (USA), as well as invited experts, Fernando Bermejo from Spain and Vera Franz from the United Kingdom. The event was supported by Trust for the Americas, Open Society Foundation, and the Karisma Foundation and was transmitted via the web. Also in attendance were more than 120

representatives from academia, journalists, and members of organizations defending freedom of expression and access to information, as well as other organizations of human rights defenders in local forums.

58. On June 18, 2014 the Special Rapporteur presented a course organized by the American Bar Association at IACHR headquarters on the inter-American system of human rights and the inter-American freedom of expression standards for a group of 15 Latin American attorneys. Manuel Ventura, judge of the Inter-American Court, also attended.

59. On July 2, 2014 the senior attorney the Office of the Special Rapporteur, Ona Flores, gave a talk on access-to-information standards at the Global Media Forum, in Bonn, Germany. The event was organized by Deutsche Welle and the Federal Ministry for Economic Cooperation and Development of Germany (BMZ).

60. On July 14, 2014 the Office of the Special Rapporteur presented a report simultaneously in seven cities of the region on “Violence against Journalists and Media Workers: Inter-American standards and national practices on prevention, protection and prosecution of perpetrator” in an online forum organized by a collaboration of the Fundación para la Libertad de Prensa (FLIP) of Colombia with Article 19 of Brasil, Foro de Periodismo Argentino (Fopea) in Argentina, Instituto Prensa y Sociedad (IPYS) in Venezuela, IPYS in Peru, Comité por la Libre Expresión (C-Libre) in Honduras, and the Centro Nacional de Comunicación Social (Cencos), Article 19, and Periodistas de a Pie in Mexico. The event included in the participation of experts from the Committee to Protect Journalists (CPJ) and IFEX.

61. On July 16 the Special Rapporteur gave a course on “Freedom of Expression in the Inter-American System” to public officials. The course was organized by the IACHR.

62. On July 29, 2014 the Special Rapporteur participated in an online conference on the right to forget and the Internet. Her presentation was focused on the inter-American perspective. It was organized by the Universidad Externado of Colombia, with approximately 100 persons in attendance, including both virtual and face-to-face participants at the university.

63. From August 6 to 8, 2014 the Special Rapporteur paid an academic visit to Mexico. On August 6 she participated in the Second Course on the Inter-American Human Rights System, named in honor of Héctor Fix-Zamudio, speaking on “The case-law on freedom of expression and access to information, and reparations: The Right to Rectification and to Reply,” organized by the UNAM. On August 7 the Special Rapporteur participated in the panel on “Relevance of protest” and the roundtable discussion on “Internet and protest – We convene, we communicate, and we disseminate,” in the context of the seminar on “Freedom of expression vis-à-vis the security forces,” organized by Article 19, UNAM, and CLIP.

64. From August 10 to 15 the Office of the Special Rapporteur participated in organized activities during the official visit by the IACHR to Mexico for the 152nd extraordinary period of sessions.

65. From August 18 to 20, 2014 the Special Rapporteur made an academic visit to Brazil where she participated in various activities and meetings. On August 18, she participated in a debate organized by the Law School at the Universidade de Sao Paulo, accompanied by the former UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression Frank La Rue. The topic of the debate was freedom of expression in the media, the Internet, and the streets. The event was organized by Article 19 and Intervozes. On August 19 the Special Rapporteur participated in the 10th Brazilian Congress of Press. Finally, on August 20 the report “Freedom of Expression and the Internet” was launched in its Portuguese-language version. It was held at the Law School of the Fundação Getúlio Vargas.

66. On September 5, 2014 the Special Rapporteur and the journalist from the Office, Silvia Higuera, participated in a meeting with representatives of the Committee to Protect Journalists (CPJ) in New York.

67. On September 12, 2014 the Special Rapporteur participated in the 27<sup>th</sup> Session of the Human Rights Council of the United Nations, held in Geneva, on “the right to privacy in the digital era.” At this session the Rapporteur made a presentation on inter-American standards regarding freedom of expression and the Internet.

68. From September 15 to 20, 2014 the Special Rapporteur and attorney Sofia Jaramillo carried out an academic visit in Colombia. On September 13, they held a forum on international legal standards in freedom of expression and the role of the judicial branch. In addition to the Special Rapporteur, there was participation at this event by the dean of the Communication and Language Faculty of the Pontificia Universidad Javeriana; Edison Lanza, director of the Centro de Archivos y Acceso a la Información Pública (CAinfo) and incoming Special Rapporteur for Freedom of Expression of the IACHR; Guilherme Canela Godoi, Coordinator of the Regional Science Office for Latin America and the Caribbean Gina Cabarcas, (UNESCO coordinator of Analysts at the Unit for Analysis and Context of the Attorney General’s Office [*Unidad de Análisis y Contexto de la Fiscalía*]); and Ignacio Gómez, president of the FLIP. Then on the afternoon of the 15<sup>th</sup>, 16<sup>th</sup> and 17<sup>th</sup> of September, the Special Rapporteur led a course for training and sharing experiences for prosecutors on “International standards in freedom of expression and the role of the judicial branch” in coordination with the Attorney General’s Office of Colombia [*Fiscalía General de la Nación de Colombia*], the Fundación para la Libertad de Prensa –FLIP, the Montevideo office of UNESCO and the Universidad Javeriana, in Bogotá, Colombia. Prosecutors and judicial operators from Colombia, Honduras, Guatemala, Brazil, Argentina, Paraguay and Uruguay took part in the course.

69. On September 18 and 19, the Special Rapporteur held diverse meetings with directors and members of organizations from the society and from academia such as the Universidad Externado de Colombia, Andiaros, Flip, Fecolper, as well as some of the magistrates of the Constitutional Court.

70. From October 10 to 12, the Special Rapporteur took part in the Latin American Conference on Investigative Journalism and the 2014 Latin American Journalism Summit held in Mexico City and organized by the regional IPYS office. Rapporteur Edison made a presentation at the conference on Inter-American standards for prevention and protection of journalists.

71. From October 17 to 20, Special Rapporteur Edison Lanza took part in the 70<sup>th</sup> General Assembly of the Inter-American Press Society (IPS), where he participated in a panel associated with the situation of freedom of expression in the region.

72. On October 28, the team from the Rapporteurship held a meeting with 17 journalists who are participating in the Edward R. Murrow Program and were visiting Washington as part of the *Department’s International Visitor Leadership Program*. The aim was to make a presentation on the mandate of the Office of the Special Rapporteur, IACHR protection mechanisms and a summary of standards of freedom of expression.

73. On October 29, the Special Rapporteur had a conversation with the Executive Director of the Regional Alliance for Freedom of Expression and Access to Information and leaders of important organizations that work on topics of freedom of expression and the Internet in the region, such as the CELE, ADC, Karisma, Derechos Digitales, APC and Fundación Getulio Vargas to contribute and increase information on topics addressed at the hearing on Human Rights and the Internet.

74. On October 30, the Special Rapporteur made a presentation on the working agenda and priorities for his mandate at an event organized by IFEX – ALC, CPJ, CEJIL and Freedom House attended by 15 representatives of diverse civil society organizations.

75. On November 3, attorney Ona Flores participated in the Seminar “*Towards an effective framework of protection for the work of journalists and an end to impunity*”, in Strasberg, France. The seminar was organized by the Council of Europe, UNESCO, Centre for Freedom of the Media (CFOM), University of Sheffield and the European Lawyer’s Union / Union des Avocats Européens (ELU/UAE). The seminar provided a forum for interregional dialogue among representatives of diverse universal and regional human rights protection systems to examine progress and existing challenges in the field of protection for journalists with



the aim of developing a coherent protection framework at the global level. On November 4, attorney Flores took part in the Third United Nations Interagency Meeting on the Safety of Journalists in Strasbourg, France. The event was organized by UNESCO.

76. From November 17 to 20, Special Rapporteur Edison Lanza and Rapporteurship attorney Sofia Jaramillo made an academic visit to El Salvador where they held various seminars and meetings with the civil society and with state officials in coordination with the Universidad Centroamericana Jose Simeón Cañas. Thus, on November 17, a seminar was held on Inter-American standards for freedom of expression and access to information in El Salvador. On the 18<sup>th</sup>, the team from the Rapporteurship held various meetings with a group of journalists and members of community radio stations, as well as with representatives for the Red por el Derecho a la Comunicación, which is composed of the Journalists Association of El Salvador [*asociación de periodistas de el Salvador (APES)*], Arpas, UCA, Fespad, the Iniciativa Social para la Democracia (ISD), UNES, Centro para la Defensa del Consumidor (CDC) e IMU and the Junta Ciudadana por el Derecho a la Comunicación consists of social organizations, community media outlets, social activists, social communicators and journalists. That same day, the Office of the Special Rapporteur Held meetings with representatives of public authorities such as the Secretariat of Transparency and the Superintendence of Telecommunications. On November 19, the team from the Rapporteurship met with commissioners and officials from the Institute for Access to Public Information [*Instituto de Acceso a la Información Pública*]. That same day, it met with representatives from the ASDER organization and the team of organizations that promoted the law on access to information and with other organizations that work on diverse topics of freedom of expression. The meetings were attended by representatives from the Fusades, FUNDES, C-Libre, USMD, IIDH, ARPAS, Pen Internacional-Honduras, APES and DIJ organizations. On November 20, a seminar was held on standards of freedom of expression in the Inter-American system at Santa Ana.

77. On November 21, the Special Rapporteur gave a conference on Inter-American standards of freedom of expression in Lima, in the framework of the International Forum promoting reflection, work and participation for modernization of the 2004 Peruvian radio and television law [*Promoviendo la reflexión, el trabajo y participación para una modernización de la Ley Peruana de Radio y TV del 2004*], organized by the Council of ministers of Peru [*Consejo de Ministro de Perú*].

78. On November 25, the Special Rapporteur participated in a panel on “Jurisdictional Control of Plurality in Audiovisual Content [*El Control jurisdiccional de la pluralidad en los contenidos audiovisuales*], in Mexico City in the framework of the Seminar on the Right to Hearings organized by the Office for Coordination of Human Rights and Human Rights Consultation of the Supreme Court of Justice of the Nation [*Coordinación de Derechos Humanos y Asesoría de Derechos Humanos de la Suprema Corte de la Justicia de la Nación*].

79. From December 1 to 5, the Special Rapporteur and Attorney Ona Flores were part of the official commission on the IACHR on-site visit to Honduras to observe the general human rights situation in the country. During the visit, the team from the Office of the Special Rapporteur held meetings with the Asociación de Medios de Comunicación, Asociación de Medios Comunitarios de Honduras (AMCH), Asociación de la Prensa de Honduras, Comité por la Libre Expresión (C-Libre), Pen Internacional-Honduras (PEN), Asociación para una Sociedad más Justa (Capítulo de Transparencia Internacional Honduras), Frente de Estudiantes de la Universidad Nacional Autónoma de Honduras, Rectoría de la Universidad Nacional Autónoma de Honduras, Radio Alter Eco, Radios Comunitarias Lencas –COPINH, Radio Comunitaria Suga-Sambo Creek, Radio Exclusiva de Tela, Radio Progreso and Radio Valle de Ángeles. They also met with representatives of state authorities such as the Institute for Access to Public Information [*Instituto de Acceso a la Información Pública*], the National Telecommunications Commission [*Comisión Nacional de Telecomunicaciones*], the Procuratir General’s Office [*Procuraduría General de la República*], the Office of the General Public Prosecutor [*Ministerio Público*], the Department of International Relations and Human Rights of the Secretariat of Security [*Departamento de Relaciones Internacionales y Derechos Humanos de la Secretaría de Seguridad*] and the National Criminal Investigations Directorate of the National Police [*Dirección Nacional de Investigación Criminal de la Policía Nacional*]. The Office of the Special Rapporteur received

relevant information both from representatives of civil society organizations as well as the State, which will be included in the report on this country in the section on freedom of expression.

80. On December 10, the Special Rapporteur participated via videoconference with a presentation on standards of the Inter-American System on Freedom of Expression and the Internet, in the framework of events organized by Amnistía Internacional Uruguay, Centro de Archivos y Acceso a la Información Pública -CAinfo, Creative Commons Uruguay, Datos Abiertos, Transparencia y Acceso a la Información -Data Uruguay and the Fundación Friedrich Ebert -FES en Uruguay, on the occasion of International Human Rights and Uruguay Day.

81. On December 11 and 12, the Special Rapporteur made an academic visit to Quito, Ecuador to participate at the conference organized by the Social Sciences Faculty of Latin America [*Facultad de Ciencias Sociales de América Latina - FLACSO*], on Inter-American Standards in the Field of Diversity, Pluralism and Freedom of Expression. The Special Rapporteur also visited state institutions such as the Council for Regulation and Development of Information and Communication [*Consejo de Regulación y Desarrollo de la Información y Comunicación (CORDICOM)*] and the public daily newspaper El Telégrafo. During the visit, the Rapporteur held meetings with representatives of diverse civil society organizations that work for the defense of human rights and freedom of expression in the country, such as the Carter Center, the Unión Nacional de Periodistas (UNP), the Colegio de Periodistas de Pichincha (CPP), Fundación Andina para la Observación y Estudio de Medios (Fundamedios), the Asociación de Radio y Televisión, the Coordinadora de Radios Populares de Ecuador (CORAPE), Radialistas Apasionados, the Organización Católica Latinoamericana y Caribeña de Comunicación (OCLACC), the Confederaciones de Nacionalidades Indígenas del Ecuador (CONAIE) and the Colectivo el Churo. Finally, the Rapporteur met with representatives of academia with participation by the Human Rights Center [*Centro de DDHH*] of the Universidad Pontificia, the Universidad San Francisco de Quito, CIESPAL and FLACSO. Before the visit, the Rapporteur met with the Representative of the Mission of Ecuador to the OAS with whom he shared the objectives of the visit.

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

82. 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.

83. 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).

84. 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.

85. During 2014, the Office of the Special Rapporteur drafted a report on standards of freedom of expression for transition to open, diverse, plural, and inclusive free-to-air digital television. The contents of this study are included in chapter III of this report.

86. Also during this period, the Office of the Special Rapporteur drafted a report on the right of access to information, particularly referring to institutional models of bodies that guarantee access to information and which are operating in the Americas. The contents of this study are included in chapter IV of this report.

87. In 2014, the Office of the Special Rapporteur worked alongside with the Rapporteurship on the Rights of Women, on the Rights of the Child, on Human Rights Defenders and on the Rights of Lesbian, Gay, Trans, Bisexual, and Intersex Persons in the production of expert knowledge regarding the exercise of freedom of expression of these groups and communities.

## **6. Special statements and declarations**

88. 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.

89. The Office of the Special Rapporteur receives an average of 1,000 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.

90. 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.

91. 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>33</sup>

92. On May 6, 2014, the Special Rapporteur, the United Nations Special Rapporteur for 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 Cooperation in Europe (OSCE), and the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples' Rights (ACHPR) issued a joint declaration on the universality and the right to freedom of expression.<sup>34</sup>

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<sup>33</sup> The abovementioned joint declarations are available for consultation at: <http://www.cidh.oas.org/relatoria/docListCat.asp?catID=16&IID=1>

<sup>34</sup> United Nations (UN) Special Rapporteur for Promotion and Protection of the Right to Freedom of Opinion and Expression and the Special Rapporteur of the Organization of American States (OAS) for Freedom of Expression, the Representative on Freedom of the Media of the Organization for Security and Cooperation in Europe (OSCE) and the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples' Rights (ACHPR). Joint declaration. May 6, 2014. [Universality and the Right to Freedom of Expression](#).

93. On September 1, 2014, the Office of the Special Rapporteur issued a joint communiqué with the United Nations (UN) Special Rapporteur for Promotion and Protection of the Right to Freedom of Opinion and Expression, David Kaye, the Representative on Freedom of the Media of the Organization for Security and Cooperation in Europe (OSCE), Dunja Mijatović, and the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples' Rights (ACHPR), Faith Pansy Tlakula, on the obligations of states to protect journalists who cover armed conflicts.<sup>35</sup>

94. During 2014, the Office of the Special Rapporteur issued twenty-eight (28) press communiqués<sup>36</sup> to call attention to incidents associated with freedom of thought and expression. These pronouncements emphasized events of particular concern along with the best local practices, and explain the respective regional standards. The press communiqués issued in 2014 may be consulted at the website of the Office of the Special Rapporteur, available at: <http://www.cidh.org/relatoria>.

#### **D. Funding**

95. 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>37</sup>

96. 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. 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.

97. 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

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<sup>35</sup> United Nations (UN) Special Rapporteur for Promotion and Protection of the Right to Freedom of Opinion and Expression, the Special Rapporteur of the Organization of American States (OAS) for Freedom of Expression, the Representative on Freedom of the Media of the Organization for Security and Cooperation in Europe (OSCE) and the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples' Rights (ACHPR). Joint Communiqué. September 1, 2014. [Obligation of States to protect journalists covering armed conflicts](#).

<sup>36</sup> During 2014 (until December 3) the following press communiqués were drafted: IACHR. Special Rapporteur for Freedom of Expression. [Press Release R 135/14](#) of November 14, 2014; [Press Release R 129/14](#) of November 3, 2014; [Press Release R 128/14](#) of November 2, 2014; [Press Release R 124/14](#) of October 17, 2014; [Press Release R 122/14](#) of October 17, 2014; [Press Release R 109/14](#) of September 29, 2014; [Press Release R 107/14](#) of September 22, 2014; [Press Release R 96/14](#) of September 9, 2014; [Press Release R 90/14](#) of August 22, 2014; [Press Release R 89/14](#) of August 21, 2014; [Press Release R 87/14](#) of August 16, 2014; [Press Release R 85/14](#) of August 14, 2014; [Press Release R 83/14](#) of August 6, 2014; [Press Release R 75/14](#) of July 21, 2014; [Press Release R 72/14](#) of June 27, 2014; [Press Release R 70/14](#) of June 24, 2014; [Press Release R 64/14](#) of June 10, 2014; [Press Release R 59/14](#) of May 19, 2014; [Press Release R 47/14](#) of May 3, 2014; [Press Release R 45/14](#) of April 24, 2014; [Press Release R 39/14](#) of April 15, 2014; [Press Release R 21/14](#) of February 26, 2014; [Press Release R 20/14](#) of February 25, 2014; [Press Release R 12/14](#) of February 14, 2014; [Press Release R 13/14](#) of February 14, 2014; [Press Release R 11/14](#) of February 12, 2014; [Press Release R 5/14](#) of January 24, 2014.

<sup>37</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.

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>38</sup>

98. 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 2014, 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, Chile, 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 in the audited financial statements available on the webpage of the organization.<sup>39</sup>

#### **E. Staff**

99. 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 2014, Beatriz Mallea (Chile), German Parra (Colombia) and Pilar Galván (Mexico) contributed their work and enthusiasm very constructively to the Office of the Special Rapporteur.

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<sup>38</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>

<sup>39</sup> All the information is available for consultation at: OAS. Board of External Auditors. Report to the Permanent Council 2013. Annual Audit of Accounts and Financial Statements for the years ended December 31 2012 and 2013. Section II. Specific Funds. Pp 57-59; 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.

## F. Work Plan 2015-2018

100. In view of the election of a new Special Rapporteur in July of last year, and of the issues and challenges that persist in the hemisphere, the Office of the Special Rapporteur, under the leadership of Edison Lanza, drafted a three-year work plan that was presented to and approved by the plenary of the IACHR at its 153<sup>rd</sup> Session.<sup>40</sup> The work plan of the Office of the Special Rapporteur will place emphasis on the following central thematic points:

101. *Protection of journalists, media workers, and activists.* Violence and attempts on the lives of media workers continues to be an alarming problem, and its severity has even increased in recent years in several of the region's countries due to various factors. This is the most extreme form of silencing and censoring the press, activists and dissidents, and human rights defenders. Due to the seriousness of its effects and because of the potential for this type of violence to silence entire regions that are at the mercy of the arbitrariness of the State, conflicts, and non-State actors tied to extractive industries or organized crime, this continues to be a serious problem to which the Office of the Special Rapporteur will continue to pay all of its attention. The range of attacks against journalists and media workers continues to be diverse and of varying intensity (physical and verbal assaults, threats, restrictions on access to sources), and they often take place in view of a passive State or even through the acts of State agents. The Office of the Special Rapporteur monitors the situation continually, issues statements in response to attacks against the integrity and lives of journalists, advocates for the setting of standards for building protection systems that consider the exercise of the profession to be an inescapable variable, and continually promotes the examination of individual petitions by the Inter-American Human Rights System related to the murder or assaults of journalists. In this current term, the Office of the Special Rapporteur will continue these actions and seek to increase the training of State authorities to prevent or respond to these situations, advocate for the establishment and/or strengthening of protection mechanisms, promote the prompt adjudication of individual petitions on the issue, and broaden its condemnation of situations where there is a lack of protection.

102. *Impunity.* Given the situation of impunity with respect to crimes against freedom of expression and the apparent lack of willingness in some countries to address these violations, the facts are never established in a significant number of these cases. This ends up emboldening the perpetrators, and significantly increasing the incidence of this form of censorship. Specifically, the Inter-American Court has held repeatedly that impunity, understood as the "total lack of investigation, prosecution, capture, trial and conviction," favors the chronic repetition of human rights violations.<sup>41</sup> Although some courts have managed to identify the direct perpetrators of these crimes, dozens of cases connected to the exercise of freedom of expression have gone unpunished in the region. The high levels of violence against journalists can be explained, at least in part, by the impunity that the perpetrators of such attacks have enjoyed. The Office of the Special Rapporteur has the mandate and the ethical commitment to work toward getting these acts investigated, tried by an impartial court that ensures all of the defendants' rights, and punished without interference or obstacles. In addition to working to have these crimes remembered and brought to justice, this office will continue to promote the principle of the guarantee of non-repetition of violence against journalists and human rights defenders. During this term, the Office of the Special Rapporteur will continue to develop training programs for judges, prosecutors' offices, and investigative bodies with the aim of ensuring that this type of criminal investigation includes the perspective of freedom of expression.

103. *The criminalization of expression and the subsequent imposition of liability.* In many countries of the region the criminal law is still used unjustifiably and disproportionately to penalize expression within the framework of a democratic society. The application of the punitive power of the State in many countries entails the criminalization of journalists, political and social leaders, dissidents, and human rights activists in the context of expressions of criticism, protest, or public interest. The disproportionate use of the criminal law to protect the honor of government officials or public figures has chilling effects on those who take part in

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<sup>40</sup> Article 15.6 of the Rules of Procedure of the IACHR.

<sup>41</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.

public discourse, and in general on speech in the public interest. This also entails a limitation to the right of participation of different groups. With respect to this issue, the Office of the Special Rapporteur will continue to promote the appropriate examination of cases by the IACHR, to enable the establishment of applicable standards by both the Inter-American Human Rights System and by national authorities. Along these lines, the office has also included this issue in the training program for judges and prosecutors of the region, for the dissemination of the standards and case law applicable in certain situations related to freedom of expression. It is important to insist that the national courts include conventionality control in their decisions and that they have the tools to resolve the conflicts that arise between freedom of expression and other rights in light of the relevant standards of the IAHR.

104. *Indirect censorship.* The IACHR has developed standards to prevent censorship by indirect means, based on the interpretation of Article 13.3 of the Convention. Nevertheless, some States continue to use government authority to influence the exercise of freedom of expression and reward or punish the media according to their news or editorial slant. The Office of the Special Rapporteur proposes to encourage the awareness and application of the Principles on the regulation of government advertising—approved by the IACHR in 2011<sup>42</sup>—in order to allocate those resources based on objective and nondiscriminatory criteria within a framework of transparency. This will be done through the encouragement of petitions relating to this violation of freedom of expression and work with the States to encourage them to enact legal regulations on the issue. The exercise of regulatory power by the States over broadcasting is another relevant issue in the region. Radio frequencies are a common good that belongs to all of humanity, and the power to grant, allocate, or revoke, when exercised arbitrarily, interferes with freedom of expression. The processes for allocating frequencies, the conditions of use, and the transition from analog to digital communication must be promoted and monitored by the IACHR. During this term, the office will continue to promote the establishment and application of standards on this subject. For example, this report includes a chapter on standards of freedom of expression applicable to the switch from analog to digital broadcast television, simultaneously promoting diversity, pluralism, and the inclusion of the entire population in access to this new technology.

105. *Diversity and pluralism.* The hemisphere is witnessing a debate on the need to guarantee diversity and pluralism in communications without interfering with the types of speech protected by freedom of expression. We are referring to the ability of individuals to access media in order to express themselves freely, but also to the assurance that they have access to a diversity of sources of information and opinion. For over twenty years now, the IAHR has been building and reaffirming standards in two respects: (a) the States have the obligation to guarantee the existence of free, independent, and plural media; (b) monopolies or oligopolies in the ownership or control of the media run counter to democracy by restricting the plurality and diversity that ensures the full exercise of the right to freedom of information. When the State's omission leads to the existence of monopolies or oligopolies or hinders the free flow of ideas, it gives rise to a form of indirect restriction. The States have the obligation to intervene where there is excessive concentration, by the means authorized under the Convention, and to bring the operation of the media that use frequencies into line with the requirements of freedom of expression. In this respect, the existence of a commercial media sector is insufficient, *per se*, for there to be a democratic system with a diversity and plurality of voices; therefore, it is necessary to promote the coexistence of media of different types and different forms of ownership. The recognition and equal opportunity for the operation of community and other nonprofit radio and television stations, such as those to which indigenous peoples are entitled to access, continues to be a pending matter in various countries of the region. Similarly, the discussion regarding the mechanisms to prevent the concentration of media ownership and control must be further developed by the Inter-American System of Human Rights, and is something that the Office of the Special Rapporteur proposes to address during the current term.

106. *Freedom of expression of specific groups.* The situation of the freedom of expression of different vulnerable groups has always been a key focal point for the Office of the Special Rapporteur from the

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<sup>42</sup> IACHR, [2010 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter V (Principles on the Regulation of Government Advertising in the Inter-American System for the Protection of Human Rights). OEA/Ser.L/V/II. Doc. 5. March 7, 2011.

time of its creation. The work plan for this new period requires delving deeper into this issue and undertaking new studies on the link between freedom of expression and the protection and promotion of the rights of different groups that are subject to or have been subject to discrimination (children, women, indigenous peoples, LGBTI persons, disabled persons, etc.). In this case, the Office of the Special Rapporteur will encourage the States to assume positive obligations to reverse or change existing discriminatory situations and to enable these groups to fully exercise freedom of expression, as well as to protect their rights in view of openly discriminatory expressions.

107. *Freedom of expression and the Internet.* The enjoyment and protection of freedom of expression in the online world is a prerequisite that concerns and benefits all people. The Office of the Special Rapporteur has addressed the phenomenon of the Internet from the human rights perspective. Among these priorities, it is essential to promote and be vigilant with respect to universal access to this notable forum for education, access to information, personal expression, and entertainment. Given that the Internet has dramatically increased the opportunities to receive, research, and convey information, access to the Internet is a challenge that is closely tied to equality and fairness. In its recent report on Freedom of Expression and the Internet,<sup>43</sup> the Office of the Special Rapporteur has addressed the issues of how to guarantee freedom of expression and access to information online in view of new forms of censorship on the web, the role of intermediaries in the dissemination of information, network governance, privacy rights as the other side of the coin of information freedoms, the dangers of mass surveillance via the Internet and other digital media, and the link between the right to information and intellectual property rights. The Office of the Special Rapporteur will need to increase its capacity to delve more deeply into the issues raised in this initial report, while promoting the first cases before the system that involve conflicts related to freedom of expression on the Internet.

108. *Access to public information.* A significant number of Latin American and Caribbean States have enacted laws on access to public information, but a culture of transparency has not yet been fully guaranteed or implemented. The Office of the Special Rapporteur can play an important role in monitoring the implementation processes of these access to information laws, while exploring new terrain for this right, such as the obligations of the States with respect to information to guarantee rights. It is also necessary to promote the use of the right to access to public information as a mechanism for the protection of economic, social, and cultural rights, in order to extend its use in the region and link public information to the fulfillment of social rights.

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<sup>43</sup> IACHR. [2013 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013.





## 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 2014. 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 nongovernmental 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 and social communicators exercising their profession; subsequent findings of disproportionate liability; progress toward as well as challenges to the right of access to information; situations that could affect diversity and pluralism when spreading information and ideas; the threats to the exercise of freedom of expression on the internet; 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 2014 Annual Report, the Office of the Special Rapporteur generally took into account information received until December 1, 2014. Information regarding incidents that occurred after the date the 2014 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 learned of the announcement made in June by the country's new government regarding the pending bill designed to decriminalize the offense of defamation. According to reports, Attorney General Steadroy Benjamin stated that the issue had been placed on the front burner in the new administration of Prime Minister Gaston Browne. The announcement was reportedly made after the International Press Institute (IPI) reminded the new government of the commitment made at the meeting held in April 2013, at which the current Prime Minister reportedly promised to repeal that law if elected.<sup>44</sup>

### **2. Argentina**

#### **A. Advances**

8. On February 11, the Supreme Court of Justice upheld the judgment ordering the Government to include the Arterar – Canal 13 [Channel 13] group in the government advertising distribution [list]<sup>45</sup>. The case initiated when the company Arte Radiotelevisivo Argentino SA (Aretar- Canal 13) filed an *amparo* against the Nation State (specifically against the Chiefs of Staff, headed at that time by Minister Juan Abal Medina and the Secretary of Public Communication, Alfredo Scoccimarro) with the goal of “eliminating the arbitrary and discriminatory assignment of the official guideline concerning” that company. The *amparo* pleadings were denied in first instance. In June, the IV National Appeals Chamber of the Federal Court of Administrative Matters [*Sala IV de la Cámara Nacional de Apelaciones en lo Contencioso Administrativo Federal*] granted it and ordered the Government to prepare and present “an outline for the distribution of official advertising” to the Court in 30 days. Said guideline “shall faithfully comply with the guidelines of proportionality and equality” established in the order. The State sought an extraordinary appeal before the Supreme Court, it upheld the decision and ordered the State to present an outline for equitable advertising. The Supreme Court questioned why the judicial precedent “doctrine” wasn’t followed such as in the case of *Editorial Río Negro* against the government of that province and *Editorial Perfil* against the Nation State. “Government conduct relating to the lack of application of these standards constitutes a clear violation of constitutional principles”<sup>46</sup>.

9. In a February 24 ruling, civil court judge María Gloria Albores granted the *amparo* filed by the *La Arena* newspaper, in the city of Santa Rosa, ordering the Pampa Province to allow “full access to all data in the current court case before the First Instance Civil, Commercial, Labor and Mines Court 5 [Juzgado de Primera Instancia Civil, Comercial, Laboral y de Minería 5], where the government for the Province sued public officials of the Autarkic Housing Institute for the Pampa Province [*Instituto Provincial Autárquico de la Vivienda*] for fund diversion<sup>47</sup>.

10. The Office of the Special Rapporteur learned that on March 26 the Supreme Court of Justice for the Nation upheld a decision wherein the State must guarantee access to public information in favor of an *amparo* requested by the Center for the Implementation of Public Policy for Equality and Growth [*Centro de*

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<sup>44</sup> The Antigua Observer. January 13, 2014. [Pressure mounts on government to repeal criminal defamation](#); Caribbean 360/CMC. June 25, 2014. [Antigua says abolishment of criminal defamation is on “front burner”](#); International Press Institute. June 17, 2014. [Newly elected Antiguan government must keep promise to repeal criminal defamation](#).

<sup>45</sup> Corte Suprema de Justicia de la Nación. Arte Radiotelevisivo Argentino SA c/ EN - JGM - SMC s/ amparo ley 16986. Expediente A.925.XLIX.REX. February 11, 2014.. Available for consultation at: <http://servicios.csjn.gov.ar/confal/ConsultaCompletaFallos.do?method=iniciaConsulta>

<sup>46</sup> La Prensa. February 11, 2014. [La Corte ordenó al Gobierno incluir a Canal 13 en el reparto de publicidad oficial “en defensa de la libertad de expresión”](#); La Capital. February 11, 2014. [La Corte volvió a ordenar al Estado el reparto equitativo de pauta oficial](#); Diario Democracia. February 11, 2014. [Corte ordena incluir a Canal 13 en reparto de publicidad oficial](#).

<sup>47</sup> Foro de Periodismo Argentino (FOPEA). July 28, 2014. [Fallo a favor de diario pampeano sobre acceso a la información](#); La Arena. July 28, 2014. [Fallo ejemplar: el Estado obligado a informar a La Arena](#).

*Implementación de Políticas Públicas para la Equidad de Crecimiento*] (Cippec). Here the State, through the Ministry of Social Development, requested information regarding lists of beneficiaries and transfers to the private sector on social assistance.<sup>48</sup> Cippec requested the above-mentioned information from the Ministry in July of 2008, and the request was denied by claiming it was sensitive information that affected vulnerable groups. Upon the denial, Cippec filed an *amparo* remedy at the II National Appeals Chamber of the Federal Court of Administrative Matters, who ordered the National Government to provide the requested information. In its opinion the Supreme Court asserts that the requested information is “tied to public matters” and that the “access to that data holds a clear public interest [as] in order to obtain full social control regarding the way the appropriate authorities have assigned subsidies it is necessary to access the list of different beneficiaries and recipients of social plans [benefits]”. Lastly, the Supreme Court highlighted the “urgent need to have a national law to regulate this important area” and added that it is “essential for the legislator to establish, within the general scope, uniform guidelines that allow effective exercise of this right [...]”. It stated that the law for access to public information “represents a true social claim in our country” and that “in order to guarantee effective exercise of the right to information, the State must immediately pass a law that [...] is comprehensive in regulating the manner in which public authorities fulfill this right”<sup>49</sup>.

11. During the month of May, The Federal Authority for Audiovisual Communication Services [*Autoridad Federal de Servicios de Comunicación Audiovisual*] fulfilled its obligation to include the digital signal emitted by the National University of Córdoba [*Universidad Nacional de Córdoba*] in the programming for all cable operators in the providence<sup>50</sup>.

12. On August 8, a court decision held that radio reporter Raquel Garruchaga for *La Bomba* was absolved from a slander case filed by the ex director of Social and Community Development, Liliana Ortelio. The public official claimed the reporter stated in her program that she had used public funds for personal expenses<sup>51</sup>.

13. Through dispositions on October 14, the Supreme Court of Justice for the Nation ruled in two cases involving the right to access to information held by the State. In the first matter, the Court upheld the decision wherein the Inspector General of Justice [*Inspector General de Justicia*] (IGJ) was ordered to report to the plaintiff if the partnerships Ciccone Calcográfica S.A., later called Compañía de Valores Sudamericana S.A., and The Old Fund, were enrolled, and if so, in what capacity; as well as the submission of a copy of its statutes, details pertaining to the composition of the government and supervision bodies, shareholders, addresses and other relevant information. In the second case, the Court denied the extraordinary appeal filed by the Nation State opposing the order for the head of the Ministry of Federal Planning, Public Investment and Services, to provide certain information and documentation relating to the process for public bidding on the construction of the “Presidente Néstor Kirchner” and “Gobernador Jorge Cepernic” dams<sup>52</sup>.

14. On October 21 the National Civil Appeals Chamber [*Cámara Nacional de Apelaciones en lo Civil*] denied a claim for damages against reporters Jorge Berri, Mariano Obarrio, Gustavo Ybarra, Graciela

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<sup>48</sup> Corte Suprema de Justicia de la Nación. CIPPEC c/ EN M° DESARROLLO SOCIAL DTO 1172/03 s/ AMPARO LEY 16986. March 26, 2014. Expediente C.830.XLVI.REX. Available for consultation at: <http://servicios.csjn.gov.ar/confal/ConsultaCompletaFallos.do?method=iniciaConsulta>

<sup>49</sup> Asociación por los Derechos Civiles (ADC). March 26, 2014. [LA CORTE SUPREMA RATIFICÓ EL DERECHO DE ACCESO A LA INFORMACIÓN PÚBLICA](#); Asociación de Entidades Periodísticas Argentinas (Adepa). March 27, 2014. [Corte ratifica jurisprudencia sobre derecho a la información](#); Fundación LED. March 27, 2014. [LA CORTE SUPREMA DE JUSTICIA DE LA NACIÓN RATIFICA LA IMPORTANCIA DEL ACCESO A LA INFORMACIÓN PÚBLICA](#).

<sup>50</sup> Autoridad Federal de Servicios de Comunicación Audiovisual (AFSCA). September 2, 2014. [Sabbatella: “La Justicia le sigue diciendo a Clarín que cumpla”](#).

<sup>51</sup> Fondo de Periodismo Argentino (FOPEA). August 8, 2014. [La Justicia absolvió a periodista de San Luis acusada de calumnias e injurias](#); Noticias Villa Mercedes Info. August 8, 2014. [Raquel Gurruchaga fue absuelta por la jueza Nora Villegas en la causa por calumnias e injurias](#); ABC Noticias. August 11, 2014. [El periodismo y la libertad de expresión ganaron una batalla con la absolución de Raquel Gurruchaga](#).

<sup>52</sup> Agencia de Noticias del Poder Judicial. October 14, 2014. [La Corte se pronunció en dos nuevos casos por acceso a la información pública](#).

Mochkofsky and María Villosio; originating from covering an alleged bribery in November of 2002 to stop the passing of a bill. Between September 19 and November 16 of 2002, several articles were published in *La Nación* newspaper, discussing the role of consultant Carlos Becrún, head of CB & Asociados, as he appeared to be the lobbyist and middleman for these bribes. In 2011, the judiciary determined that what was claimed in the newspaper articles did not occur and that the role Becrún played was to create parliamentary reports for the Minister of Finance, the Central Bank [*Banco Central*], Citibank and the Argentine Bank Association [*Asociación de Bancos Argentinos*] (international banks). In response, Becrún sued Julio Ceesar Saguier, Bartolomé Mitre and José Escribano, as well as the reporters for “true malice” and “disinterest in the truth of published information”. In their disposition, the judges held them not liable based on the first three Articles of Law 26.522, stating the articles were based on “institutional responsibility” and that the case “did not prove the defendants were aware that the information was untrue”<sup>53</sup>.

15. On October 28, The Supreme Court of Justice issued a decision wherein it held that “you should not judge the possible responsibility of the “search engines” in accordance to the norms established for objective responsibility”, rather “in light of subjective responsibility”. Said opinion stems from the damages suit filed against Google Inc. and Yahoo de Argentina SRL, where the claim was unauthorized commercial use of the plaintiff’s image, who claimed the utmost violation of personal rights when the image was linked to certain erotic and or pornographic Internet sites. In first instance, the claims were sustained, while in the second instance only one was partially sustained. In its opinion, the Supreme Court fully denied all possible liability of the companies. The Court said that, as deduced from comparative law, “search engines have no general obligation to monitor contents uploaded to the network and that are provided by the heads of each of the web pages” and that “on this basis are irresponsible for those contents that they have not created”. The Court said that the “search engine” can be responsible for external content “when given effective notice of the illicit content, no due diligence action is taken”. In its opinion the Court held that manifest illicit content regarding harmful content, illegal –civil or criminal- in nature, is palpable and results from direct consultation to the specific page, reliable information from the injured party or any person shall suffice, whichever the case may be; with no need for additional evaluation or clarification. On the other hand, in cases where the damaging content requires debate for clarification or compensation to occur in the appropriate judicial or administrative setting, then the appropriate judicial or administrative procedures shall be followed. The Supreme Court applied this same reasoning to the so-called thumbnails, as that is where search engines link to content not created by them. Lastly, the Supreme Court held that it is impossible to force search engines to filter or block future links, as this would create prior censorship pursuant to Article 13 of the American Convention on Human Rights, a principle which may only be restricted under “extraordinary circumstances”<sup>54</sup>.

## **B. Assaults, threats, intimidation and attacks against journalists and media outlets**

16. On December 12, 2013, the automobile belonging to Darío Zarco, director and reporter for the *Primera Línea* newspaper, was intentionally set on fire by unknown persons in the city of Resistencia in the Chaco province. The event occurred days after the reporter claimed he was attacked by an alleged police force of about forty officers while covering the violent incidents and was a witness to an incident that even the police admitted was out of the ordinary. At that time he was harassed, threatened, insulted and his cellular telephone was yanked from him by some officers who deleted the images on it. The journalist was also investigating criminal organizations that operate in the area<sup>55</sup>.

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<sup>53</sup> Agencia Nacional de Noticias Jurídicas. October 29, 2014. [La Justicia tomó la ley de medios para fallar a favor de periodistas de La Nación](#).

<sup>54</sup> Corte Suprema de Justicia de la Nación. Rodríguez, María Belén c/ Google Inc y OTROS s/ daños y perjuicios. Expediente R. 522. XLIX. October 28, 2014. Available for consultation at: <http://servicios.csjn.gov.ar/confal/ConsultaCompletaFallos.do?method=iniciaConsulta>

<sup>55</sup> La Nación. December 13, 2013. [Incendian el auto del director de un portal de Resistencia](#); Foro de Periodismo Argentino (FOPEA). December 12, 2013. [Incendian el automóvil de un periodista en Chaco](#); Futuro Digital. December 13, 2013. [Buscando intimidar incendian el auto del periodista Darío Zarco, director de Primera Línea](#).

17. The Office of the Special Rapporteur received information regarding threats and later attacks on Omar Reinoso, owner of *FM Belgrano*, in the capital of the province of San Luis. According to reports, on December 6, 2013, the ex senator of the province, Alberto Leyes, who was complaining about the broadcast editorial was threatening the journalist and said, “you will learn who I am”. On December 22 unknown persons stole broadcast equipment belonging to the station at the Villa de la Quebrada locale in the province of San Luis. Three days later, at the radio station in the city of San Luis, unknown persons stole equipment used for journalism. The reporter filed a complaint<sup>56</sup>.

18. A team of journalists for channel *Todo Noticias* [All News] (TN) was attacked by alleged family members and friends of the director for the Federal Administration of Public Revenue [*Administración Federal de Ingresos Públicos*] (AFIP), Ricardo Echegaray, whom were attempting to interview the official at the international airport in Rio de Janeiro, Brazil, on January 1. According to reports, the team composed of reporter Ignacio Otero, camera man Marcelo Fuentes, and camera assistant Martín Magaldi, was punched, kicked, almost strangled, insulted and threatened under the alleged direction of the public official. The Brazilian authorities did not respond to the scene. The journalists were threatened for having trouble with AFIP and would have difficulty in returning to the country. The journalist team published a report about “luxury vacations” the official took<sup>57</sup>. Later, on a January 3 press conference set for discussing the results of the January 3 tax revenue, the public official accused the Clarín group and its CEO, Héctor Magnetto, of “scare tactics” and “lynching by media”. The statements originated in the controversy caused by the publication of the aforementioned report and alleged attacks against the TN journalist team<sup>58</sup>.

19. Journalist Susana Arriéguez from the city of San Salvador in the province of Jujuy complained that on January 18 she received a telephone call at her home where an unknown male threatened with killing her, her son, mother and family members if she continued to “talk” about Milagro Sala (province representative and leader of the social movement Túpac Amaru) and the political movement CCC (Combative Classist Current) [*Corriente Clasista y Combativa*]. According to reports, the journalist criticized these movements in her program; she informed this was the reason for the intimidation she was subjected to as of 2012. The Argentine Journalism Forum [*Foro de Periodismo Argentino*] (FOPEA) requested the reinstatement of the protection plan for Arriéguez that had been withdrawn. The event gave rise to the complaint filed before the Jujuy police Investigation Brigade<sup>59</sup>.

20. In the early morning hours of January 26, unknown persons knocked down the transmission antenna for *Radio 7* at the Villa Unión locale in the province of La Rioja. Police experts indicated that the wires holding the antenna were cut with a special tool. The event took the station off air and therefore they were transmitting via Internet<sup>60</sup>.

21. The Office of the Special Rapporteur documented alleged assaults, threats, and/or attacks against journalists by alleged members of the security forces or by unknown people. Such as the cases of Claudia Perlata and cameraman Tomás Foster, *Channel 5*, who were threatened and assaulted on January 26 by residents of the La Granda neighborhood when they were trying to report on the Claudio Ariel ‘Pájaro’

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<sup>56</sup> Foro de Periodismo Argentino (FOPEA). December 25, 2013. [Robo y amenazas en una FM y un portal informativo de San Luis](#); San Luis 24. No date. [Nuevo ataque contra radio Belgrano: ahora robaron en los estudios de la capital puntana](#).

<sup>57</sup> Clarín. January 1, 2014. [Amigos de Echegaray agredieron a tropadas a periodistas de TN](#); La Nación. January 2, 2014. [Allegados a Echegaray agreden a un equipo de TN en Río de Janeiro](#); Notimérica/Europa Press. January 2, 2014. [Amigos de un miembro del Gobierno argentino agreden a un periodista](#); Foro de Periodismo Argentino (FOPEA). January 1, 2014. [FOPEA repudia agresiones y amenazas a equipo periodístico por parte de personas cercanas a Echegaray](#).

<sup>58</sup> Perfil.com. January 3, 2014. [Echegaray rechazó la agresión a TN y denunció ser 'perseguido' por los medios](#); La Nación. January 4, 2014. [Echegaray buscó tomar distancia de la agresión a TN y justificar su viaje](#); Télam. January 3, 2014. [Echegaray acusó al grupo Clarín de "linchamiento mediático" y condenó la eventual agresión a periodistas](#); Página 12. January 4, 2014. ["Fue un caso de linchamiento mediático"](#).

<sup>59</sup> Foro de Periodismo Argentino (FOPEA). January 21, 2014. [FOPEA alerta por nuevas amenazas a periodista de Jujuy](#); Análisis Digital. January 21, 2014. [Foepa alerta por nuevas amenazas a periodistas en Jujuy](#).

<sup>60</sup> Foro de Periodismo Argentino (FOPEA). January 29, 2014. [FOPEA alerta sobre el derribo intencional de antena de radio en La Rioja](#); El Independiente. Without date. [Derribaron una antena radial](#).

[Bird] Cantero mural, the leader of the drug trafficking organization 'Los Monos' who was killed<sup>61</sup>. Another case is César Ríos, director of the *Síntesis* newspaper, whose residence was attacked with a homemade bomb on February 15 after the reporter published information about drug trafficking in the city of San Lorenzo<sup>62</sup>. On February 18 Ríos gave an interview to a television media outlet in Buenos Aires, next to Claudio Martínez, owner and director of *Radio Máxima FM 91.5*, who also reported on drug trafficking and political corruption. The next day, Martínez was threatened via his cellular telephone wherein, among other expressions, he was told, "cut it out, we're going to eliminate you, choose the type of bullet you would like us to use"<sup>63</sup>. On February 28, a photographer and a reporter for the *La Capital* newspaper were attacked with rocks and shooting by unknown persons when covering the issue of insecurity in Villa Gobernador Gálvez south of Rosario<sup>64</sup>. Andrés Mendieta, reporter for the onlin[e] newspaper *Jujuy al Momento*, was hit from behind while interviewing legislator Guillermo Snopek, first vice chairman of the Jujuy Legislature, on April 16<sup>65</sup>. In the early morning hours of April 20, unknown persons in the city of Santa Fe repeatedly shot at the home of journalist Carlos Fornés, in the city of Santa Fe<sup>66</sup>. On May 5, Freddy Páez, anchorman for the *Channel 5* news program, was beat by a province of Santa Cruz police officer at Pico Truncado who was waiting for him to finish his work. The journalist filed a complaint with the Prosecutor's Office<sup>67</sup>.

22. The named leader of a drug trafficking ring, Sandra Yaquelina Vargas, aka 'La Yaqui', ordered the killing of some reporters for the *El Sol* newspaper in the city of Mendoza, allegedly as revenge for the investigation the media outlet had conducted as of mid 2012. According to available information, the Criminal Analysis Division [*División de Análisis Criminal*] had knowledge of the meeting the alleged leader had with her young group – known as 'Yaqui's Little Angels' [*Los Angelitos de Yaqui*] – whom she ordered to kill the reporters who were revealing how her organization operates. Claudia Ríos, the Special Prosecutor, ordered police protection for three reporters of said newspaper. In that regard, the Minister of Security in Mendoza, Leonardo Comperatore, committed to working with the prosecutor to preserve the integrity of the journalists<sup>68</sup>. On February 15, unknown armed persons evaded the protective police officers and entered the newspaper facility, threatened security personnel and took some editing elements<sup>69</sup>.

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<sup>61</sup> La Capital. January 27, 2014. [Amenazaron a movileros de Canal 5 cuando hacían una nota sobre el mural del Pájaro Cantero](#); La Voz del Pueblo. January 28, 2014. [Agreden a periodistas por grabar un mural en homenaje a un narco](#).

<sup>62</sup> Síntesis. No date. [ATENTADO: tiraron una bomba Molotov en la casa del director del Periódico Síntesis](#); La Capital. February 17, 2014. [Explotan una bomba en el cuarto de los hijos de un periodista de San Lorenzo](#); Infobae. February 18, 2014. [Grave atentado contra el director de un diario de Santa Fe](#); Rosario 3. February 17, 2014. [Atacaron la casa del director de un periódico sanlorenocino](#); Foro de Periodismo Argentino (FOPEA). February 20, 2014. [Atentado y amenazas a medios de San Lorenzo](#).

<sup>63</sup> Síntesis. No date. [Amenazan de muerte a Claudio Martínez Palacios](#); Foro de Periodismo Argentino (FOPEA). February 20, 2014. [Atentado y amenazas a medios de San Lorenzo](#).

<sup>64</sup> Foro de Periodismo Argentino (FOPEA). March 2, 2014. [Ataque y amenazas a equipo periodístico en Villa Gobernador Gálvez](#); Rosario 3. February 28, 2014. [Dos periodistas fueron agredidos a balazos en la zona sur](#); Cuna de la noticia. March 1, 2014. [Atacan a balazos a periodistas del diario La Capital](#)

<sup>65</sup> Prensa Jujuy. April 22, 2014. [Vicepresidente de la Legislatura jujeña golpeó por la espalda a un periodista](#); El Libertario. April 22, 2014. [Jujuy: periodista denunció que fue golpeado por un diputado](#); Jujuy al Momento. April 21, 2014. [Asociación de prensa repudió agresión a periodista](#).

<sup>66</sup> El Litoral. April 20, 2014. [Atacan a tiros la casa de un periodista](#); Uno Santa Fe. April 20, 2014. [Le pegaron nueve balazos al portón de la casa del periodista Carlos Fornés](#); Agencia Cfin. April 21, 2014. [Repudio al atentado contra un periodista](#); Fundación LED. April 21, 2014. [Repudio ante el ataque al domicilio de un periodista santafecino](#).

<sup>67</sup> Periódico Austral. May 6, 2014. [Policía retirado agredió a periodista de Pico Truncado](#); El Ciudadano de las Heras. May 6, 2014. [Un periodista fue golpeado por un oficial de policía](#).

<sup>68</sup> El Sol. February 13, 2014. [Periodistas de El Sol, con custodia policial por investigar a una banda narco](#); La Nación. February 14, 2014. [Periodistas mendocinos bajo amenaza de muerte por una organización narco](#); La Capital. February 13, 2014. [Tres periodistas de Mendoza, amenazados por una banda narco de adolescentes](#); Foro de Periodismo Argentino (FOPEA). February 14, 2014. [Amenazas de muerte a periodistas mendocinos por investigar a banda de narcotraficantes](#).

<sup>69</sup> Infobae. February 15, 2014. [Mendoza: tras las amenazas a periodistas, hombres armados irrumpieron en el diario El Sol](#); El Universal. February 15, 2014. [Asaltan diario argentino cuyos periodistas estaban amenazados por narcos](#); Knight Center for Journalism in the Americas. February 19, 2014. [Argentine reporters given police protection after receiving death threats](#).

23. In early April, at a press conference, police personnel showed a fake video incriminating some reporters in an act of corruption. Intimidating the journalists, the montage of images was presented as an example of how information can be manipulated<sup>70</sup>.

24. The Office of the Special Rapporteur was informed about possible intimidation against *MDZ Online* in Guaymallén, province of Mendoza. According to reports, two 9 mm caliber bullets, that had not been fired, were found at the main entrance. The first was found on April 10, and the second on April 17. The media outlet directors filed a complaint with the 8<sup>th</sup> Prosecutor's Office [*Oficina Fiscal 8*] in Guaymallén, where they had several reports and publications on corruption and ongoing trials that could be related to the intimidation. The judiciary ordered public security measures for the online newspaper<sup>71</sup>.

25. On May 14, Ezequiel Oslé, reporter for the *laplataYA.com* portal, was violently rebuked by councilman Guillermo Renna who also threatened him with the loss of his job and said, "you don't know whom you are messing with". This due to a report published by the journalist a day earlier. On top of the threat, one of the advisors to the public official tried to assault him, but people at the scene stopped him<sup>72</sup>.

26. On May 19, the representatives of the province of Jujuy, Milagro Sala and Germán Noro, headed a protest in front of the *Pregón* newspaper facilities against a published report that Sala categorized as a "lie" and that included the incidents that occurred in the Túpac Amaru neighborhood where representative Sala has an organization with the same name. During the march, transit could not get through on the road where the building is. The media outlet offered the leaders the possibility of replying to what they felt was wrong in the publication. The Argentine Association of Journalism Entities [*Asociación de Entidades Periodísticas Argentinas*] (Adepa) categorized this as an event "tainted with intimidation"<sup>73</sup>. On May 22, some representatives proposed a reprimand of Sala and Noro for what they felt were intimidation tactics against the newspaper, attacks on the freedom of expression as well as violent incidents (stemming from the report). The proposal was rejected<sup>74</sup>.

27. On July 9, reporters Carolina Ponce de León, for *Radio Universidad*, Marisa Suárez, for *FM Láser*, and Sergio Silvia for *Channel 26*, were attacked by protective and guardians of the Vice-president of the Nation, Amado Boudou, while covering his visit in Tucumán<sup>75</sup>.

28. On July 18, an attack on *FM Radio San Jorge*, located at Caleta Oliva, where rocks were thrown at the station's windows in the province of Santa Cruz. The events occurred during the broadcast of the informational program "El ultimo que apague la luz" [the last one turns off the lights], led by journalist Ricardo Duarte, who was threatened days earlier by people showing him a firearm from a car<sup>76</sup>.

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<sup>70</sup> Rosario 3. April 7, 2014. ["Los periodistas no estamos dentro de este barro"](#); Enredando. April 5, 2014. [Repudio al amedrentamiento de los policías de Judiciales a trabajadores de prensa](#).

<sup>71</sup> MDZ Online. April 18, 2014. [Mensaje mafioso: Balas 9 mm en la puerta de MDZ](#); Diario Inédito. April 18, 2014. [Dejan dos balas en la puerta del diario mendocino MDZ](#); Fundación LED. April 18, 2014. [PREOCUPACIÓN ANTE LA INTIMIDACIÓN A MDZ ON LINE EN MENDOZA](#); Infobae. April 19, 2014. [Repudian una nueva amenaza a un diario en Mendoza](#); La Nación. April 19, 2014. [Dos balas y una amenaza a un diario de Mendoza](#).

<sup>72</sup> Agencia Nova. May 16, 2014. [La Plata: periodista denunció que el concejal Renna lo amenazó](#); laplataYA. May 15, 2014. [Concejal amenazó al periodista Ezequiel Oslé](#); Diagonales. May 15, 2014. [Fuerte cruce entre un edil y un periodista](#).

<sup>73</sup> Asociación de Entidades Periodísticas Argentinas (Adepa). May 22, 2014. [Manifestación intimidatoria contra Pregón de Jujuy](#); Infobae. May 22, 2014. [Adepa repudió la "manifestación intimidatoria" de Milagro Sala contra un diario de Jujuy](#).

<sup>74</sup> El Libertario. May 22, 2014. [El PJ evitó cuestión de privilegio contra Milagro Sala y Germán Noro](#); Infobae. May 22, 2014. [Adepa repudió la "manifestación intimidatoria" de Milagro Sala contra un diario de Jujuy](#); Pregón. May 23, 2014. [ADEPA repudia manifestación "intimidatoria" contra Pregón](#).

<sup>75</sup> Perfil. July 10, 2014. [Denuncian que custodios de Boudou agredieron a la prensa](#); Foro de Periodismo Argentino (FOPEA). July 9, 2014. [Custodios agreden a periodistas de Tucumán en un acto político](#).

<sup>76</sup> Foro de Periodismo Argentino (FOPEA). July 18, 2014. [Destrozan a pedradas ventanales de una radio de Caleta Olivia](#); Calafate Móvil. July 19, 2014; [Atentado contra Radio San Jorge en Caleta Olivia](#); La Opinión Austral. July 20, 2014. [Desconocidos causaron daños en una emisora de Caleta Olivia](#).



29. On July 26, Bruno Beck, the supervisor of Andresito, attacked missionary journalist Martín Sereno while the reporter was at the Multi-Sport complex at that municipality reporting on flood evacuees.<sup>77</sup>

30. On July 31, in the city of Santa Fe, three *Radio Sol* journalists were threatened and afterwards one of them suffered an attack. Reportedly, while criticizing the Institutional Security Guard [*Guardia de Seguridad Institucional (GSI)*], journalists Jorge Cantero, Ignacio Herraes and Alejandro Paganelli received a threat over the telephone where they were warned to quit those critics and that they would wait for them at the end of the show. Later, when the reporters were leaving the station, some hooded men were waiting for them in a black car with tinted windows. One of the attackers chased journalist Alejandro Paganelli, hit his car with violence and then fled with the others when he saw other members of the radio show.<sup>78</sup>

31. Graphic journalist Maximiliano Huyema for the *Tiempo de San Juan* newspaper was threatened as he worked on a report covering irregularities in the construction of a private neighborhood in the city of Rivadavia. Reportedly, while the journalist was working, a person came up to him and intimidated him saying that his fate would be the same as that of reporter José Luis Cabezas<sup>79</sup>, who was violently killed in 1997.<sup>80</sup>

32. On August 15, reporter Dante Leguizamón was threatened by the Chief of Police for the province of Córdoba, Inspector Julio César Suárez, both in person and in public for the reports pertaining to police activities. Reportedly, the Chief of Police told the journalist “[I] myself will take care of you”.<sup>81</sup> This event was the genesis of the prosecutor’s October 22 charge for coercion.<sup>82</sup>

33. On September 11, an unknown person burned Gustavo Sylvestre’s car, which was parked in front of his residence. The victim, director of the ‘Mañana Sylvestre’ radio program stated it was intentional<sup>83</sup>.

34. On September 11, the Periodismo Para Todos [Journalism for all] news team, headed by Rodrigo Alegre and Paula Bernini was interrupted in the Formosa province when attempting to arrive at a wichi school. Reportedly, a group of approximately 20 people forced the journalists to get out of the vehicle they were travelling in to be interrogated for about 2 hours by the attacking group, one of the leaders of the group was provincial representative Roberto Vizacaino<sup>84</sup>.

35. On November 8, In Santiago del Estero, unknown persons painted the garage door black and placed a miniature coffin at the house of the parents of journalist Leonel Rodríguez, correspondent for *La Nación* newspaper. The reporter related this threat to the coverage of the court case for the former supervisor of La Banda, Hector “Chabay” Ruiz, who is charged with sexual abuse. The journalist received threats through Facebook, where he was intimidated with: “stop messing around with Chabay” and similar

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<sup>77</sup> Foro de Periodismo Argentino (FOPEA). July 29, 2014. [FOPEA repudia la agresión física a periodista por parte del intendente de Andresito](#); Misiones para todos. No date. [Piden investigar al intendente Bruno Beck por la agresión al periodista Martín Sereno](#).

<sup>78</sup> La Capital. August 4, 2014. [Agresiones a periodistas santafesinos en Parque Alberdi](#); El Litoral. July 31, 2014. [Amenazaron a periodistas de FM Sol](#); Radio Sol Santa Fe/YouTube. July 31, 2014. [Amenazas y agresiones a periodistas de SOL 91.5](#).

<sup>79</sup> Foro de Periodismo Argentino (FOPEA). August 5, 2014. [Amenazan a fotógrafo en San Juan](#); El Tiempo de Asan Juan. August 11, 2014. [Después de la denuncia, en el Del Bono Green comenzaron una demolición](#).

<sup>80</sup> Info Huella. January 25, 2014. [Cabezas: "17 años del asesinato del Reportero Gráfico"](#); Telam. January 25, 2014. [Familiares y colegas realizaron un homenaje a Cabezas en Pinamar](#).

<sup>81</sup> Agencia Nacional de Noticias Jurídicas. August 19, 2014. [Las amenazas no se solucionan pidiendo disculpas](#).

<sup>82</sup> Cadena 3. October 23, 2014. [Imputaron por coacción al jefe de Policía de Córdoba](#); Telam. October 22, 2014. [Imputan al jefe de Policía de Córdoba por intimidación a periodista](#).

<sup>83</sup> Reporters Without Borders (RSF). September 17, 2014. [Well-Known Tv Host's Car Torched Outside Buenos Aires Home](#); Clarín. September 11, 2014. [Incendiaron la camioneta del periodista Gustavo Sylvestre](#); La Nación. September 11, 2014. [Prenden fuego la camioneta del periodista Gustavo Sylvestre: "Obviamente fue intencional"](#).

<sup>84</sup> Última Hora. September 12, 2014. [La Fundación LED manifiesta su repudio a las amenazas sufridas por el equipo periodístico del programa Periodismo para Todos en Formosa](#); Foro de Periodismo Argentino (FOPEA). September 12, 2014. [Ataque a un equipo de PPT en Formosa](#).

expressions<sup>85</sup>. Likewise, during the month of August, while Leonel Rodríguez was covering the campaign closure for the municipal elections in La Banda, “Chabay’s” youngest son came up to him to threaten him<sup>86</sup>. Continuing with threats, during the month of October, Gustavo Pabón, the press director of La Banda, contacted the reporter’s brother, Lucian Rodríguez, who has a sports program, and told him: “Everything is fine with you, but I have to withdraw your documents because Chabay is fuming at your brother”<sup>87</sup>.

36. On November 13, journalist Germán de los Santos, correspondent for *La Nación* newspaper in Rosario, received several telephone calls wherein there were threats on his life. Reportedly, the threats were related to the journalist’s reports on drug trafficking in Rosario and the surrounding areas, which he has been covering for some time<sup>88</sup>. The House of Representatives expressed repudiation against these acts, manifesting solidarity with the journalist<sup>89</sup>. The Office of the Special Rapporteur informed the State of the concern about these and other threats against reporters who investigate organized crime. The State informed the Rapporteurship that the investigation was filed under the number 23.303/14 (Fiscalnet 126.412/14) before the Office of the Federal Public Prosecutor of First Instance #3 [*Fiscalía Federal de Primera Instancia Nro. 3*] of Rosario, with the title “*Srio. Av. s/Amenazas con armas o anónimas. Dte.: German Guillermo De Los Santos*”, and that the Attorney and the Attorney General’s Office [*Procuraduría General de la Nación*] had adopted all “the measures needed to guarantee the physical integrity of Mr. De los Santos and his family”.<sup>90</sup>

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

### C. Attacks and threats against reporters and journalists within the context of protests

38. The Office of the Special Rapporteur learned that during different protests, where police were demanding a salary increase, occurring in different cities in the country in early December of 2013; there were robberies, attacks and or threats against the journalists covering them. As in the cases of photo reporter Carlos Sánchez, for the online newspaper *La Voz de Jujuy*; Ángel Díaz, reporter for *RadioVisión de Jujuy*; Luis Lettier and Gonzalo Rodríguez, for *Canal 4 Noticias* [Channel 4 News], in the province of Jujuy<sup>91</sup>. Also, the cases of reporter Belén Salvaña, cameraman Crisitan Ponce and technician Miguel Debiassi, the reporting team for *Channel 5* for Rosario<sup>92</sup>; and Leo Botta, for the cable network for *El Litoral*<sup>93</sup> newspaper in

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<sup>85</sup> Fondo de Periodismo Argentino (FOPEA). November 8, 2014. [Alerta por acciones intimidatorias contra periodista de Santiago del Estero](#); TN. November 8, 2014. [Atacaron la casa de los padres de un periodista en Santiago del Estero](#).

<sup>86</sup> Fondo de Periodismo Argentino (FOPEA). November 8, 2014. [Alerta por acciones intimidatorias contra periodista de Santiago del Estero](#); La Nación. November 8, 2014. [Amenazan a un periodista de LA NACION en Santiago del Estero](#).

<sup>87</sup> Fondo de Periodismo Argentino (FOPEA). November 8, 2014. [Alerta por acciones intimidatorias contra periodista de Santiago del Estero](#); Infobae. November 8, 2014. [Amenazan al periodista de Santiago del Estero que denunció a un intendente por abuso sexual](#).

<sup>88</sup> La Nación. November 13, 2014. [Otro periodista de LA NACION amenazado: ahora fue en Rosario, tras publicar notas sobre el narcotráfico](#); Fondo de Periodismo Argentino (FOPEA). November 13, 2014. [Profunda preocupación de Fopea por las amenazas al periodista Germán de los Santos](#); El Litoral. November 13, 2014. [Periodista recibió amenazas](#).

<sup>89</sup> Cámara de Diputados de la Nación. November 13, 2014. [Proyecto de Declaración](#).

<sup>90</sup> Permanent Mission of the Republic of Argentina to the OAS. January 19, 2015. Letter including note SDH/DAI No. 20/15 from the Office of the Attorney against Narcocriminalistics of the Attorney General’s Office [*Procuraduría contra la Narcocriminalidad de la Procuraduría General de la Nación*].

<sup>91</sup> La Voz de Jujuy. December 10, 2013. [Otro ataque a la prensa en Jujuy: En la revuelta policial golpean y roban a periodistas de La Voz, Canal 4 y Canal 7](#); Foro de Periodismo Argentino (FOPEA). December 11, 2013. [FOPEA se solidariza con los periodistas agredidos en Jujuy e intimidados en Santa Fe](#); Reporters Without Borders (RSF). December 13, 2013. [Journalists Attacked During Police Demonstrations in Provinces](#); Centro Latinoamericano de Derechos Humanos (Cladh). No date. [COMUNICADO DE PRENSA | ATAQUES A PERIODISTAS](#).

<sup>92</sup> Foro de Periodismo Argentino (FOPEA). December 11, 2013. [FOPEA se solidariza con los periodistas agredidos en Jujuy e intimidados en Santa Fe](#); Reporters Without Borders (RSF). December 13, 2013. [Journalists Attacked During Police Demonstrations in Provinces](#); Centro Latinoamericano de Derechos Humanos (Cladh). No date. [COMUNICADO DE PRENSA | ATAQUES A PERIODISTAS](#); Diario

the province of Santa Fe. In the Tucumán province, the cases of photographer Jorge Olmos Grosso and correspondent Luis María Ruiz, both for the *La Gaceta* newspaper; Daniel Gollán, independent reporter; Gianni Bulacio, for the *El Tribuno* newspaper of Tucumán; Sebastián Lorenzo Pisarello, for the APA! agency<sup>94</sup>, Marcelo Cuello, reporter for State television *Channel 10*; Sol Iriarte, for the *CCC* channel; Eduardo Paul, for *Channel 8*<sup>95</sup>.

39. Brian Palacio, freelance photographer, was kidnapped, beat and threatened by operatives of the National Gendarmerie while covering a protest in a municipality in the province of Buenos Aires. According to reports, after Palacio took photographs of security agents presumably beating protesters, members of the police took Palacio by force into a truck where they kept him as they drove around and beat him threatening to “throw him into the Riachuelo [creek]”. The operatives forced him to delete the images, took all his work equipment; took his personal information and when they let him out of the truck they threatened to go looking for him if he filed a complaint regarding the event. Palacio’s mother filed a complaint with the Prosecutor, and on January 3 the photo reporter presented a statement where he admitted he had no witnesses to the event<sup>96</sup>.

40. On January 12, two indigenous peoples journalists were violently repressed by the police in the Jujuy province, they also threatened them, and physically and verbally assaulted them after having detained them. According to reports, Sergio González, for *Luna Azul* radio in Humahuaca, and Armando Quispe (or Kispe), for *FM Pachakuty* in Abra Pampa, were filming and recording an indigenous community protesting Rally Dakar going through the area. During the alleged attack on the journalists, the police tried to take their cellular telephones and video recordings. Lastly they were detained for “resisting authorities”<sup>97</sup>. Days later, the Argentine Indigenous Community Audiovisual Journalism Coordinator [*Coordinadora de Comunicación Audiovisual Indígena Argentina*] (CCAIA) published a press release stating that Quispe was “harassed by the security forces of the province” after alleging he was detained again in the early morning hours of January 20. That day, after the closing of a folklore festival, the provincial police subdued Quispe, threw him to the ground, handcuffed him and transported him to a police station for a “background check”<sup>98</sup>.

41. On May 20, commencing the trial against ex prosecutor José María Campagnoli, protesters, allegedly supporters for the public official, assaulted, insulted, and tried to beat some of the reporters who were covering the event; including journalist Marcela Ojeada for *Continental* radio<sup>99</sup>. On June 4, Mónica

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Registrado. December 10, 2013. [Rosario: policías acuartelados increpan a una periodista y al cámara](#); El Litoral. December 10, 2013. [Robos, ataques a comercios y aprietes a periodistas](#).

<sup>93</sup> Foro de Periodismo Argentino (FOPEA). December 11, 2013. [FOPEA se solidariza con los periodistas agredidos en Jujuy e intimidados en Santa Fe](#); Centro Latinoamericano de Derechos Humanos (Cladh). No date. [COMUNICADO DE PRENSA | ATAQUES A PERIODISTAS](#).

<sup>94</sup> Reporters Without Borders (RSF). December 13, 2013. [Journalists Attacked During Police Demonstrations in Provinces](#); Foro de Periodismo Argentino (FOPEA). December 12, 2013. [Graves agresiones a periodistas y reporteros gráficos](#);

<sup>95</sup> Foro de Periodismo Argentino (FOPEA). December 12, 2013. [Graves agresiones a periodistas y reporteros gráficos](#); Centro Latinoamericano de Derechos Humanos (Cladh). No date. [COMUNICADO DE PRENSA | ATAQUES A PERIODISTAS](#); El Intransigente. December 14, 2013. [Cerisola condenó a los manifestantes que agredieron a periodistas en Plaza Independencia](#).

<sup>96</sup> Clarín. January 2, 2014. [Un fotógrafo denunció que fue torturado por gendarmes luego de cubrir una protesta](#); Foro de Periodismo Argentino (FOPEA). December 30, 2013. [Fotógrafo denuncia haber sido secuestrado y golpeado por Gendarmería Nacional en el conurbano](#); Infobae. January 2, 2014. [Un fotógrafo denunció agresiones por parte de la Gendarmería](#); Reporters Without Borders (RSF). January 6, 2014. [Government Urged to Hold Gendarmes to Account for Detaining and Beating Photographer](#).

<sup>97</sup> Foro de Periodismo Argentino (FOPEA). January 16, 2014. [FOPEA repudia la violenta represión y detención de comunicadores indígenas en Jujuy](#); Prensa Jujuy. January 16, 2014. [Dakar: periodistas indígenas reprimidos están imputados por “resistencia a la autoridad”. Repudio](#).

<sup>98</sup> Jujuy al momento. January 28, 2014. [Comunidades originarias denuncian persecución policial](#); Prensa Jujuy. January 23, 2014. [Jujuy, contra la prensa: después de la represión del Dakar, policía persigue a periodista indígena](#); Las 24 horas de Jujuy. January 22, 2014. [DENUNCIAN QUE COMUNICADORES INDÍGENAS SON PERSEGUIDOS POR LA POLICÍA DE JUJUY](#); Coordinadora Latinoamericana de Cine y Comunicación de los Pueblos Indígenas (Clacpi)/Télam. No date. [Argentina: Preocupación por nueva detención de comunicador indígena](#).

<sup>99</sup> Télam. May 20, 2014.

Kreibohm, reporter for *Norte* newspaper, was injured by a rubber bullet while covering protests by different civilian groups in the 25 de Mayo Plaza in the city of Resistencia, in the Chaco province. The journalist tried to intervene in order to avoid the detention of one protestor who lost her balance when a police officer shot one of her legs. The journalist manifested that she would file a complaint against the attacker<sup>100</sup>.

42. Reporters Ariel Lima, news program *Channel 7*, and Jennifer di Serio, for *CN23*, in the city of Buenos Aires, were beat by National Gendarmerie agents while they were covering the protest on the Pan-American Highway at the border with Buenos Aires, where protesters to those who were laid off by the Lear multinational corporation demanded their jobs be returned<sup>101</sup>.

43. In 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>102</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>103</sup>

#### **D. Adaptation to the Audiovisual Communication Services Law**

44. Law 26.522 regulating “Audiovisual Communication Services in the territorial jurisdiction of the Republic of Argentina” was enacted on October 10, 2009. In 2010, the Grupo Clarín filed a writ of unconstitutionality [*acción de inconstitucionalidad*] against four Articles. In December of 2012 the National Civil and Commercial Federal Court of First Instance No. 1 [*Juzgado Nacional de Primera Instancia en lo Civil y lo Comercial Federal No. 1*] rejected the writ. The Grupo appealed the decision and the National Civil and Commercial Appeals Chamber [*Cámara Nacional de Apelaciones en lo Civil y Comercial*] issued a ruling, partially admitting the writ. The matter was brought before the Supreme Court of Justice that ruled on October 29, 2013. In the opinion it declared the Articles in question were constitutional and, in this case, the right to freedom of expression of the Grupo Clarín had not been infringed upon<sup>104</sup>.

45. The State reported to the Office of the Special Rapporteur that the Federal Authority on Audiovisual Communication Services [*Autoridad Federal de Servicios de Comunicación Audiovisual*] (AFSCA) received 40 proposals for voluntary adaptation to the new limits on licence concentration for media providers that the Law 26.522 established, out of which 21 were formally admitted, 16 were rejected due to

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<sup>99</sup> Télam. 20 de mayo de 2014. [Agresiones de Manifestaciones a periodistas en la audiencia por Campagnoli](#); 24Con. May 20, 2014. [El fiscal Campagnoli señaló que apelará si es necesario](#); INFOnews. May 20, 2014. [Seguidores de Campagnoli agredieron a periodistas en el ingreso del fiscal al jury](#).

<sup>100</sup> Norte. June 4, 2014. [Periodista de NORTE alcanzada por posta de goma](#); Infobae. June 4, 2014. [Chaco: heridos y detenidos tras una manifestación de estatales, desocupados y aborígenes](#); Informe Reservado. No date. [Chaco: heridos y detenidos tras una manifestación de estatales, desocupados y aborígenes](#); Diario Chaco. June 5, 2014. [Olivello aseguró que no disparó contra la periodista Kreibohm](#).

<sup>101</sup> Foro de Periodismo Argentino (FOPEA). August 8, 2014. [Gendarmería Nacional golpeó a periodistas durante una protesta en Panamericana](#); Colectivo de Trabajadores de Prensa (CTP). August 8, 2014. [No a la represión en Lear: la Gendarmería golpeó a trabajadores de prensa y detuvo a una nieta restituida](#).

<sup>102</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>103</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>104</sup> IACHR. Annual Report 2013. [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. 149. Doc. 50. December 31, 2013. Para. 18 – 19.

adaptation not being a requirement and 3 were pending disposition. Likewise, two official adaptation procedures began on proposals that had been formally accepted, one is for Grupo Clarín, S.A., and the other for Cadena 3. In the latter, the State remarked that partial approval for the execution of the formally admitted proposal is pending discussion that would result in ordering the official transfer of two licenses.<sup>105</sup> After receiving the information, the government approved two other proposals of the three that were pending and only one was left.<sup>106</sup>

46. Under the process of adapting to the new law, several groups presented adaptation plans, including the following: Grupo Clarín, Grupo Uno Media, Telefó (belonging to Telefónica from Spain), the Spanish group Prisa, Grupo Indalo, and Directv from the United States.<sup>107</sup>

47. Grupo Uno Media had cable TV licenses, free-to-air and cable TV channels, and radio stations. Their proposal for adapting to the new law, which was accepted by the AFSCA in February 2014, consisted on allocating licenses among smaller companies reportedly created by the shareholders and their families.<sup>108</sup> The proposal of the Grupo Indalo, owner of a cable television channel, a UHF license and various radios, involved the sale of two FM stations in Buenos Aires and the UHF signal.<sup>109</sup> Directv, meanwhile, had to adapt the property of a local channel, so they decided to enroll Golf Channel as part of its Argentine subsidiary.<sup>110</sup> All these proposals adequacy were approved by the regulatory body.

48. On December 2014, two other groups obtained the approval of its plans to adjust to the law of audiovisual media services: Telefó, which had nine licenses to broadcast, exceeded the limit of 35 percent potential audience in the country and was linked to a foreign telephone company with operations in the country (Telefónica from Spain), and Prisa, owner AM Radio Continental and other stations, with more than 30 percent of its property in foreign hands and which had a greater number of radio licenses than allowed. The AFSCA approved the proposal of Telefó (Television Federal SA) based on the fact that its links with Telefónica de Argentina, one of the two landline phone companies in the country, which also provides mobile services, were indirect. According to the law, anyone who “owns ten percent (10%) or more” of shares of a “provider by license, concession or permission from a national public service, provincial or municipal” can not hold or be shareholder of audiovisual media services (Art. 25). The AFSCA validated Telefó’s adequacy plan on the understanding that “no impediment” because both the television company as telephone independently owned headquarters in Spain.<sup>111</sup> Telefó meanwhile undertook to sell two channels. In

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<sup>105</sup> Communication from the Permanent Mission of the Republic of Argentina to the OAS. Note No. 871 of November 21, 2014 forwarding the communication from the Autoridad Federal de Servicios de Comunicación Audiovisual. Note #288 AFSCA/DNGAyDSA/14 of November 12, 2014 to the Office of the Special Rapporteur for Freedom of Expression. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>106</sup> Autoridad Federal de Servicios de Comunicación Audiovisual (AFSCA). [Resolución 1593/14](#). December 30, 2014; Autoridad Federal de Servicios de Comunicación Audiovisual (AFSCA). [Resolución 1592/14](#). December 30, 2014.

<sup>107</sup> Perfil. November 11, 2012. [Ley de medios: cuáles son los grupos que deberán adecuarse antes del 7D](#); Autoridad Federal de Servicios de Comunicación Audiovisual (AFSCA). [Resumen de propuestas presentadas formalmente](#). December 2012.

<sup>108</sup> Infobae TV. February 19, 2014. [Daniel Vila: “No tengo dudas de que el Grupo Clarín salió beneficiado de esta puja”](#); Infobae. February 17, 2014. [Ley de medios: la Afsca aprobó el plan de adecuación del grupo Clarín](#); Perfil. May 4, 2013. [Aprobarían la adecuación de Vila y Manzano a la Ley de Medios](#); Autoridad Federal de Servicios de Comunicación Audiovisual (AFSCA). [Resolución 196/14](#). February 18, 2014.

<sup>109</sup> Minuto Uno. March 5, 2013. [La AFSCA aprobó la propuesta de adecuación de Indalo](#); La Voz. January 22, 2014. [Aprueban el plan de adecuación de los medios de Cristóbal López](#); Página/12. December 3, 2012. [Los que elevaron su plan de adecuación](#).

<sup>110</sup> Autoridad Federal de Servicios de Comunicación Audiovisual (AFSCA). [Resolución 618/13](#). May 8, 2013.

<sup>111</sup> “[...] La controlante última de Televisión Federal Sociedad Anónima es Telefónica Sociedad Anónima, sociedad constituida bajo las leyes del Reino de España, que a su vez es controlante indirecta a través de Telefónica Internacional Sociedad Anónima de Telefónica de Argentina Sociedad Anónima, sociedad prestadora del servicio de telefonía. (...) La prestación de un servicio público por parte de una sociedad controlada indirectamente por quien a su vez controla indirectamente a la licenciataria no constituye obstáculo alguno para la prestación del servicio de comunicación audiovisual por parte de la firma Televisión Federal Sociedad Anónima”. Autoridad Federal de Servicios de Comunicación Audiovisual (AFSCA). [Resolución 1593/14](#). December 30, 2014; Clarín. December 17, 2014. [Ley de medios: aprobaron que Telefónica se quede con Telefó](#); El Cronista. December 17, 2014. [Ley de medios: la Afsca aprobó que Telefónica se quede con Telefó](#); Perfil. December 17, 2014. [El AFSCA aprobó el plan de adecuación de Telefó](#).

December, the AFSCA also approved the plan of the Grupo Prisa (Radio Continental and other stations), due to a reciprocal agreement with Spain that exempts them to comply with the maximum of foreign ownership permitted, and said they would transfer of some licenses.<sup>112</sup>

49. With regard to Grupo Clarín, on October 8, the Federal Authority on Audiovisual Communication Services [*Autoridad Federal de Servicios de Comunicación Audiovisual*] (AFSCA) rejected the adaptation proposal with Resolution 1121/14 and decided to start the adequacy *ex officio*<sup>113</sup>. The rejected proposal was formally deemed admissible on February 18, with Resolution 193/14, understanding that it “divid[ed] the structure of Grupo Clarín into six (6) Units of Audiovisual Communication Services, where there should be no partnership between the direct and indirect shareholders”.<sup>114</sup> On May 16, the group submitted to AFSCA, National Securities Commission [*Comisión Nacional de Valores*] (CNV), and the Stock Exchange; the names of those who would remain in charge of the two business units it would divide into as an adaptation to this law<sup>115</sup>. According to an analysis conducted by AFSCA’s technical groups, Grupo Clarín tried to “cheat to evade the law”<sup>116</sup> through the use of “crossed partnerships”.<sup>117</sup> The director of said entity, Martín Sabbatella, stated that through the adaptation plan, the Grupo tried to “fake a sale that was just smoke and mirrors to hide the fact that the current owners would continue managing the company as one great big partnership”<sup>118</sup> and that both independent business units, “[would] maintain commercial ties with partnerships formed in Panama, United States, New Zealand and Argentina”<sup>119</sup>. On October 31, Civil and Commercial Federal Court Judge, Horacio Alfonso, issued a precautionary measure *a priori*, suspending the official adaptation until the matter presented by multimedia is resolved. According to the judge, “taking into account the importance of the matter at hand, as well as the facts in the case” “it is appropriate to order” AFSCA and other bodies to “abstain from executing, on their own or through a third party, anything relating to the ordered official transfer until the disposition of the requested remedy”<sup>120</sup>.

50. Grupo Clarín argued that its plan is strictly within the confines of the Law, as the sale and division of its units is compatible with the law. Similarly, with the *ex officio* adaptation the government is in violation of the right to due process by not providing sufficient notice that they would start the *ex officio* adaptation, in violation of the principles in the 2013 Supreme Court Opinion; as a government decision implies unequal treatment with other media groups.<sup>121</sup> In December 2014, the judge Horacio Alfonso ruled

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<sup>112</sup> Infobae. December, 16 2014. [Ley de medios: la Afsca aprobó las adecuaciones de Telefé y el Grupo Prisa](#); Autoridad Federal de Servicios de Comunicación Audiovisual (AFSCA). [Resolución 1592/14](#). December 30, 2014.

<sup>113</sup> Autoridad Federal de Servicios de Comunicación Audiovisual (AFSCA). [Resolución 1121/14](#)

<sup>114</sup> Autoridad Federal de Servicios de Comunicación Audiovisual (AFSCA). [Resolución 193/14](#).

<sup>115</sup> Grupo Clarín. May 16, 2014. [Comunicado: Propuesta de nuevos accionistas en el plan de adecuación](#); Télam. May 16, 2014. [Maqnetto y Herrera de Noble abandonarán el Grupo Clarín](#); Minuto Uno. May 16, 2014. [El Grupo Clarín se adecua a la Ley de Medios e informó cómo lo hará](#); Página 12. May 17, 2014. [Los nombres de la división de Clarín](#).

<sup>116</sup> Autoridad Federal de Servicios de Comunicación Audiovisual (AFSCA). October 12, 2014. [Información sobre plan de adecuación del Grupo Clarín y sus vinculaciones societarias](#).

<sup>117</sup> Autoridad Federal de Servicios de Comunicación Audiovisual (AFSCA). October 10, 2014. [Sabbatella: “Clarín confirma que querían hacer trampa y que lo que denunciamos es cierto”](#).

<sup>118</sup> Autoridad Federal de Servicios de Comunicación Audiovisual (AFSCA). October 11, 2014. [Sabbatella: “Hemos descubierto una clara maniobra planificada por Clarín para burlar la ley”](#).

<sup>119</sup> Autoridad Federal de Servicios de Comunicación Audiovisual (AFSCA). October 10, 2014. [Sabbatella: “Clarín confirma que querían hacer trampa y que lo que denunciamos es cierto”](#).

<sup>120</sup> La Nación. November 1, 2014. [Grupo Clarín: suspenden la adecuación de oficio](#); La Política Online. No date. [La justicia suspendió la adecuación de oficio que Afsca quiere hacerle a Clarín](#); Clarín. November 1, 2014. [Freno judicial a la adecuación de oficio de Clarín](#).

<sup>121</sup> La Nación. November 1, 2014. [Grupo Clarín: suspenden la adecuación de oficio](#); Clarín. November 1, 2014. [Freno judicial a la adecuación de oficio de Clarín](#); Perfil. November 1, 2014. [Con una nueva cautelar, Clarín consiguió frenar la adecuación de oficio](#); El Mundo. October 10, 2014. [El grupo Clarín denuncia un ataque y un trato desigual por parte del Gobierno argentino](#).

suspension for six months to the adequacy of Grupo Clarin, and the decision was later appealed by the AFSCA.<sup>122</sup>

## E. Subsequent Liabilities

51. In December of 2013, Juan Pablo Suárez, the director for online media outlet *Última Hora*, was detained in the city of Santiago del Estero, after being charged of instigation for insurrection, after covering the supposed repression of a police officer demanding better salaries. The reporter spent ten days in prison. On May 13, Federal Court Judge Pedro Simón, increased the severity of the complaint by charging Suárez with the crime of instigation to collective violence, aggravated by the goal of terrorizing the population, which meant the Antiterrorism Law was applicable<sup>123</sup>. The case dates back to December 9, 2013, when Suárez recorded a video of an alleged repression against a police officer who was protesting for a salary increase. Hours later, Appointed Criminal Judge 5 for regular justice of the province ordered a search of *Última Hora*. During the search, the authorities seized several computers and other electronics used for drafting, among those, the video recording of the alleged repression. Suárez was detained during that search<sup>124</sup>. On May 27, judge Molinari reversed the insurrection charges and the applicability of the antiterrorism law against the journalist, but prosecuted him for incitation to violence. According to available reports, the judge based his decision on messages found in mobile telephones belonging to the journalist and the policeman (the victim of the alleged recorded repression). In these messages the police officer allegedly asked for “more people at the protest”; the judge considered this was “instigating the police to confine themselves” as the rest of the country had done. The crime of instigation to violence carries a sentence of three to six years<sup>125</sup>. On October 15, the prosecutor for the Federal Appeals Chamber of Tucumán, Gustavo Gómez, requested the proceedings against the reporter be nullified due to the absence of a crime<sup>126</sup>, which would eventually occur when the Court ruled to overturn the charge and conviction<sup>127</sup>.

52. The IACHR notes that Inter-American case law and doctrine on this matter<sup>128</sup> provides that the imposition of penalties for abusing freedom of expression in keeping with the charge of inciting violence (understood as inciting commission of crimes, breach of public order or national security) is to be based on current, reliable, objective and strong evidence that the person was not simply expressing an opinion (no matter how harsh, unjust, or disturbing it may be), rather that the person had the clear intention of committing a crime and there was a current, real, and effective likelihood that he could achieve these objectives. Were this not to be the case, this would mean opening up the possibility of punishing opinions,

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<sup>122</sup> Telam. December 11, 2014. [La Afsca apeló la cautelar que suspende la adecuación de oficio del Grupo Clarín a la ley de medios](#); CBA24n. December 10, 2014. [Cautelar para Clarín suspende adecuación de oficio](#); iProfesional. December 11, 2014. [Ley de Medios: la Justicia frenó la adecuación de oficio del Grupo Clarín](#); Página/12. December 20, 2014. [“Favorecen a las corporaciones”](#).

<sup>123</sup> Última Hora. May 12, 2014. [Ley Antiterrorista contra Juan Pablo Suarez](#); La Nación. May 12, 2014. [Fuerte rechazo de Fopea a la aplicación de la ley antiterrorista contra un periodista](#); Clarín. May 12, 2014. [Santiago del Estero: repudian la aplicación de ley antiterrorista contra un periodista](#); Infobae. May 12, 2014. [Por primera vez podrían aplicar la Ley Antiterrorista a un periodista](#); Foro de Periodismo Argentino (FOPEA). May 11, 2013. [FOPEA repudia la aplicación de la ley antiterrorista contra el periodismo](#); Última Hora. May 12, 2014. [Jorge Lanata entrevistó a Juan Pablo Suarez](#); Foro de Periodismo Argentino (FOPEA). December 19, 2013. [Detención arbitraria a periodista en Santiago del Estero](#); Continental. May 16, 2014. [El fiscal Simón defendió la aplicación Ley Antiterrorista a un periodista santiagueño](#).

<sup>124</sup> Última Hora. December 10, 2013. [ALLANARON NUESTRAS OFICINAS](#); La Nación. December 12, 2013. [Santiago del Estero: detuvieron a un periodista y lo acusaron de sedición](#); Clarín. December 16, 2013. [Sigue detenido el periodista acusado de “sedición”](#); TN. December 11, 2013. [ACOSO POLICIAL Y DETENCION DE NELSON VILLAGRAN Y UN PERIODISTA EN SANTIAGO DEL ESTERO](#); Knight Center for Journalism in the Americas. December 18, 2013. [Argentine journalist accused of instigating police strike, lootings faces sedition charges](#).

<sup>125</sup> La Nación. May 28, 2014. [Procesan a un periodista por incitar a la violencia](#); Cadena 3.com. May 28, 2014. [Rechazan imputación a periodista por la Ley Antiterrorista](#); El AncaStí. May 28, 2014. [Levantán acusación contra periodista](#); Última Hora. May 28, 2014. [Santiago del Estero: procesaron al periodista Suárez por incitación a la violencia](#).

<sup>126</sup> Cadena 3. October 16, 2014. [Piden sobreseer al periodista acusado por Ley Antiterrorista](#); La Nación. October 15, 2014. [Piden el sobreseimiento del periodista santiagueño acusado por ley antiterrorista](#).

<sup>127</sup> Última Hora. October 30, 2014. [La Justicia sobreseyó al periodista santiagueño, Suarez](#); Info Judicial. November 2, 2014. [Stgo. del Estero: Sobreseyeron al periodista denunciado](#).

<sup>128</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteurship 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. Paragraph 59.

and any States would be empowered to suppress any critical thought or statement about authorities which, as would be the case with anarchism or opinions that are radically opposed to the established order, questions even the very existence of the established institutions.

53. Furthermore, Inter-American case law and scholarly legal opinion has stipulated that laws establishing limitations on freedom of expression are to be drawn up in the clearest and most exact terms possible, inasmuch as the legal framework must provide legal certainty to citizens.<sup>129</sup> This requirement takes on even greater importance when it is a question of limitations imposed on freedom of expression by criminal law. In this regard, the Inter-American Court of Human Rights has indicated that these kinds of limitations must also meet the strict requirements of the principle of legality, in keeping with Article 9 of the American Convention on Human Rights: “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>130</sup> The foregoing reveals itself in the need “use strict and unequivocal terms, clearly restricting any punishable behaviors,”<sup>131</sup> which implies “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>132</sup>

54. Journalist Agustín Bottinelli was prosecuted before judge Sergio Torres for the crime of coercion stemming from a 1979 publication. He would be the first in the field of journalism to be prosecuted for crimes against humanity at the national level. On September 10, 1979, an article titled “The mother of a deceased subversive [person] speaks” [*Habla la madre de un subversivo muerto*] was published in the *Para Tí* magazine. In the article Mrs. Thelma Jara de Cabezas was shown as regretful as she described how the guerrillas had deceived her son for him to join them in arms. At that time, the interviewee was held captive at the Naval School of Mechanical Engineering [*Escuela Superior de Mecánica de la Armada*] (ESMA) and her son had disappeared as of 1976, complaints had been filed before different Human Rights organizations. The ruling in the judiciary stated that “[the] object of the report was to create doubt or hide the practice of illegal detentions and forced disappearances, including that of the interviewee, and to spread the idea that these disappearances were lies planted by the Human Rights organizations [...]”<sup>133</sup>.

## F. Freedom of Expression and the Internet

55. In October, the Press Secretary, Chief of Staff and Ministers for Federal Planning, Public Investment and Services, and Economy introduced the Digital Argentina Bill of Law [*Ley Argentina Digital*]. This bill of law aims to standardize and regulate Information and Communications Technology (ICTs). During the presentation the Chief of Staff stated that the right to communication, “is a human right and therefore everyone should have access to it under equal circumstances”. He emphasized that the regulation, “is public policy” and that, “[it] excludes content regulation”. The minister ensured the initiative would allow, “all residents access to information and communications services under equal conditions and with the highest quality parameters”<sup>134</sup>. Debates on the bill will commence on November 4 in the National Senate Technology,

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<sup>129</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteurship 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. Paragraph 69.

<sup>130</sup> I/A Court HR., *Case of Usón Ramírez v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207, paragraph 55.

<sup>131</sup> Inter-American Court of HR., *Case of Usón Ramírez v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207, paragraph 55.

<sup>132</sup> Inter-American Court of HR., *Case of Usón Ramírez v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207, paragraph 55.

<sup>133</sup> Infonews. November 5, 2014. [Les a humanidad: procesaron al ex director de una revista](#); Publico. November 9, 2014. [Argentina procesa a un periodista por delitos de lesa humanidad](#). Página 12. November 5, 2014. [Un periodista procesado por cómplice](#).

<sup>134</sup> Ministerio de Economía. October 29, 2014. [Kicillof: “Es un derecho de todos los argentinos acceder a la mejor tecnología”](#).



Media and Communications Committee [*Comisión de Sistemas, Medios y Comunicación del Senado de la Nación*]<sup>135</sup>.

56. Among other things, the original<sup>136</sup> bill enabled telephone companies to provide audiovisual communication services, allowing them access to licenses for the provision of the so called “quadruple play” (satellite television, Internet service provider, 4G telephone network, and land lines). This was specifically barred in the Audiovisual Communication Services Law [*Ley de Servicios de Comunicación Audiovisual*] enacted on October 10, 2009 and declared constitutional by the Supreme Court of Argentina<sup>137</sup>. Throughout the entire bill process, the Office of the Special Rapporteur received information from several civil society organizations expressing their concern on various aspects of the law and how quickly it went through congress. These concerns were based on: i) the lack of precision in the provision containing the main principle, “net neutrality”; ii) the obligation the state has not to interfere in the web content layer; iii) presumable lack of independence and autonomy the government has in designing the enforcement of the law in regulating certain aspects of technology linked to Internet; iv) the lack of precision to define the concept pertaining to “information technology and communications services” which could cause confusion as to who is subject to the Law, iii) lack of protection of the right to privacy in information technology and communications usage as well as the need to establish the inviolability of the so called metadata, including traffic and geolocation services, iv) the lack of clear procedure and regulations for determining significant market power of the providers and progressive measures to avoid possible imbalance; v) lack of definition of a sanctioning body, which should be regulated by the enforcement authority<sup>138</sup>.

57. According to official information, the Argentina Senate Technology, Media and Freedom of Expression Committee [*Comisión de Sistemas, Medios de Comunicación y Libertad de Expresión*] issued its support for the Law on November 19. According to this opinion, telephone companies could not provide satellite television services and they would gradually begin providing audiovisual communication services<sup>139</sup>. At that time, a clause was added to the bill setting forth the obligations that telecommunications service licensees have, and end users’ rights such as, “equal, reliable and continuous” access to ICTs. Furthermore it requires the enforcement authority ensure, “competition and the development of regional markets thereby leveling the playing field vis-à-vis large companies”. The bill specifically excluded all regulation of web content<sup>140</sup>.

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<sup>135</sup> ARG Noticias. November 3, 2014. [Comienzan a debatir la ley Argentina Digital](#); Diario Registrado. November 4, 2014. [Comienza el tratamiento del proyecto de ley 'Argentina Digital' en el Senado](#).

<sup>136</sup> Poder Ejecutivo Nacional. Proyecto de Ley PE No. 365/14. October 29, 2014. Available for consultation at: <http://www.senado.gov.ar/parlamentario/parlamentaria/exp>

<sup>137</sup> IACHR. [Annual Report 2013. 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). OAS/Ser.L/V/II.149. Doc. 50. December 31, 2013. Pars. 27, 133-176 Corte Suprema de Justicia de la Nación. [Grupo Clarín AS y otros c/Poder Ejecutivo Nacional y otros/ acción meramente declarativa](#). October 29, 2013.

<sup>138</sup> Asociación por los Derechos Civiles (ADC) and Fundación Via Libre. November 25, 2014. [La ADC y Fundación Via Libre manifiestan su preocupación por el dictamen de "Argentina Digital"](#); Universidad de San Andrés. November 26, 2014. [Comentario al proyecto de ley Argentina Digital](#); CELE and Universidad de Palermo. November 13, 2014. [Presentación del Dr. Eduardo Bertoní](#); Comisión de Sistemas, Medios de Comunicación y Libertad de Expresión. November 25, 2014. [Ref: Proyecto de Ley 365/14. "Argentina Digital"](#)

<sup>139</sup> It should be noted, that on June 3, the Supreme Court dismissed the extraordinary appeals launched by the National Government and different licensed telephone service providers against judicial rulings disallowing those companies from providing radio broadcasting or supplementary services and barring the State from issuing them radio broadcasting licenses. These appeals also stemmed from the III Federal Appeals Court Chamber of Administrative Matters [*Sala III de la Cámara Nacional de Apelaciones en lo Contencioso Administrativo Federal*] ruling, wherein *Telefónica de Argentina S.A.* and *Telecom de Argentina S.A.* were ordered to desist from offering services that included, through agreements with other companies, telephone, television and Internet services. The Chamber based its ruling on the grounds that the licenses issued to the telephone companies clearly stated they could not provide radio broadcasting services. The Supreme Court held that the ruling did not bar corresponding authorities from reviewing or updating radio broadcasting and communications regulations. Agencia de Noticias del Poder Judicial. June 5, 2014. [La Corte rechazó planteos de empresas telefónicas en causa por prestación de servicios de radiodifusión](#).

<sup>140</sup> Comisión de Sistemas, Medios de Comunicación y Libertad de Expresión. [Dictamen de Comisión. Expte. PE-365/14 y otros tenidos a la vista](#). November 19, 2014; Agencia Nacional de Noticias Jurídicas. November 19, 2014. [Argentina Digital obtuvo dictamen en el Senado con algunas modificaciones](#).

58. On December 16 the legislative chamber passed the final bill on the Digital Argentina Law. The version of the bill passed in the senate on December 10, incorporates some modifications to address the issues pointed out by the experts, academia and civil society. The Executive Branch enacted the Digital Argentina Law on December 18.<sup>141</sup> In that regard, the Law 27.078 creates the Federal Information Technology and Communications Authority [*Autoridad Federal de Tecnologías de la Información y las Comunicaciones*] as the enforcement body for the law, which shall, “continue [the duties of the] Communications Secretariat [*Secretaría de Comunicaciones*] and the National Communications Committee [*Comisión Nacional de Comunicaciones*] pursuant to this law and with all the objectives thereto”<sup>142</sup>. The law also sets forth the powers, budget, and board for the enforcement authority, composed of seven members designated by the National Executive Branch<sup>143</sup>. Furthermore the bill establishes the Federal Telecommunications and Information Technology Council [*Consejo Federal de Tecnologías de las Telecomunicaciones y la Digitalización*] comprised of state representatives, cellular and land line telephone companies, non-profit telecommunications services, connectivity providers, unions, the Interuniversity Council [*Consejo Interuniversitario*], user associations, and others as assigned by the Federal Executive Branch<sup>144</sup>. It has the duty to cooperate and advise in the design of public policy on communications and digital technology, hold yearly meetings with the federal authorities in order to receive a detailed management report, write a yearly report on the enforcement of the law and the state of telecommunications and digital technology development in Argentina and to advise the enforcement authority<sup>145</sup>. In addition the law includes the duties of the earlier Bicameral Commission for the Promotion and Follow-up on Audiovisual Technology [*Comisión Bicameral de Promoción y Seguimiento de la Comunicación Audiovisual*], established by the National Congress, as well as the duties of evaluating the performance of the board for the enforcement authority and to forward the names of three candidates for this authority to the executive branch, among others<sup>146</sup>. Lastly, the Law contains a more specific definition of Information Technology and Communications Services<sup>147</sup> and provisions seeking to protect the net neutrality principle<sup>148</sup>. The Office of the Special Rapporteur encourages the State of Argentina to continue the dialogue with civil society representatives allowing for healthy feedback on the law and a better implementation.

59. The Office of the Special Rapporteur, recalls that the Internet has been developed through set principles in design that as implemented have led to a decentralized online environment, which is neutral and open. Several of the issues included in the “Digital Argentina” bill of law include basic matters of Internet function. The Office of the Special Rapporteur reiterates, as stated in the “Freedom of Expression and Internet” report, net neutrality is fundamental in order to guarantee pluralism and diversity in the flow of information. It also recognizes that it is favorable for the right to freedom of expression when the states protect private digital communication, as well as personal and confidential information found online. Furthermore, in order to establish any restriction on the right to freedom of expression on the Internet, the impact the restriction could have on safeguarding and promoting the right to freedom of expression in this platform must be considered; thus any sanction must be applied by specialized autonomous entities that have the technical capacity and proper protection to safeguard possible structural threats on the Internet or communication integrity<sup>149</sup>. Upon implementation of the regulation, it is essential to ensure there is dialogue and reinforced participation by all actors at all levels without undermining the basic characteristics of the original environment.

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<sup>141</sup> Ministerio de Planificación. 19 de diciembre de 2014. [El poder ejecutivo promulgó la Ley Argentina Digital](#).

<sup>142</sup> Presidencia de la Nación. Ley Argentina Digital [Ley 27.078](#). December 18, 2014. Art.79.

<sup>143</sup> Presidencia de la Nación. Ley Argentina Digital [Ley 27.078](#). December 18, 2014. Art. 80-84.

<sup>144</sup> Presidencia de la Nación. Ley Argentina Digital [Ley 27.078](#). December 18, 2014. Art. 86.

<sup>145</sup> Presidencia de la Nación. Ley Argentina Digital [Ley 27.078](#). December 18, 2014. Art. 85.

<sup>146</sup> Presidencia de la Nación. Ley Argentina Digital [Ley 27.078](#). December 18, 2014. Art. 88.

<sup>147</sup> Presidencia de la Nación. Ley Argentina Digital [Ley 27.078](#). December 18, 2014. Art. 6.d.

<sup>148</sup> Presidencia de la Nación. Ley Argentina Digital [Ley 27.078](#). December 18, 2014. Art. 56 y 57.

<sup>149</sup> IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Pars. 27, 133-176.

## G. Stigmatizing statements

60. Through a press release, the Ministry of Justice and Human Rights [*Ministerio de Justicia y Derechos Humanos*] accused the *La Nación* newspaper and its reporter Hugo Alconada Mon of creating a “systematic process” of “aggravating and destabilizing maneuvers to harm the Nation State and its institutions”. According to the information received, the press release was published in order to refute an article published by that newspaper wherein it stated that the Inspector General of Justice (IGJ) had allegedly protected an anonymous company that had ties with the presidential family<sup>150</sup>.

61. The director of the Financial Information Unit (FIU), José Sbatella, pointed the finger at the *La Nación* and *Clarín* newspapers of carrying out a media campaign against him; after the alleged search of the FIU for suspected harboring of a businessman charged with money laundering. The official reported that this was part of a campaign to oust him of his position in the organization<sup>151</sup>.

62. The Office of the Special Rapporteur documented criticism, by public officials and leaders of social organizations associated with the government, to discredit the press. In that regard, a media outlet was falsely accused of having kilos of cocaine in its power<sup>152</sup>, of creating a “feeling of economic catastrophe”<sup>153</sup>, of “lying to its readers”<sup>154</sup>, of being “more dangerous than the military”<sup>155</sup>. There was also stigmatization against reporters for the media in which they work<sup>156</sup>.

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<sup>150</sup> La Nación. December 20, 2013. [El Ministerio de Justicia acusó a LA NACION de desestabilización](#); Télam. December 19, 2013. [El Ministerio de Justicia y Derechos Humanos desmintió un artículo publicado por el diario La Nación](#); Foro de Periodismo Argentino (FOPEA). December 20, 2013. [Acusan de “desestabilización” al diario La Nación y a unos de sus periodistas](#).

<sup>151</sup> Agencia Periodística de Buenos Aires (Agepeba). January 15, 2014. [Sbatella denunció una campaña de Clarín y La Nación para correrlo de la UIF](#); Télam. January 15, 2014. [Sbatella denunció una campaña de Clarín y La Nación para desplazarlo](#); Perfil.com. January 19, 2014. [Sbatella se defiende y asegura que no encubrió a Lázaro](#).

<sup>152</sup> On March 4, pro-government leader Luis D’Elia reportedly posted on his Twitter account a false message in which he claimed that the narcotics division of the Police conducted an “impressive operation in the newsroom” of Infobae portal, where they reportedly found “100 kilos of cocaine.” He added that businessman Daniel Hadad (owner of Infobae) remained a “fugitive”. In a following message he reportedly accepted that he had written a lie “so that for a while they would know how it feels.” La Nación. March 7, 2014. [Preocupa a la SIP las amenazas sobre el periodismo en Venezuela, México y Argentina](#); Infobae. March 5, 2014. [La Fundación LED y Adepa repudiaron los dichos de Luis D’Elia](#); Inter American Press Association (IAPA). March 6, 2014. [IAPA: Work of the Press Continues to be at Risk in Venezuela](#); “IMPRESIONANTE OPERATIVO en la redacción de @infobae la división antinarcóticos allana y encuentra 100 Kg de cocaína Daniel HADAD prófugo”. Official Twitter account of Luis D’Elia @Luis\_Delia. [4 de marzo de 2014 – 3:11 PM](#). “BASTA DE MENTIRAS 10 años de difamaciones de HADAD e @infobae. Invente una mentira en TW sobre ellos para q por un rato sepan lo q se siente”. Official Twitter account of Luis D’Elia @Luis\_Delia. [4 de marzo de 2014 – 4:41 PM](#).

<sup>153</sup> In a radio interview on March 9, Economy Minister Axel Kicillof, while explaining the economy of the country, reportedly criticized “opposition” newspapers for publishing information that “generate a sense of economic catastrophe.” Notimérica/Europa Press. March 10, 2014. [Kicillof critica diarios opositores por “generar sensación de catástrofe económica”](#); Los Andes. March 9, 2014. [Kicillof aseguró que “Argentina no tiene problemas económicos graves”](#); El Día. No date. [Para Kicillof hay dificultades, pero no problemas económicos graves](#).

<sup>154</sup> On March 17, the Secretary General of the Presidency, Oscar Parrilli, reportedly stated that Clarín and La Nación newspapers had made up a “novel” after the publication of an article on the relocation of a monument. Parrilli reportedly added that the dailies “lie to their readers.” Télam. March 17, 2014. [Parrilli aseguró que Clarín y La Nación armaron “una novela” sobre el traslado del monumento a Colón](#); Tiempo Argentino. March 18, 2014. [Más críticas a La Nación y Clarín](#); Noticias Terra. March 17, 2014. [PARRILLI ASEGURÓ QUE CLARIN Y LA NACION ARMARON “UNA NOVELA” SOBRE EL TRASLADO DEL MONUMENTO](#).

<sup>155</sup> The head of the Mothers of Plaza de Mayo, Hebe de Bonafini, reportedly said that “today the media are more dangerous than the military” in terms of destabilization, in statements to the media hours before the anniversary of the 1976 coup. Bonafini reportedly referred to the media because “they come into your house, and all day are installing fear, manipulate your life, your way of thinking and eating.” Télam. March 21, 2014. [Para Bonafini, “hoy son más peligrosos los medios de comunicación que los militares”](#); La Política Online. March 22, 2014. [“Más peligrosos que los militares”](#); La Razón. March 21, 2014. [Para Hebe, “los medios son más peligrosos que los militares”](#); Animales Políticos. March 22, 2014. [Según Hebe, “los medios son más peligrosos que los militares”](#).

<sup>156</sup> For example, during a press conference on April 9, union leader Hugo Moyano reportedly interrupted a question asked by journalist Néstor Dib, of channel C5N, and made him accountable for Cristóbal López, the owner of the medium for which he works. Foro de Periodismo Argentino (FOPEA). April 10, 2014. [Foepa exige el fin de la estigmatización de los periodistas por el medio donde trabajan](#); Clarín. April 11, 2014. [Periodistas exigen el fin de acusación y ataque a periodistas por el medio donde trabajan](#); INFOnews. April 11, 2014. [Foepa repudió el maltrato de Hugo Moyano a los periodistas](#); On April 10, CGT Azul y Blanca union leader Luis Barrionuevo reportedly verbally assaulted Marina Hermoso, a CN23 channel reporter, allegedly upset by a question she asked during a press conference in the context of a national strike the country was going through. Barrionuevo reportedly replied with insults toward Hermoso’s medium and said that she “had been sent” to ask those questions. The journalist replied “with all respect mate, nobody sent me to ask anything”.

63. The Secretary General of the Office of the President, Oscar Parrilli, accused *La Nación* newspaper and *Clarín* media group of “defamation and lying”, and announced that he would request the journalism entities and schools investigate them for what “could be a serious violation of the ethics and exercise of the journalism profession”. According to the public officer, *La Nación* did not await the official response in an article pertaining to the *Casa Rosada* [presidential palace], and later a media outlet of the *Clarín* group reported on it based on the article in *La Nación*<sup>157</sup>.

64. On November 14, the Chief of Staff, Jorge Capitanich, apparently confused, ironically called journalist Fernando Carnota, ‘marmota’ [marmot]. The public official stated, “there is a reporter, last name Marmota I believe, that constantly criticizes in the morning”; likewise he stated the reporter “does his job quite well, opposition that is”. This incident occurred at a press conference when Capitanich was responding to the costs of flights to transport ministers Axel Kicillof and Héctor Timerman to the G-20 meeting in Australia<sup>158</sup>.

65. 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.

66. 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>159</sup>

## H. Wiretapping and espionage

67. On December 21, 2013, the president of the radical senate block, Gerardo Morales, denounced that Army Chief César Milani, was illegally spying on him, and other politicians and journalists; including Daniel Santoro for the *Clarín* newspaper. According to the information received, attorney Ricardo Monner Sans filed a criminal complaint before the Federal Criminal and Correctional Court No. 10 [*juzgado Criminal y Correccional Federal No. 10*] to investigate the case, requesting the search of the Army building

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which led to the end of the press conference. INFOnews. April 10, 2014. [El cruce entre Barrionuevo y una periodista de CN23](#); La Voz. April 12, 2014. [Adepa repudió la agresión verbal a una periodista](#); Foro de Periodismo Argentino (FOPEA). April 10, 2014. [Foepa exige el fin de la estigmatización de los periodistas por el medio donde trabajan](#). . In March, Jorge Lanata and the president of the state news agency *Telám*, Santiago Álvarez, had words. The event began with a column written by Lanata in the *Clarín* newspaper where he criticized the management of the news agency; Álvarez responded with an article published on his portal where, among other things, he accused Lanata of “lack of professionalism” Perfil.com. March, 27, 2014. [Fuerte cruce entre el director de la agencia Télam y Jorge Lanata](#); INFOnews. March 27, 2014. [La agencia Telam respondió a los ataques de Lanata](#)

<sup>157</sup> La Voz. January 9, 2014. [Parrilli denunciará a La Nación y Grupo Clarín](#); Télam. January 9, 2014. [Parrilli pide que se analice si Clarín y La Nación incurrieron en faltas a la ética en ejercicio del periodismo](#); INFOnews. January 9, 2014. [Parrilli pide analizar si hubo “falta de ética” de Clarín y La Nación](#); El Comercial. January 10, 2014. [Parrilli pide analizar si hubo “falta de ética” de Clarín y La Nación](#).

<sup>158</sup> TN. November 14, 2014. [Capitanich tildó de “marmota” a un periodista de TN](#); Los Andes. November 14, 2014. [Capitanich llamó “marmota” al periodista de TN Carnota](#); La Prensa. November 14, 2014. [Capitanich calificó de “marmota” a un periodista de televisión](#); Clarín. November 14, 2014. [Capitanich descalificó a un periodista de TN y lo llamó “marmota”](#).

<sup>159</sup> I/A Court H.R. *Case Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of January 28, 2009. Series C No. 194. Para. 139.

where the alleged espionage took place<sup>160</sup>. On December 27, 2013, the reporter appeared before federal judge Julián Ercolini who subpoenaed him in the context of said investigation. The journalist committed to providing the name of the non-commissioned officer whom he suspected was in charge of spying on him<sup>161</sup>.

## I. Access to information and public spaces

68. 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 of the creation of the Federal Network for Access to Public Information [*Red Federal de Acceso a la Información Pública*] on April 8, with the object of sponsoring practices regarding transparency and the right to access public information that contribute to accountability and strengthening of public management<sup>162</sup>. The network is comprised of the Directorate General for Follow Up on Bodies for the Control and Access to Government Information for the Autonomous City of Buenos Aires [*Dirección general de Seguimiento de organismos de control y acceso a la información del Gobierno de la Ciudad Autónoma de Buenos Aires*]; the Anticorruption and Transparency Directorate for the Province of Santa Fe [*Dirección Provincial de Anticorrupción y Transparencia de Santa Fe*]; the Prosecutor for Administrative Investigations in the Chaco province [*Fiscalía de Investigaciones Administrativas de la provincia de Chaco*]; the Office of Access to Public Information in the Municipality of Córdoba [*Oficina de acceso a la información pública de la Municipalidad de Córdoba*]; the Directorate for Transparency and Public Management Oversight in the Municipality of Morón [*Dirección de Transparencia y control de gestión de la Municipalidad de Morón*] the General Directorate for Investigations, Public Ethics and Transparency for the Municipality of Rosario [*Dirección general de Investigaciones, Ética pública y transparencia de la Municipalidad de Rosario*]; and the Office of Information on the Parliament and Access to Information on the Deliberating Council for the city of Córdoba [*Oficina de información parlamentaria y acceso a la información del Consejo Deliberante de la ciudad de Córdoba*]. Statutes for the above-mentioned organization were executed on September 4<sup>163</sup>.

69. On May 20, at the beginning of the trial against ex prosecutor José María Campagnoli, there were issues with admittance of the media and civil society. He was suspended and a political trial against him was opened for alleged misconduct stemming from his participation in a trial of Lázaro Báez, as he had no jurisdiction over this criminal case. When the media was authorized entry, security personnel removed their cell phones, cameras and other recording devices. They were only allowed to enter with pens and pads of paper<sup>164</sup>.

70. Principle 4 of the IACHR Declaration of Principles states: “[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”.

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<sup>160</sup> Clarín. December 21, 2013. [Denuncian que Milani ordenó espionar a un periodista de Clarín](#); La Nación. December 23, 2013. [Piden que se investigue si César Milani espía a periodistas](#); Urgente 24. December 23, 2013. [Milani en la mira: Denuncia penal por espionaje contra periodistas y políticos](#); Foro de Periodismo Argentino (FOPEA). December 24, 2013. [Preocupación de FOPEA por denuncia de espionaje sobre periodistas](#); La Gaceta. December 24, 2013. [Adepa quiere saber si espían a la prensa](#).

<sup>161</sup> La Nación. December 28, 2013. [Morales ratificó ante la Justicia que Milani espía sus actividades](#); Clarín. December 26, 2013. [Allanaron el Ejército por la denuncia contra Milani por espionaje ilegal](#).

<sup>162</sup> La Política Online. April 8, 2014. [Red federal de acceso a la información pública](#); Noticias Terra. April 8, 2014. [Conforman en la Ciudad la Red Federal de Acceso a la Información Pública](#); La Nación. April 11, 2014. [Argentina: se lanzó una red federal de acceso a la información pública](#).

<sup>163</sup> Ciudad Autónoma de Buenos Aires. September 9, 2014. [Primer encuentro oficial de la Red Federal de Acceso a la Información Pública](#); Gobierno de Santa Fé. September 12, 2014. [Santa Fe participó del primer encuentro de la Red Federal de Acceso a la Información Pública](#); Red de Transparencia y Acceso a la Información. October 6, 2014. [Argentina: Red Federal de Acceso a la Información Pública realiza firma de estatutos](#).

<sup>164</sup> Infobae. May 20, 2014. [Les sacaron los celulares a los periodistas en la primera audiencia del jury contra Campagnoli](#); TN. May 20, 2014. [Audiencia por Campagnoli: al final los periodistas podrán ingresar, pero les retienen los celulares](#); iProfesional. May 20, 2014. [Les sacaron los celulares a los periodistas en la primera audiencia del jury contra Campagnoli](#); Los Andes. May 20, 2014. [Campagnoli: “Me están juzgando por investigar”](#); “Llegamos y nos hicieron escribir una nota a mano para poder acreditarnos. Grupo reducido x espacio pequeño. Perfecto. Así se hizo.”. Twitter account of Marcela Ojeda @Marcelitaojeda. [20 de mayo de 2014 – 8:18 AM](#).

## J. Censorship of journalistic material

71. On December 17, 2013, entrepreneur, Lázaro Báez, requested an emergency precautionary measure before the federal justice system for Río Gallegos in the Santa Cruz province. So that “it orders public bodies, internet portals, audiovisual and newspaper media and/or any other method for disseminating information, to abstain from divulging information, opinion or making any comment whatsoever that is based on private commerce information” for any of his companies. The genesis of the request came after the *La Nación* newspaper published an investigation on the alleged partnership and financial ties between Báez’s companies and the presidential family, and that the newspaper announced the publication of additional investigations. According to the newspaper reports, Báez rented rooms in hotel complexes purchased by the Kirchners in exchange for millions in income<sup>165</sup>.

72. On June 17, judge Mónica Liliana Preisz issued a precautionary measure wherein “public information media in its entirety (television, radio, computer, magazine, newspaper, etc)” was prohibited from publishing statements from Rocío Oliva about the private life of ex soccer player Diego Maradona until the World Cup in Brazil was over<sup>166</sup>.

73. On June 19, at the Hudson toll in the Buenos Aires province, the National Gendarmerie stopped the truck transporting the *La Tecla* magazine. Seemingly the agents rebuked the driver, detained him without reason and took away his driver’s license. According to the learned information, the vehicle was used to deliver copies of the magazine wherein the cover story was an investigation on public officials, senator Mario Ishii and mayor Carlos Urquiaga<sup>167</sup>.

74. Principle 5 of the IACHR Declaration of Principles on Freedom of Expression reads: “[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”.

## K. Protection of Sources

75. On October 28, by an order executed by federal judge Santiago Ulpiano Martínez the police searched the radio station and web site offices for *La Brújula 24* [the Compass 24], located at Bahía Blanca, in the Buenos Aires province; seizing journalism materials related to wiretaps obtained by the radio station; involving entrepreneur Juan Ignacio Suris, who is incarcerated and charged with alleged money laundering and ties to drug trafficking. Through a press release, judge Martínez affirmed that the order for the search had its genesis at the Public Prosecutor’s Office [*Ministerio Público Fiscal*] and that the objective was to identify the source<sup>168</sup>. On November 5, one of the media directors and journalist, Germán Sasso, was prosecuted for “aggravated concealment” after he refused to reveal the sources leading him to the wiretaps. Sasso was asked

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<sup>165</sup> La Nación. December 18, 2013. [Báez busca prohibir que se informe sobre sus negocios con los Kirchner](#); Clarín. December 17, 2013. [Lázaro Báez pide censurar las notas sobre sus pagos a los Kirchner](#); La Razón. December 18, 2013. [Lázaro Báez pide censurar notas sobre sus pagos a los Kirchner](#); Foro de Periodismo Argentino (FOPEA). December 17, 2013. [Lázaro Báez pidió una medida cautelar para que los medios no den información sobre sus empresas](#); Infobae. December 17, 2013. [Lázaro Báez pidió censura previa en una investigación periodística sobre los vínculos de sus empresas con las de la familia Kirchner](#).

<sup>166</sup> Ifex. July 8, 2014. [Prensa argentina no puede publicar historias sobre vida privada de ex futbolista hasta el final del Mundial](#); 233 Grados. July 4, 2014. [La justicia argentina prohíbe a los medios que publiquen declaraciones de la ex de Maradona](#).

<sup>167</sup> Foro de Periodismo Argentino (FOPEA). June 19, 2014. [Gendarmería retuvo un vehículo que trasladaba la edición de una revista porteña](#); Infobae. June 20, 2014. [La Gendarmería detuvo la distribución de la revista La Tecla](#).

<sup>168</sup> Committee to Protect Journalists (CPJ). October 30, 2014. [Argentine authorities raid news outlet and confiscate materials](#); La Nación. October 28, 2014. [Un juez ordenó allanar una radio y un sitio de noticias que revelaron escuchas vinculadas al caso Lázaro Báez](#); Clarín. October 28, 2014. [Invocando “violación de secretos”, un juez allanó una radio en Bahía Blanca](#).

by the judge himself to testify on October 31, but he refused to do so<sup>169</sup>. On November 10, the journalist appealed the case before the Federal Chamber of Bahia Blanca.<sup>170</sup>

76. Principle 8 of the IACHR Declaration of the Principles of 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”.

#### L. Government advertising

77. The Office of the Special Rapporteur learned about the investigation opened against four public officials for alleged irregularities in the ‘Fútbol para Todos’ [Soccer for everyone] program after a political spot criticized the administration of a head of local government. According to reports, Juan Manuel Abal Medina, ex Chief of Staff; Alfredo Scoccimarro, Public Communications Secretary; Gustavo Fernández Russo, undersecretary for Communication and Transmission Content [subsecretario de Comunicación Pública y Contenidos de Difusión]; and Rodrigo Rodríguez, ex Public Communications undersecretary were charged with the crime of “embezzlement of public funds” for allegedly using official funds in government advertising for political gain and not for informing the public on government activities. On August 11, 2012, a commercial spot ran at the half of the River Plate vs. Estudiantes de la Plata game where Mauricio Martí was made out to be the person responsible for a worker strike and it was stated that the local administration was responsible for resolving the conflict. Legislators Cristian Ritondo and Daniel Presti filed a complaint, which was rejected by prosecutor Federico Delgado who ruled that playing the spot was a political act that could not be prosecuted. Nonetheless, federal judge Claudio Bonadio moved for the investigation and called the four public officials to testify<sup>171</sup>. On March 19, Court One of the Federal Chamber for Buenos Aires nullified the actions of judge Claudio Bonadio after an appeal was filed by the defense of Abal Medina and Scoccimarro. In the ruling juez Bonadio was reversed due to the lack of clarification on whether a crime had been committed prior to accepting testimony from the defendants. Federal judge Marcelo Martínez de Giorgi adjudicated the case<sup>172</sup>.

78. On February 25, 2014 the Supreme Court of the Province of Salta declared itself “incompetent” to examine an amparo submitted in August 2013 by journalist Juan Guillermo Gonza, director of the weekly *Nueva Propuesta*, and his son Juan Guillermo Gonza, director of *Fishing Travel Radio, Television and Magazine* (GG Productions) for the suspension, reduction and eventual complete withdrawal of government advertising to their media outlets in an alleged arbitrary and discriminatory manner, excluding them from distribution of these resources by the executive branch of the province of Salta.<sup>173</sup>

79. In the amparo writ, whose processing has been reportedly delayed for more than a year, the reporter also complains about the failure of said Province to legislate in this area, put in place effective remedies and take suitable measures to protect the right to freedom of expression. According to information received, although the provincial government has reportedly recognized the discrimination suffered by Mr.

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<sup>169</sup> La Brújula 24. November 5, 2014. [El juez Martínez procesó al director de La Brújula 24](#); Diario Hoy. November 6, 2014. [Escandaloso apriete a la prensa independiente](#); Foro de Periodismo Argentino (FOPEA). November 5, 2014. [Repudio de Fopea al procesamiento del director de La Brújula](#); La Nueva. November 5, 2014. [Procesan al director de una radio y página web por presunto delito de “encubrimiento agravado”](#).

<sup>170</sup> Clarín. November 10, 2014. [Revelaciones del Periodistas procesado por el caso Báez](#). Agencia NOVA. November 10, 2014. [Sasso: “Nos sentimos perseguidos y amenazados por la Justicia de Bahía Blanca”](#).

<sup>171</sup> La Prensa. February 12, 2014. [Llaman a indagatoria a Abal Medina y Scoccimarro por un spot en Fútbol para Todos](#); La Nación. March 6, 2014. [Por un aviso en Fútbol para Todos, indagaron a un funcionario de Medios](#); Clarín. February 21, 2014. [Indagaron a un ex funcionario por un spot de Fútbol Para Todos](#).

<sup>172</sup> Rionegro. January 3, 2014. [Confirman 25 despidos en los medios de Cristóbal López](#); Mercurio del Plata. January 2, 2014. [Despidos de periodistas: Feinmann levó la justificación del Grupo Indalo](#); La Gaceta. January 2, 2014. [Antonio Laje fue echado de C5N y el Grupo Indalo confirmó el despido de periodistas](#); La Nación. January 3, 2014. [Antonio Laje: “Estoy afuera, me censuraron y me sacaron del aire”](#); Notinac. No date. [Rebelión en C5N y Radio 10 tras el despido de más periodistas](#).

<sup>173</sup> Communication on December 2, 2014, and appendixes sent to the Office of the Special Rapporteur for Freedom of Expression in relation to the alleged decrease of government advertising to journalists of Nueva Propuesta and Viaje de Pesca (Salta, Argentina). Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

Gonza's weekly during conciliation hearings, until this date the situation has not been reversed nor legal mechanisms for objective and formal allocation government advertising have been established.<sup>174</sup>.

80. The Office of the Rapporteur 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."

#### **M. Other relevant situations**

81. The Office of the Special Rapporteur learned about the massive lay offs that took place in different media outlets throughout the country, presumably due to internal reorganization, however they may have been revenge. The alert came from the Argentine Journalism Forum (FOEPA) specifically referencing the cases of Grupo Indalo Media and Editorial Perfil<sup>175</sup>. The first group fired 25 employees, including Antonio Laje, C5N network and *Radio 10*, who claims he was fired because he criticized the government during the December black outs. Gustavo Mura was also fired from *Radio 10*, as he was critical during the interview of Sergio Berni, Secretary of Security for Argentina [*Secretario de Seguridad de Argentina*]<sup>176</sup>. Editorial Perfil fired reporters who participated in a union meeting and later fired 12 others who protested during the first wave of lay offs<sup>177</sup>.

82. Management for Arteargentina SA, in charge of ex *Radio Chaco*, threatened reporters and announcers with a 1.000 peso (about \$123 US dollars) deduction from their salary if they named or alluded to other "brands/newspapers/online newspapers, etc." where they acquired information<sup>178</sup>.

83. On April 8, president Cristina Fernández de Kirchner used a national network for the inauguration of the Federal Encounter for Speech [*Encuentro Federal de la Palabra*]. Television and radio transmission was compulsory, not only for the leader's words, but also a poetry reading, a hip-hop show, actor's words and stand up [comedy]<sup>179</sup>. It was controversial because representatives of the opposition stated that the use of this network was a violation of the Audiovisual Communication Services Law<sup>180</sup>. Fernández de

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<sup>174</sup> Communication on December 2, 2014, and appendixes sent to the Office of the Special Rapporteur for Freedom of Expression in relation to the alleged decrease of government advertising to journalists of Nueva Propuesta and Viaje de Pesca (Salta, Argentina). Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>175</sup> Foro de Periodismo Argentino (FOEPA). January 9, 2014. [FOEPA alerta por despidos masivos en diferentes medios de todo el país](#); Knight Center for Journalism in the Americas. January 14, 2014. [Argentine organization criticizes massive journalism layoffs across the country](#).

<sup>176</sup> Rionegro. January 3, 2014. [Confirman 25 despidos en los medios de Cristóbal López](#); Mercurio del Plata. January 2, 2014. [Despidos de periodistas: Feinmann levó la justificación del Grupo Indalo](#); La Gaceta. January 2, 2014. [Antonio Laje fue echado de C5N y el Grupo Indalo confirmó el despido de periodistas](#); La Nación. January 3, 2014. [Antonio Laje: "Estoy afuera, me censuraron y me sacaron del aire"](#); Notinac. No date. [Rebelión en C5N y Radio 10 tras el despido de más periodistas](#).

<sup>177</sup> Foro de Periodismo Argentino (FOEPA). January 9, 2014. [FOEPA alerta por despidos masivos en diferentes medios de todo el país](#); Télam. January 10, 2014. [Multitudinario acto en repudio a los despidos en editorial Perfil](#).

<sup>178</sup> Diario Chaco. January 21, 2014. [Insólita medida en la ex Radio Chaco prohíbe a su personal citar las fuentes de las notas so pena de recibir fuertes multas](#); Info GEL. January 22, 2014. [Continúa el conflicto en la ex Radio Chaco](#); Foro de Periodismo Argentino (FOEPA). January 24, 2014. [Rodríguez Villafaña: "Es inconstitucional y opera como censura previa"](#).

<sup>179</sup> Perfil.com. April 8, 2014. [Cristina por cadena nacional, con show de hip-hop, stand up y palos antihuelga](#); Argentina.ar. April 8, 2014. [Cristina inauguró el Encuentro Federal de la Palabra](#); La Política Online. April 8, 2014. [El stand up de Cristina](#).

<sup>180</sup> La Nueva. April 9, 2014. [La presidenta recibió el premio Rodolfo Walsh a la libertad de expresión](#); Clarín. April 9, 2014. [Cadena nacional: Cristina no cumple con la Ley de Medios](#).



Kichner responded on her Twitter account with messages such as “You see don’t they have a sense of humor? Such a fuss over a little hip hop and a stand up?”<sup>181</sup>

84. On Tuesday, July 1, *FM Cosmos 100.1 Mhz* radio station was shut down by a disposition of the National Communications Commission [*Comisión Nacional de Comunicaciones*] (CNC), claiming the signal interfered with the space frequency assigned to the Mobile Aviation Service for the Air force of Argentina [*Servicio Móvil Aeronáutico de la Fuerza Aérea de Argentina*]. This, even though the station was in operation for a year and was registered with the Federal Authority for Audiovisual Communication Services in 2010. The shut down took place three days after a criticism of the Undersecretary of Local Communication [*Subsecretario de Comunicación local*] and mayor Gustavo Arrieta for discretionary distribution of government advertising, which excluded Cosmos<sup>182</sup>.

85. A missive dated July 14, boasting as the proxy for Francisco Zamora, son of Governor Gerardo Zamora, intimidated the *Última Hora* news portal in Santiago del Estero, to take an article about wiretaps on Juan Suris off their web page. Juan Suirs was charged in a drug trafficking case that tied Suirs to his client<sup>183</sup>.

86. On October 28, the Supreme Court ruled in favor of a precautionary measure for several media companies; [the initial decision] was reversed by the II National Appeals Chamber of the Federal Court of Administrative Matters. As a result of this measure, as long as litigation between the Federal Administration of Public Revenue (AFIP) and the Newspaper Editors Association of Buenos Aires [*Asociación de Editores de Diarios de Buenos Aires*]; *La Nación* and other print media is extended; the collector is disallowed from imposing a tax liability over three hundred million pesos, something that could seriously damage these companies. The case stems from a claim filed by the media when the benefit permitting employer contributions to be counted as taxes expired. In its decision the Court held that “fiscal policy cannot be used as an instrument to exclude a group from benefits that are granted to all other economic sectors thus indirectly affecting freedom of expression”<sup>184</sup>.

### 3. Bahamas

87. The Office of the Special Rapporteur received information regarding the announcement made by the director of the Bank of the Bahamas that a criminal action would be filed against the newspaper *The Punch* for what he considered “a combination of outright lies and numerous falsehoods and inaccuracies.” The announcement was reportedly made in a press release and was issued after the February 20 publication in the newspaper of a story about the bank’s alleged intent to fraudulently obtain an \$8 million loan. At the closing of this Report the criminal action was not yet presented.<sup>185</sup>

88. 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.”

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<sup>181</sup> Los Andes. April 9, 2014. [Cristina: “¿Tanto lío por un poco de hip hop y un stand up?”](#); La Voz. April 9, 2014. [Cristina: ¿Tanto lío por un poco de hip hop y un “stand up?”](#); La Nueva. April 9, 2014. [La presidenta recibió el premio Rodolfo Walsh a la libertad de expresión](#); Official Twitter account of Cristina Fernández de Kirchner @CFKArgentina. [9 de abril de 2014 – 10:22 AM](#).

<sup>182</sup> Foro de Periodismo Argentino (FOPEA). July 1, 2014. [Una radio de Cañuelas fue clausurada por criticar al Intendente](#); La Noticia 1. July 3, 2014. [Cañuelas: Radio criticó a Arrieta y 72 horas después fue clausurada](#).

<sup>183</sup> Foro de Periodismo Argentino (FOPEA). July 14, 2014. [Intiman a un portal de noticias de Santiago del Estero a despublicar una nota](#); La Nueva. July 16, 2014. [Gerardo Zamora pretende que se borre una nota que lo vincula a Juan Suris](#); Infobae. July 16, 2014. [Zamora quiere que un medio de su provincia borre una nota que lo vincula al narco Juan Suris](#).

<sup>184</sup> *La Nación*. October 29, 2014. [Repuso la Corte una cautelar para los diarios](#); Clarín. October 28, 2014. [La Corte puso un límite al avance del Gobierno sobre los medios](#); Página 12. October 29, 2014. [Otra prórroga a la cautelar](#).

<sup>185</sup> Tribune 242. February 21, 2014. [Bank Of The Bahamas To Sue The Punch](#); The Bahamas Weekly. February 20, 2014. [BOB Chief Strikes Back: “BOB to Sue PUNCH and Ivan Johnson Over Defamation and Lies”](#).

#### 4. Barbados

89. On March 11, three journalists from the newspaper *The Nation* reportedly appeared before a court for a preliminary hearing, on charges of violating the Protection of Children Act. Newspaper director Vivian-Anne Gittens, Editor-in-Chief Roy Morris, and journalist Sanka Price were reportedly accused of this offense following the October 2013 publication of a photograph that allegedly showed two minors having sexual relations in a classroom. In the published photograph, which was allegedly taken from the social networking site Facebook, the minors were completely clothed and their faces had been blurred. The image was reportedly accompanied by an article that indicated how the incident had allegedly taken place in front of other children, who had circulated a video on the Internet. The journalists could face up to five years in prison for these offenses. The hearing was reportedly continued to July 21 at the request of the Prosecutor's Office.<sup>186</sup> At the time this report went to press, the case remains pending.<sup>187</sup>

90. The Governor of the Central Bank of Barbados, DeLisle Worrell, reportedly barred the newspaper *The Nation* and all of its journalists from attending news conferences or any other media events held by the Bank. The decision was reportedly communicated to the newspaper's directors in a letter stating that it was due to "the lack of professional integrity" demonstrated by the newspaper in the headline of an article published on May 8. The article in question discussed the alleged dismissal of 60 employees from the Bank.<sup>188</sup> Subsequently, the Central Bank of Barbados issued a release stating that "[r]espect and embraces freedom of press and the importance of dissemination of timely and accurate information and as such has not banned the Nation Corporation [to receive the communications issued by the Central Bank, and to have free access to the Central's Bank website]."<sup>189</sup>

91. 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."

#### 5. Bolivia

##### A. Progress

92. According to information disseminated in March, the investigation into the murder of journalist Carlos Quispe Quispe, which occurred in 2008, had been reopened by the new prosecutors assigned to the case, Verónica Marca and Lizeth Zarco. In the investigation, four people were formally accused.<sup>190</sup> Quispe was declared dead on March 29, 2008, after being beaten by presumed demonstrators against the then mayor of Pucarani, Alejandro Mamani, who entered the installations of *Radio Municipal Pucarani* where Quispe was working. The demonstrators attacked the radio station and left the reporter unconscious, who

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<sup>186</sup> Barbados Today. March 11, 2014. [Hearing on Nation 'sex case' on pause](#); International Press Institute (IPI). March 11, 2014. [IPI reiterates call to drop indecency charges against Barbados journalists](#); Inter American Press Association (IAPA). March 12, 2014. [IAPA calls for criminal charges against journalists in Barbados to be dropped](#); Knight Center for Journalism in the Americas. March 13, 2014. [IAPA demands Barbados authorities drop criminal charges against newspaper employees](#).

<sup>187</sup> Inter American Press Association (IAPA). [Caribbean](#). General Assembly – Santiago, Chile. October, 2014.

<sup>188</sup> Nationnews.com. May 11, 2014. [Worrell bans Nation](#); Caribbean News Now!. May 13, 2014. [Barbados central bank governor bans local newspaper from press conferences](#); StabroekNews.com. May 11, 2014. [Barbados Central Bank Governor bans Nation newspaper](#); Barbados Today. May 11, 2014. [Newspaper ban](#); Trinidad Express Newspapers. May 12, 2014. [Bajan paper banned from covering Sparrow concert?](#)

<sup>189</sup> GlobalVoices. May 18, 2014. ["Ban" From Barbados Central Bank Prompts Defense of Press Freedom](#); Nationnews. May 12, 2014. [Central Bank embraces 'freedom of the press'](#).

<sup>190</sup> Reporters Without Borders (RSF). March 28, 2014. [SEIS AÑOS DESPUÉS DEL ASESINATO DE CARLOS QUISPE QUISPE, VUELVE A ABRIRSE LA INVESTIGACIÓN Y CUATRO PERSONAS SON ACUSADAS](#); Bolivia Exterior. March 30, 2014. [Reabren caso de periodista asesinado en Pucarani en 2008](#).

died two days later because of the gravity of his wounds.<sup>191</sup> Judicial proceedings against the alleged perpetrators of the crime had been postponed on three occasions and then suspended indefinitely.<sup>192</sup>

93. The Office of the Special Rapporteur was informed of the resolution handed down by the Supreme Court of Justice [*Tribunal Supremo de Justicia*] on April 28, by means of which it annulled the 2½-year prison term facing journalist Rogelio Pelaez, who is accused of slander [*calumnia*] by attorney Waldo Molina, after having revealed a case of diversion of public funds [*desvío de fondos públicos*] in the weekly magazine *Larga Vista* in the city of Paz<sup>193</sup>.

94. 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."

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

95. The Office of the Special Rapporteur was informed about the disappearance in January of Cristian Osvaldo Mariscal Calvimontes, a journalist from the *Plus TV* television network in the department of Tarija, beginning on January 19. The social communicator had last been seen leaving a discotheque.<sup>194</sup> As of the date of this report, there was no clear connection between the crime and his journalistic work. Nonetheless, the Office of the Special Rapporteur considers it of fundamental importance that the authorities investigate these incidents without discarding the hypothesis of a link with journalistic activity and freedom of expression.

96. Paolo Alcoba, a journalist for *Radio Suprema* in the city of Monteagudo, was attacked on March 14 by a civic leader from the zone and his son. As reported, the leader had arrived at the installations of the radio station to complain about an interview they had made of two members of the departmental assembly who criticized an agreement made by the Civic Committee [*Comité Cívico*] of Monteagudo. The leader rebuked, pushed and beat the journalist, who did not respond to the beating because of the leader's age. The leader then suggested that the journalist take on his son. The case was denounced to the police and the Office of the General Public Prosecutor. [*Ministerio Público*].<sup>195</sup>

97. A journalist and a photojournalist from the newspaper *Correo del Sur* in the city of Sucre, department of Chuquisaca, were verbally attacked by transporters who were blocking an avenue on March

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<sup>191</sup> IACHR. [Annual Report 2008. 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. 20; IACHR. Office of the Special Rapporteur for Freedom of Expression. April 9, 2008. Press Release N° 189/08. [OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION DEPLORES MURDER OF JOURNALIST IN BOLIVIA AND DEMANDS INVESTIGATION](#).

<sup>192</sup> Reporters Without Borders (RSF). March 28, 2014. [SEIS AÑOS DESPUÉS DEL ASESINATO DE CARLOS QUISPE QUISPE, VUELVE A ABRIRSE LA INVESTIGACIÓN Y CUATRO PERSONAS SON ACUSADAS](#); IACHR. [Annual Report 2009. 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. 57.

<sup>193</sup> Reporters Without Borders (RSF). July 22, 2014. [Sentencia de Rogelio Peláez anulada: "no olvidamos los otros procesos legales contra periodistas en Bolivia"](#); *Correo del Sur*. July 23, 2014. [Justicia revierte pena de prisión contra periodista](#); *La Razón*. July 14, 2014. [Una buena noticia para los periodistas](#).

<sup>194</sup> Reporters Without Borders (RSF). May 7, 2014. [DEBE ESCLARECERSE EL CASO DE UN PERIODISTA DESAPARECIDO HACE CUATRO MESES](#); *Página Siete*. April 28, 2014. [Periodista desaparecido tuvo contacto con imputados](#); *Nuevo Sur*. No date. [Policía retoma búsqueda de periodista Cristian Mariscal en Tarija y Camargo](#).

<sup>195</sup> *Bolivia Exterior/El Diario*. March 20, 2014. [Dirigente cívico golpea a periodista en Chuquisaca](#); *Correo del Sur*. March 15, 2014. [Periodista denuncia golpiza de cívico en Monteagudo](#); *Asociación Nacional de la Prensa (ANP)*. March 19, 2014. [Líder cívico golpea a periodista](#). Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

20. The photojournalist had his camera taken away from him. According to information received, Gonzalo Sánchez was taking photos of the blockade when some of the transporters took away his camera even though the social communicator had shown his press card. Journalist Henry Aira intervened to request that the equipment be returned, but received insults. People who were present in the area defended the social communicators and, after a few minutes, Sánchez recovered his camera. The Chuquisaca Press Federation [*Federación de la Prensa de Chuquisaca*] filed a criminal complaint against a group of transporters.<sup>196</sup>

98. On May 1, the mayor of Santa Cruz de la Sierra, Percy Fernández, harassed a journalist who had approached him for an interview during a public event. Mercedes Guzmán, a reporter for the UNO network, had sat down next to the official when he placed his hand on her leg. The social communicator tried to remove the mayor's hand but he had resisted. In response to the controversy that arose, Fernández publicly apologized. Opposition members filed a complaint against the mayor before the Office of the General Public Prosecutor [*Ministerio Público*].<sup>197</sup>

99. On June 17 in La Paz, the studios of *Canal 33* Pacesísima de Televisión were attacked with a teargas grenade during the broadcast of a journalistic program. Available information indicates that during the morning hours, a grenade had been thrown at the doors of the media outlet and its toxic smoke had invaded the building, forcing interruption of the program, preventing an interview with the chairman of the Human Rights Commission of the Chamber of Deputies [*Comisión de Derechos Humanos de la Cámara de Diputados*], Rodolfo Calle from taking place. Before this occurrence, the channel had received anonymous phone calls demanding that an interview with a former civic leader recently freed after serving five years in prison as a preventive measure be cut.<sup>198</sup>

100. On August 27, in the town of Riberalta, an angry group of people destroyed the infrastructure of the Televisión Amazónica channel, looted equipment, attacked journalists and burned the home of one of them. Apparently, this had taken place as a reprisal for the police eviction of some 50 families from land belonging to Wigberto Rivero Pinto, who is also the owner of the television channel. Given the violence that took place, the press workers of Riberalta decided not to work on coverage of this occurrence as a security measure.<sup>199</sup>

101. On August 12, the Cruz Andina radio station, in the town of Uyuni, was dismantled by at least 20 people who violently entered the media outlet's installations. According to the Telecommunications and Transport Authority [*Autoridad de Telecomunicaciones y Transporte (ATT)*], the station was closed because it did not have an operating license. The station apparently was covering the conflict between inhabitants of the zone and mayor Froilán Condori, whom they are questioning over a bus terminal in a zone of difficult access for vehicles.<sup>200</sup>

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<sup>196</sup> FM Bolivia. March 21, 2014. [Transportistas agredieron a periodistas en Sucre](#); Página Siete/ANF. March 22, 2014. [Presentan querrela contra agresores de periodistas](#); Asociación Nacional de la Prensa (ANP). March 20, 2014. [Periodistas agredidos por transportistas](#). Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; ACLÓ. March 21, 2014. [Durante el paro cívico, dos periodistas y un fotógrafo agredidos verbalmente por transportistas por sacar fotografías a vehículos](#); Correo del Sur. March 22, 2014. [Prensa denuncia agresiones ante la Fiscalía](#)

<sup>197</sup> CNN en Español. May 8, 2014. [Polémica en Bolivia por un alcalde que manoseó a una periodista](#) (VIDEO); Nuevosur/El Deber. May 9, 2014. [Periodista dice que no denunció a Percy porque no cree en la justicia](#); TN. May 7, 2014. [Verguenza: un alcalde tuvo que pedir perdón tras manosear a una periodista](#); La Razón. May 8, 2014. [Periodista acosada por el alcalde Fernández habla en CNN y dice no creer en la justicia boliviana](#);

<sup>198</sup> El Diario. June 18, 2014. [Detonan granadas de gas en puertas de canal 33 de La Paz](#); La Patria. June 18, 2014. [Canal 33 de La Paz sufre atentado con granada de gas](#); Asociación Nacional de la Prensa (ANP). June 18, 2014. [ANP condena atentado a canal de Tv](#). Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Página Siete. June 18, 2014. [Lanzan gas lacrimógeno a oficinas de Pacesísima TV](#); El Día. June 19, 2014. [La ANP condena atentado contra Canal 33 de La Paz](#).

<sup>199</sup> El Deber. No date. [Destruyen un canal de TV y la casa de una periodista por conflicto de tierras](#); Página Siete. August 29, 2014. [Una recién nacida murió en un enfrentamiento en Riberalta](#); Erbol. August 27, 2014. [Desalojo de familias deriva en ataque a un canal de Tv](#).

<sup>200</sup> FM Bolivia. August 13, 2013. [ATT y Ministerio de Gobierno habrían allanado radio en Uyuni](#); Erbol. August 12, 2014. [ATT secuestra equipos de una emisora local de Uyuni](#); Los Tiempos. August 15, 2014. [La ANP condena cierre de una radio en Uyuni](#).

102. On August 28, two police officers from the Ministry of Government [*Ministerio de Gobierno*] forced a reporter from the Agencia de Noticias Fides (ANF) to erase graphic material obtained outside the installations of that state agency. The reporter had filmed a truck that, according to a denunciation by the Unidad Demócrata (UD), had been used by employees of the referred-to ministry to destroy a billboard of the candidate from that political party, Samuel Doria Medina, in the city of La Paz. According to available information, the photojournalist stated that an unidentified civil agent approached to tell him that he could not take photographs and took him to a uniformed agent to force him to erase what he had filmed.<sup>201</sup>

103. On September 6, a pane of glass in the window of the quinquennial *El Chuquisaqueño*, published in the city of Sucre, was broken by stones following the publication of a series of opinion columns against opposition party politicians, according to journalist Jhonny Moscoso<sup>202</sup>.

104. On September 9, the departmental police commander of Cochabamba, colonel Alberto Suárez, threatened journalist Escarley Pacheco Pardo when during an interview the social communicator asked him about a complaint filed against him regarding domestic violence. In response to the question, the police officer warned: "I am going to follow your steps Pacheco, Be careful." Subsequently, colonel Alberto Suárez submitted a letter apologizing for what he described as an "involuntary impasse."<sup>203</sup>

105. On October 29, photojournalist Juan Quisbert was covering a protest outside the offices of the Anti-crime Force of La Paz [*Fuerza Anticrimen de La Paz*] by sexual workers with support from a feminist group, when he was attacked by individuals who had their faces covered and who broke a flash from his photographic equipment, forcing him to erase the digital files from his photographic camera.<sup>204</sup>

106. 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."

### C. Confidentiality of information sources

107. The Office of the Special Rapporteur was informed that Criminal Investigations Judge 11 of La Paz, Jhonny Machicado, had ordered Ricardo Aguilar, a reporter for the daily newspaper *La Razón*, to "lift the confidentiality of the source" of a report on a lawsuit that Bolivia had filed with the International Court of Justice at The Hague against Chile for an exit to the Pacific Ocean. According to information received, the decision was made in the framework of a lawsuit filed on April 22 by the Office of the Procurator General of the State [*Procuraduría General del Estado*] against the journalist for the crimes of espionage [*espionaje*] and revealing secrets [*revelación de secretos*], and against the director of the newspaper, Claudia Benavente, for complicity [*complicidad*].<sup>205</sup> The lawsuit stemmed from publication of the article 'De cómo en la demanda marítima triunfó la idea de los actos unilaterales' published on April 13 in the Animal Político supplement two days before Bolivia was to present its brief with the legal and historical arguments for the lawsuit to the

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<sup>201</sup> Página Siete. August 29, 2014. [UD acusa al Gobierno de destruir sus gigantografías](#); La Patria. August 29, 2014. [Funcionarios de Gobierno obligaron a reportero gráfico borrar fotografías](#).

<sup>202</sup> El Diario/ANP. September 10, 2014. [Apedrean oficinas de quincenario](#); Notibol/ANF. September 9, 2014. [Apedrean oficinas de quincenario en Sucre](#)

<sup>203</sup> Radio Intereconomía. September 12, 2014. [RSF denuncia las amenazas de un policía a un periodista en Bolivia](#); Página Siete. September 18, 2014. [Jefe policial pide disculpas a periodista por amenaza](#); La Razón. September 17, 2014. [Comandante Departamental de la Policía se disculpa con periodista de ATB, Escarley Pacheco](#).

<sup>204</sup> El Diario. October 30, 2014. [Trabajadoras sexuales agreden a fotógrafo de EL DIARIO](#); Asociación Nacional de la Prensa (ANP). November 7, 2014. [Trabajadoras sexuales agreden a reportero gráfico](#). Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>205</sup> Reporters Without Borders (RSF). May 12, 2014. [LAS AUTORIDADES JUDICIALES PIDEN A UN PERIODISTA BOLIVIANO QUE REVELE SUS FUENTES](#); La Razón. May 9, 2014. [Juez ordena a periodista de La Razón revelar su fuente](#); Emol/EFE. May 8, 2014. [Bolivia: Juez ordena a periodista revelar sus fuentes de nota sobre demanda marítima](#);

Court.<sup>206</sup> The reporters were notified on May 7. The newspaper had claimed incompetence of Criminal Investigations Judge 11 in the application of a proceeding in a Print Tribunal [*Tribunal de Imprenta*], but the request was initially denied. On June 4, the country's journalists demonstrated in different cities in defense of article 8 of the Print Law [*Ley de Imprenta*], which establishes confidentiality of sources.<sup>207</sup> Finally, on August 5, the Third Criminal Chamber of the Departmental Court of Justice of La Paz [*Sala Penal Tercera del Tribunal Departamental de Justicia de la Paz*] decided to refer the ordinary trial to a specialized print tribunal [*tribunal especializado de imprenta*].<sup>208</sup>

108. 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”.

#### **D. Government advertising**

109. The government of the city of Santa Cruz de la Sierra withdrew its official advertising from the daily newspaper *El Deber* allegedly in retaliation for the publication of a video that showed the mayor of this city in a disrespectful attitude towards a television journalist during a public event. The occurrence was denounced by the newspaper, which also stated that it had been the victim of threats from officials close to the mayor of the city, Percy Fernández.<sup>209</sup>

110. On June 18, during a press conference, president Evo Morales declared that he did not understand the concept of an advertising veto and added that each person, including state authorities, can make their advertising or propaganda in whatever media outlet they wish. The president had said “(One) is not obligated to make their propaganda in any particular media outlet” in response to a question about his government's alleged advertising veto of independent media outlets. He had also questioned the independence of the country's media outlets, stating that one could not be so “naive” as to believe that there are “independent media” because that would be a mistake. “Each medium has its own alignment” he added. President Morales also attributed attacks against his administration to various media outlets and reminded them to report the truth.<sup>210</sup>

111. The Office of the Special Rapporteur 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.”

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<sup>206</sup> La Tercera/EFE. May 8, 2014. [Justicia boliviana acusa de espionaje a periodistas por nota sobre demanda marítima](#); El Sol Online. May 8, 2014. [Acusan a periodista boliviano por revelar datos de la demanda a Chile](#); Perú 21. May 8, 2014. [Bolivia: Acusan a periodistas de espionaje a favor de Chile](#); La Razón. May 9, 2014. [Juez ordena a periodista de La Razón revelar su fuente](#).

<sup>207</sup> Reporters Without Borders (RSF). May 12, 2014. [LAS AUTORIDADES JUDICIALES PIDEN A UN PERIODISTA BOLIVIANO QUE REVELE SUS FUENTES](#); El Potosí. May 29, 2014. [Juez paceño niega el pedido de incompetencia en caso La Razón](#); La Patria/ANP. June 5, 2014. [Periodistas reivindicaron el secreto de la fuente](#); Sin embargo. June 5, 2014. [Bolivia: Periodistas hacen cerrada defensa del secreto de fuente](#); Los Tiempos. June 5, 2014. [Periodistas defienden Ley de Imprenta con marcha](#); La Razón. May 9, 2014. [Juez ordena a periodista de La Razón revelar su fuente](#).

<sup>208</sup> La Razón. August 6, 2014. [Juicio a periodistas es derivado a Tribunal de Imprenta](#); Página Siete. August 6, 2014. [Justicia paceña remite caso La Razón a Tribunal de Imprenta](#).

<sup>209</sup> Inter American Press Association. May 21, 2014. [IAPA condemns harassment of Bolivian paper El Deber](#); Asociación de Entidades Periodísticas Argentinas. May 23, 2014. [Alcalde que manosea mujeres toma represalias contra diario](#)

<sup>210</sup> Erbol. June 18, 2014. [Evo dice que no entiende el veto publicitario a medios](#); El Diario. June 19, 2014. [Evo Morales cuestiona independencia de medios](#); Página Siete. June 19, 2014. [Evo dice que no hay veto de publicidad a los medios](#).

## E. Stigmatizing declarations

112. During a press conference on April 8, the Minister of Communications, Amanda Dávila, had accused journalist Raúl Peñaranda of links to Chilean conservative interests due to his dual citizenship. The minister said that while working as the director of the newspaper *Página Siete*, the reporter “carried out a campaign against national interests and against the Bolivian maritime lawsuit.” The social communicator clarified the reason for his dual citizenship, but associated these accusations with the presentation on April 10 of his book ‘Control remoto’ in which he denounces alleged government control of “parastate media” with the aim of defining the agenda and public opinion.<sup>211</sup> On April 10, journalist Raúl Peñaranda published the book ‘Control Remoto’ in which he stated that president Evo Morales was dedicated to building a network of “parastate media” in order to dominate the country’s public opinion. The book deals with the alleged purchase of media by entrepreneurs who sympathize with the government, after having “ceded editorial and informative control to it” and are supposedly directly managed from the office of vice president Álvaro García Linera<sup>212</sup>.

113. On June 20, the mayor of Santa Cruz de la Sierra, Percy Fernández Añez, characterized the daily newspaper *El Deber* as “a liar and ridiculous” during a ceremony opening a school that was also attended by president Evo Morales, Minister of Government Carlos Romero and municipal authorities. During that event, the mayor used offensive expression such as “marica” (faggot) against a photojournalist, while the latter clarified that he did not work for *El Deber*<sup>213</sup>.

114. During a press conference on October 13, president Evo Morales characterized radio stations *Erbol* and *Fides* as his “first enemies,” saying that they are both administered by the Catholic Church. The president said “[I believe that Erbol, Fides are there [...] there are two radio media outlets that are administered by the priests of the Catholic Church. They are the first enemies of Evo Morales”<sup>214</sup>.

115. As stated in previous 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>215</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

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<sup>211</sup> El Diario/ANP. April 9, 2014. [Ministra cuestiona a periodista Peñaranda por su nacionalidad](#); Los Tiempos/ANF. April 9, 2014. [ANP lamenta “xenofobia” de Dávila](#); Erbol. April 8, 2014. [Dávila acusa de chileno a periodista que escribe sobre medios paraestatales](#); La Razón. April 8, 2014. [Dávila denuncia ofensiva del periodista Raúl Peñaranda contra el Gobierno](#); Página Siete. April 9, 2014. [El Gobierno arremete contra el periodista Raúl Peñaranda](#).

<sup>212</sup> El Tiempo/EFE. April 10, 2014. [Periodista boliviano acusa en libro al Gobierno de controlar medios privados](#); Página Siete. April 11, 2014. [Se agota la primera edición del libro de Raúl Peñaranda](#); Knight Center for Journalism in the Americas. April 17, 2014. [Bolivia created “government-operated” media network to control public opinion, new book says](#).

<sup>213</sup> Inter American Press Association. June 24, 2014. [Attack on Bolivian paper, photographer protested by IAPA](#); Agencia de Noticias Fides (ANF). June 22, 2014. [ANP preocupada por agresión verbal de alcalde contra periódico El Deber](#); Oxígeno. June 22, 2014. [Percy Fernández se estrella otra vez con los medios: agredió a un reportero gráfico y El Deber](#).

<sup>214</sup> Página Siete. October 14, 2014. [Evo considera a la red ERBOL y Fides sus “primeros enemigos”](#); El Montículo.com. October 13, 2014. [Evo considera a la red ERBOL y Fides sus “primeros enemigos”](#); El Deber. No date. [Evo dice que sus primeros enemigos son dos medios](#).

<sup>215</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.

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>216</sup>

116. 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>217</sup>

## F. Prior censorship

117. The Office of the Special Rapporteur received word of a denunciation made by dissident Cuban writers Wendy Guerra and William Navarrete, who in a blog appearing in the Spanish newspaper *El Mundo* stated that on Saturday, November 8, they were censored by order of the Government of Bolivia when they were preparing to give a conference entitled “Cuba por dentro y por fuera”, during the close of the First Literary Festival of Santa Cruz de la Sierra. The writers also affirmed that William Navarrete heard Cecilia Kenning, director of the private Asociación Pro Arte y Cultura (APAC) –organizer of the event- say that a municipal official from the Cultural Foundation of the Central Bank of Bolivia [*Fundación Cultural del Banco Central de Bolivia*], Homero Carvalho, received orders from the Government of Evo Morales to avoid holding the conference at all costs, or to over the tone with respect to the Cuban topic.<sup>218</sup> In an interview with the Monitoring and Oversight Unit for Freedom of the Press and Expression in Bolivia [*Unidad de Monitoreo y Vigilancia de la Libertad de Prensa y Expresión en Bolivia*], Homero Carvalho had denied the act of censorship, explaining that the topic that the speakers intended to address was not part of the encounter, which was why Cecilia Kenning had explained this circumstance to them, and that the writers themselves had made the decision not to carry out the conference.<sup>219</sup>

118. The Office of the Special Rapporteur had knowledge that during 2013, the UNIR foundation had investigated journalistic censorship and self-censorship in Bolivia, based on an anonymous survey in the cities of La Paz, Santa Cruz and Cochabamba, the purpose of which was to determine the perception and assess the degree of (self)censorship among journalists in this respect. According to the study, 54% of those surveyed admitted to having been victims of censorship during their professional careers, while 59% said that they had resorted to the practice of self-censorship. Similarly, 83% would admit to knowing of a colleague who has suffered from censorship. The survey showed that 28% of the journalists consulted said that they had been censored for topics that could generate conflicts with authorities and 26% for topics that would affect the interests of advertisers. Additionally, 85% of those survey complained of difficulty in obtaining access to public sources, particularly the police and armed forces.<sup>220</sup>

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<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. 32.

<sup>217</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>218</sup> Página 7. November 14, 2014. [Escritores cubanos disidentes denuncian supuesta censura](#); *El Día*. November 12, 2014. [Escritores cubanos denuncian censura en Bolivia](#).

<sup>219</sup> Asociación Nacional de la Prensa (ANP). November 16, 2014. *Homero Carvalho: No hubo censura del Viceministerio*. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>220</sup> Knight Center for Journalism in the Americas. April 18, 2014. [More than half of Bolivian journalists have suffered censorship and self-censorship](#); *La Razón*. March 23, 2014. [Estado de situación de la censura y autocensura periodísticas en Bolivia](#).



## G. Freedom of expression in electoral contexts

119. The Office of the Special Rapporteur had knowledge of a resolution approved by the Supreme Electoral Tribunal [*Tribunal Supremo Electoral (TSE)*] on January 2 that would establish economic sanctions for media outlets and companies that carry out or disseminate polls, or pre-election surveys, of organizations that do not have authorization from the TSE. In May, the president of that agency repeated his warning and added that the media outlets on June 1 would receive a list of organizations with approval for carrying out surveys.<sup>221</sup> On July 17, 2014, the TSE reported that people or organizations that place obstacles in the path of electoral campaigns for the October 12 general elections would be economically punished.

120. On August 20, the Supreme Electoral Tribunal [*Tribunal Supremo Electoral*] issued Resolution 347, which would prohibit all media outlets from disseminating spots and/or advertising messages with images, photographs and/or voices of the candidates for the October 12 elections, starting 90 days before and until 30 days before those elections.<sup>222</sup> The National Press Association of Bolivia [*Asociación Nacional de la Prensa de Bolivia (ANP)*] affirmed that the Resolution would violate the right to express ideas.<sup>223</sup>

121. On August 26, the Supreme Electoral Tribunal [*Tribunal Supremo Electoral (TSE)*] resolved to sanction the political organization Movimiento al Socialismo (MAS) and the state channel Bolivia TV with a fine for the presentation of candidates to be deputies and senators from La Paz made by president Evo Morales during a ceremony inaugurating works that was broadcast by four television networks. The sanction would be justified by Resolution 347<sup>224</sup>, in light of which the president had recognized his mistake and affirmed that he would pay the fine levied by the TSE<sup>225</sup>.

122. On October 9, the president of the Departmental Electoral Tribunal [*Tribunal Electoral Departamental (TED)*] of Chuquisaca sanctioned two political organizations and three media outlets for violating the Electoral Propaganda Dissemination Regulation [*Reglamento para la Difusión de Propaganda Electoral*].<sup>226</sup>

## H. Other relevant situations

123. On March 12, mining cooperative members had warned that they would close the offices of the daily newspaper *La Razón*, in the city of Oruro, as a means to obtain a public apology from the publication following its dissemination of an ironic cartoon about people who had died during an accident that took place during the Carnival of Oruro. The president of the Federation of Mining Cooperatives of Oruro [*Federación de Cooperativas Mineras de Oruro*] made an announcement in which he gave the daily newspaper 24 hours to apologize.<sup>227</sup> By means of a note published days after the incident, the newspaper expressed its apologies to those who may feel offended by the referred-to communication.<sup>228</sup>

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<sup>221</sup> Página Siete. May 5, 2014. [Múltiplos a medios que difundan encuestas de firmas sin registro](#); Los Tiempos. May 5, 2014. [Encuestas sin aval del TSE tendrán sanciones](#); La Patria/ANF. January 4, 2014. [Tribunal Electoral sancionará a medios que difundan encuestas electorales](#); Opinión.com.bo/El País. January 4, 2014. [El TSE ingresa al año electoral y regula difusión de encuestas](#).

<sup>222</sup> Tribunal Supremo Electoral. [Resolución TSE-RSP No. 0347/2014](#). August 18, 2014; Página Siete; August 21, 2014; [TSE prohíbe pase de spots con imágenes y voces de candidatos](#); El Potosí/ANF. August 22, 2014. [Resolución del TSE vulnera el derecho a expresar ideas](#).

<sup>223</sup> El Potosí/ANF. August 22, 2014. [Resolución del TSE vulnera el derecho a expresar ideas](#).

<sup>224</sup> Tribunal Supremo Electoral. [Resolución TSE-RSP No. 0347/2014](#). August 18, 2014.

<sup>225</sup> La Razón. August 27, 2014. [TSE multa al MAS y a Bolivia Tv con Bs 130.625 por falta electoral](#); Página Siete. August 27, 2014. [El TSE impone una multa de Bs 130 mil al MAS y al Canal 7](#).

<sup>226</sup> La Razón. October 9, 2014. [En Chuquisaca sancionan al MAS, UD y tres medios de comunicación por violar el silencio electoral](#); Página Siete. October 10, 2014. [TDE sanciona en Chuquisaca a dos partidos y tres medios](#); FM Bolivia. October 10, 2014. [Corren sanciones a medios y partidos](#).

<sup>227</sup> Erbol. March 12, 2014. [Diputado y mineros exigen disculpas por caricatura](#); Agencia de Noticias Fides (ANF). March 12, 2014. [Cooperativas mineras advierten con cerrar oficina de la razón en oruro y quemar periódicos si no pide disculpas](#); Asociación Nacional de la

124. On August 1, Law 315 and the “Hermanos Peñasco Layme” Law 554 on Private Life Insurance and Permanent Disability due to Accidents of Illnesses in General or Other Causes for the Men and Women Press Workers of Bolivia [*Seguro Privado de Vida e Invalidez Permanente por Accidente de Enfermedades en General u Otras Causas para las Trabajadoras y los Trabajadores de la Prensa de Bolivia “Hermanos Peñasco Layme”*], which establishes the creation of an Insurance Financing Fund [*Fondo de Financiamiento del Seguro*] mainly composed of support from the State and printed, radio, television and digital media outlets. These funds would enable the contracting of a private insurance entity that, if necessary, would award benefits in an amount to be defined by the Regulation of the Law.<sup>229</sup> The National Press Association of Bolivia [*Asociación Nacional de la Prensa de Bolivia*] had characterized the referred-to Law as an “attack against the freedoms of enterprise and expression,” because the financial burden would affect the economy of the companies and would not guarantee life insurance because of “the high potential to become a source of corruption.”<sup>230</sup>

125. During the first days of September, the National Press Association of Bolivia [*Asociación Nacional de la Prensa de Bolivia (ANP)*] had demanded an explanation from the Office of the General Public Prosecutor [*Ministerio Público*] regarding the complaint by the newspaper *El Día* in the city of Santa Cruz de la Sierra about the impersonation of a journalist by a presumed investigator from the Attorney General’s Office [*Fiscalía*] during a judicial hearing. Apparently, an official from the Ministry of Government [*Ministerio de Gobierno*] who was in charge of security for one of the prosecutors had been present during the judicial hearing wearing the exclusive official uniform of the media outlet.<sup>231</sup>

126. On September 21, the state channel Bolivia TV stopped broadcasting the debate between candidates for the Vice Presidency organized by the Association of Journalists of La Paz [*Asociación de Periodistas de La Paz (APLP)*].<sup>232</sup> This omission was repeated one week later, in declining to broadcast the sole debate between presidential candidates, held on September 28. This was notable because the referred-to media outlet had provided informative coverage of every presidential debate since the late 1980s.<sup>233</sup> The vice president of the APLP, Raúl Peñaranda, said that “[T]he state television always [had] favor[ed] the government but that Bolivia TV never ha[d] been so submissive as now.”<sup>234</sup>

127. On October 11, the National Press Association of Bolivia [*Asociación Nacional de la Prensa de Bolivia ANP*] issued a communiqué condemning the “outrage” suffered by the newspaper *El Deber* in the city of Santa Cruz de la Sierra due to improper use of its journalistic seal for dissemination on the Internet of a false report made on October 9 asserting that candidate Jorge Quiroga Ramírez was withdrawing from the presidential race.<sup>235</sup>

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Prensa (ANP). March 12, 2014. *Amenazan a periódico con cierre de oficina*. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Tarixa. March 14, 2014 [Bolivia: Mineros impiden circulación del diario La Razón en Oruro](#).

<sup>228</sup> La Patria. March 17, 2014. [Mineros satisfechos de publicación de disculpas en La Razón por caricatura](#); Agencia de Noticias Fides (ANF). March 16, 2014. [La Razón ofrece disculpas por publicación de caricatura](#).

<sup>229</sup> Ministerio de Comunicación. September 26, 2014. [Ministerio de Comunicación socializa alcances de la Ley del Seguro Privado de Vida e Invalidez para periodistas](#).

<sup>230</sup> Agencia de Noticias Fides. August 14, 2014. [ANP denuncia “atropello” a la libertad de expresión](#); FM Bolivia. August 15, 2014. [Rige ley de seguro para periodistas con modificaciones y la ANP la cuestiona](#).

<sup>231</sup> Página Siete/ANF. September 5, 2014. [Diario El Día denuncia suplantación de periodista](#); Opinión. September 5, 2014. [ANP: El Día denuncia suplantación de periodista en audiencia](#).

<sup>232</sup> Página Siete. September 23, 2014. [Periodistas: Primera vez que el Canal 7 no transmite debate](#); Committee to Protect Journalists (CPJ). October 7, 2014. [Bolivia’s president and state-run TV skip presidential election debate](#).

<sup>233</sup> IFEX. October 10, 2014. [Bolivia’s president and state-run TV skip presidential election debate](#); Committee to Protect Journalists (CPJ). October 7, 2014. [Bolivia’s president and state-run TV skip presidential election debate](#).

<sup>234</sup> Knight Center for Journalism in the Americas. October 10, 2014. [Elecciones en Bolivia: acusan al canal estatal de hacer propaganda pro Evo Morales en plena campaña](#); Committee to Protect Journalists (CPJ). October 7, 2014. [Bolivia’s president and state-run TV skip presidential election debate](#).

<sup>235</sup> Los Tiempos. October 11, 2014. [ANP condena “atropello” contra el diario El Deber](#); El Deber. No date. [La ANP condena atropello contra el deber](#).

## 6. Brazil

### A. Progress

128. On February 4, a jury panel in the state of Maranhão convicted two people charged as the perpetrators in the murder of journalist Décio Sá, which took place in the city of São Luis. The defendants were sentenced to 25 years and three months, and 18 years and three months in prison, respectively [sic].<sup>236</sup> According to reports, on April 23, 2012, the journalist was at a restaurant when the shooter entered the locale and shot him in the back several times. Sá worked as a reporter on political matters for the *O Estado do Maranhão* newspaper and authored a blog called *Blog do Décio*, wherein he reported acts of corruption<sup>237</sup>. According to the information received, the crime was committed because of reports published on the blog belonging to the journalist about the murder of an entrepreneur, which involved the members of a usury group.<sup>238</sup> Both convicted defendants for the murder of Sá appealed the jury [*Tribunal do Júri*] trial decision. Nine other people – including police officers and the alleged perpetrators- also were under prosecution for the crime.<sup>239</sup>

129. The Office of the Special Rapporteur takes note of the progress in the criminal prosecution for the homicide of sports reporter Valério Luiz de Oliveira. According to reports, on August 12, 2014, the 2<sup>nd</sup> Criminal Court [2<sup>a</sup> *Vara dos Crimes Dolosos*] of Goiânia decided to prosecute five people by jury [*Tribunal do Júri*], two were police officers and one an ex sports manager.<sup>240</sup> On the other hand, the Office of the Special Rapporteur also learned that in the early morning hours of September 10, a lock on a door in an office of the Public Prosecutor for the State of Goiás was broken. That room contained criminal case court files for the homicide of Luiz de Oliveira. The Public Prosecutor filed a complaint regarding this event and was informed the incident would be investigated.<sup>241</sup> Luiz de Oliveira worked for *Radio Jornal 820 AM* and for *PUC-TV* network, in the city of Goiânia and was killed on July 5, 2012 in that city. The reporter allegedly received death threats and was denied access to the team club facilities because of his critical commentaries on a Goiás state soccer team.<sup>242</sup>

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<sup>236</sup> Poder Judiciário do Estado do Maranhão. Processo No. 20550-43.2012.8.10.0001. Judgment of February 4, 2014. Available for consultation at: <http://jurisconsult.tjma.jus.br/>; G1. February 5, 2014. *Assassino do jornalista Décio Sá é condenado a 25 anos de prisão*; Brasil 247. February 5, 2014. *Assassino de Décio Sá é condenado a 25 anos*.

<sup>237</sup> IACHR. *Annual Report 2012. 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. 73; IACHR. Office of the Special Rapporteur for Freedom of Expression. April 26, 2012. *Press Release R40/12. Office of the Special Rapporteur Condemns Murder of Journalist and Political Blogger in Brazil*; Reporters Without Borders (RSF) April 24, 2012. *Seven arrested in investigation into killing of blogger Décio Sá*; UN High Commissioner for Human Rights. April 27, 2012. *Preocupa a ACNUDH tendencia de asesinatos de periodistas que daña el ejercicio de la libertad de expresión en Brasil*.

<sup>238</sup> G1. February 5, 2014. *Assassino do jornalista Décio Sá é condenado a 25 anos de prisão*; Agência Brasil. February 3, 2014. *Começa no Maranhão julgamento de acusados de matar jornalista Décio Sá*.

<sup>239</sup> Poder Judiciário do Estado do Maranhão. Processo No. 20550-43.2012.8.10.0001. Available at: <http://jurisconsult.tjma.jus.br/>; G1. February 5, 2014. *Assassino do jornalista Décio Sá é condenado a 25 anos de prisão*; Agência Brasil. February 3, 2014. *Começa no Maranhão julgamento de acusados de matar jornalista Décio Sá*; Inter American Press Association (IAPA). No date. *Caso Décio Sá: Polícia pediu prisão de advogado, mas Justiça negou*.

<sup>240</sup> Tribunal de Justiça do Estado de Goiás. 2<sup>a</sup> Vara dos Crimes Dolosos. Processo Nº 273311-41.2012.8.09.0051. Sentença de Pronúncia. August 12, 2014. Available for consultation at: <http://www.tjgo.jus.br/index.php/consulta-processual>; Tribunal de Justiça do Estado de Goiás. August 13, 2014. *Acusados da morte de Valério Luiz vão a júri popular*; IACHR. *Annual Report 2013. 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.149. Doc. 50. December 31, 2013. Para. 89.

<sup>241</sup> G1. September 10, 2014. *MP registra ocorrência após suposto arrombamento de porta no Fórum*; Jornal Opção. September 10, 2014. *Caso Valério Luiz: Verificada tentativa de arrombamento em sala do Fórum de Goiânia onde processo está guardado*; Portal Imprensa. September 10, 2014. *Fórum de Goiânia (GO) é invadido e bandidos tentam levar processo do caso Valério Luiz*.

<sup>242</sup> IACHR. *Annual Report 2012. 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 R86/12 Office of the Special Rapporteur Condemns Killing of Sports Commentator in Brazil*; Reporters Without Borders (RSF). July 9, 2012. *Sports reporter gummed down in Goiânia, police investigating link to work*; Knight Center for Journalism in the Americas. February 4, 2012. *Polícia prende suspeitos de assassinar jornalista esportivo em Goiás*; GloboEsporte.com. March 19, 2013. *Morte na rádio, parte 1: o crime que levou um clube às páginas policiais*.

130. According to the information received, on August 28, 2014, an ex police officer was sentenced by a jury in the Ipatinga Court to 12 years incarceration for the murder of journalist Rodrigo Neto de Faria. The case was appealed. On August 1, the defendant was exonerated from Civil Police disciplinary actions including his alleged participation in the crime.<sup>243</sup> Neto de Faria was the host of the radio program 'Plantão Policial' for *Rádio Vanguarda* and police reporter for the *Vale do Aço* newspaper in the city of Ipatinga, in the state of Minas Gerais. Two unknown persons, who shot him at least twice, murdered the journalist on March 8, 2013. Previously, the reporter received several threats related to his reports on police corruption and crimes in the region.<sup>244</sup> According to reports, another person was also being prosecuted for the murder of Neto de Faria and additional investigations were ongoing in order to determine the mastermind of the crime and the alleged group of hitmen or "extermination" team the defendants were part of.<sup>245</sup> Likewise, according to reports, on September 17, 2014, the Criminal Court [*Vara Criminal*] for Coronel Fabriciano decided to prosecute one of the perpetrators in the Neto de Faria homicide for the April 14, 2013 murder of Walgney Carvalho. Carvalho was a freelance photographer and correspondent for the *Vale do Aço* newspaper. The police concluded that the photographer was murdered for his knowledge on facts relating to the murder of Neto de Faria.<sup>246</sup>

131. In March, 2014 the "Working Group on Human Rights for Journalists in Brazil" [*Grupo de Trabalho sobre Direitos Humanos dos Profissionais de Comunicação no Brasil*], presented its final report. The Group – composed of federal government authorities, the Federal Public Prosecutor, and representatives of journalist organizations and civil society – was created in 2012 and had among its responsibilities to propose the establishment of a monitoring system for complaints of violence against journalists, perfecting public policy related to this goal, and adopting guidelines for journalist safety in the risky situations which stem from their profession. The Group presented a final report after the culmination of its 2013 and 2014 activities, which included meetings and public hearings with the purpose of obtaining information regarding violence against journalists in the states of the federation. UNESCO authorities also attended the meetings of the Working Group, as well as 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 subject of journalist protection in Mexico and Colombia.<sup>247</sup> In the report, the Group analyzed the Brazilian context of violence against journalists

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<sup>243</sup> Tribunal de Justiça de Minas Gerais. Processo No. 0066365-79.2013.8.13.0313. Available for consultation at: [http://www4.tjmg.jus.br/juridico/sf/proc\\_movimentacoes.jsp?comrCodigo=313&numero=1&listaProcessos=13006636](http://www4.tjmg.jus.br/juridico/sf/proc_movimentacoes.jsp?comrCodigo=313&numero=1&listaProcessos=13006636); G1. August 28, 2014. *Ex-policial é condenado pela morte do jornalista Rodrigo Neto*; EM. August 28, 2014. *Ex-policial civil é condenado a 12 anos de prisão por morte de jornalista em Ipatinga*; Jornal Vale do Aço. August 10, 2014. *Lúcio Lirio é expulso da Polícia Civil*; Diário do Aço. August 9, 2014. *Lúcio não é mais investigador da PC*.

<sup>244</sup> IACHR. *Annual Report 2013. 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.149. Doc. 50. December 31, 2013. Para. 102; IACHR. Office of the Special Rapporteur for Freedom of Expression. March 12, 2013. *Press Release R18/13 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>245</sup> Aconteceu no Vale. August 30, 2014. *Promotor que acompanha o caso admite que assassinato não está esclarecido*; Portal Diário do Aço. March 8, 2014. *Um ano depois, como está o Caso Rodrigo Neto?*; EM. August 28, 2014. *Ex-policial civil é condenado a 12 anos de prisão por morte de jornalista em Ipatinga*; G1. May 6, 2014. *Polícia Civil de BH volta a investigar motivação da morte de Rodrigo Neto*.

<sup>246</sup> Rádio Cidade 89.1 FM. September 23, 2014. *Justiça manda 'Pitote' a júri popular por morte de Walgney Carvalho*; G1. September 19, 2014. *Justiça manda 'Pitote' a júri popular por morte de Walgney Carvalho*; Jornal Vale do Aço. September 18, 2014. *Justiça manda "Pitote" ir a júri pelo assassinato de fotógrafo*; IACHR. *Annual Report 2013. 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.149. Doc. 50. December 31, 2013. Para. 103; IACHR. Office of the Special Rapporteur for Freedom of Expression. April 17, 2013. *Press Release R26/13 Office of the Special Rapporteur Condemns Murder of Journalist in Brazil*; Committee to Protect Journalists (CPJ). *Walgney 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. *Inquéritos são concluídos e suspeitos têm prisão preventiva decretada pela Justiça*; Jornal Vale do Aço. July 24, 2013. *"Pitote" também matou Carvalho, conclui PC*.

<sup>247</sup> IACHR. *Annual Report 2013. 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.149. Doc. 50. December 31, 2013. Para. 92; Communication of the State of Brazil to the IACHR Executive Secretariat and to the Office of the Special Rapporteur for Freedom of Expression. No. 129. May 29, 2013. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Communication of the State of Brazil to the IACHR. No. 301. November 11, 2013. Anexo XIV. Grupo de Trabalho "Direitos Humanos dos Profissionais de Comunicação no Brasil" criado pela Resolução n° 07/2012 – Relatório Parcial. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Secretaria de Direitos Humanos. Conselho de Defesa dos Direitos da Pessoa Humana. Grupo de Trabalho "Direitos Humanos dos Profissionais de

and documented 321 cases of crimes against journalists, between 2009 and February of 2014, related to the exercise of their right to freedom of expression. In this situation, the Group recommended that different State organizations, among other things: broaden the National Protection System to include journalists suffering threats, through a Mechanism for the Protection of Journalists among others things.; taking into account possible specific needs for protection, and to include reporters and civil society organizations in the National Coordination for the Protection Plan; create an observatory for violence against journalists [*Observatório da Violência contra Comunicadores*] to register and monitor violence cases and their status, incorporating the National Protection System; establish a standardized protocol for armed forces action during protests; and present bills that support the enhancement of the federal mechanism for investigating crimes against freedom of expression in cases of omission, inefficiency, non-compliance with reasonable timeframes or presumed local authority involvement in crimes.<sup>248</sup>

132. Law 12.965/2014, also known as Internet Civil Framework [*Marco Civil da Internet*], was enacted on April 23, 2014. The law, which included broad public consultations with Brazilian society, is a product of a bill led by the Minister of Justice and the Getulio Vargas Foundation Technology and Society Center [*Centro de Tecnologia e Sociedade da Fundação Getulio Vargas*].<sup>249</sup> The law establishes freedom of expression and the protection of privacy as regulatory principles for the Internet and contains important protections to safeguard these rights and Internet access.<sup>250</sup> In this regard, the law guarantees inviolability of online communication that may only be revealed to a third party with a court order and prohibits the interruption of user connection, except in non-payment cases.<sup>251</sup> The law also guarantees the principle of neutrality on the web<sup>252</sup> and sets forth that, generally speaking, intermediaries shall not be held responsible for damages caused due to content generated by third parties as long as they take the necessary precautions within their technical capacities to make the damaging content unavailable by a specific judicial order.<sup>253</sup> The law also includes provisions regarding Internet access promotion and online literacy establishing that Internet development in the country should be governed by multiparticipative governance, which is transparent, and include participation from the State, companies, civil society and academia.<sup>254</sup>

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Comunicação no Brasil” criado pela Resolução nº 07/2012. [Relatório Final](#); Secretaria de Direitos Humanos da Presidência da República. March 11, 2014. [GT Comunicadores apresenta relatório final e propõe a criação de observatório](#).

<sup>248</sup> Secretaria de Direitos Humanos. Conselho de Defesa dos Direitos da Pessoa Humana. Grupo de Trabalho “Direitos Humanos dos Profissionais de Comunicação no Brasil” criado pela Resolução nº 07/2012. [Relatório Final](#).

<sup>249</sup> IACHR. [Annual Report 2013. 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.149. Doc. 50. December 31, 2013. Para. 99; 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 users](#); Presidência da República. [Lei No. 12.965](#). April 23, 2014.

<sup>250</sup> Presidência da República. [Lei No. 12.965](#). April 23, 2014. Article 3.

<sup>251</sup> Presidência da República. [Lei No. 12.965](#). April 23, 2014. Article 7.

<sup>252</sup> Presidência da República. [Lei No. 12.965](#), April 23, 2014. Article 9. Article 9 establishes: “Art. 9. Those responsible for transmissions, commutation or routing have the duty to treat all data packages equally, regardless of content, origin and destination, service, terminal or application. § 1. Traffic discrimination or degradation regulation rests exclusively within the purview of the President of the Republic as stated in subparagraph IV of Art. 84 in the Federal Constitution, for the true execution of this law, in consultation with the Internet Management Committee [*Comité Gestor de Internet*] and the National Telecommunications Agency [*Agencia Nacional de Telecomunicaciones*] and may only be the result of: I – technical requirements necessary for the provision of services and applications; and II – prioritization of emergency services”.

<sup>253</sup> Presidência da República. [Lei No. 12.965](#), April 23, 2014. Article 19. It is important to note that said legal provision is not applicable to copyright material. In that regard, Article 19 establishes: “Art. 19: In order to guarantee freedom of expression and impede censorship, Internet applications providers can only be held accountable civilly for damages deriving from third party content if, a specific judicial order is issued and no action is taken to make the content in violation unavailable, within the technical limitations of the service and set deadline, except when there are different applicable provisions. § 1- The judicial order mentioned in the heading must contain, under the penalty of nullification, clear and specific identification of the content claimed to be a violation, which allows for the unequivocal identification of the content. § 2- In cases where there is an infringement on copyright laws and other related rights, this Article shall be applicable when specific legal precaution has been utilized, with full respect for freedom of expression and other guarantees provided for in Art. 5 of the Federal Constitution.” Article 21 of the law also establishes that intermediaries have subsidiary responsibility when divulging content created by a third party; said content may be images, videos or other material containing nudity or sexual acts that are private in nature as long as, upon notification by the participant or legal representative, sponsorship diligently ceases; within the context and technical limitations of the service, the withdrawal of said content.

<sup>254</sup> Presidência da República. [Lei No. 12.965](#). April 23, 2014. Articles 24 - 27.

133. On August 5, the Superior Court of Justice [*Superior Tribunal de Justiça*] determined that search engine providers could not be forced to delete specific results from their system for a specific word, even when the provider is informed of the exact address of the page sought to be deleted. In that regard, the Court stated that search engines, by their very nature, do not include content pre-filtering. The instant case was a request by a judge who was absolved in an administrative disciplinary action and requested the news pertaining to the action be excluded from search engine results for his name.<sup>255</sup> The Superior Court of Justice ruled similarly in a June 4 decision, where a judge sued Google for not deleting content pertaining to his alleged involvement in illegal activity when a search is done in his name. In that case the SCJ ruled that search engines could not be held responsible for the results of a search, even if those are illegal. According to the court, this type of censorship on search engines “make it too difficult to find any web page including the banned word or phrase, regardless of its legal or illegal content, in violation of the right to information.”<sup>256</sup>

134. On September 17, 2014, the Supreme Federal Court [*Supremo Tribunal Federal*] reversed a precautionary measure that banned the publication of an edition of the *IstoÉ* magazine. According to reports, the ruling goes back to a remedy filed by the publishing company for the magazine opposing a precautionary measure of the District of Fortaleza Court. In that case the court ruled the publisher should abstain from distributing, marketing and publishing any article related to governor Ceará and a police operation investigating money laundering and tax evasion. The measure imposed a daily fine of R\$5,000,000 million *reais* (some US\$2,000,000) for non-compliance. On September 17, 2014, the Suprema Federal Court reversed the measure imposed by the first instance court. The ruling was based on an April 30, 2009 opinion wherein the 1967 Press Law was declared unconstitutional, reaffirming the ban on prior censorship. The court considered, among other things, that the information dealt with the actions of a public official; that it was not published with manifested negligence nor knowledge of distributing false information, and that, nonetheless the information referenced a classified investigation, the reporters who received the information did not violate the secrecy of the investigation, but rather those who leaked the information are responsible.<sup>257</sup> In a similar ruling on October 3, 2014, the Supreme Federal Court reversed a precautionary measure that prohibited *Rede Globo* from publishing reports on alleged irregularities in the adoption process by a judge in the state of Paraíba; subject to investigation because of a parliamentary investigation. In the ruling, the Supreme Court based its opinion on the September 17 ruling, among other things, and reiterated the general ban of prior censorship in the judicial framework for Brazil.<sup>258</sup>

135. In December, The National Truth Commission [*Comissão Nacional da Verdade*] (CNV) published its final report on serious human rights violations in the country between 1946 and 1988. The Commission recognized the generalized and systematic character of arbitrary detentions, acts of torture, executions and forced disappearances perpetrated by the State, against political regime, including reporters, especially in the 21 years of dictatorship which began in 1964. CNV recognized these crimes as crimes against humanity and recommended the proper entities adjudicate in the appropriate realm, criminal, civil and administrative the responsible public agents, without the applying amnesty. In that regard, the CNV recommended continuing the strengthening of relocation policies and opening military dictatorship files, especially those belonging to repression organizations, which should be turned over to the public archives for processing and publication in the National Archives. The CNV specifically states that “private documents belonging to private entities and persons that can contribute to the investigation on serious human rights violation in Brazil, must be considered [documents of] public and social interest.”<sup>259</sup>

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<sup>255</sup> Superior Tribunal de Justiça. Reclamação 018685. [Decision of August 5, 2014.](#)

<sup>256</sup> Superior Tribunal de Justiça. Reclamação 5072-AC. [Decision of December 11, 2013.](#) Published on June 4, 2014.

<sup>257</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. September 29, 2014. [Press Release R 109/14 Office of the Special Rapporteur for Freedom of Expression Pleased With Recent Ruling by Brazil's Supreme Federal](#); Tribunal Supremo Tribunal Federal (STF). Medida Cautelar na [Reclamação 18.638](#) Ceará. Judgment of September 17, 2014.

<sup>258</sup> Supremo Tribunal Federal (STF). Medida Cautelar na [Reclamação 18.746](#) Rio de Janeiro. Judgment of October 3, 2014; Supremo Tribunal Federal (STF). October 3, 2014. [Suspensa decisão que impedia TV Globo de exibir matéria sobre juiz](#); O Globo. October 4, 2014. [Gilmar Mendes libera veiculação de matéria da TV Globo sobre juiz da Paraíba.](#)

<sup>259</sup> Comissão Nacional da Verdade. Relatório Final da CNV. Volumen 1. Available for consultation at: [http://www.cnv.gov.br/index.php?option=com\\_content&view=article&id=571](http://www.cnv.gov.br/index.php?option=com_content&view=article&id=571)

## B. Murders

136. On February 10, 2014, journalist Santiago Ilídio Andrade died; he was a cameraman for the *Rede Bandeirantes* network. His death was due to attacks he received while covering the Rio de Janeiro protests. According to reports, on February 6, while covering a protest on the bus fare increase in that city, the reporter was hit with an explosive which caused cranial collapse. Upon being admitted to the hospital, Andrade was in an induced coma, nonetheless, the Municipal Health Department for Rio de Janeiro reported days later that Andrade was brain dead. The journalist later passed away. President Dilma Rousseff strongly condemned the attack and declared the Federal Police would support the case investigation. According to reports, the police detained two people who were allegedly involved.<sup>260</sup>

137. On February 13, journalist Pedro Palma, owner of the local weekly *Panorama Regional*, was murdered in the municipality of Miguel Pereira, state of Rio de Janeiro. According to the information received, on the night of February 13 Palma was murdered in front of his house when two unknown persons shot him at least three times from a motorcycle. The journalist owned the weekly *Panorama Regional*, which circulated in different municipalities in the region. In the magazine he normally reported alleged irregularities in the local government. People close to Palma indicated that he had received death threats.<sup>261</sup>

138. As reported, on the night of February 27, Geolino Lopes Xavier, the director of portal *N3* and news program host, was murdered in the city of Teixeira de Freitas, state of Bahia. According to available information, Lopes was in a portal *N3* automobile after dropping a colleague off at home when unknown persons shot at him from another vehicle.<sup>262</sup> According to reports, the reporter was researching irregularities on companies that provide services to the office of the mayor in the municipality.<sup>263</sup>

139. According to the information received, journalist and blogger Marcos de Barros Leopoldo Guerra was reportedly killed in his house by two unknown persons who shot him on the night of December 23 in the city of Ubatuba, state of São Paulo. The assailants later fled on a motorcycle. The journalist exposed cases of corruption and criticized local authorities on his blog *Ubatuba Cobra*. According to persons close to Leopoldo Guerra, the blogger had been receiving death threats because of the reports published on his blog.<sup>264</sup>

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<sup>260</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. February 12, 2014. [Press Release R 11/14 Office of the Special Rapporteur Condemns Death of Journalist in Brazil](#); Committee to Protect Journalists (CPJ). February 7, 2014. [Brazilian journalist in coma after being attacked](#); Estadão. February 10, 2014. [Cinegrafista atingido por rojão em protesto no Rio tem morte cerebral](#); Associação Brasileira de Jornalismo Investigativo (Abraji). February 10, 2014. [Abraji lamenta morte de cinegrafista da Band](#); UOL. February 10, 2014. [Cinegrafista atingido por explosivo em protesto no Rio tem morte encefálica](#); G1. February 10, 2014. [Cinegrafista atingido por rojão em protesto no Rio tem morte cerebral](#); Knight Center for Journalism in the Americas. February 10, 2014. [Brazilian cameraman hit in the head with explosive confirmed brain-dead](#); O Tempo. February 10, 2014. [Dilma se diz 'revoltada' por morte de cinegrafista em protesto](#); Época. February 10, 2014. [Família autoriza doação de órgãos de cinegrafista morto em protesto](#); Inter American Press Association (IAPA). 2014. [Brasil; O Globo. August 19, 2014. Dupla presa pela morte do cinegrafista Santiago Andrade em fevereiro vai a júri popular.](#)

<sup>261</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. February 25, 2014. [Press Release R 20/14 Office of the Special Rapporteur Condemns murder of Journalist in Brazil](#); Committee to Protect Journalists (CPJ). February 14, 2014. [Newspaper owner gunned down in Brazil](#); Inter American Press Association (IAPA). February 14, 2014. [SIP manifesta consternação com novo assassinato no Brasil](#); O Globo. February 13, 2014. [Dono de jornal em Miguel Pereira é assassinado a tiros na porta de casa](#); G1. February 13, 2014. [Jornalista é assassinado a tiros na porta de casa, em Miguel Pereira, RJ.](#)

<sup>262</sup> A Tarde. February 27, 2014. [Jornalista Geo Lopes é morto a tiros em Teixeira de Freitas](#); Associação Brasileira de Imprensa (ABI). March 10, 2014. [Entidades repudiam assassinato de jornalista no interior da Bahia](#); Reporters Without Borders (RSF). February 28, 2014. [Four journalists killed since start of 2014](#); Knight Center for Journalism in the Americas. February 28, 2014. [News portal director becomes fourth journalist killed in Brazil this year.](#)

<sup>263</sup> O Povo News. September 29, 2014. [Case Gel Lopes completa 7 meses esquecido pelas autoridades](#); Bahia 40 Graus. May 11, 2014. [Assassinato de Gel Lopes e o tal dossiê bomba](#); Inter American Press Association (IAPA). May 9, 2014. [Assassinato de Gel Lopes: Ex-deputado diz que jornalista fez dossiê antes de ser morto.](#)

<sup>264</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. December 30, 2014. [Press Release R 157/14 Office of the Special Rapporteur condemns murder of journalist in Brazil](#); Committee to Protect Journalists (CPJ). December 26, 2014. [Critical Brazilian blogger shot to death](#); Exame.com. December 24, 2014. [Jornalista e blogueiro é executado a tiros em Ubatuba](#); Fox News Latino/EFE. December 24, 2014. [Journalist who denounced corruption in Brazilian city slain](#); Folha de São Paulo. December 24, 2014. [Jornalista é assassinado a tiros em Ubatuba \(SP\)](#); O Globo. December 24, 2014. [Jornalista é morto a tiros dentro de casa no litoral norte de SP.](#)

140. 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 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>265</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>266</sup>

141. Additionally, principle 9 of the IACHR Declaration of Principles on Freedom of Expression, approved in 2000, 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”.

### C. Attacks, harassment, threats and detentions of journalists and attacks on the media

142. On January 22, the radio host and reporter Delmiro Ribeiro Sousa, for radio *Paiaíá FM*, was beat by an attorney and two other people in the city of Saúde, state of Bahia. The journalist was also threatened. The attacks were related to a report made by Ribeiro Sousa on irregularities found in pension cases handled by the attorney.<sup>267</sup>

143. On February 27, Jackson Rodrigues, cameraman for *TV Band Amazonas*, was detained while covering a double homicide in Manaus, state of Amazonas. According to reports, the journalist was assaulted and detained by a police officer for the crime of contempt while filming the establishment. According to the Military Police commander, an administrative process was initiated in the Comptroller Office of the institution.<sup>268</sup>

144. As reported, in March of 2014, the mayor for the city of Nova Iguaçu threatened reporter Yassine Ahmad Hijazi, for the *A Fronteira* portal, after the journalist questioned him in an interview.<sup>269</sup>

145. The headquarters for the *Pedra Branca FM 87.9* community radio station was destroyed by a March 8, 2014 fire in the city of Pedra Branca, state of Paraíba. According to reports, two unknown persons

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<sup>265</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>266</sup> IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Violence against journalists and media workers: Inter-American standards and national practices on prevention, protection and prosecution of perpetrators). OEA/Ser. L/V/II. 149. Doc. 50. December 31, 2013. Para. 31; Also see: 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>267</sup> Associação Brasileira de Jornalismo Investigativo (Abraji). February 7, 2014. [Radialista é agredido após denunciar esquema de cobrança ilegal de advogado](#); Rota Notícias/You Tube. February 4, 2014. [Radialista é agredido por advogado em Saúde-BA](#).

<sup>268</sup> Associação Brasileira de Jornalismo Investigativo (Abraji). February 27, 2014. [Cinegrafista da Band é agredido e preso](#); Fato Amazônico. February 27, 2014. [Corregedoria-Geral vai instaurar inquérito para apurar ocorrência envolvendo cinegrafista e oficial da PM](#); D24am. February 27, 2014. [Cinegrafista da Band é detido e diz ter sido agredido por policial](#); Portal D24am/You Tube. February 27, 2014. [Cinegrafista da Band é detido e diz ter sido agredido por policial em Manaus](#); Rede Tiradentes. February 27, 2014. [Cinegrafista da Band Amazonas é preso por policiais militares, em plena atividade, enquanto registrava homicídios](#).

<sup>269</sup> Associação Brasileira de Imprensa (ABI). March 24, 2014. [Jornalista é ameaçado pelo prefeito de Foz do Iguaçu em coletiva](#); Gazeta do Povo. March 19, 2014. [Prefeito de Foz perde a linha e xinga repórter](#); A Fronteira/You Tube. March 19, 2014. Published by AmigosDe Foz. [Reni Pereira agride verbalmente repórter](#).



broke a window at the station during the night and lit the station on fire. The fire destroyed all the equipment of the station.<sup>270</sup>

146. On March 13, Aníbal Ribas, owner and editor for the *Jornal Pampeano* newspaper, was threatened by eight police officers at the newspaper's headquarters, in the city of Jaguarão, state of Rio Grande do Sul. According to reports, the officers threatened the journalist with detention if he refused to sign six police reports wherein he was accused of committing the crimes of slander, defamation, and libel. The accusation was based on a report published that same day, which included a transcription of an alleged conversation among agents of the security forces.<sup>271</sup>

147. On April 11, alleged agents for the security forces immobilized and detained reporter Bruno Amorim, for *O Globo*, whom was taking pictures of a police operation to vacate the Favela da Telerj community in the city of Rio de Janeiro. The journalist was accused of contempt, inciting violence and resisting. Police officers also threatened to detain reporter Leonardo Barros, also for *O Globo*, as well as photographer Ana Carolina Fernandes, correspondent for *Reuters*.<sup>272</sup>

148. As reported, on May 9, the *Extra* newspaper journalist team, made up of reporter Flávia Junqueira, photographer Fábio Guimarães and driver Bruno Guerra were covering a Federal Police operation of an alleged fraud with the post office health insurance plan, when a person who was allegedly involved in the aforementioned crimes intentionally crashed into their vehicle. According to reports, when the team left the area, the person tried to crash into the vehicle again at a high rate of speed, but the driver for the team of journalists avoided the crash.<sup>273</sup>

149. On May 9, two unknown persons shot at Dirceu Marques de Oliveira, director for the *Tribuna do Povo* newspaper, in the city of Várzea de Palma, state of Minas Gerais. According to reports, the director was downtown delivering his paper when he was shot in the shoulder. The newspaper tends to report on political and criminal matters, and its headquarters was set on fire twice in the previous years.<sup>274</sup>

150. On May 15, an attorney and councilperson damaged the work equipment of reporter Elaine Stepanski and of a photographer for the *Notícias do Dia* newspaper while they were covering alleged irregularities in the Council Chamber of the city of Biguaçu, in the state of Santa Catarina.<sup>275</sup>

151. As reported, on June 4, police struck a cameraman for the program '*Brasil Urgente*', for *TV Bandeirantes* while he was covering an eviction operation in São Paulo. The Public Safety Secretary for the

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<sup>270</sup> Associação Brasileira de Emissoras de Rádio e Televisão (Abert). March 11, 2014. [Rádio comunitária é incendiada no interior da Paraíba](#); WSCOM Online. March 10, 2014. [Rádio Comunitária é incendiada em Pedra Branca](#).

<sup>271</sup> Portal Comunique-se. March 19, 2014. [Dono de jornal relata ter sofrido ameaças de policiais que invadiram redação](#); Inter American Press Association (IAPA). 2014. [Brazil](#).

<sup>272</sup> *O Globo*. April 11, 2014. [Repórter do GLOBO é detido por fotografar ação da polícia na desocupação da Favela da Oi](#); Portal Imprensa. April 11, 2014. [Repórter de "O Globo" é detido por fotografar ação da PM em desocupação de favela do RJ](#); Associação Brasileira de Jornalismo Investigativo (Abraji). April 11, 2014. [Abraji condena prisão de repórter no Rio de Janeiro](#); Portal Imprensa. April 14, 2014. ["Estava exercendo meu direito de documentar uma ação da PM", diz fotógrafa agredida no RJ](#); Associação Brasileira de Emissoras de Rádio e Televisão (Abert). No date. [Relatório de Liberdade de Imprensa](#).

<sup>273</sup> *Extra*. May 13, 2014. [Janjão vai depor sobre ameaças](#); *Extra*. May 10, 2014. [Abraji repudia agressão e intimidação à equipe do jornal Extra](#); Knight Center for Journalism in the Americas. May 15, 2014. [Jornal Extra denuncia agressão sofrida por seus repórteres durante investigação de esquema de fraude](#); Inter American Press Association (IAPA). May 14, 2014. [IAPA condemns legal, physical intimidation of Brazilian journalists](#).

<sup>274</sup> *R7*. May 9, 2014. [Diretor de jornal é baleado no ombro em atentado no norte de Minas](#); *O Tempo*. May 9, 2014. [Diretor de jornal de Várzea da Palma é baleado em atentado](#); *Aconteceu no Vale*. May 9, 2014. [Diretor de jornal do Norte de Minas é baleado em atentado](#); *Hoje em Dia*. May 9, 2014. [Diretor de jornal do Norte de Minas sofre atentado](#); *Comunique-se*. May 12, 2014. ["Não vou parar meu trabalho", diz diretor de jornal baleado em Minas Gerais](#); *Gazeta Norte Mineira*. May 10, 2014. [POR UM FIO! Jornalista de Várzea da Palma sobrevive após levar tiro nas costas em emboscada](#).

<sup>275</sup> Portal Imprensa. May 16, 2014. [Jornalista é agredida enquanto apurava denúncia em cidade do interior de SC](#); Federação Nacional dos Jornalistas (Fenaj). May 19, 2014. [Entidades denunciam novas agressões contra profissionais de imprensa](#).

state apologized for the event and said the police officer had been identified and was taken to the Comptroller office of the institution.<sup>276</sup>

152. Vera Araújo, reporter for *O Globo*, was detained for contempt on June 15, after reportedly filmed the detention of an Argentina fan in Rio de Janeiro. According to reports, a police sergeant decided the reporter needed to turn her camera off. Although Araújo identified herself with her press pass, the officer arrested the reporter. Upon learning about the case, the Secretary of Safety and the Military Police (MP) stated that internal affairs would investigate to determine if the police was responsible. In that regard, the MP issued a press release stating the sergeant was preliminarily on administrative leave.<sup>277</sup> In a November 6 communication, the State reported that a disciplinary administrative process was in place in order to investigate the event.<sup>278</sup>

153. On June 9, photographer for *O Estado de São Paulo*, André Liohn, was attacked by unknown individuals while photographing a disturbance in a metro workers assembly in São Paulo. According to reports, the attack took place after the press advisor for the union threatened to deny the media access to future assemblies if the photographer did not abstain from taking pictures.<sup>279</sup>

154. On July 17, reporter Eduardo Faustini and cameraman Luiz Cláudio Azevedo for *Rede Globo*, were victims of an ambush in the city of Anapurus, state of Maranhão. According to reports, the news team was working on a report of corruption in the offices of the mayors in the region when unknown persons intercepted their vehicle and stole their camera and recording equipment. Four people were apprehended for the crime, including a military police officer, a nephew of the city mayor, the secretary of administration and the treasurer for the office of the mayor.<sup>280</sup>

155. On July 24, cameraman Tiago Ramos for *SBT* network was attacked while covering the jail release of three detained activists. According to reports, a group of people awaiting the release of the activists attacked and injured the journalist. On that same occasion, photography equipment of photographer André Mello, for the *O Dia* newspaper, was damaged.<sup>281</sup>

156. On September 16, the president of the republic bodyguards attacked reporter Marina Dias, for the *Folha de São Paulo*, newspaper at the entrance to a presidential candidate debate.<sup>282</sup> In that regard, on

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<sup>276</sup> Tribuna Hoje. June 5, 2014. [Cinegrafista da Band é agredido por Policial Militar](#); Bahia Notícias. June 5, 2014. [Secretário se manifesta no Brasil Urgente sobre agressão de PM a cinegrafista da Band](#); Associação Brasileira de Emissoras de Rádio e Televisão (Abert). No date. [Relatório de Liberdade de Imprensa](#).

<sup>277</sup> O Globo. June 15, 2014. [PM prende jornalista do GLOBO que filmava prisão de torcedor argentino](#); Associação Brasileira de Jornalismo Investigativo (Abraji). June 16, 2014. [ABRAJI repudia prisão de repórter de O Globo, no Rio](#); El Economista/Agência Brasil. June 16, 2014. [Jornalistas do Rio irão à Justiça em busca de proteção contra polícia](#); G1. June 15, 2014. [PM prende repórter que filmava detenção de argentino no Rio](#); Portal Imprensa. June 16, 2014. [Repórter do jornal "O Globo" é presa após filmar detenção de turista argentino](#).

<sup>278</sup> Communication of the Permanent Mission of Brazil at the OAS. November 6, 2014. No. 301. Informação sobre a situação dos direitos humanos durante protestos no Rio de Janeiro. Anexo III: Corregedoria Geral Unificada. Ref. Ofício SUPDH No. 315/2014. August 10, 2014. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>279</sup> Portal Imprensa. June 10, 2014. [Fotógrafo do "Estadão" é agredido em assembleia dos metroviários de São Paulo](#); TV Estadão. June 9, 2014. [Fotógrafo é agredido em assembleia dos metroviários](#).

<sup>280</sup> G1. July 18, 2014. [Equipe da Rede Globo é vítima de emboscada em Anapurus](#); Imirante. July 21, 2014. [PM suspeito de participação em crime presta novo depoimento](#); G1. July 18, 2014. [Preso PM suspeito de participar de emboscada à equipe da TV Globo](#); O Estado. July 26, 2014. [Suspeitos de assaltar equipe do Fantástico presos](#); G1. July 25, 2014. [Três suspeitos de emboscada a equipe do Fantástico são presos](#); TV Guará. July 18, 2014. [Equipe do programa Fantástico é assaltada no interior do Maranhão](#); Blog do Gilberto Lima. July 17, 2014. [Equipe do Fantástico tem equipamentos roubados em Anapurus](#); G1. July 20, 2014. [Equipe do Fantástico é ameaçada e assaltada durante investigação](#); Associação Brasileira de Jornalismo Investigativo (Abraji). July 19, 2014. [Abraji repudia violência sofrida por equipe da Rede Globo no Maranhão](#).

<sup>281</sup> Associação Brasileira de Imprensa (ABI). July 25, 2014. [Jornalistas são agredidos durante libertação de ativistas no Rio](#); Federação Nacional dos Jornalistas (Fenaj). August 1, 2014. [FENAJ presta solidariedade a profissionais agredidos](#); O Dia. July 25, 2014. [Cinegrafista do SBT acaba hospitalizado após agressões de grupo em Bangu](#); G1. July 25, 2014. [Cinegrafista agredido no RJ enquanto trabalhava presta queixa na polícia](#).

<sup>282</sup> Associação Nacional de Jornais (ANJ). September 17, 2014. [Seguranças da Presidência agridem jornalistas em tumulto na entrada](#); Portal Imprensa. September 17, 2014. [Jornalistas são agredidos por seguranças em debate de presidenciáveis na CNBB](#).

September 26, the alleged bodyguards for a presidential candidate campaign attacked photographer André Penner, for *Associated Press*. The photographer was covering an event in Taboão da Serra, state of São Paulo, when he was assaulted by kicking and hitting and his camera was stolen.<sup>283</sup>

157. As reported, on October of 2014, the team for *RPCTV* was threatened on the road by the brother of the mayor for the city of Turvo, in the state of Paraná. The team was working on a report on election irregularities in the municipality of that city when the brother of the mayor and at least three unknown individuals threatened the reporters and ordered them to delete the images. The military police intervened. The team was investigating a complaint about threats and left the local battalion escorted by police. On the other hand, the group of the mayor's brother filed a complaint against the team for defamation.<sup>284</sup>

158. Principle 9 of the IACHR Declaration of Principles on Freedom of Expression, approved in 2000, 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.”

#### D. Social Protests

159. The Office of the Special Rapporteur received information about attacks and detentions against journalists who were working on social protests taking place in several cities in the country in 2014.

160. In that context, alleged security force agents assaulted several journalists and media workers, including: photographer Sebastião Moreira, for the *EFE* agency;<sup>285</sup> Gustavo Maia for *UOL*;<sup>286</sup> Mauro Donato for *Diário do Centro do Mundo*;<sup>287</sup> photographer Nelson Antoine for *Fotoarena*;<sup>288</sup> Sérgio Roxo, reporter for *O Globo*;<sup>289</sup> Reynaldo Turollo Jr.<sup>290</sup> and Zanone Fraissat<sup>291</sup> for *Folha de São Paulo*; photographer

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<sup>283</sup> O Estado de São Paulo. September 26, 2014. [Passeata de tucanos termina em tumulto e agressão na Grande SP](#); Associação de Repórteres Fotográficos e Cinematográficos no Estado de São Paulo. September 28, 2014. [André Penner, repórter fotográfico da AP é agredido em SP](#); Portal Imprensa. September 26, 2014. [Fotógrafo da AP é agredido por seguranças durante carreata de Aécio Neves em SP](#).

<sup>284</sup> Associação Brasileira de Jornalismo Investigativo (Abraji). October 13, 2014. [Equipe da RPCTV é ameaçada por irmão de prefeito no Paraná](#); Gazeta do Povo. October 10, 2014. [PF abre inquérito para apurar falsas denúncias de compra de voto em Turvo](#); G1. October 10, 2014. [PF investiga falsas denúncias de compra de voto no interior do Paraná](#).

<sup>285</sup> He was reportedly assaulted on the face while under police custody. Metro Jornal. January 29, 2014. [Assista: manifestantes e imprensa são agredidos por PMs](#); Resumo Fotográfico. January 30, 2014. [Fotógrafo denuncia agressão policial durante manifestação](#).

<sup>286</sup> He was reportedly assaulted with a police baton despite showing his press credentials. Associação Brasileira de Jornalismo Investigativo (Abraji). February 7, 2014. [Abraji repudia agressão a cinegrafista da Band no Rio](#); UOL. February 6, 2014. [Repórter do UOL é agredido por PMs em protesto no Rio](#); Associação Brasileira de Emissoras de Rádio e Televisão (Abert). No date. [Relatório de Liberdade de Imprensa](#).

<sup>287</sup> He was reportedly assaulted with a police baton. Terra. February 25, 2014. [SP: 14 jornalistas foram agredidos ou detidos em protesto, diz Abraji](#); Associação Brasileira de Emissoras de Rádio e Televisão (Abert). No date. [Relatório de Liberdade de Imprensa](#).

<sup>288</sup> He was reportedly assaulted with a police baton on his back. Associação Brasileira de Jornalismo Investigativo (Abraji). February 26, 2014. [Abraji atualiza levantamento de agressões e detenções de jornalistas durante protesto em São Paulo](#); Associação de Repórteres Fotográficos e Cinematográficos no Estado de São Paulo (Arfoc-SP). February 24, 2014. [Repórteres fotográficos identificados são agredidos durante manifestação](#).

<sup>289</sup> He was reportedly assaulted upon detention. R7. February 23, 2014. [Jornalistas são detidos e agredidos em protesto: ação é condenada](#); Terra. February 25, 2014. [SP: 14 jornalistas foram agredidos ou detidos em protesto, diz Abraji](#); Associação Brasileira de Emissoras de Rádio e Televisão (Abert). No date. [Relatório de Liberdade de Imprensa](#).

<sup>290</sup> He was reportedly assaulted while under police custody. Folha de São Paulo. February 22, 2014. [Vídeo mostra cerco policial a manifestantes e jornalista em SP](#); UOL Mais. February 22, 2014. [PROTESTOS 22/2](#); Associação Brasileira de Emissoras de Rádio e Televisão (Abert). No date. [Relatório de Liberdade de Imprensa](#); Federação Nacional dos Jornalistas (Fenaj). February 28, 2014. [Profissionais de imprensa são agredidos em confronto entre manifestantes e policiais em SP](#).

<sup>291</sup> He was reportedly assaulted by a security guard at a municipal medical facility. Folha de São Paulo. April 25, 2014. [Jornalista da Folha é agredido por segurança em entrada de AMA](#); Comunique-se. April 25, 2014. [Fotógrafo da Folha é agredido por segurança de posto de saúde](#).

Bruno Santos<sup>292</sup> and Mauro Pimentel<sup>293</sup> and reporter Daniel Fevero<sup>294</sup> for *Terra*; Bárbara Ferreira Santos<sup>295</sup> and Evelson de Freitas<sup>296</sup> for *O Estado de São Paulo*; photographer Victor Moriyama correspondent for *Getty Images*;<sup>297</sup> Amanda Previdelli for *Brasil Post*;<sup>298</sup> Tarek Mahammed for *Rede de Fotógrafos Ativistas*;<sup>299</sup> Alice Martins reporter for *VICE*;<sup>300</sup> Mário Bentes for *GGN* newspaper;<sup>301</sup> photographer Aloíso Mauricio for *Brazil Photo Press*;<sup>302</sup> Diógenes Muniz<sup>303</sup> and Adriano Conter<sup>304</sup> for *VejaSP*; cameraman Jairo Lopes for *TV Liberal*;<sup>305</sup> reporters Barbara Arvanitidis and Shasta Darlington *CNN* correspondents;<sup>306</sup> Douglas Barbieri<sup>307</sup> and Tiago

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<sup>292</sup> He was reportedly assaulted with a police baton. *Terra*. February 22, 2014. [SP: ato contra Copa tem prisão de jornalistas; fotógrafo do Terra é ferido](#); Associação Brasileira de Jornalismo Investigativo (Abraji). February 24, 2014. [Abraji lamenta agressões e detenções de jornalistas durante protesto em SP](#).

<sup>293</sup> He was reportedly assaulted with a police baton on the face and kicked. *Terra*. July 13, 2014. [Protesto no RJ tem 4 detidos; fotógrafo do Terra é agredido](#); G1. July 14, 2014. [Vídeo mostra agressão a jornalista durante protesto na Tijuca, no Rio](#); Associação Brasileira de Imprensa (ABI). July 15, 2014. [Polícia é responsável por 68% dos casos de violência contra jornalistas no RJ](#).

<sup>294</sup> He was reportedly injured by fragments from a non lethal bomb. G1. June 18, 2014. ['Irresponsável', diz jornalista ferido por bomba da PM em protesto no RS](#); *Terra*. June 18, 2014. [Repórter do Terra é ferido por bomba da PM durante protesto](#).

<sup>295</sup> She was reportedly detained and assaulted on the head with a police baton. Portal Imprensa. February 24, 2014. [Jornalistas são feridos e detidos pela Polícia Militar durante ato contra a Copa em SP](#); Associação Brasileira de Emissoras de Rádio e Televisão (Abert). No date. [Relatório de Liberdade de Imprensa](#).

<sup>296</sup> He was reportedly assaulted on the hands with a police baton. *Diário do Grande ABC*. February 23, 2014. [Jornalistas são detidos e agredidos](#); Associação de Repórteres Fotográficos e Cinematográficos no Estado de São Paulo (Arfoc-SP). February 24, 2014. [Repórteres fotográficos identificados são agredidos durante manifestação](#).

<sup>297</sup> He was reportedly assaulted upon detention. Nota de Rodapé. February 25, 2014. [Relato do repórter fotográfico Victor Moriyama, detido pela PM no Ato contra a Copa do Mundo](#); Associação de Repórteres Fotográficos e Cinematográficos no Estado de São Paulo (Arfoc-SP). February 24, 2014. [Repórteres fotográficos identificados são agredidos durante manifestação](#).

<sup>298</sup> She was reportedly assaulted with a riot shield. *Brasil Post*. February 23, 2014. [Protesto em SP: pelo direito de fazer o meu trabalho](#); *Jornal do Brasil*. February 24, 2014. [Abraji lamenta agressões e detenções de jornalistas durante protesto em SP](#); Associação Brasileira de Emissoras de Rádio e Televisão (Abert). No date. [Relatório de Liberdade de Imprensa](#).

<sup>299</sup> He was reportedly assaulted with a police baton and kicked. *El País*. February 23, 2014. [Ativistas denunciam brutalidade policial durante o ato contra a Copa de São Paulo](#); Associação Brasileira de Emissoras de Rádio e Televisão (Abert). No date. [Relatório de Liberdade de Imprensa](#); *Jornal do Brasil*. February 24, 2014. [Abraji lamenta agressões e detenções de jornalistas durante protesto em SP](#).

<sup>300</sup> She was reportedly assaulted with a police baton. *Rede Brasil Atual*. February 24, 2014. [Pelo menos 14 jornalistas foram agredidos pela PM durante protesto contra Copa em SP](#); Sindicato dos Radialistas RS. February 25, 2014. [SISP apura 15 agressões a jornalistas na manifestação do dia 22](#); Associação Brasileira de Emissoras de Rádio e Televisão (Abert). No date. [Relatório de Liberdade de Imprensa](#).

<sup>301</sup> He was reportedly injured by fragments from a non lethal bomb. Federação Nacional dos Jornalistas. February 28, 2014. [Profissionais de imprensa são agredidos em confronto entre manifestantes e policiais em SP](#); Associação Brasileira de Jornalismo Investigativo (Abraji). February 26, 2014. [Abraji atualiza levantamento de agressões e detenções de jornalistas durante protesto em São Paulo](#).

<sup>302</sup> He was reportedly assaulted with a flying kick and thrown to the ground. Additionally, he was reportedly temporarily detained. Associação de Repórteres Fotográficos e Cinematográficos no Estado de São Paulo (Arfoc-SP). February 24, 2014. [Repórteres fotográficos identificados são agredidos durante manifestação](#); Federação Nacional dos Jornalistas (Fenaj). February 28, 2014. [Profissionais de imprensa são agredidos em confronto entre manifestantes e policiais em SP](#); Associação Brasileira de Jornalismo Investigativo (Abraji). February 26, 2014. [Abraji atualiza levantamento de agressões e detenções de jornalistas durante protesto em São Paulo](#).

<sup>303</sup> He was reportedly assaulted on the hands with a police baton. *Rede Brasil Atual*. February 26, 2014. [Sobe para 19 número de jornalistas vítimas da PM durante protesto em São Paulo](#); *VejaSP/You Tube*. February 25, 2014. [Antijogo](#); Federação Nacional dos Jornalistas (Fenaj). 28 de fevereiro de 2014. [Profissionais de imprensa são agredidos em confronto entre manifestantes e policiais em SP](#); Associação Brasileira de Jornalismo Investigativo (Abraji). February 26, 2014. [Abraji atualiza levantamento de agressões e detenções de jornalistas durante protesto em São Paulo](#).

<sup>304</sup> He was reportedly assaulted on his back. *Rede Brasil Atual*. February 26, 2014. [Sobe para 19 número de jornalistas vítimas da PM durante protesto em São Paulo](#); Federação Nacional dos Jornalistas (Fenaj). February 28, 2014. [Profissionais de imprensa são agredidos em confronto entre manifestantes e policiais em SP](#).

<sup>305</sup> He was reportedly assaulted by police agents trying to take his camera away. *TvPA Start/You Tube*. April 8, 2014. [JLI - Agressão ao Repórter Márcio Lins 05-04-14 Greve dos Policiais](#); G1. April 5, 2014. [Imagens mostram homem que teria agredido repórter da TV Liberal, no PA](#); *ORM News*. April 5, 2014. [Equipe da TV Liberal é agredida por policiais militares](#).

<sup>306</sup> They were reportedly injured by fragments from a non lethal bomb. *O Globo*. June 12, 2014. [Black blocs enfrentam PMs em SP; no Rio, tumulto e bombas de gás](#); *CNN* in Español. June 12, 2012. [Periodistas de CNN resultaron heridas durante protestas en Sao Paulo](#); Associação Brasileira de Emissoras de Rádio e Televisão (Abert). June 12, 2014. [Abert repudia violência contra jornalistas no dia da abertura da Copa do Mundo](#).

<sup>307</sup> He was reportedly injured by fragments from a non lethal bomb. R7. July 14, 2014. [Ao menos 36 jornalistas foram agredidos ou presos durante a Copa, diz Abraji](#); Sindicato Jornalistas DF. June 13, 2014. [Jornalistas são agredidos e equipe de TV tem carro depredado](#)

Ramos<sup>308</sup> for *SBT*; Rodrigo Abd for *The Associated press*,<sup>309</sup> reporters Nadini Carega and Wilson Ventura Júnior;<sup>310</sup> as well as photographer Loloano Silva<sup>311</sup> for *Coletivo Mariachi*; photographer Ricardo Giusti for the *Correio do Povo* newspaper;<sup>312</sup> Rodrigo Carvalho,<sup>313</sup> Felipe Peçanha<sup>314</sup> and Bernardo Guerreiro<sup>315</sup> for *Mídia Ninja*; Cristiano Soares for *Rádio Guaíba*;<sup>316</sup> photo reporter Bóris Mercado for *Grupo Epensa*;<sup>317</sup> photographer Oswaldo Ribeiro Filho for *Demotix*;<sup>318</sup> Augusto Lima for *Coletivo Carranca*;<sup>319</sup> Eduardo Gudun for *TV Cidade*;<sup>320</sup> newsteams for *TV Gazeta* and *TV Capixaba*;<sup>321</sup> freelance photographers Paulo Alexandre,<sup>322</sup> Kátia Carvalho,<sup>323</sup> Alexandre Cavalcanti,<sup>324</sup> Jason O'Hara,<sup>325</sup> Leo Correa,<sup>326</sup> Samuel Tosta,<sup>327</sup> and photographer Ana Carolina Fernandes<sup>328</sup> for *Reuters*.

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[durante atos contra a Copa.](#)

<sup>308</sup> He was reportedly injured by fragments from a non lethal bomb. Sindicato dos Jornalistas Profissionais de Minas Gerais. No date. [A violência contra jornalistas no Rio domingo 13/7](#); *Mídia Ninja*. July 14, 2014. [Abuso de insanidade: As agressões sofridas por cada jornalista na final da Copa do Mundo no Rio de Janeiro.](#)

<sup>309</sup> He was reportedly injured on his leg. G1. June 12, 2014. [Jornalista da CNN é ferida em protesto contra a Copa em SP](#); *Folha de São Paulo*. June 12, 2014. ['A gente não esperava', afirmou repórter da CNN ferida em protesto.](#)

<sup>310</sup> Both were reportedly beaten by police agents and detained. Coletivo Mariachi/You Tube. June 14, 2014. [Rio: Em ato pacífico, PM salva carrinho de lixo, espanca e detém manifestantes](#); *A Nova Democracia*. July 2014. [RJ: o povo diz não à farra da Fifa.](#)

<sup>311</sup> His arm was reportedly broken after being assaulted with a police baton. Coletivo Mariachi. July 13, 2014. [Depoimento de fotógrafo do Coletivo Mariachi que teve o braço quebrado por um PM durante manifestação](#); *Folha de São Paulo*. July 13, 2014. [Jornalistas relatam agressões da polícia durante manifestação no Rio](#); *Agência Brasil*. July 14, 2014. [Sindicato diz que 15 jornalistas ficaram feridos em protestos ontem, no Rio](#); *Mídia Ninja*. July 14, 2014. [Abuso de insanidade: As agressões sofridas por cada jornalista na final da Copa do Mundo no Rio de Janeiro.](#)

<sup>312</sup> He was reportedly injured by fragments from an explosive device. G1. June 13, 2014. [Fotógrafo é atingido por explosivo durante protesto em Porto Alegre](#); Sindicato dos Jornalistas Profissionais do RS. June 13, 2014. [Sindicato lamenta episódio envolvendo repórter fotográfico do Correio do Povo.](#)

<sup>313</sup> He was reportedly assaulted by police agents. REC Mídia Independente/You Tube. June 13, 2014. [No Rio, protesto contra a Copa é marcado por descontrole de PMs e agressão a cinegrafista](#); Associação Brasileira de Jornalismo Investigativo (Abraji). June 20, 2014. [Com Copa do Mundo, número de violações contra jornalistas durante protestos chega a 190.](#)

<sup>314</sup> He was reportedly assaulted by a group of at least eight police agents. Front Line Defenders. July 17, 2014. [Declaração Conjunta: Brasil - Dois defensores dos direitos humanos presos em meio a repressão policial violenta de protestos no Rio de Janeiro](#); *Olhar Direto*. July 13, 2014. [Jornalista do Mídia Ninja é espancado pela polícia fora do estádio no Rio de Janeiro](#); *Mídia Informal/You Tube*. July 14, 2014. [4º ATO - Fifa Go Home - Praça Saens Peña - Tijuca - Zona Norte do RJ - 13-07-2014.](#)

<sup>315</sup> He was reportedly assaulted with pepper spray. *Mídia Ninja*. July 14, 2014. [Abuso de insanidade: As agressões sofridas por cada jornalista na final da Copa do Mundo no Rio de Janeiro](#); *Jornalistas da Web*. July 14, 2014. [Sindjor Rio divulga lista de jornalistas agredidos pela polícia em manifestação na Tijuca.](#)

<sup>316</sup> He was reportedly injured by fragments from a non lethal bomb. Lance!Net. June 18, 2014. [Três jornalistas ficam feridos por estilhaços em protesto contra a Copa](#); *Terra*. June 18, 2014. [Repórter do Terra é ferido por bomba da PM durante protesto.](#)

<sup>317</sup> He was reportedly thrown to the ground after taking pictures of police assaulting demonstrators. *Terra*. July 13, 2014. [Protesto no RJ tem 4 detidos; fotógrafo do Terra é agredido](#); *Resumo Fotográfico*. July 14, 2014. [Polícia agride fotojornalistas durante manifestação no Rio](#); *El Bocón*. July 14, 2014. [Mundial Brasil 2014: Unos celebraron y otros expresaron su malestar.](#)

<sup>318</sup> He was reportedly struck by a tear gas grenade on the face. *Terra*. July 13, 2014. [Protesto no RJ tem 4 detidos; fotógrafo do Terra é agredido](#); *Resumo Fotográfico*. July 14, 2014. [Polícia agride fotojornalistas durante manifestação no Rio.](#)

<sup>319</sup> He was reportedly assaulted with a police baton. Rede Democrática. July 15, 2014. [Nota de repúdio à violência policial](#); Associação Brasileira de Emissoras de Rádio e Televisão (Abert). No date. [Relatório de Liberdade de Imprensa.](#)

<sup>320</sup> He was reportedly injured by a rubber bullet. Portal Imprensa. September 23, 2014. [Repórter é atingido por bala de borracha durante protesto no interior de SP](#); G1. September 22, 2014. [Repórter é atingido por bala de borracha durante protesto; veja vídeo.](#)

<sup>321</sup> They were reportedly assaulted with pepper spray. G1. August 4, 2014. [Policial joga spray de pimenta em equipes de TV durante protesto no ES](#); OAB Espírito Santo. August 6, 2014. [OAB-ES condena ação violenta da Polícia Rodoviária Federal contra jornalistas.](#)

<sup>322</sup> He was reportedly assaulted by municipal guards. Associação Brasileira de Jornalismo Investigativo (Abraji). February 7, 2014. [Abraji repudia agressão a cinegrafista da Band no Rio](#); Associação Brasileira de Emissoras de Rádio e Televisão (Abert). No date. [Relatório de Liberdade de Imprensa.](#)

<sup>323</sup> She was reportedly injured by fragments from a non lethal bomb. *Comunique-se*. June 17, 2014. [Sindicato reclama de violência insustentável contra jornalistas](#); *Conexão Jornalismo*. June 16, 2014. [Freixo e Sindicato de jornalistas vão prestar apoio a repórteres agredidas por PMs.](#)

<sup>324</sup> He was reportedly injured by fragments from a non lethal bomb. *Correio do Povo*. June 18, 2014. [Polícia dispersa manifestantes durante protesto contra Copa](#); *Sul 21*. June 18, 2014. [Forte aparato policial impede manifestação contra a Copa em Porto Alegre.](#)

161. Likewise, several reporters were detained while reporting during protests: reporter Sérgio Roxo for *O Globo*;<sup>329</sup> Reynaldo Turolo Jr. for *Folha de São Paulo*;<sup>330</sup> Paulo Toledo Piza for *G1*;<sup>331</sup> Bárbara Ferreira Santos and Fábio Leite for *O Estado de São Paulo*;<sup>332</sup> photographer Victor Moriyama, *Getty Images* correspondent;<sup>333</sup> Felipe Laroza for *VICE*;<sup>334</sup> photographer Aloísio Maurício for *Brazil Photo Press*;<sup>335</sup> Felipe Peçanha<sup>336</sup> and Bernardo Guerreiro<sup>337</sup> de *Mídia Ninja*; documentarian Aloyana Lemos;<sup>338</sup> freelance reporter Leo Correa<sup>339</sup> and photoreporter Bóris Mercado for *Grupo Epensa*.<sup>340</sup>

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<sup>325</sup> He was reportedly assaulted and kicked on his face. *G1*. July 14, 2014. [Vídeo mostra agressão a jornalista durante protesto na Tijuca, no Rio](#); *Brasil Post*. June 14, 2014. [#VergonhaNaCopa: jornalista canadense leva chute no rosto e diz ter sido roubado por PM durante ato no Rio \(VÍDEO\)](#); A Nova Democracia/You Tube. July 13, 2014. [Flagrante de cineasta canadense sendo espancado e roubado por PMs no Rio](#).

<sup>326</sup> He was reportedly assaulted with pepper spray. *Folha de São Paulo*. July 13, 2014. [Polícia dispersa protesto no entorno do Maracanã momentos antes da final](#); *Comunique-se*. July 14, 2014. [Violência: Manifestação no Rio de Janeiro acaba com agressão a jornalistas](#).

<sup>327</sup> He was reportedly injured by fragments from a non lethal bomb. *O Globo*. July 13, 2014. [Protesto contra a Copa do Mundo termina com bombas e feridos na Tijuca](#); Associação Brasileira de Emissoras de Rádio e Televisão (Abert). No date. [Relatório de Liberdade de Imprensa](#); *Terra*. July 13, 2014. [Protesto no RJ tem 4 detidos; fotógrafo do Terra é agredido](#).

<sup>328</sup> She was reportedly assaulted with pepper spray after her mask was taken by force. *BBC Brasil*. July 13, 2014. [Polícia usa violência em protesto e fere ao menos 10 jornalistas no Rio](#); *EBC Agência Brasil*. July 14, 2014. [Sindicato diz que 15 jornalistas ficaram feridos em protestos ontem, no Rio](#); Associação Brasileira de Emissoras de Rádio e Televisão (Abert). No date. [Relatório de Liberdade de Imprensa](#).

<sup>329</sup> *R7*. February 23, 2014. [Jornalistas são detidos e agredidos em protesto; ação é condenada](#); *Terra*. February 25, 2014. [SP: 14 jornalistas foram agredidos ou detidos em protesto, diz Abraji](#); Associação Brasileira de Emissoras de Rádio e Televisão (Abert). No date. [Relatório de Liberdade de Imprensa](#).

<sup>330</sup> *Folha de São Paulo*. February 22, 2014. [Vídeo mostra cerco policial a manifestantes e jornalista em SP](#); *UOL Mais*. February 22, 2014. [PROTESTOS 22/2](#); Associação Brasileira de Emissoras de Rádio e Televisão (Abert). No date. [Relatório de Liberdade de Imprensa](#); Federação Nacional dos Jornalistas (Fenaj). February 28, 2014. [Profissionais de imprensa são agredidos em confronto entre manifestantes e policiais em SP](#).

<sup>331</sup> Knight Center for Journalism in the Americas. February 25, 2014. [Police arrest, attack Brazilian reporters during protest in São Paulo against World Cup](#); *G1*. February 23, 2014. [Detidos após manifestação contra Copa são liberados em SP, diz SSP](#).

<sup>332</sup> *Portal Imprensa*. February 24, 2014. [Jornalistas são feridos e detidos pela Polícia Militar durante ato contra a Copa em SP](#); Associação Brasileira de Emissoras de Rádio e Televisão (Abert). No date. [Relatório de Liberdade de Imprensa](#); Knight Center for Journalism in the Americas. February 25, 2014. [Police arrest, attack Brazilian reporters during protest in São Paulo against World Cup](#); Associação Brasileira de Jornalismo Investigativo (Abraji). February 24, 2014. [Abraji lamenta agressões e detenções de jornalistas durante protesto em SP](#).

<sup>333</sup> Nota de Rodapé. February 25, 2014. [Relato do repórter fotográfico Victor Moriyama, detido pela PM no Ato contra a Copa do Mundo](#); Associação de Repórteres Fotográficos e Cinematográficos no Estado de São Paulo (Arfoc-SP). February 24, 2014. [Repórteres fotográficos identificados são agredidos durante manifestação](#).

<sup>334</sup> Associação Brasileira de Jornalismo Investigativo (Abraji). February 24, 2014. [Abraji lamenta agressões e detenções de jornalistas durante protesto em SP](#); Sindicato dos Radialistas RS. February 25, 2014. [SJSP apura 15 agressões a jornalistas na manifestação do dia 22](#).

<sup>335</sup> Associação de Repórteres Fotográficos e Cinematográficos no Estado de São Paulo (Arfoc-SP). February 24, 2014. [Repórteres fotográficos identificados são agredidos durante manifestação](#); Federação Nacional dos Jornalistas (Fenaj). February 28, 2014. [Profissionais de imprensa são agredidos em confronto entre manifestantes e policiais em SP](#); Associação Brasileira de Jornalismo Investigativo (Abraji). February 26, 2014. [Abraji atualiza levantamento de agressões e detenções de jornalistas durante protesto em São Paulo](#).

<sup>336</sup> He was reportedly detained for carrying a laptop charger, considered to be an explosive device by the police. *Mídia Ninja/You Tube*. June 20, 2014. [NINJA é preso por portar um carregador de notebook que a polícia considera como explosivo](#); Associação Brasileira de Emissoras de Rádio e Televisão (Abert). No date. [Relatório de Liberdade de Imprensa](#).

<sup>337</sup> Associação Brasileira de Emissoras de Rádio e Televisão (Abert). No date. [Relatório de Liberdade de Imprensa](#); *Mídia Ninja*. June 21, 2014. [Gás, bomba e detenções. 1 ano de violência da Polícia Militar nas manifestações do Rio de Janeiro](#).

<sup>338</sup> *Olhar Direto*. July 13, 2014. [Jornalista do Mídia Ninja é espancado pela polícia fora do estádio no Rio de Janeiro](#); *Mídia Ninja*. July 14, 2014. [Abuso de insanidade: As agressões sofridas por cada jornalista na final da Copa do Mundo no Rio de Janeiro](#).

<sup>339</sup> *Portal Imprensa*. July 14, 2014. [Jornalistas são agredidos por PMs durante manifestação contra a Copa no RJ](#); Associação Brasileira de Emissoras de Rádio e Televisão (Abert). July 14, 2014. [Jornalistas relatam agressões da polícia durante manifestação no Rio](#).

<sup>340</sup> *Terra*. July 13, 2014. [Protesto no RJ tem 4 detidos; fotógrafo do Terra é agredido](#); *Resumo Fotográfico*. July 14, 2014. [Polícia agride fotojornalistas durante manifestação no Rio](#); *El Bocón*. July 14, 2014. [Mundial Brasil 2014: Unos celebraron y otros expresaron su malestar](#).

162. As reported, at least seven of the reporters assaulted by alleged members of the security forces, had their equipment damaged during the attack.<sup>341</sup> Likewise, according to the information received, reporter Márcio Lins for *TV Liberal*<sup>342</sup> and reporter Alexandre Capozzoli for the *Grupo de Apoio ao Protesto Popular*,<sup>343</sup> lost consciousness due to the assaults by alleged security agents against them while covering the protests. In that regard, on June 12, 2014, reporter Karinny de Magalhães, correspondent for alternative journalism *Mídia Ninja*, was detained by the police while reporting live on a protest, she was verbally assaulted with sexist terms and beat until she fell unconscious. Allegedly, the goal was to obtain the code to her cell phone. The journalist was detained until June 14 for heritage crime.<sup>344</sup> According to reports, upon receiving a complaint regarding these events, the Office of the Public Prosecutor for Minas Gerais recommended the security forces of the State take all necessary measures to ensure the free exercise of journalism during any public event, especially in the context of possible protests, regardless of whether the journalists have a press pass or ties to a media outlet.<sup>345</sup>

163. Lastly, according to information received, Leonardo Martins for the *Frame* agency<sup>346</sup> and Carla Rodeiro and Thomas Jefferson for *TV Gazeta*,<sup>347</sup> were attacked by protestors or unidentified individuals at the protests. Also, reporter Sérgio Moraes for *Reuters* was injured [when hit] by a rock causing him a minor head injury.<sup>348</sup>

164. The Office of the Special Rapporteur received information that on August 28 the Court of Justice for the state of São Paulo reversed a first instance court ruling wherein the state of São Paulo was

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<sup>341</sup> They are: Nelson Antoine, Sérgio Roxo, Bruno Santos, Victor Moriyama, Jason O'Hara, Bernardo Guerreiro and Mauro Pimentel. Also, journalist Marcos de Paula, of *O Estado de São Paulo*, reportedly had his photographic equipment ruined by security forces. Associação Brasileira de Jornalismo Investigativo (Abraji). February 26, 2014. [Abraji atualiza levantamento de agressões e detenções de jornalistas durante protesto em São Paulo](#); Associação de Repórteres Fotográficos e Cinematográficos no Estado de São Paulo (Arfoc-SP). February 24, 2014. [Repórteres fotográficos identificados são agredidos durante manifestação](#); Último Segundo. February 22, 2014. [Protesto contra Copa no centro de SP tem quebra-quebra e confronto com a polícia](#); EBC. February 23, 2014. [Secretaria de SP informa que 260 detidos em protesto foram liberados](#); Terra. February 22, 2014. [SP: ato contra Copa tem prisão de jornalistas; fotógrafo do Terra é ferido](#); Nota de Rodapé. February 25, 2014. [Relato do repórter fotográfico Victor Moriyama, detido pela PM no Ato contra a Copa do Mundo](#); G1. July 14, 2014. [Vídeo mostra agressão a jornalista durante protesto na Tijuca, no Rio](#); Brasil Post. July 14, 2014. [#VergonhaNaCopa: jornalista canadense leva chute no rosto e diz ter sido roubado por PM durante ato no Rio \(VÍDEO\)](#); Mídia Ninja. July 14, 2014. [Abuso de insanidade: As agressões sofridas por cada jornalista na final da Copa do Mundo no Rio de Janeiro](#); Jornalistas da Web. July 14, 2014. [Sindjor Rio divulga lista de jornalistas agredidos pela polícia em manifestação na Tijuca](#); Terra. July 13, 2014. [Protesto no RJ tem 4 detidos; fotógrafo do Terra é agredido](#); O Estado de São Paulo. June 28, 2014. [Protestos perto do Maracanã acaba em confronto e 15 presos](#); Diário do Grande ABC. June 29, 2014. [PM apreende 20 rojões em ato de manifestação no Rio](#); Associação Brasileira de Emissoras de Rádio e Televisão (Abert). No date. [Relatório de Liberdade de Imprensa](#).

<sup>342</sup> TvPA Start/You Tube. April 8, 2014. [JLI - Agressão ao Repórter Márcio Lins 05-04-14 Greve dos Policiais](#); G1. April 7, 2014. [Polícia identifica PM suspeito de agredir jornalistas da TV Liberal](#); Comunique-se. April 7, 2014. [Repórter desmaia ao ser agredido durante protesto da Polícia Militar](#).

<sup>343</sup> El País. February 23, 2014. [Ativistas denunciam brutalidade policial durante o ato contra a Copa de São Paulo](#); GAPP - Grupo de Apoio ao Protesto Popular. February 23, 2014. [\[GAPP NO FRONT\]](#); Associação Brasileira de Emissoras de Rádio e Televisão (Abert). No date. [Relatório de Liberdade de Imprensa](#).

<sup>344</sup> G1. June 13, 2014. [Ativista é presa em protesto, e Mídia Ninja denuncia agressão em BH](#); Mídia Ninja. June 14, 2014. ['Vocês deviam todos morrer' diz PM para repórter NINJA presa. Leia o relato completo](#); Mídia Ninja. June 14, 2014. [Repórter da Mídia NINJA e dois ativistas são liberados depois de dia na cadeia em BH](#); Forum. June 14, 2014. [MP defende liberdade de imprensa após prisão de ativista em BH](#); Reporters Without Borders (RSF). June 16, 2014. [Agents of Brazil's military police regard journalists as "cancer of world"](#); SelesNafes.com. June 24, 2014. ["Desmaiei", relata amapaense agredida por PMs em manifestação contra a Copa](#); Hoje em dia. June 14, 2014. [Repórter da Mídia Ninja acusada de depredação é solta](#).

<sup>345</sup> Terra. June 14, 2014. [MP defende liberdade de imprensa após prisão em BH](#); Forum. June 14, 2014. [MP defende liberdade de imprensa após prisão de ativista em BH](#).

<sup>346</sup> Alagoas 24 horas. March 22, 2014. [Aposentado é expulso de Marcha com Deus por vestir vermelho](#); Comunique-se. March 25, 2014. [Abraji informa que fotógrafo foi agredido na Marcha da Família](#).

<sup>347</sup> Jefferson was reportedly struck with a traffic cone and harassed along with reporter Carla Rodeiro. The car of *TV Gazeta* was reportedly depredated. UOL. June 19, 2014. ["Fomos hostilizados", diz repórter da TV Gazeta, que teve carro depredado](#); Comunique-se. June 20, 2014. [Carro da TV Gazeta é depredado em ato do Movimento Passe Livre](#); Inter American Press Association (IAPA). 2014. [Brazil](#); Associação Brasileira de Emissoras de Rádio e Televisão (Abert). No date. [Relatório de Liberdade de Imprensa](#).

<sup>348</sup> Associação Brasileira de Emissoras de Rádio e Televisão (Abert). No date. [Relatório de Liberdade de Imprensa](#); G1. June 13, 2014. [Veio pedra de tudo quanto é lado' diz fotógrafo ferido em protesto em BH](#); UOL. June 12, 2014. [Traumatismo craniano em BH marca o dia que teve 5 jornalistas feridos](#); Terra. June 13, 2014. [Fotógrafo atingido em protesto tem traumatismo craniano leve](#).

ordered restitution to photo reporter Alexandre Wagner Oliveira da Silveira for the loss of vision in his left eye while covering a protest in 2000. The Court found that the injury to reporter Silveira was probably caused by a rubber bullet shot by a police officer. Nonetheless, the court held the police were acting within the strict confines of carrying out their legal duties in order to contain the protest, considering that the protestors closed streets and threw objects at police officers. In that context, the Court stated that although the reporter was not participating in the protest, the rubber bullet injury was “solely his fault”, as he was at the scene documenting the protests and did not leave during the “confusion” among protestors and police he “placed himself at risk.”<sup>349</sup> He has filed an appeal against the decision.<sup>350</sup>

165. In a November 6 communication, the State reported that the Military Police for the State of Rio de Janeiro and the Office of the Public Prosecutor received complaints regarding alleged attacks against reporters during protests in the context of the 2014 FIFA World Cup. Likewise, on July 21, the National Ombudsman of Human Rights [*Ouidoria Nacional dos Direitos Humanos*] (ONDH) also received complaints of attacks on reporters in Rio de Janeiro, which were forwarded to the Joint Police Comptroller Office of the Secretary of Public Safety for the State of Rio de Janeiro [*Corregedoria Unificada de Polícia da Secretaria de Segurança Pública do Estado do Rio de Janeiro*] and the Office of the Public Prosecutor External Control Mechanism for Police Activity [*Núcleo de Controle Externo da Atividade Policial do Ministério Público do Rio de Janeiro*]. According to the State, Rio de Janeiro Military Police has set forth their tactics for crowd control “based on legal instruments, according to UN recommendations, [...] and uses only non-lethal materials that have been regulated, authorized and controlled by the Brazilian Arm[y]” and that all military police “are oriented to provide the necessary protection for the press to be able to fully perform their duties.”<sup>351</sup>

166. Additionally, the State reported that in June of 2014 the Office of the Labor Public Prosecutor in São Paulo issued a recommendation to the media outlets for them to adopt measures for the protection, health and safety of their employees. According to the document, “media professionals need all the infrastructure, support and safety equipment that permits them to do their job without hindering their health.”<sup>352</sup>

167. In the Joint Declaration on Violence Against Journalist and Media Workers in the Context of Protests adopted in 2013, indicates that in the context of demonstrations and social conflict situations, the work of journalists and media workers, as well as the free flow of information “is essential to keeping the public informed of events, while plays an important role in reporting on the conduct of the State [...] preventing the disproportionate use of force and the abuse of authority.”<sup>353</sup> For this reason, the authorities must grant journalists the highest level of assurance for them to carry out their duties. In that regard, they should guarantee that reporters are not detained, threatened or assaulted and that their rights are not restricted in any way for practicing journalism in the context of a protest. The State shall not disallow or penalize live transmissions of events and should abstain from imposing measures that regulate or limit free

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<sup>349</sup> Tribunal de Justiça do Estado de São Paulo. Processo No. 0108144-93.2008.8.26.0000. Decision of August 28, 2014. Available for consultation at: <http://ponte.org/wp-content/uploads/2014/09/Ac%C3%B3rd%C3%A3o-Apela%C3%A7%C3%A3o.pdf>; Also see: <https://esaj.tjsp.jus.br/cpo/sg/show.do?processo.foro=990&processo.codigo=RMZ011UX90000>; Artigo 19. September 9, 2014. *Caso Alex Silveira: um risco para a cobertura de protestos*; G1. September 6, 2014. *Fotógrafo diz ser 'absurda' decisão que o culpa por ferimento em protesto*; Sindicato dos Jornalistas Profissionais no Estado do Espírito Santo. September 17, 2014. *TJSP culpa repórter fotográfico atingido por bala de borracha*.

<sup>350</sup> Tribunal de Justiça do Estado de São Paulo. Processo No. 010814-93.208.8.26.0000. Available for consultation at: <https://esaj.tjsp.jus.br/cpo/sg/show.do?processo.foro=990&processo.codigo=RMZ011UX90000>

<sup>351</sup> Communication of the Permanent Mission of Brazil at the OAS. November 6, 2014. No. 301. Informação sobre a situação dos direitos humanos durante protestos no Rio de Janeiro. Anexo III: Corregedoria Geral Unificada. Ref. Ofício SUPDH No. 315/2014. August 10, 2014. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>352</sup> Communication of the Permanent Mission of Brazil at the OAS. November 6, 2014. No. 301. Informação sobre a situação dos direitos humanos durante protestos no Rio de Janeiro. Anexo IV: Ministério Público do Trabalho de São Paulo. Recomendação No. 38471.2014. June 13, 2014. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>353</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*.



circulation of information.<sup>354</sup> Reporters should not be called as witnesses by judicial institutions and the authorities should respect their right to source confidentiality. In addition, their work tools and material should not be confiscated or destroyed.<sup>355</sup> The authorities should adopt public discourse that contributes to the prevention of violence against journalists by emphatically condemning attacks and investigating the facts and penalizing those responsible, as established in Principle 9 of the IACHR Declaration of Principles.<sup>356</sup> It is also a matter of utmost importance in these contexts that the authorities have special protocols to protect the press in social conflict situations and to instruct security forces on the role the press has in a democratic society.<sup>357</sup>

168. Likewise, according to information received, hundreds of protestors were attacked and detained by alleged police officers during social demonstrations taking place in 2014. In several cases, the individuals were detained and charged with “contempt,” including attorneys Daniel Biral and Silvia Daskal, part of a defense group for protestors. Biral was assaulted and knocked unconscious during his detention.<sup>358</sup> In a November 6, 2014 communication the State reported that Biral and Daskal were detained for contempt as they allegedly pushed two police officers. According to the State, the Public Safety Secretariat oriented Biral to go to the Forensic Medicine Institute for a test on possible injuries and to report the assault before the Comptroller Office of the Military Police.<sup>359</sup>

169. As reported, on July 13, 2014, the day of the 2014 FIFA World Cup final, security forces contained dozens of protestors, reporters, human rights defenders and attorneys for at least a three-hour period in a Rio de Janeiro square, this technique is known as kettling. In this context, different people were assaulted, including at least 10 journalists,<sup>360</sup> and at least 6 people were detained, four of them for contempt. The fencing reportedly was not removed until the end of the world cup final game.<sup>361</sup> The Military Police reported that their Comptroller Office would open an investigation on the reported acts of violence.<sup>362</sup>

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<sup>354</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>355</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>356</sup> [Principle 9 of the Declaration of Principles of the IACHR](#): “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation”.

<sup>357</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>358</sup> El País. July 1, 2014. [Um ato contra prisões de manifestantes acaba com cinco detidos em São Paulo](#); Justiça Global, Artigo 19, Conectas Direitos Humanos, Instituto de Defensores de Direitos Humanos (DDH), Mariana Criola – Centro de Assessoria Jurídica Popular, Serviço de Assessoria Jurídica Universitária da Universidade Federal do Rio Grande do Sul (SAJU/UFRGS), Coletivo Urucum – Assessoria em Direitos Humanos, Comunicação e Justiça- CE, ANCOP– Articulação Nacional dos Comitês Populares da Copa. September 24, 2014. Ofício n. 38/14 JG/RJ. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Jornal de Hoje. June 17, 2014. [Protesto contra a Copa teve duas prisões por desacato à polícia](#); G1. June 13, 2014. [Protestos de quinta no Rio terminam com 12 detidos, diz polícia](#); Zero Hora. June 12, 2014. [Oito são detidos por dano ou desacato durante protesto em Porto Alegre](#); Folha de São Paulo. July 1, 2014. [PM usa balas de borracha contra manifestantes durante protesto em SP](#); R7. June 13, 2014. [Protestos no 1º dia da Copa têm ao menos 13 detidos e 8 feridos no Rio](#); Veja. February 23, 2014. [PM solta 262 manifestantes presos em protesto contra Copa](#); O Globo. February 23, 2014. [Todos os 262 manifestantes detidos já foram liberados, diz SSP.](#)

<sup>359</sup> Communication of the Permanent Mission of Brazil at the OAS of November 6, 2014. No. 301. Informação sobre a situação dos direitos humanos durante protestos no Rio de Janeiro. Anexo I: Secretaria de Estado da Segurança Pública. Ofício Gab. Sec. N. 0685/2014. September 9, 2014. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>360</sup> As reported in paragraph 33 of this report, they are: Jason O’Hara, Felipe Peçanha, Bernardo Guerreiro, Mauro Pimentel, Ana Carolina Fernandes, Oswaldo Ribeiro Filho, Samuel Costa, Loloano Silva, Tiago Ramos and Augusto Lima.

<sup>361</sup> Artigo 19. July 15, 2014. [Nota sobre a onda de violações no Rio de Janeiro](#); Justiça Global. July 14, 2014. [Não teve democracia – Nota da Justiça Global sobre o cerco policial nos protestos durante a final da Copa](#); Terra. July 13, 2014. [Protesto no RJ tem 4 detidos; fotógrafo do Terra é agredido](#); R7. July 13, 2014. [Estação do metrô da Saens Peña é reaberta após ficar mais de 3 horas fechada devido à manifestação](#); O Globo. July 13, 2014. [Estado de sítio na Praça Saens Pena](#); G1. July 15, 2014. [Peção pede rigor em investigação de violência policial em protestos no Rio](#); Folha de São Paulo. July 15, 2014. [Polícia investigará excessos da PM durante protesto contra Copa no Rio](#); BBC

170. On November 5, a judge from the 3<sup>th</sup> Public Law Chamber Court of Justice for São Paulo [3<sup>a</sup> *Câmara de Direito Público do Tribunal de Justiça de São Paulo*] reversed the precautionary measure obligating the state of São Paulo to create, within 30 days, a Military Police action plan in the context of gatherings in demonstrations.<sup>363</sup> The 10<sup>th</sup> Public Treasury Court for São Paulo [10<sup>a</sup> *Vara de Fazenda Pública de São Paulo*] issued the ruling on October 24. In the court's opinion, this action plan should include the obligation not to dismantle protests except under extreme circumstances, for objective reasons that are known and subject to public control; to ban the use of deadly weapons and rubber bullets and limit the use of pepper spray to extreme cases; mandatory police uniforms for purposes of identification; to describe the conditions under which a demonstration may be dismantled, including the corresponding authority to do so, circumstances under which it may be authorized, with compulsory publicizing of the reasons in the specific case, so administrative and judicial power may control; duty to inform the public of the name of the officer that will be the spokesperson for the security forces during a demonstration in order to communicate with the protest organizers and; to ban time and place conditions on the exercise of assembly. The Court stated that these measures were not intended to create barriers for the State to maintain public order, but rather to guarantee the "legitimate exercise of the fundamental right to assembly, coexisting with the obligation the government has to provide public order, balancing the rights and obligations."<sup>364</sup> The precautionary measure was granted in the context of a civil public action filed by the Public Defender against the state of São Paulo for the use of public force in demonstrations in the State as of 2011, a violation of the rights to freedom of expression, assembly, among others.<sup>365</sup>

171. For his part, the judge from the 3<sup>th</sup> Public Law Chamber [3<sup>a</sup> *Câmara de Direito Público*] when assessing the appeal remedy [*agravo regimental*] against the precautionary measure granted by the 10<sup>th</sup> Public Treasury Court for São Paulo [10<sup>a</sup> *Vara de Fazenda Pública de São Paulo*], found that although it is impossible to verify, "isolated violent cases" reportedly by police forces during the protests, there is no evidence of generalized abuse that justify judicial intervention. For the judge "the use of deadly and non-deadly weapons is allowed for police officer preservation of life and bodily integrity. It is true that possible abuse must be punished and mainly, avoided, however it is unconceivable to force police to place their life and bodily integrity at risk without self defense". In that regard, the judge concluded the State cannot be precluded from its obligation to maintain public order, thus it removed the precautionary measure granted by the 10<sup>th</sup> Public Treasury Court.<sup>366</sup>

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Brasil. July 13, 2014. [Policia usa violência em protesto e fere ao menos 10 jornalistas no Rio](#).

<sup>362</sup> O Estado de São Paulo. July 14, 2014. [PM diz que vai apurar violência policial em protesto no Rio](#); G1. July 15, 2014. [Pezão pede rigor em investigação de violência policial em protestos no Rio](#).

<sup>363</sup> Tribunal de Justiça do Estado de São Paulo. Processo No. 2195562-25.2014.8.26.0000. Decision of November 5, 2014. Available for consultation at: <https://esaj.tjsp.jus.br/cpo/sg/search.do?conversationId=&paginaConsulta=1&localPesquisa.cdLocal=-1&cbPesquisa=NUMPROC&tipoNuProcesso=UNIFICADO&numeroDigitoAnoUnificado=2195562-25.2014&foroNumeroUnificado=0000&dePesquisaNuUnificado=2195562-25.2014.8.26.0000&dePesquisaNuAntigo=>; Brasil Post. November 6, 2014. [TJ-SP derruba liminar que proibia o uso de bala de borracha pela Polícia Militar em protestos](#); Tribunal de Justiça de São Paulo. November 6, 2014. [TJSP suspende decisão que proibia uso de balas de borracha em protestos](#).

<sup>364</sup> Tribunal de Justiça do Estado de São Paulo. Processo No. 1016019-17.2014.8.26.0053. Decision of October 24, 2014. Available for consultation at: <https://esaj.tjsp.jus.br/cpo/pg/show.do?processo.foro=53&processo.codigo=1H0006JQA0000>

<sup>365</sup> Tribunal de Justiça do Estado de São Paulo. Processo No. 1016019-17.2014.8.26.0053. [Petition from the Office of the Public Defender of the state of São Paulo](#). April 22, 2014.

<sup>366</sup> Tribunal de Justiça do Estado de São Paulo. Processo No. 2195562-25.2014.8.26.0000. Decision of November 5, 2014. Available for consultation at: <https://esaj.tjsp.jus.br/cpo/sg/search.do?conversationId=&paginaConsulta=1&localPesquisa.cdLocal=-1&cbPesquisa=NUMPROC&tipoNuProcesso=UNIFICADO&numeroDigitoAnoUnificado=2195562-25.2014&foroNumeroUnificado=0000&dePesquisaNuUnificado=2195562-25.2014.8.26.0000&dePesquisaNuAntigo=>

After the closing of this report the Office of the Special Rapporteur learned that the State Assembly for the state of São Paulo passed bill 608/2013, banning the use of rubber bullets by security forces in demonstrations. The bill was sent to the governor of the state for his approval or veto, and on December 19, 2014, the governor vetoed the bill. Assembleia Legislativa do Estado de São Paulo. Projeto de lei N° 608 / 2013. Available for consultation at: <http://www.al.sp.gov.br/alesp/pesquisa-proposicoes/>; Folha de São Paulo. December 4, 2014. [Alesp aprova projeto que proíbe uso de bala de borracha](#); O Globo. December 4, 2014. [Assembleia Legislativa de São Paulo proíbe o uso de bala de borracha em manifestações](#); Associação Fundo de Auxílio Mútuo dos Militares do Estado de São Paulo (AFAM). December 22, 2014. [VETO TOTAL AO PROJETO DE LEI N° 608/2013 - proíbe o uso de munição de elastômero \(bala de borracha\) pelos policiais da Polícia Militar e da Polícia Civil](#); G1. December 20, 2014. [Anistia lamenta veto de proibição do uso de bala de borracha em protestos](#).

172. The Office of the Special Rapporteur also received information about criminal proceedings initiated in the context of demonstrations against protestors and human rights defenders. In that regard, on July 12, 2014, one day before the 2014 FIFA World Cup Final, police officers searched the residences of the protestors and confiscated articles (including pamphlets and gas masks) and detained 19 people, including attorney Eloisa Samy who defended the rights of the protestors, and two teenagers. The action was authorized by the 27<sup>th</sup> Criminal Court for Rio de Janeiro [27<sup>a</sup> *Vara Criminal do Rio de Janeiro*], who issued arrest and search and seizure orders, as well as temporary detention for 26 protestors and human rights defenders as well as the two teenagers. According to the court the detentions were necessary due to “reliable evidence” that these persons were planning acts of violence over the next days, “with a view to take advantage of the visibility due to the coverage of the World Cup.” In response to several writ of *habeas corpus* petitions, on July 15, judge Siro Darlan for the 7<sup>th</sup> Criminal Chamber Court of Justice for Rio de Janeiro [7<sup>a</sup> *Câmara Criminal do Tribunal de Justiça do Rio de Janeiro*] determined that Eloisa Samy and 11 other individuals should be released. Later, on July 18, the judge of the 7<sup>th</sup> Criminal Chamber released five other individuals.<sup>367</sup>

173. As reported, on July 18, the 27<sup>th</sup> Criminal Court for Rio de Janeiro [27<sup>a</sup> *Vara Criminal do Rio de Janeiro*] opened a criminal proceeding against 23 of the 26 aforementioned protestors, including attorney Samy, for the crime of “armed organized crime” [*formação de quadrilha*] and ordered pretrial detention allegedly for dangerousness and the need to preserve public order.<sup>368</sup> On July 23, 2014, the judge for the 7<sup>th</sup> Criminal Chamber overturned the pretrial detention orders because of a *habeas corpus* petition. The plenary of the 7<sup>th</sup> Criminal Chamber upheld this ruling on August 12, for 21 of the 23 protesters arrested. Nevertheless, as a precautionary measure the protestors were banned from participating in new protests.<sup>369</sup>

174. As reported, on August 14 the Court of Justice for Rio de Janeiro confirmed that an administrative proceeding was opened in order to investigate the comments of criticism to the Office of the Public Prosecutor made by Judge Siro Darlan during an interview on the case. The Office of the Public Prosecutor also reported the judge to the National Judiciary Council [*Corregedoria Nacional de Justiça*] (CNJ).<sup>370</sup>

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<sup>367</sup> Justiça Global, Artigo 19, Conectas Direitos Humanos, Instituto de Defensores de Direitos Humanos (DDH), Mariana Criola – Centro de Assessoria Jurídica Popular, Serviço de Assessoria Jurídica Universitária da Universidade Federal do Rio Grande do Sul (SAJU/UFRGS), Coletivo Urucum – Assessoria em Direitos Humanos, Comunicação e Justiça- CE, ANCOP– Articulação Nacional dos Comitês Populares da Copa. September 24, 2014. Ofício n. 38/14 JG/RJ. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; O Estado de São Paulo. July 18, 2014. [Justiça do Rio determina soltura de ativistas](#); Consultor Jurídico. July 17, 2014. [Prisão de ativistas no RJ foi exercício de "futuologia", dizem especialistas](#); EBC Agência Brasil. July 15, 2014. [Justiça começa a soltar ativistas presos no Rio](#); UOL. July 18, 2014. [Justiça do Rio determina soltura de ativistas](#); G1. July 15, 2014. [Justiça do RJ concede habeas corpus e manda soltar 12 ativistas presos](#); Exame. July 18, 2014. [Justiça do Rio determina soltura de ativistas](#); EM. July 18, 2014. [Justiça do Rio determina soltura de Sininho e mais quatro ativistas presos na Copa](#); EBC Agência Brasil. July 12, 2014. [Polícia diz que manifestantes presos tinham materiais para usar como explosivos](#); Zero Hora. July 12, 2014. ["Ela se mostrou surpresa, mas não resistiu", diz delegado que prendeu Sininho](#).

<sup>368</sup> R7. July 18, 2014. [Justiça do Rio aceita denúncia e decreta prisão preventiva de 23 ativistas](#); G1. July 18, 2014. [Justiça aceita denúncia e manda prender 23 ativistas por atos violentos](#); EM. July 18, 2014. [Justiça do Rio aceita denúncia do MP e decreta prisão preventiva de 23 ativistas](#); *Correio do Povo*. July 18, 2014. [Decretada prisão preventiva de Sininho e mais 22 ativistas](#).

<sup>369</sup> O Dia. July 23, 2014. [Desembargador concede habeas corpus para os 23 ativistas](#); EBC Agência Brasil. July 23, 2014. [Desembargador concede habeas corpus para 23 ativistas no Rio](#); Instituto de Defensores de Direitos Humanos. July 23, 2014. [Desembargador concede habeas corpus a manifestantes no RJ](#); *Correio do Povo*. August 12, 2014. [Justiça do Rio de Janeiro decide manter manifestantes em liberdade](#); G1. August 12, 2014. [TJ-RJ decide que manifestantes vão responder em liberdade](#).

After the closing of this report, on December 3, the 27<sup>th</sup> Criminal Court for Rio de Janeiro [27<sup>a</sup> *Vara Criminal do Rio de Janeiro*] ordered the prison detention of three of the defendants, allegedly for their participation in an October protest. One of the individuals was detained. The three activists requested *habeas corpus* before the 7<sup>th</sup> Criminal Chamber. On December 16, the requested *habeas corpus* was denied by the 7<sup>th</sup> Criminal Chamber. G1. December 4, 2014. [Defesa de Sininho e mais dois entra com habeas corpus contra prisão](#); O Dia. December 4, 2014. [Advogados de Sininho e de mais dois ativistas pedem habeas corpus](#); R7. December 9, 2014. [Justiça quer parecer do MP para decidir se revoga prisão de Sininho e mais 2 ativistas](#); G1. December 19, 2014. [Nilo Batista vai ao STJ pedir liberdade de Sininho e mais 2 ativistas](#); Folha de São Paulo. December 16, 2014. [Justiça nega habeas corpus a Sininho](#).

<sup>370</sup> G1. August 14, 2014. [TJ-RJ instaura processo para apurar se Siro Darlan chamou MP de 'inútil'](#); EBC Agência Brasil. August 14, 2014. [TJ do Rio abre procedimento para avaliar entrevista do desembargador Siro Darlan](#); Extra. August 15, 2014. [Ministério Público representa contra Siro Darlan no CNJ](#); O Globo. August 15, 2014. [Ministério Público vai ao Conselho Nacional de Justiça contra o desembargador Siro Darlan](#); EBC Agência Brasil. August 17, 2014. [MP recorre ao CNJ contra Siro Darlan por causa de entrevista](#); BBC Brasil. July 28, 2014. [#SalaSocial: Desembargador que libertou ativistas diz que MP 'reprime pobre](#).

175. According to the provisional remedy [*mandado de segurança*<sup>371</sup>] filed by the Brazil Bar Association [*Ordem dos Advogados do Brasil*], within the context of the investigations that resulted in the criminal proceedings against the protestors for organized crime, on July 2, 2014, the 27<sup>th</sup> Criminal Court for Rio de Janeiro [27<sup>a</sup> *Vara Criminal do Rio de Janeiro*] ordered wiretaps on the phones belonging to at least four of the defense attorneys for the protestors, including two directors of the *Instituto de Defensores de Direitos Humanos* (DDH) and the landline belonging to that organization. The approved wire tap was requested by the police who alleged there were no professional ties between the attorneys and the targets of the investigation; as the attorneys went to protests with them free of billing hours [sic]. On August 14, 2014, the Brazil Bar Association filed said provisional remedy before the 7<sup>th</sup> Criminal Chamber of the Court of Justice for Rio de Janeiro requesting the wiretaps be deemed illegal. Likewise, it requested the access to transcriptions and wiretapped audio of the recorded communication on the attorney's phones and the DDH landline be restricted as a precautionary measure; along with any other attorney wiretapped communication, as these took place within the context of their professional practice. On September 12, 2014, Judge Siro Darlan, President of the 7<sup>th</sup> Criminal Chamber granted the precautionary measure.<sup>372</sup> Subsequently, on November 11, the plenary of the 7<sup>th</sup> Criminal Chamber decided to revoke the decision which granted the precautionary measure.<sup>373</sup>

176. In a November 6 communication, the State reported that in Brazil the wiretap for the criminal investigation and procedure [*la investigación e instrucción penal y procesal penal*] is regulated by law. Pursuant to internal laws, the wiretap was subject to a three-prong test: a court order, with the objective of linking the criminal investigation and legal hypothesis set forth by the law (such as, exclusively when the crime carries incarceration, [subject is] believed to be the perpetrator, and when evidence cannot be obtained by any other means). In that regard, the State reported that the wiretap ordered by the 27<sup>th</sup> Court was pursuant to internal regulations and under the scrutiny of the Office of the Public Prosecutor. It added that on July 24 the Office of the National Coordinator for the Protection of Human Rights Defenders [*Programa de Proteção aos Defensores de Direitos Humanos*] (PPDDH) was sued due to the barriers on the work of an attorney for the *Instituto de Defensores de Direitos Humanos* (DDH) and to consider incorporating the attorney in the program. The State reported that on August of 2014 the Federal Team for the program contacted the attorney; however as of the date of the communication they had not received the necessary information in order to analyze the case.<sup>374</sup>

177. The Office of the Special Rapporteur also received information about laws that could have a negative impact in the exercise of the right to freedom of expression within the context of protests. In that regard, on November 10, 2014 the Court of Justice for Rio de Janeiro, by majority vote, ruled the 2013 Law 6.528 is constitutional, banning, among others, the use of masks “or any other way of hiding the face” in demonstrations and determines that the right to assembly must be exercised “by prior notice to the police authorities.”<sup>375</sup> In the ruling, the Court contended that the use of masks during protests, although at first

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<sup>371</sup> Supremo Tribunal Federal (STF). [Provisional remedy](#). “Procedure initiated to prevent, preserve or defend rights. It is an act of prevention promoted in the judiciary, due the gravity of the fact, the potential risk of injury of any nature or the existence of a fair reason, as long as supported by law. Two items must be examined: if the allegations seem to be true (*fumus boni iuris*) and if the delay in the decision in the main process can cause harm to the requesting part (*periculum in mora*). The injunction will be preventive, when requested and authorized prior to the commencement of the case. On the other hand, it will be incidental when requested during the course of the main action.”

<sup>372</sup> Tribunal de Justiça do Estado do Rio de Janeiro. Sétima Câmara Criminal. Mandado de Segurança nº 0042944-27.2014.8.19.0000. [Decision of September 12, 2014](#); Ordem dos Advogados do Brasil. [Mandado de segurança com pedido de liminar](#). August 13, 2014; UOL. July 23, 2014. [Advogados de ativistas tiveram conversas monitoradas](#); EBC Agência Brasil. July 23, 2014. [Instituto denuncia grampo em telefones de advogados de ativistas](#); Consultor Jurídico. August 14, 2014. [OAB-RJ entra com MS para tirar de autos conversas entre advogado e cliente](#); Direito.US. August 15, 2014. [Ordem dos Advogados do Brasil \(RJ\) impetra Mandado de Segurança contra escutas entre Advogados e seus Clientes](#).

<sup>373</sup> Consultor Jurídico. November 15, 2014. [Interceptação de advogados suspeitos de envolvimento em manifestação é lícito](#).

<sup>374</sup> Communication of the Permanent Mission of Brazil at the OAS of November 6, 2014. No. 301. Informação sobre a situação dos direitos humanos durante protestos no Rio de Janeiro. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>375</sup> Estado do Rio de Janeiro. Ley No. 6528. September 11, 2013. [Regulamenta o artigo 23 da Constituição do Estado](#). Articles 2 – 3; Poder Judiciário do Estado do Rio de Janeiro. Tribunal de Justiça. Órgão Especial. [Ações Diretas de Inconstitucionalidade nº 0052756-30.2013.8.19.0000 e nº 0053071-58.2013.8.19.0000](#). Decision of November 10, 2014; Migalhas. November 11, 2014. [Lei fluminense que proíbe máscaras em manifestações é constitucional](#).

glance it does not change the peaceful character of the protest, “was being used by individuals with bad intentions to alter the peaceful character” and “practice criminal activity against others, public and private property and against the appropriate and legitimate political cause”. In that regard, banning masks is justified as it makes it impossible to identify the individuals committing crimes and hold them accountable. According to the Court “[a] masked individual is an anti democratic coward hiding from him/herself and others”, making the legal restriction adequate and proportionate to the guarantee of the rights of other protestors and third parties, as the banning [of masks] does not impede the exercise to assembly but rather only impedes “the individual evading his/her [civil, administrative and criminal] responsibilities for their actions and opinion.”<sup>376</sup>

178. Similarly, on August 29 it was published the August 2014 State Law No. 15.556, passed by the Legislative Assembly of the State of São Paulo and not vetoed by the governor of the state. The law bans the use of masks “or any other object that could hide a person’s face and make it difficult to recognize them” during demonstrations or gatherings and requires the civil or military police be notified before any demonstration or gatherings in a public place, “according to the regulations issued by the Public Safety Secretariat.” Also, the law establishes that civil and military police “shall duly and legally intervene” in order to “preserve public and social order, physical and moral integrity of the citizen, public and private property, as well as the full compliance with this law.”<sup>377</sup>

179. At the March 28 hearing on the Situation of Human Rights and Social Protest in Brazil during the 150 period of sessions, the Commission received with concern information on different events taking place during 2013 and 2014 demonstrations in the country. In that regard, the petitioner organizations provided information on cases of violence against protestors and journalists by members of the public forces as well as on the impunity of these crimes; detentions and criminal proceedings against protestors; and bills that could have a negative impact on protests if passed. On their behalf the State reported it has publicly recognized the right to protest and has opened dialogue with civil society on the subject. Likewise the State reported that it has issued specific resolutions on the use of force during social protest and has taken measures to regulate it at the federal and state levels. Lastly, it reported that it has taken measures to handle the demands that triggered the demonstrations and to prevent human rights violations in these contexts.<sup>378</sup>

180. In a July 7, 2014 communication, the State sent additional information regarding 2013 social protest in the country. In that regard, the State reported, among other things, that according to the Public Safety Secretariat for Rio de Janeiro, security forces acted in a manner that exclusively preserved public order and in that manner took action to remove vandals from the protest. It affirmed that “possible excessive acts” by the Military Police have been referred to the Comptroller Office for that institution. It reported that it is implementing an interministerial help desk that establishes guidelines for police use of force. It added that the Council for Human Rights Defense [*Conselho de Defesa dos Direitos da Pessoa Humana*] (CDDPH) passed a resolution restricting the use of less lethal weapons during protests, including [those used] against the press, and created a “Working Group on Regulating Use of Force and Less Lethal Weapons” [*Grupo de Trabalho sobre Regulamentação do Uso da Força e de Armamentos de Baixa Letalidade*]. Lastly, it reported that in March of 2014 the National Ombudsman Police Forum [*Fórum Nacional de Ouvidores de Polícia*] approved guidelines on detentions during protests, the use of less powerful weapons as well as compulsory police identification, among other things.<sup>379</sup>

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<sup>376</sup> Poder Judiciário do Estado do Rio de Janeiro. Tribunal de Justiça. Órgão Especial. [Ações Diretas de Inconstitucionalidade nº 0052756-30.2013.8.19.0000 e nº 0053071-58.2013.8.19.0000](#). Decision of November 10, 2014.

<sup>377</sup> Assembleia Legislativa do Estado de São Paulo. Ley No. 15.556. August 29, 2014. [Restringe o uso de máscaras ou qualquer paramento que oculte o rosto da pessoa em manifestações e reuniões, na forma que especifica, e dá providências correlatas](#). Articles 2, 4 and 5.

<sup>378</sup> IACHR. 150 Period of Sessions. Hearing - Situation of human rights and social protest in Brazil. March 28, 2014. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=en&session=134&page=3>

<sup>379</sup> Communication of the Permanent Mission of Brazil at the OAS to the Executive Secretariat of the IACHR. No. 170. July 7, 2014. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Defesanet. June 19, 2013. [Não letais e armas de fogo - Restrição e proibição - RESOLUÇÃO 06 DO CDDPH](#).

181. The IACHR has reiterated that social protest is a fundamental tool for defending human rights and it is essential for expressing social and political criticism on the activities of the authorities. The Commission has stated that “in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly”<sup>380</sup> and that “the exercise of the right of assembly through social protest must not be subject to authorization on the part of the authorities or to excessive requirements that make such protests difficult to carry out.”<sup>381</sup>

182. Equally, the Commission has observed that the alleged use of punitive powers by the State to prosecute human rights defenders and peaceful protest, and to penalize political critics or dissidents is of great concern.<sup>382</sup> The Office of the Special Rapporteur recalls that the IACHR has determined that Article 7.5 of the American Convention establishes that the sole basis for pretrial detention rests on a defendant trying to elude the justice system or tampering with a judicial investigation. According to the IACHR justifying pretrial detention by the dangerousness of the accused or the possibility of [the accused] committing a crime in the future, runs contrary to this provision and to the presumption of innocence.<sup>383</sup>

183. Also, the Joint Declaration on violence against journalists and media workers in the context of protests, adopted in 2013, establishes that the rights of assembly and freedom of expression “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>384</sup>

184. Lastly, the Inter-American Commission has found that any type of arbitrary or abusive interference affecting the privacy of human rights defenders and their organizations is prohibited under the Declaration and the American Convention.<sup>385</sup>

## **E. Subsequent Liabilities**

185. On April 22 a judge for the 15<sup>th</sup> Criminal Court for Salvador de Bahia [*15<sup>a</sup> Vara Criminal da Comarca de Salvador*] convicted journalist Aguirre Talento to six months and six days in prison for the crime of defamation as a consequence of two articles published in *A Tarde* newspaper. The sentence was substituted for community service and a fine of ten minimum wage salaries (some US\$2,900). According to the information received, the reporter was sued by an entrepreneur because of two reports written in 2010 wherein the journalist referenced an alleged investigation by the Public Prosecutor against him and some of his partners for the violation of environmental regulations. In the report, the journalist published that the Office of the Public Prosecutor requested pretrial detention for the entrepreneur. The businessman denied these allegations and sued the reporter for defamation. Even though in his defense the reporter claimed he

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<sup>380</sup> IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc.57. December 31, 2009. Para. 197.

<sup>381</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. 139.

<sup>382</sup> IACHR. February 21, 2014. [Press Release No. 17/14. IACHR expresses deep concern over the situation with respect to the right to peaceful protest, freedom of association and freedom of expression in Venezuela](#).

<sup>383</sup> IACHR. [Report on the Use of Pretrial Detention in the Americas](#) . OEA/Ser.L/V/II. Doc. 46/13. December 30, 2013. Para. 144

<sup>384</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>385</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. 58.

only transcribed what was written in the criminal complaint filed by the Office of the Public Prosecutor, in his sentencing, the judge found that the journalist assumed the risk of embarrassing the entrepreneur by publishing on his possible imprisonment. The ruling was appealed.<sup>386</sup>

186. As reported, on April 22 the judge for the 1<sup>th</sup> Criminal Regional Circuit Court for Pinheiros [1<sup>a</sup> Vara Criminal do Fórum Regional de Pinheiros] in São Paulo sentenced Ricardo Boechat, anchorman for 'Jornal da Band' television program on the Rede Bandeirantes network, to six months and sixteen days imprisonment for the crime of slander of a senator. The sentence was substituted for three months community service. According to reports, the case has its genesis in 2011 when the reporter criticized an interview the public official gave to another *Radio Bandeirantes* reporter. In that interview, the senator was angered by the questions posed to him about his pension that led him to take the reporter's recording device and erase the interview. The ruling was appealed. The Criminal Appeals Panel [Turma Recursal Criminal] upheld the journalist's sentence on August 28.<sup>387</sup> On November 21, the Supreme Federal Court [Supremo Tribunal Federal] rejected on the grounds of formal aspects, an extraordinary appeal remedy filed to this court.<sup>388</sup>

187. According to the information received, on August 12 the Regional Federal Court [Tribunal Regional Federal] (TRF) for the 3<sup>rd</sup> region overturned a first instance ruling and opened a criminal proceeding against Demetrio Carta and Leandro Fortes, owner and reporter for *Carta Capital* magazine, respectively. The criminal proceeding was for the crime of slander of a Supreme Federal Court [Supremo Tribunal Federal] judge. The journalists denounced his alleged involvement in a corruption scheme. According to the Office of the Public Prosecutor, the report was based on a fake document. The federal judge in first instance court dismissed the complaint filed and determined the report merely quoted a document. Similarly, she found the Office of the Public Prosecutor was unable to prove it was a fake document or that the reporter knew it was a fake. In its August 12 ruling, the TRF considered, among other things, that in the crime of slander the defendant carries the burden of proof and not the Office of the Public Prosecutor.<sup>389</sup> For its part, on June 2, the 21<sup>th</sup> Civil Court for Brasilia [21<sup>a</sup> Vara Cível de Brasília] ruled against Carta Capital publishing and the reporters Carta and Fortes ordering them to pay R\$180,000 thousand *reais* (some US\$68,000) because of a series of reports criticizing the STF judge, including the publications subject to the criminal proceeding. The judgment was appealed.<sup>390</sup>

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<sup>386</sup> Tribunal de Justiça do Estado da Bahia. Processo No. 0053404-65.2011.8.05.0001. Judgment of April 22, 2014. Available for consultation at: <http://esaj.tjba.jus.br/esaj/portal.do?servico=190100>; Also see: <http://s.conjur.com.br/dl/jornalista-condenado-prisao-juiz.pdf>; Portal Imprensa. May 6, 2014. *Entidades se manifestam contra condenação de jornalista na BA e planejam ato*; Consultor Jurídico. April 28, 2014. *Juiz considera reportagem "maldosa" e condena autor à prisão*; Committee to Protect Journalists (CPJ). May 13, 2014. *Journalists convicted of criminal defamation in Brazil*; IFEX/Abraji. May 1, 2014. *Defamation case leads to rare 6-month prison sentence for Brazilian journalist*.

<sup>387</sup> Tribunal de Justiça de São Paulo. Processo No. 0017181-98.2011.8.26.0011. Available for consultation at: <https://esaj.tjsp.jus.br/esaj/portal.do?servico=190090>; Brasil 247. May 9, 2014. *Requião condena Boechat a seis meses de prisão*; Tribuna Hoje. May 11, 2014. *Ricardo Boechat é condenado por caluniar senador*; Gazeta do Povo. May 8, 2014. *Jornalista Ricardo Boechat é condenado por ofender Requião*; JusBrasil. No date. *Boechat é condenado a seis meses de prisão por ofensas contra Requião*; TV Bandeirantes/You Tube. April 25, 2011. Published by Fato e Verdade Notícias. *Requião arranca gravador da mão de repórter da RB após pergunta sobre aposentadoria*.

<sup>388</sup> Supremo Tribunal Federal. ARE 850673 – Recurso Extraordinário com Agravo. Decision of November 21, 2014. Available for consultation at: <http://www.stf.jus.br/portal/processo/verProcessoAndamento.asp?incidente=4666727>; Tribunal de Justiça de São Paulo. Processo No. 0017181-98.2011.8.26.0011. Available for consultation at: <https://esaj.tjsp.jus.br/esaj/portal.do?servico=190090>

On December 2, after the closing of this report, the journalist Ricardo Boechat appealed the decision of the Supreme Federal Court [Supremo Tribunal Federal] (STF), and filed a regimental appeal remedy [Agravo regimental], which would be pending decision. Supremo Tribunal Federal. ARE 850673 – Recurso Extraordinário com Agravo. Decision of November 21, 2014. Available for consultation at: <http://www.stf.jus.br/portal/processo/verProcessoAndamento.asp?incidente=4666727>; Tribunal de Justiça de São Paulo. Processo No. 0017181-98.2011.8.26.0011. Available for consultation at: <https://esaj.tjsp.jus.br/esaj/portal.do?servico=190090>

<sup>389</sup> Tribunal Regional Federal da 3<sup>a</sup> Região. Recurso em Sentido Estrito Nº 0008171-51.2013.4.03.6181/SP. Processo No. 2013.61.81.008171-0. Decision of August 12, 2014. Available for consultation at: <http://web.trf3.jus.br/acordaos/Acordao/PesquisarDocumento?processo=201361810081710>; Justiça Federal. Seção Judiciária de São Paulo. Processo No. 0008171-51.2013.4.03.6181. Available for consultation at: <http://www.jfsp.jus.br/foruns-federais/>; Consultor Jurídico. August 23, 2014. *Denúncia de calúnia não precisa de exame pericial para ser recebida*; Portal Imprensa. August 13, 2014. *Justiça acata denúncia do MPF contra "CartaCapital" por calúnia a Gilmar Mendes*.

<sup>390</sup> Vigésima Primeira Vara Cível de Brasília. Processo No. 2012.01.1.154969-7. Judgment of June 2, 2014. Available for consultation at: <http://tjdf19.tjdft.jus.br/cgi->

188. In an August 5 ruling, for formal aspects the Supreme Federal Court [*Supremo Tribunal Federal*] (STF) denied an appeal filed against the sentence of the Court of Justice for the state of Sergipe. This court upheld the seven month and sixteen day imprisonment sentence (substituted for the same amount of time in community services) of reporter José Cristian Góes for the crime of slander against the vice-chief judge of the Court of Justice. With the STF ruling, the sentencing stood.<sup>391</sup> As this Office of the Special Rapporteur reported earlier, the journalist was convicted based on an article of fiction published in his blog and narrated in first person without mentioning any names. According to the Office of the Public Prosecutor, the reporter wrote the text as a criticism of the governor for the state, the brother-in-law of the Court of Justice vice-chief judge. According to this interpretation, the article dishonors the judge by calling him “the law hit man” [*jagunço da lei*]. The conviction determined there was no violation of the right of freedom of expression in this case because “the honor and image of a public official are at risk while carrying out his duties”. Upon sentencing, the judge increased the penalty imposed by one third for slandering a public official while carrying out his duties, and he also found the fact that the expression had been disseminated on the Internet to be an aggravating circumstance.<sup>392</sup>

189. Similarly, on November 28, the 7<sup>th</sup> Civil Court [*7ª Vara Cível da Comarca de Aracaju*] of the Court of Sergipe sentenced José Cristian Góes to pay R\$25,000 thousand *reais* (some US\$10,000) to the vice-president judge of the Court of Justice on the grounds of the aforementioned article of fiction. The civil case was tied to the criminal case, and therefore was limited to imposing a compensation amount. In that regard, when setting compensation, the 7<sup>th</sup> Civil Court highlighted that compensation should have been greater, but the financial situation of the journalist would make it impossible to collect on a greater amount. In the opinion of the judge, the aggravating factors were that the crime was against a member of the judiciary carrying out his official duties, which meant this was not only an attack on “his image as a judge and public officer”, but also on “the image and credibility of the judiciary itself.”<sup>393</sup>

190. On May 3, the 1<sup>st</sup> Chamber of the Supreme Federal Court [*Supremo Tribunal Federal*] (STF) denied a writ for *habeas corpus* filed by the Public Defender of the Union in favor of a person under military justice prosecution for contempt. In the instant case, the Public Defender requested the case in the military justice system be vacated on the grounds of lack of jurisdiction. The case goes back to a 2011 event, an army operation in the Rio de Janeiro community. At that time the person argued with the soldiers and pulled her pants down as a protest. According to the Supreme Federal Court, Brazilian law allows for the military justice system to adjudicate civilian crimes against the armed forces where there is intent to, among other things, offend the soldier, even in cases where the services provided are for the protection and guarantee of public order. Therefore, the STF decided to deny the writ of *habeas corpus*.<sup>394</sup>

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[bin/tjcg1?NXTPGM=tjhtml05&ORIGEM=INTER&SELECAO=1&CIRCUN=1&CDNUPROC=20120111549697](http://bin/tjcg1?NXTPGM=tjhtml05&ORIGEM=INTER&SELECAO=1&CIRCUN=1&CDNUPROC=20120111549697); Consultor Jurídico. June 4, 2014. *Carta Capital é condenada em R\$ 180 mil por ofender ministro Gilmar Mendes*.

After the closing of this report, on December 3, 2014 the Federal District Court raised the compensation amount to be paid by the publishing company and journalists to the STF judge from R\$180,000 thousand *reais* to R\$360,000 thousand *reais* (some US\$136,000). Tribunal de Justiça do Distrito Federal. 6a Turma Cível (Palácio da Justiça - Térreo). Processo APC 2012 01 1 154969-7. Decision of December 3, 2014. Available for consultation at: <http://tjdf19.tjdft.jus.br/cgi-bin/tjcg1?NXTPGM=plhtml06&SELECAO=1&ORIGEM=INTER&CDNUPROC=20120111549697APC> and at <http://s.conjur.com.br/dl/acordao-tj-df-carta-capital-gilmar.pdf>; Consultor Jurídico. December 3, 2014. *TJ do DF dobra indenização que Carta Capital pagará a Gilmar Mendes*; Portal Imprensa. December 5, 2014. *TJ-DF aumenta indenização que "CartaCapital" deve pagar a Gilmar Mendes*.

<sup>391</sup> Supremo Tribunal Federal. ARE 811162. [Decision of August 5, 2014](#); Tribunal de Justiça do Estado de Sergipe. Juizado Especial Criminal da Comarca de Aracaju. [Processo Nº 201245102580](#); Tribunal de Justiça do Estado de Sergipe. Turma Recursal do Estado de Sergipe. [Processo Nº 201301008618](#); Consultor Jurídico. September 2, 2014. *STF rejeita recurso e mantém condenação de jornalista por texto ficcional*.

<sup>392</sup> IACHR. [Annual Report 2013. 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.149. Doc. 50. December 31, 2013. Para. 122; Tribunal de Justiça do Estado de Sergipe. Juizado Especial Criminal da Comarca de Aracaju. Judgement of July 4, 2013. [Processo No. 201245102580](#); Tribunal de Justiça do Estado de Sergipe. Turma Recursal do Estado de Sergipe. [Processo Nº 201301008618](#). [Acórdão No. 5450](#). October 22, 2013; Portal Infonet. May 29, 2012. [Eu, o coronel em mim](#).

<sup>393</sup> Tribunal de Justiça do Estado de Sergipe. 7ª Vara Cível da Comarca de Aracaju. Processo No. 201210701342. Decision of November 28, 2014. Available for consultation at: [Processo No. 201210701342](#). [Decision of November 28, 2013](#).

<sup>394</sup> Supremo Tribunal Federal. HC 112932. [Decision of May 13, 2014](#); Consultor Jurídico. May 14, 2014. [Compete à Justiça Militar julgar civil acusado de desacato](#).



191. Principle 10 of the Declaration of Principles of the IACHR 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”.

192. In addition, 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”. Equally, the Inter-American Court has reiterated that “their jurisdiction should be restricted to military personnel in active service only”, and ordered that States to respect the “restrictive and exceptional scope of military courts, and exclude the trial of civilians from the jurisdiction thereof”, including cases filed for contempt.<sup>395</sup>

193. Regarding possible civil responsibility, the Inter-American Court has established that as far as freedom of expression is concerned, civil sentences shall be strictly proportionate so as not to infringe upon this right as, “the fear of a civil penalty, considering [...] 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>396</sup>

## F. Community Radio

194. As reported, on February 23 the Office of the Federal Public Prosecutor shut down *Rádio Muda* station and seized broadcasting equipment. This station was a community radio station in operation for over 20 years in the *Campinas* University in the state of São Paulo. The operation took place at request of the National Telecommunications Agency (Anatel), allegedly for the lack of a broadcast license.<sup>397</sup>

195. In July, Núbia da Silva Oliveira, president of *Associação Comunitária Coité*, was criminally charged with “clandestine telecommunication activities”, for her role in the broadcasting of *Rádio Coité FM*, a community media outlet operating in the city of Coité, state of Bahia.<sup>398</sup> As reported, Zacarias de Almeida Silva, who had been *Rádio Coité FM* director, was also prosecuted for the same crime. The case was initiated in 2013 and is pending disposition.<sup>399</sup>

196. As stated on other occasions, the use of criminal law for violations in radio broadcasting can be problematic in light of the American Convention on Human Rights. Therefore, the Office of the Special Rapporteur reiterates that it is disproportionate to establish criminal punishment for commercial or community radio broadcasting; facing a lack of or misuse of a broadcasting license.<sup>400</sup>

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<sup>395</sup> I/A Court H.R. *Caso Palamara Iribarne Vs. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Serie C No. 135. Para. 124-144.

<sup>396</sup> I/A Court H.R. *Caso Tristán Donoso Vs. Panamá. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Serie C No. 193. Para. 129.

<sup>397</sup> Correio Popular. February 24, 2014. *Rádio 'Muda' é fechada após pedido da Anatel*; G1. February 24, 2014. *Sem autorização da Anatel, 'Rádio Muda' é fechada na Unicamp*; Terra. February 24, 2014. *Sem autorização da Anatel, 'Rádio Muda' da Unicamp é fechada*; Amarc Brasil. August 18, 2014. *Informe*; Artigo 19. May 13, 2014. *Carta de repúdio ao Ministério Público Federal pela perseguição à Rádio Muda*.

<sup>398</sup> Justiça Federal. Tribunal Regional Federal da 1ª Região. Processo No. 0010631-63.2013.4.01.3304. Available for consultation at: <http://processual.trf1.jus.br/consultaProcessual/index.php?secao=FSA>; Artigo 19. September 26, 2014. *Rádio Comunitária Coité FM enfrenta série de obstáculos para se manter no ar*.

<sup>399</sup> Justiça Federal. Tribunal Regional Federal da 1ª Região. Processo No. 0000358-25.2013.4.01.3304. Available for consultation at: <http://processual.trf1.jus.br/consultaProcessual/index.php?secao=FSA>; Artigo 19. September 26, 2014. *Rádio Comunitária Coité FM enfrenta série de obstáculos para se manter no ar*.

<sup>400</sup> IACHR. *Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of

197. Equally, the Office of the Special Rapporteur reiterates 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>401</sup>

### G. Other relevant situations

198. On August 22, the state police for Paraná detained a person at his workplace hours after he made a comment on Facebook wherein he criticized the actions of an officer at a checkpoint the day before. The prison was notified by an alleged police officer through a comment on the same post that had the criticism. On that occasion, it was reported that the police would continue to investigate other individuals in order to “find and identify those who made comments on the page regarding military police actions”. According to reports, the local police commander stated the detention was necessary because the criticism could be construed as a crime against police honor. The individual was released after providing statements at the station.<sup>402</sup>

199. On September 19, the 34<sup>th</sup> Civil Court for São Paulo jurisdiction [34<sup>a</sup> *Vara Cível da Comarca de São Paulo*] upheld the judgment on the merits of a measure that bars activist Ricardo Fraga Oliveira from protesting against a facility or participating in any other activity close to the facility construction. The judgment also prohibits him from publishing anything on the matter on the Internet and orders him to remove any content on the matter from the web or a fine of R\$10,000 thousand *reais* (some US\$4,000) may be imposed for each violation. According to the 34<sup>th</sup> Civil Court, the measure was justified due to the impact the protests of this activist had on the right to property the company exercises. According to reports, Oliveira appealed the decision.<sup>403</sup> As has been reported by this office, this case goes back to a ruling of that same court, upheld by the Court of Justice, which through a precautionary measure, banned Oliveira from protesting against the company or publishing on the matter on the Internet in 2013, among other things. Oliveira had an initiative on Facebook called “The Other Side of the Wall- A collective intervention” [*O Outro Lado do Muro – Intervenção Coletiva*], used to protest against the property development construction.<sup>404</sup>

200. On September 29, the Regional Electoral Tribunal for Rio de Janeiro ordered the online comedy network *Porta dos Fundos* and YouTube to remove a video as access to it could potentially hurt the

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the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 129; 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. 467.

<sup>401</sup> 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. 284.

<sup>402</sup> Yahoo! Notícias. August 28, 2014. [No Paraná, homem é preso após criticar abordagem da PM no Facebook](#); G1. August 22, 2014. [Homem é preso depois de criticar abordagem da PM no Facebook](#); Spotniks. August 23, 2014. [Homem é preso após criticar abordagem da PM no Facebook](#).

<sup>403</sup> Tribunal de Justiça do Estado de São Paulo. 34<sup>a</sup> Vara Cível da Comarca de São Paulo. [Processo No. 1008543-15.2013.8.26.0100](#). Judgment of September 19, 2014; Artigo 19. October 13, 2014. [A censura continua](#); Adital. October 10, 2014. [Activista apelará decisão judicial que le prohíbe protestar en internet contra emprendimiento inmobiliario](#).

<sup>404</sup> IACHR. [Annual Report 2013. 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.149. Doc. 50. December 31, 2013. Para. 132; Tribunal de Justiça do Estado de São Paulo. 34<sup>a</sup> Vara Cível da Comarca de São Paulo. [Processo No. 1008543-15.2013.8.26.0100](#). Judgment of March 6, 2013; Tribunal de Justiça de São Paulo. 5<sup>a</sup> Câmara de Direito Privado. [Processo No. 0051583-73.2013.8.26.0000](#). Judgment of May 15, 2013.

image of a state government candidate. The video, a comedy, generally criticized the candidates running for election and mentioned the local government candidate by name. An appeal before the Supreme Federal Court [*Supremo Tribunal Federal*] (STF) was dismissed on the grounds of formal aspects.<sup>405</sup> Similarly, in October, Google was notified of a Regional Electoral Tribunal for Rio de Janeiro ruling ordering another video removed from *Porta dos Fundos*, which also mentioned the candidate to state government within the context of comedy.<sup>406</sup> According to reports, on October 15, the orders to remove were vacated because the candidate did not acquire the necessary votes to move on to the second elections round.<sup>407</sup> According to the data collected by *Associação Brasileira de Jornalismo Investigativo* (Abraji), during the “*Eleição Transparente*” initiative, at least 190 cases were filed before the electoral justice system with the objective of avoiding the barring or sanctioning of the dissemination of content within the context of the 2014 elections.<sup>408</sup>

201. Principle 5 of the IACHR Declaration of Principles 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.”

202. Similarly, pursuant to principle 11, “[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.” In addition, principle 10 establishes, “[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.”

## 7. Canada

### A. Progress

203. On June 13, the Supreme Court of Canada handed down its decision in the case of *R. v. Spencer*, holding that the State’s law enforcement agencies must have a warrant in order to request information from Internet service providers about their subscribers. The Court underscored that “particularly important in the context of Internet usage is the understanding of privacy as anonymity,” and that “the identity of a person linked to the use of the Internet must be recognized as giving rise to a privacy interest beyond that inherent in the person’s name, address and telephone number.”<sup>409</sup>

204. The Office of the Special Rapporteur notes with interest the launching of a censorship tracker, created by PEN Canada, the BC Civil Liberties Association (BCCLA), the Canadian Civil Liberties

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<sup>405</sup> Tribunal Regional Eleitoral do Rio de Janeiro. Protocolo No. 158.287/2014. Decision of September 29, 2014. Available for consultation at: <http://s.conjur.com.br/dl/decisao-porta-fundos-garotinho.pdf>; Folha de São Paulo. October 1, 2014. *Vídeo da Porta dos Fundos que cita Garotinho é retirado do ar pela Justiça*; Supremo Tribunal Federal. Reclamação 18.776 Rio de Janeiro. *Decision of October 3, 2014*; UERJ Direitos. Reclamação com pedido urgente de concessão de liminar. October 2, 2014. Available for consultation at: [http://uerjdireitos.com.br/wp-content/uploads/2014/10/uerjdireitos\\_porta-dos-fundos\\_rcl\\_uerjdireitos\\_02-10-14\\_final-assinado.pdf](http://uerjdireitos.com.br/wp-content/uploads/2014/10/uerjdireitos_porta-dos-fundos_rcl_uerjdireitos_02-10-14_final-assinado.pdf)

<sup>406</sup> Consultor Jurídico. October 6, 2014. *TRE do Rio manda Google apagar outro vídeo do Porta dos Fundos*; Portal Imprensa. October 7, 2014. *TRE-RJ determina que Google retire do ar outro vídeo do Porta dos Fundos*; Brasil de Fato. October 9, 2014. *Vídeo do 'Porta dos Fundos' que cita Garotinho é retirado do ar pela segunda vez*.

<sup>407</sup> Tribunal Regional Eleitoral do Rio de Janeiro. Mandado de Segurança No. 7907-04.2014.6.19.0000. Decision of October 5, 2014. Available for consultation at: <http://s.conjur.com.br/dl/decisao-liminar-porta-fundos.pdf>; Tribunal Regional Eleitoral do Rio de Janeiro. Mandado de Segurança No. 7906-19.2014.6.19.0000. Decision of October 15, 2014. Available for consultation at: <http://s.conjur.com.br/dl/liminar-porta-fundos-voce-me-conhece.pdf>; Consultor Jurídico. October 15, 2014. *Com derrota de Garotinho, vídeos do Porta dos Fundos voltam ao YouTube*.

<sup>408</sup> Associação Brasileira de Jornalismo Investigativo (Abraji). October 27, 2014. *Eleições de 2014 tiveram quase 200 processos contra divulgação de informações*; Associação Brasileira de Jornalismo Investigativo (Abraji). No date. *Eleição Transparente*.

<sup>409</sup> Supreme Court of Canada. *R. v. Spencer*. June 13, 2014. Available for consultation at: <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14233/index.do>

Association (CCLA), and Canadian Journalists for Free Expression (CJFE), which is designed to be a localization tool that will enable the public to report cases of censorship and incidents where freedom of expression has been curtailed. The reports will be published in an interactive map that will allow users to be aware of incidents affecting freedom of expression in the country.<sup>410</sup>

## **B. Attacks on the media and journalists**

205. On January 20, the Palestinian Center for Development and Media Freedoms (MADA) reported that cameraman Amer Hijazi of *Al-Mahid TV* had been attacked on that same day by a member of Canadian Prime Minister Stephan Harper's security detail at the Church of the Nativity in Bethlehem, following a dispute over permission for the Palestinian journalists to film inside the church.<sup>411</sup>

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

## **C. Access to public information**

207. The Office of the Special Rapporteur views positively the bill to amend the Parliament of Canada Act, as well as the Access to Information Act, which would improve the system for accessing information and increase government transparency. The amendment to the Access to Information Act would establish transparency as a general rule, and confidentiality as the rare exception. It would also authorize the Information Commissioner to order the government to disclose documents, allowing the government to apply for judicial review of that order. The Act would also eliminate the payment of fees associated with requests for information (except for an initial fee); it would require more periodic reviews thereof, and provide incentives for the timely disclosure of information. In addition, the amendment to the Parliament of Canada Act would require the Board of Internal Economy (which oversees the finances of the House of Commons) to open its meetings to the public, with certain exceptions.<sup>412</sup>

208. On September 23, 2014, Elizabeth Denham, the Information and Privacy Commissioner for British Columbia (B.C.), issued a special report on the situation of access to information in the province. According to the report, the length of time it takes the government to respond to a request for information increased during the 2013-2014 period. In contrast, during the same period, the number of requests that concluded without the disclosure of information due to a lack of documentation on the requested information ("no responsive records") decreased.<sup>413</sup>

209. 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."

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<sup>410</sup> IFEX/Canadian Journalists for Free Expression (CJFE)/PEN Canada. November 21, 2014. [Canadian civil society groups launch Censorship Tracker mapping tool](#); Canadian Civil Liberties Association (CCLA). November 20, 2014. [Censorship Tracker Launched: A New Tool to Monitor Threats to Free Expression in Canada](#).

<sup>411</sup> IFEX/Canadian Journalists for Free Expression (CJFE). January 21, 2014. [Canada should investigate assault on Palestinian journalist by Prime Minister's body guard](#); Palestinian Center for Development and Media Freedoms (MADA). January 20, 2014. [MADA: Journalists attacked by the Canadian Prime Minister Guard](#); Pakistan Press Foundation. January 22, 2014. [Pakistan Press Foundation condemns physical assault on Palestinian journalist](#).

<sup>412</sup> Parliament of Canada. [Bill C-613](#).

<sup>413</sup> Information and Privacy Commissioner. [A step backwards: report card on government's access to information responses April 1, 2013 - March 31, 2014](#). September 23, 2014.

#### D. Internet and freedom of expression

210. The Office of the Special Rapporteur learned of the judgment handed down on June 13 by the Supreme Court of British Columbia in the case of *Equustek Solutions Inc. v. Jack*. In this decision, the Court ordered Google to remove a website from the search results not only from the Canadian domain “Google.ca” but also from the worldwide index of its entire search platform. This case is related to the litigation of trade secrets between two Canadian companies, in which one sued the other alleging that it had stolen the designs for some of its products and sold them on its website. The plaintiff alleged that Google was facilitating access to this unlawful online vendor through a search platform. In spite of the fact that Google voluntarily agreed to remove the URLs that redirected the users to those products through “Google.ca,” the Court decided that this was insufficient and that it had to eliminate the domain even from the main “Google.com” site.<sup>414</sup>

211. The Office of the Special Rapporteur is following with interest the legislative process on the Protecting Canadians from Online Crime Act, or Bill C-13, as well as the Digital Privacy Act, or Bill S-4. Law C-13 would punish the unauthorized distribution of intimate images. It would also allow the voluntary disclosure of personal information (data) from third parties to the government, without this creating any type of liability, and would make it possible for Internet service providers, telecommunications companies, and operators of websites and social networks to disclose information about their users. This Law would further allow the police to request a warrant to collect data, provided they demonstrate that they have reasonable grounds to suspect the commission of a crime. As of December 9, the Bill C-13 has received Royal Assent, and will enter into force three months after the date it received Royal Assent.<sup>415</sup> Law S-4, for its part, would allow internet service providers to share personal information, without consent or notice to the affected party, in certain previously established cases. Specifically, the Law would allow for the disclosure of personal information without such knowledge or consent in order to obtain the identification of an injured or sick person and communicate it to his or her relatives; in order to prevent, detect, or suppress fraud, or to protect the victims of financial abuse. The Law would also allow in specific cases for the collection, use, and disclosure of information to establish, manage, or terminate employment relationships with individuals.<sup>416</sup>

212. 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.<sup>417</sup> 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 to privacy according to international human rights law, including in the context of digital communication.<sup>418</sup> Finally, the defense of individual privacy should be carried out pursuant

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<sup>414</sup> Supreme Court of British Columbia. *Equustek Solutions Inc. v. Jack*. June 13, 2014. Available for consultation at: <https://www.canlii.org/en/bc/bcsc/doc/2014/2014bcsc1063/2014bcsc1063.html>

<sup>415</sup> IFEX/Canadian Journalists for Free Expression (CJFE). June 6, 2014. [Bill C-13: Cyberbullying legislation threatens free expression in Canada](#); The Globe and Mail. June 6, 2014. [How new laws are about to change your privacy](#); IFEX/PEN Canada. May 15, 2014. [Privacy could vanish if cyber-bullying act becomes law in Canada](#); Open parliament. [Bill C-13](#). Alberta Law Libraries. December 10, 2014. [Bill C-13, Protecting Canadians from Online Crime Act, received Royal Assent December 9, 2014](#); Reuters. December 10, 2014. [Government of Canada Highlights Royal Assent of Bill to Help Law Enforcement Protect Victims of Online Crime](#).

<sup>416</sup> The Globe and Mail. June 6, 2014. [How new laws are about to change your privacy](#); IFEX/Pen Canada. May 15, 2014. [Privacy could vanish if cyber-bullying act becomes law in Canada](#); Open parliament. [Bill S-4](#); The Globe and Mail. June 5, 2014. [Privacy bill could allow swapping of users' data without consent, critics say](#); The Huffington Post. April 14, 2014. [Bill S-4, Tories' Digital Privacy Act, An Attack On Digital Privacy: Critics](#).

<sup>417</sup> IACHR. [Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 22.

<sup>418</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

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.”<sup>419</sup>

### **E. Collection of telephony metadata**

213. The Office of the Special Rapporteur expresses its concern over the top-secret document obtained by *CBC News* that apparently revealed that the Canadian electronic espionage company Communications Security Establishment of Canada (CSEC) used information from free Internet service at a major Canadian airport to follow the wireless devices of thousands of passengers for days after they had left the terminal.<sup>420</sup> The CSEC reportedly published a response to the CBC report in which it stated that “no Canadian or foreign travelers were tracked,” but did not deny the existence of the program as such.<sup>421</sup>

### **F. Legal reforms**

214. The Office of the Special Rapporteur expresses its concern over the new law enacted by the Government of Alberta (Bill 45), which makes it unlawful to advocate for government employees to go on strike and assesses financial penalties against those who advise taking such action.<sup>422</sup>

### **G. Other relevant situations**

215. The Office of the Special Rapporteur learned of the closure of several libraries of the Department of Fisheries and Oceans (DFO). According to the DFO, its 11 libraries will be consolidated at two primary locations and two specialized locations. The scientific community reportedly views this event as an attack on science, and believes that there are ideological and political reasons behind it. A group of anonymous scientists reportedly told the CBC that the federal government was trying to silence research that does not support its economic agenda. Given that the DFO libraries contained materials relating to the environmental impact of human activity on bodies of water in Canada, it is suggested that the government’s intent is to limit this type of scientific information.<sup>423</sup>

216. On July 22, the *Toronto Star*, *CBC*, and *White Pine Pictures* reportedly brought a case in federal court based on the Correctional Service of Canada’s refusal to allow them to interview Canadian citizen Omar Khadr, who had been a prisoner at Guantanamo and was accused of throwing a grenade at U.S. Sergeant Christopher Speer. Khadr had reportedly been transferred to a Canadian prison in 2012, without the

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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\\_es.shtml](http://www.un.org/Depts/dhl/resguide/r68_es.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>419</sup> IACHR. [Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 24.

<sup>420</sup> CBC News. January 30, 2014. [CSEC used airport Wi-Fi to track Canadian travellers: Edward Snowden documents.](#)

<sup>421</sup> IFEX/Canadian Journalists for Free Expression (CJFE). February 3, 2014. [Leaks expose program that subjects Canadian travellers to mass data collection](#); World Socialist Web Site. February 4, 2014. [CSEC and Harper government assert right to spy on Canadians.](#)

<sup>422</sup> IFEX/Canadian Journalists for Free Expression (CJFE). December 19, 2013. [New gag law threatens free expression in Canadian province](#); Rabble. January 21, 2014. [With free expression under assault in Alberta, where’s ‘free speech advocate’ Ezra Levant?](#); Communications Workers of America. January 16, 2014. [Alberta’s Bill 45 an ‘assault on free speech’.](#)

<sup>423</sup> IFEX/Canadian Journalists for Free Expression (CJFE). January 28, 2014. [Spread of knowledge in peril as Canada shuts federal department libraries](#); CBC. January 6, 2014. [Fisheries and Oceans library closings called loss to science](#); The Tyee. December 23, 2013. [What’s Driving Chaotic Dismantling of Canada’s Science Libraries?](#)

forementioned media outlets managing to get an interview with him. According to the media, this denial is a violation of society's right to information.<sup>424</sup>

217. In early August, Lesslie Askin, a 71-year-old woman, reportedly took some photographs of petroleum storage tanks belonging to the Kinder Morgan Corporation at the foot of Burnaby Mountain, in order to capture their deteriorated condition. Those photographs were reportedly part of an investigation being conducted to prepare for a presentation at a hearing before the National Energy Board. According to reports, two officers from the National Security Division of the Royal Canadian Mounted Police visited her ten days later to ask her some questions. According to press reports, the police allegedly considered her on suspicion of terrorism.<sup>425</sup>

218. The Office of the Special Rapporteur was informed of the draft bill to amend Canada's copyright law, which would allow for the use of archived news material in political advertising.<sup>426</sup> Canadian Journalists for Free Expression (CJFE) raised some issues that could be of concern regarding this law, for example, that (i) the proposal could result in media outlets appearing biased and unprofessional, to the extent that it would make it look as though a media outlet had supplied some of or all of the content for a partisan political ad; (ii) news clips and journalistic reports could be taken out of context; (iii) the proposal would increase tensions between media and political advertisers, since the former would not be required to disseminate the ad if they thought it inaccurately gave the impression that the media outlet was critical of a specific political party or candidate.<sup>427</sup>

## **8. Chile**

### **A. Attacks against media outlets and journalists**

219. On January 22, journalist Vicky Vargas and cameraman Jorge León, employees of the Peruvian media outlet *Frecuencia Latina*, were forced by the Investigations Police of Chile [*Policía de Investigaciones de Chile*] to erase video recorded at an installation in the border city of Chacalluta. Both correspondents were detained for more than half an hour by the Investigations Police [*Policía de Investigaciones*]. The video recording was not restored to them and they were threatened not to cross the border again.<sup>428</sup>

220. On March 29, in the framework of Young Combatants' Day, incidents were generated that led to an attack on *ChileVisión* cameraman, Juan Carlos Torrealba. According to press information, Torrealba was hit by pellets in his face and hands.<sup>429</sup> On March 30, the Minister of the Government General Secretariat [*Ministro de la Secretaría General de Gobierno*], Álvaro Elizalde condemned the attacks against the press

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<sup>424</sup> IFEX/Canadian Journalists for Free Expression (CJFE). August 8, 2014. [Canada: Media should be allowed to interview ex-Guantanamo detainee Omar Khadr](#); The Star. July 22, 2014. [Khadr access blocked, prompting media court challenge](#).

<sup>425</sup> Canadian Journalists for Free Expression (CJFE). September 30, 2014. [Can you take a picture? A look at your right to photograph in Canada](#); CBC News. September 18, 2014. [Lesslie Askin, 71, shocked to be deemed a Kinder Morgan terror threat](#); Vancouver Observer. September 20, 2014. [Grandmother questioned as a Kinder Morgan "terrorist threat" gets her day in Parliament](#).

<sup>426</sup> IFEX/Canadian Journalists for Free Expression (CJFE). October 10, 2014. [Proposed amendments to Canada's copyright law threaten press freedom](#); CTV News. October 8, 2014. [Conservatives to change copyright law, allowing free use of news content in political ads](#).

<sup>427</sup> Canadian Journalists for Free Expression (CJFE). October 10, 2014. [Proposed amendments to Canada's copyright law threaten press freedom](#).

<sup>428</sup> Instituto Prensa y Sociedad (IPYS). January 23, 2014. [Obligan a periodistas a borrar imágenes captadas en la frontera con Chile](#); El Zar. January 24, 2014. [Periodistas peruanos fueron amenazados por Carabineros de Chile ante el fallo de La Haya](#); Perú. January 23, 2014. [Chile: Obligan a periodistas peruanos a borrar imágenes de la frontera con el Perú](#)

<sup>429</sup> La Tercera. March 30, 2014. [Disparos y barricadas marcan Día del Joven Combatiente](#); The Clinic. March 29, 2014. [Día del Joven Combatiente: Camarógrafo de Canal 13 herido y móvil de El Mercurio baleado](#); Emol. March 30, 2014. [Minuto a Minuto: Seis detenidos por disturbios en Día del Joven Combatiente \(Fin\)](#)

during that commemoration and declared the Government's solidarity with the victims of the denounced acts of violence.<sup>430</sup>

221. On September 7, a journalist was attacked by unknown individuals while carrying out his work in the framework of the March for Human Rights. Fernando Sánchez was hit on the head by a rock, had gasoline poured on him and threatened with being set ablaze. The Metropolitan Mayor [*Intendente Metropolitano*], Claudio Orrego, declared that the Metropolitan Mayor's Office [*Intendencia Metropolitana*] would file a complaint against the persons responsible for the attack. The Minister of the Government General Secretariat [*Ministro de la Secretaría General de Gobierno*], Álvaro Elizalde, condemned the attack and affirmed that a complaint would be filed against those responsible for this incident.<sup>431</sup>

222. On November 6, journalist and Secretary General of the Communist Party of Chile, Juan Andrés Lagos, was attacked when arriving home by unidentified individuals in an automobile. The Government of President Michelle Bachelet and the opposition as well as the College of Journalists [*Colegio de Periodistas*] condemned the attack against Lagos.<sup>432</sup>

223. 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".

## **B. Other relevant situations**

224. On February 27, the Executive Branch promulgated Supreme Decree 14, which derogates a series of decrees regarding electronic documents, electronic signatures and certification of such signatures,<sup>433</sup> that would come into conflict with Law Number 20.285 About Access to Public Information (Transparency Law) [*Sobre Acceso a la Información Pública (Ley de Transparencia)*]. In practice, the decree would allow public officials to erase e-mails. The derogated decrees include decree 77 of 2004,<sup>434</sup> which established regulations to set rules for dealing with mail between the diverse state agencies, as well as communication between the State and the citizenry. On January 31, the Council for Transparency [*Consejo para la Transparencia (CPLT)*] of Chile sent an office letter to all government agencies with the aim of having the outgoing authorities facilitate compliance with regulations established in the Transparency Laws [*Leyes de Transparencias*] on information transfers and information in the hands of the State, on the occasion of the inauguration of the elected government of Michelle Bachelet<sup>435</sup>.

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<sup>430</sup> La Nación. March 30, 2014. [Elizalde condenó agresiones a la prensa en el día del Joven Combatiente](#)

<sup>431</sup> Colegio de Periodistas de Chile. September 9, 2014. [Declaración Pública ante últimos y graves hechos de violencia ocurridos en el país](#). La Tercera. September 8, 2014. [Intendente Orrego condena ataque a periodista y anuncia "un día normal" para el 11 de setiembre](#); Emol. September 7, 2014. [Anuncian querrela contra quienes agredieron a periodista de CHV en marcha por los DD.HH.](#); La Tercera. September 7, 2014. [Gobierno presentará querrelas por hechos de violencia tras marcha por los Derechos Humanos](#); El Dínamo. September 8, 2014. [Intendencia se querrellará por agresión a periodista en marcha por los DD.HH](#)

<sup>432</sup> La Nación. November 8, 2014. [Colegio de la Orden condena agresión a Periodista Juan Andrés Lagos](#). El Dínamo. November 8, 2014. [PC denuncia ataque contra su secretario general, Juan Andrés Lagos](#). La información/EFE. November 10, 2014. [Bachelet condena agresión a secretario del PC: "Es deleznable e inaceptable"](#); The Clinic. November 8, 2014. [PC denuncia agresión de desconocidos a su secretario Juan Andrés Lagos](#)

<sup>433</sup> Biblioteca del Congreso Nacional de Chile (BCN). [Decreto Supremo 14. Modifica Decrteo N°181. de 2002, que aprueba Reglamento de la Ley 19.799 sobre documentos electrónicos, firma electrónica, y la certificación de dicha firma, y deroga los decretos que indica](#). February 27, 2014.

<sup>434</sup> Biblioteca del Consejo Nacional de Chile (BCN). [Derogación Decreto 77. Aprueba norma técnica sobre eficiencia de las comunicaciones electrónicas entre órganos de la Administración del Estado y entre éstos y los ciudadanos](#). February 27, 2014.

<sup>435</sup> Elmostrador.país. March 10, 2014. [La última avivada de Piñera: decreto permite a funcionarios públicos borrar correos electrónicos](#). Fundación ProAcceso. March 10, 2014. [La última avivada de Piñera: decreto permite a funcionarios públicos borrar correos electrónicos](#)



225. On May 22, the Executive Branch promulgated Law 20,750 Allows the Introduction on Digital Terrestrial Television [*Permite la Introducción de la Televisión Digital Terrestre*].<sup>436</sup> This law had initially been aimed at regulating migration by concessionaires from analog television to digital technology, free public access to digital signals and guaranteeing pluralism, among others. The law would also increase the powers of the National Television Council [*Consejo Nacional de Televisión*], which could require stations to promote inclusion and pluralism in the media by providing for a amount of cultural programming and the dissemination of national, regional and local identities, along with the promotion of social, cultural, ethnic, political, religious, sexual orientation and gender identities.<sup>437</sup>

226. The Supreme Court [*Corte Suprema*] denied access to the journalist Andrés Pozo Barceló, of the magazine *Qué pasa*, to the minutes of the meetings of the Managing Commission on the Mining Integration and Complementary Treaty [*Tratado sobre Integración y Complementación Minera*] executed between Chile and Argentina referring to the binational mining company Pascua Lama de Barrick Gold. Pozo Barceló presented an appeal to the Appeals Court of Santiago [*Corte de Apelaciones de Santiago*] in the framework of the Law Number 20.285 About Access to Public Information (Transparency Law) [*Sobre Acceso a la Información Pública (Ley de Transparencia)*] which was denied by the Court. In its decision, the Court determined that provision of the requested minutes, from the year 2000 on, would affect the interest of Chile and the rights of the Argentine State.<sup>438</sup>

227. On June 17, the Senate approved a bill that establishes a quota of 20 per cent aimed at disseminating music by Chilean composers on national radio stations. The bill generated controversy among media outlets and the FUCATEL media Observatory [*Observatorio de Medios FUCATEL*], with respect to possible intervention in radio programming that the law could generate once it was approved. At the time of this annual Report, the law had not yet been approved.<sup>439</sup>

228. The Office of the Special Rapporteur observes with concern that article 36 B letter a) of General Telecommunications Law No. 18,168<sup>440</sup> [*Ley General de Telecomunicaciones*], which punishes the operation or exploitation of free reception or broadcasting services for installations without authorization from the corresponding authority, remains in effect in the legal system of Chile. According to available information, the bill<sup>441</sup> that proposes derogation of the above-mentioned article had been approved by the Chamber of Deputies [*Cámara de Diputados*] on June 4<sup>442</sup> and is in the second reading in the Senate.<sup>443</sup> On

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<sup>436</sup> Biblioteca del Congreso Nacional de Chile (BCN). [Ley Número 20.750. Permite la Introducción de la Televisión Digital Terrestre](#). May 22, 2014.

<sup>437</sup> Inter American Press Association (IAPA). No date. [Chile; Observatorio de Medios FUCATEL. August 25, 2014. Norma para transmisión de programas culturales en TV; Chile TVD. June 9, 2014. Sergio Godoy - Lo que establece la Ley de Televisión Digital](#).

<sup>438</sup> La Gran Época. April 5, 2014. [Corte niega a periodista ver actas del Tratado Minero entre Chile - Argentina](#). Disponible en: <http://www.lagranepoca.com/31440-corte-niega-periodista-ver-actas-del-tratado-minero-entre-chile-argentina>; Observatorio Latinoamericano de Conflictos Ambientales (OLCA). April 4, 2014. [Corte Suprema rechaza recurso que pretendía obtener información del proyecto Pascua Lama](#)

<sup>439</sup> Observatorio de medios FUCATEL. March 13, 2014. [Sobre 20% de música chilena en las radios ¿regular los medios es intervenir?](#); Emol. June 17, 2014. [Senado aprobó proyecto que propone 20% de música chilena en las radios](#); La Tercera. July 2, 2014. [Ley del 20% de música chilena en radios: los cambios y metas que busca el polémico proyecto](#); Pulso. June 17, 2014. [Senado aprueba proyecto que propone un 20% de música chilena en las radios](#)

<sup>440</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 300 monthly tax units and confiscation of the equipment and installations [...]".

<sup>441</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>442</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](#).

January 22, the Senate Transport and Telecommunications Commission [*Comisión de Transportes y Telecomunicaciones del Senado*] unanimously approved the draft legislation. The bill continues its process in the Senate Finance Committee [*Comisión de Hacienda del Senado*].<sup>444</sup> The draft legislation, which creates the Superintendency of Telecommunications [*Superintendencia de Telecomunicaciones*], suspends jail terms for broadcasting without a license, eliminates the criminal offense classification [*delito de acción pública*] and maintains the imposition of fines.<sup>445</sup>

## 9. Colombia

### A. Progress

229. On March 6, the President of the Republic signed into law the Transparency and Right to Access National Public Information Act [*Ley de Transparencia y del Derecho de Acceso a la Información Pública Nacional*]<sup>446</sup>. The Act establishes the guiding principles for maximum publicity and good faith recognized in the Inter-American system to guarantee full and effective exercise of the right of access to information. The act also establishes that in the interpretation of the law, a criterion of reasonability and proportionality shall be adopted, along with application of the following principles: transparency; facilitation; nondiscrimination; gratuity; swiftness; efficacy; quality of information and proactive dissemination of information (articles 2 and 3). It also established the persons and entities with the obligation to provide the information: all public entities; “[I]ndependent or autonomous State control bodies, organisms and entities; “[p]ublic or private natural and legal persons that provide government and public services [*que presten función pública, que presten servicios públicos*] with respect to information directly associated with provision of the public service;” “[a]ny natural or legal person or dependency of a legal person that performs public service or of a public authority, with respect to information directly associated with the performance of their duty;” “[p]olitical parties or movements and significant groups of citizens;” “[e]ntities that administer parafiscal institutions, funds or resources of a public nature or origin;” “[n]atural or legal persons who receive or act as intermediaries for territorial and national public funds or benefits” with respect to “information that is produced in relation to public funds that they receive or for which they act as intermediaries” (article 5)<sup>447</sup>.

230. The Act establishes a differential accessibility criterion to enable specific populations to have access to information that particularly affects them. In this sense, it establishes that persons and entities bound by obligations, at the request of authorities from the communities, shall disseminate public information in diverse languages and tongues and shall draft alternative formats understandable to those groups. It also establishes that they shall ensure “access to that information for the country’s diverse ethnic and cultural groups and particularly shall urge media outlets to facilitate access to people in a situation of disability.” (Article 8). Similarly, it establishes minimum information contents that must be published

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<sup>443</sup> Senado de la República de Chile. September 4, 2013. [Superintendencia de Telecomunicaciones: discuten aspectos relativos a la carrera funcionaria](#)

<sup>444</sup> Senado de la República de Chile. OFICIO N°. 4/TT/2014. January 28, 2014. Available for consultation at: [http://camara.cl/pley/pley\\_detalle.aspx?prmID=8428&prmBL=8034-15](http://camara.cl/pley/pley_detalle.aspx?prmID=8428&prmBL=8034-15); Subsecretaría de Telecomunicaciones. January 22, 2014. [Comisión de Transportes y Telecomunicaciones del Senado despachó proyecto que crea la Superintendencia de Telecomunicaciones](#); Telesemana. January 27, 2014. [Senado chileno aprueba en comisión la creación de la Superintendencia de Telecomunicaciones](#)

<sup>445</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 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”. Article 48.- The following changes should be made to the General Telecommunications law No.18,168: Articles 20; 31 bis; 36; 36 bis; 36 A; 36 B, letter a); 38; 39 and 39 bis [...]”

<sup>446</sup> Secretaría General del Senado. [Ley 1712 de 2014. Diario Oficial No. 49.084](#). March 6, 2014.

<sup>447</sup> Secretaría General del Senado. [Ley 1712 de 2014. Diario Oficial No. 49.084](#). March 6, 2014.

proactively, mainly regarding the services and structure of those persons and entities bound by obligations (article 9).<sup>448</sup>

231. The Transparency and Right to Access National Public Information Act [*Ley de Transparencia y del Derecho de Acceso a la Información Pública Nacional*] provides that the Public Ministry [*Ministerio Público*] headed by the Office of the Inspector General [*Procuraduría General de la Nación*] “is responsible for ensuring proper compliance with the obligations set forth in the law”, and assigns it specific functions to do so. Among these functions, the promotion of the awareness and application of the law; the imposition of disciplinary sanctions; the promotion of government transparency; and the issuance of reports, statistics, and papers regarding compliance with the law. According to the Law, the entities of the Public Ministry will create an “office with all necessary resources” to comply with its functions. The Law does not assign the Public Ministry or any other specialized entity with responsibility to settle disputes regarding denials of access to information. Article 28 of the Law provides that denials of information can be challenged by individuals through an administrative appeal [*recurso de reposición*] before the same authorities that adopted the decision. It also provides for judicial review in case of negative decisions.

232. On May 8, the Office of the Inspector General [*Procuraduría General de la Nación*], responsible for enforcing legal provisions, issued Resolution No. 146, which created the group responsible for ensuring compliance with the obligations stipulated in the Law.<sup>449</sup> On September 5, the Transparency and Access to Information Committee was created within the Public Ministry. Some of the functions of this Committee are: to coordinate actions and joint efforts of the Public Ministry in this issue; b) establish an action plan and annual goals for the compliance of the functions assigned to Public Ministry by law; c) monitor and evaluate compliance by the Public Ministry, as well as by those subject to the law<sup>450</sup>.

233. In September the Law went into effect for all entities and individuals with obligations [*sujetos obligados*] at the national level and on March 6, 2015 it will enter into effect for the territorial entities.<sup>451</sup>

234. The Office of the Special Rapporteur has recognized that it is important that the specialized oversight agencies have the specific and precise mandate to settle disputes regarding the implementation of the law in order to achieve the effective satisfaction of the right to access to information<sup>452</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<sup>453</sup>.

235. The Constitutional Court’s review ruling of April 30 denied a *tutela* action filed against the Criminal Appeals Chamber of the Supreme Court of Justice [*Sala de Casación Penal de la Corte Suprema de Justicia*] which in 2013 acquitted journalist Luis Agustín González, director of the newspaper *Cundinamarca Democrática*. The Constitutional Court indicated that there is no evidence of “the existence of any specific grounds for the prosperity of tutela actions against judicial orders” which was why it decided to deny the

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<sup>448</sup> Secretaría General del Senado. [Ley 1712 de 2014. Diario Oficial No. 49.084](#). March 6, 2014.

<sup>449</sup> Procuraduría General de la Nación. [Resolución 146](#). May 8, 2014.

<sup>450</sup> Procuraduría General de la Nación. [Resolución 282](#). September 5, 2014.

<sup>451</sup> Secretaría General del Senado. [Ley 1712 de 2014. Diario Oficial No. 49.084](#). March 6, 2014.

<sup>452</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 Information in the Americas). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 208. See also, OAS Permanent Counsel. Committee of Judicial and Political Affairs. [Commentary and guide for implementation for the Model Interamerican Law on access to information](#). OEA/Ser.G. CP/CAJP-2841/10. April 23, 2010. Pp. 14.

<sup>453</sup> IACHR. Annual Report 2013. [Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter V (The Right to Access to Public Information in the Americas. Relevant Inter-American standards and resolutions from specialized rights protection bodies). OEA/Ser. L/V/II. 149. Doc. 50. December 31, 2013. Para. 35.

requested protection.<sup>454</sup> The journalist was sued for defamation on two counts [*injuria* and *calumnia*] by former governor of the Department of Cundinamarca, 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>455</sup> On 2013 the Supreme Court of Justice acquitted journalist Luis Agustín González of a sentence of 18 months imprisonment and the payment of 17.77 minimum wages for the crime of defamation [*injurias*]. The sentence was imposed on February 29, 2012 by the Criminal Chamber of the Superior Court of Cundinamarca.<sup>456</sup>

236. During 2014, the Constitutional Court [*Corte Constitucional*] made public a ruling protecting the communications medium *Noticias Uno* and columnist Cecilia Orozco. On January 20, 2013, *Noticias Uno* disseminated a video in which they illustrated the complaint made by residents of the building next to the home of the Comptroller General of the Republic [*Contralora General de la República*]. The residents complained of the effects of excessive noise from the home of the public servant. The video contains images of 4 children playing on the football field of the house. After dissemination of those images, journalist Cecilia Orozco published 2 newspaper columns in *El Espectador* in which she criticized the manner in which the Comptroller handled questions from the press and complaints by her neighbors. In this context, the Comptroller in representation of her son and with the representatives of the other three children filed a *tutela* [*acción de tutela*] against Iván Serrano (reporter for *Noticias Uno*), Cecilia Orozco (journalist at *El Espectador*) and *Canal Uno – Noticias Uno – La Red Independiente*<sup>457</sup>.

237. The Constitutional Court [*Corte Constitucional*] ordered that the video be edited to eliminate the images showing the children involved, along with other information that could facilitate identification of one of them. The Court also indicated that the opinion columns published by journalist Orozco are part of the realm protected by freedom of opinion. The reasons given by the Court referred to Inter American standards in terms of freedom of expression: “[*Noticias Uno*] aimed to report on the conduct of a senior public servant of the State – the Comptroller General of the Republic [*Contralora General de la República*] – which, while it was not directly related to her duties but rather to aspects of her private life, was of public relevance because she demonstrated possible nonfulfillment of her duties as a citizen. As already stated in numeral 16 of this Ruling [*Providencia*] and was reiterated by the Inter-American Court of Human Rights in its ruling on the case of *Fonvecchia y D’Amico vs. Argentina*, this type of speech is viewed as deserving special constitutional protection because it enables the press to fulfill its mission to stimulate public debate about the conduct of a senior public servant of the State who, by virtue of her duties, must be deserving of the citizens’ trust. This function is one reason why freedom of the press is given a preferential place in the system of freedoms. Therefore, in the present case, by virtue of the “two-way” nature of freedom of information, not only is the right of journalists and the communications medium to disseminate controversial information at stake, but also the public’s right to free access to those aspects of the news that directly refer to the fulfillment of a citizen’s duties by the referred-to public servant.”<sup>458</sup>

238. In August, the Office of the Special Rapporteur gained knowledge that two former employees of the then Administrative Security Department [*Departamento Administrativo de Seguridad (DAS)*] –

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<sup>454</sup> Corte Constitucional. [Judgment T-265/2014](#). April 30, 2014.

<sup>455</sup> Corte Constitucional. [Judgment T-265/2014](#). April 30, 2014; Cundinamarca Democrática/Fundación para la Libertad de Prensa (FLIP). 2008. [Editorial; No más!](#), Edition 44.

<sup>456</sup> IACHR. Annual Report 2013. [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. 149. Doc. 50. December 31, 2013. Para. 162. 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>457</sup> Corte Constitucional. [Sentencia T- 904/13](#). December 3, 2013. Also, Fundación para la libertad de Prensa (Flip). July 1, 2014. [Corte Constitucional produce dos sentencias en las que la libertad de prensa le gana al acoso judicial de funcionarios públicos y políticos](#).

<sup>458</sup> Corte Constitucional. [Sentencia T- 904/13](#). December 3, 2014.

abolished on 2011 – had pleaded guilty to the crime of psychological torture inflicted upon journalist Claudia Julieta Duque.<sup>459</sup> This took place in the midst of the judicial proceedings against former employees of the DAS, for their alleged responsibilities in the crime of “aggravated mental torture” [*tortura agravada en modalidad síquica*] and persecution of Duque.<sup>460</sup> On October 3, the Attorney General’s Office [*Fiscalía General de la Nación (FGN)*] issued a communiqué in which it accused four former senior officials of the crime of aggravated torture [*tortura agravada*] against the journalist. The communiqué also stated that in the same dossier, the Attorney General’s Office [*Fiscalía*] “ordered that copies of the proceedings be sent to the Accusations Committee of the House of Representatives [*Comisión de Acusaciones de la Cámara de Representantes*] so that, as the natural judge of [Álvaro] Uribe Vélez in his actions as President of the Republic, they may carry out an investigation into the former president’s alleged responsibility in the tortures of Duque.”<sup>461</sup> On November 24, the Attorney General’s Office issued another press communiqué in which it stated that the National Directorate for Analysis and Contexts [*Dirección Nacional de Análisis y Contextos (Dinac)*], by means of a special police group consisting of the CTI and the Dijin, arrested a former employee of the Special Intelligence Group [*Grupo Especial de Inteligencia*] of the then DAS for to fulfill a measure for preventive detention and arraignment as the alleged co-perpetrator of the crime of aggravated torture.<sup>462</sup>

239. Notwithstanding progress in the investigations, the Office of the Special Rapporteur gained knowledge that in April, the parents and attorney of journalist Claudia Julieta Duque were the victims of threats.<sup>463</sup> The Office of the Special Rapporteur also found out that the threats against the Duque family “included a family member who lives abroad”, who has received “phone calls and harassments of diverse kinds since the day of the arrest” of the former DAS employee on November 24.<sup>464</sup> In 2003 and 2004, the journalist filed a complaint against former employees of the DAS 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>465</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>466</sup> According to information provided by the State, journalist Claudia Julieta Duque is under protection measures.<sup>467</sup>

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<sup>459</sup> El Espectador. August 1, 2014. [Exfuncionarios del DAS aceptaron cargos por tortura psicológica a Claudia Julieta Duque](#); El Tiempo. August 1, 2014. [Dos exagentes del DAS aceptan tortura psicológica a periodista](#); Terra. August 1, 2014. [El DAS sí torturó psicológicamente a periodista Julieta Duque](#).

<sup>460</sup> IACHR. Annual Report 2013. [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. 149. Doc. 50. December 31, 2013. Para. 160.

<sup>461</sup> Fiscalía General de la Nación. October 3, 2014. [Fiscalía acusa a cuatro exdirectivos del DAS por tortura agravada contra Claudia Julieta Duque](#).

<sup>462</sup> Fiscalía General de la Nación. November 24, 2014. [Capturado exfuncionario del DAS por tortura agravada en contra de Claudia Julieta Duque](#).

<sup>463</sup> Reporters Without Borders (RSF). April 11, 2014. [Continúan las amenazas contra la periodista Claudia Julieta Duque](#);

<sup>464</sup> Twitter account of Claudia Julieta Duque (@JulieDuque1). [November 27, 2014 - 16:18](#).

<sup>465</sup> IACHR. Annual Report 2013. [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. 149. Doc. 50. December 31, 2013. Para. 160. See also, Fiscalía General de la Nación. March 12, 2013. [Asegurados funcionarios del DAS por tortura contra periodista](#)

<sup>466</sup> IACHR. Annual Report 2013. [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. 149. Doc. 50. December 31, 2013. Para. 160; 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>467</sup> IACHR. Annual Report 2013. [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. 149. Doc. 50. December 31, 2013. Para. 160.

240. On July 31, members of the Organized Crime Judicial Police of the Attorney General's Office [*Policía Judicial de Crimen Organizado de la Fiscalía*] and the National Police rearrested colonel (r) Jorge Eliécer Plazas Acevedo. The colonel (r) is to be tried as an alleged co-perpetrator in the crime of aggravated homicide [*homicidio agravado*] against journalist and humorist Jaime Garzón, in 1999. The colonel (r) escaped from the installations of the Artillery School in Bogotá [*Escuela de Artillería*, where he was serving a 40 years imprisonment sentence for the homicide of an Israeli industrialist.<sup>468</sup>

241. On August 21, President Juan Manuel Santos issued Decree 1480, declaring May 25, the anniversary of the crime against journalist Jineth Bedoya, as "National Day for Women Victims of the Conflict". President Santos stated that this was "a form of reparation for what was suffered by Jineth Bedoya."<sup>469</sup> On September 26, the Human Rights Unit [*Unidad de Derechos Humanos*] of the Attorney General's Office [*Fiscalía*] confirmed that the kidnapping, torture and sexual violence against journalist Jineth Bedoya, constitute a Crime against Humanity [*Crimen de Lesa Humanidad*]. The prosecutor in charge of the case had already made this decision on September 20, 2012.<sup>470</sup> On September 30, the Attorney General's Office [*Fiscalía General de la Nación*] issued a communiqué that stated that a prosecutor from the National Specialized Directorate for Human Rights and International Humanitarian Law [*Dirección Nacional Especializada de Derechos Humanos y Derecho Internacional Humanitario*] "issued an indictment against Mario Jaimes Mejía, alias 'El Panadero', as the co-perpetrator [*coautor impropio*] of the crimes of simple aggravated kidnapping, torture, combined with aggravated violent rape [*secuestro simple agravado, tortura, en concurso material heterogéneo con el de acceso carnal violento agravado*] of the victim, journalist Jineth Bedoya Lima."<sup>471</sup>

242. The Council of State [*Consejo de Estado*] issued a ruling on November 12 decreeing nullification of the resolutions issued by the Board of Directors of the National Television Commission [*Comisión Nacional de Televisión*] against Caracol Televisión S. A.<sup>472</sup> It thus declared that said channel was not obligated to pay the fine to which the nullified resolutions referred. On October 7, 1999, the Office of the Press Secretary of the President of the Republic [*Secretaría de Prensa de la Presidencia de la República*] requested that the National Television Commission [*Comisión Nacional de Televisión*] authorize the concession of a space to transmit a presidential speech, initially at 8:00 pm and subsequently at 9:30 p.m. "a decision that was not communicated in a timely fashion" to Caracol Televisión S.A. Said channel was unable to broadcast simultaneously with the other channels, because at that time it was broadcasting a live sporting event and decided not to interrupt it. Caracol Televisión broadcast the referred-to presidential speech at 10:35 pm. By means of a resolution of February 15, 2000, the Board of Directors of the National Television Commission [*Comisión Nacional de Televisión*] levied a fine on Caracol Televisión S.A in the amount of 91,452,693.00 Colombian pesos. The Council of State [*Consejo de Estado*] indicated that the administrative decisions of the Office of the Secretary of the Press of the President of the Republic [*Secretaría de Prensa de la Presidencia de la República*] regarding the broadcast of the presidential speech and its change of schedule, had no minimum legal basis that would enable it to affirm that it was supported by any of the well-established criteria of the

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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>468</sup> Fiscalía General de la Nación. July 31, 2014. [Recapturado coronel \(r\) Jorge Eliécer Plazas Acevedo, acusado por homicidio del periodista Jaime Garzón](#); El Diario. August 13, 2014. [Los hermanos de un periodista colombiano asesinado hace 15 años ven un avance judicial](#).

<sup>469</sup> Presidencia de la República. August 21, 2014. [Día Nacional contra la violencia a la mujer es una forma de reparar a Jineth Bedoya, dijo el Presidente Santos](#).

<sup>470</sup> Fiscalía General de la Nación. September 20, 2012. [Declaración del Fiscal General de la Nación, Eduardo Montealegre Lynett, sobre el caso de la periodista Jineth Bedoya, Neiva \(Huila\)](#); 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>471</sup> Fiscalía General de la Nación. September 30, 2014. [A juicio alias El Panadero por el caso de la periodista Jineth Bedoya](#).

<sup>472</sup> Consejo de Estado. Sala de lo Contencioso Administrativo. November 12, 2014. Número Único de Radicación: 25000 23 26 000 2000 01335 01. Available for consultation at: <http://www.consejodeestado.gov.co/consultaproce.php>

Constitutional Court<sup>473</sup> [*Corte Constitucional*] or by the American Convention and its Court [*Convención Americana y su Corte*] regarding legally admissible restrictions on freedom of expression.

243. In its decision, the Council of State [*Consejo de Estado*] made a diffuse review of the conventions and emphasized various rulings by the Inter-American Court of Human Rights in terms of freedom of expression. Among other things, it indicated that “the communications media, because they are companies that provide information, cultural and entertainment services etc., derive their substantive legal justification and reason for being from the fundamental human right to freedom of expression. In this sense, the communications medium, as a company, is part of the configuration of Article 13 of the American Human Rights Convention, thus supporting its purposes and objectives, and in these terms its functioning in the member States of the Inter-American Human Rights System must be addressed and guaranteed.” It also stated that “the activity of both legislative and administrative authorities regarding the substantial regime and restrictions on freedom of information must be limited to parameters found in the conventions”. In this sense, it stated that “the communications media have legal protection based on Article 13 of the Convention and, therefore [...] any limitation on this right must be framed within one of the suppositions provided in the Convention [...]. This is in addition to the necessary observance of a judgment of proportionality, emphasizing the criterion of “*imperious social necessity*” as the only criterion that permits restriction of freedom of expression”.

244. In Relation to the competences of the President of the Republic, it indicated that:

“[H]e is empowered by law to make speeches on television, because this power is another way to guarantee the right of the associates to information while at the same time enabling the President to fulfill certain of the duties assigned to him by the Constitution, but this power is not all encompassing because there are natural limitations on the principles, values, rights and freedoms that the Constitution and the conventions enshrine, in addition to being subject to fulfillment of the duty to justify the decision to make the speech on television and that this justification be based on one of the limitations set by the American Convention with respect to freedom of expression, such as respect for the rights and reputation of others or protection of national security, public order, health and public morality, in addition to being in accordance with the judgment of proportionality that has been decanted by the Inter-American Court in its constant jurisprudence. In other words, and to summarize, if the President of the Republic when making a televised speech was not in accordance with the conditions provided for in the law and stipulated by the Convention and the Constitution, his intervention will be illegal and will give rise to a settlement in favor of the operator of the service, because he will be unjustifiably limiting or restricting the economic activity of the entrepreneur of the service.”<sup>474</sup>.

245. On November 24, 2014, the Attorney General’s Office [*Fiscalía General de la Nación*] issued a communiqué stating that the National Directorate of Analysis and Contexts [*Dirección Nacional de Análisis y Contextos (Dinac)*] has carried out an investigation into the murder of Álvaro Gómez Hurtado. In this regard, it indicated that it had performed 40 tests whose “sole objective [...] is to create a detailed profile of doctor Álvaro Gómez Hurtado and the victimization of opposition journalism in Colombia”. The Attorney General’s Office [*Fiscalía General de la Nación*] also indicated that “it understands that the assassination of Álvaro Gómez Hurtado is framed within the category of grave human rights violations. Therefore, the timeframe for counting the moment of expiration of the statute of limitations for taking criminal action is different from that

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<sup>473</sup> The Council of State stated, based on Judgment C-1172 issued on November 8, 2001 by the Constitutional Court, that “the power of the President of the Republic to intervene on television at any time is subjected to four strict conditions: (i) That it be personal; (ii) That it is related to urgent matters of public interest; (iii) That it is necessary to report these matters for citizens to have an actual and effective participation in community life; and (iv) That it is related to the performance of his duties”. Consejo de Estado. Sala de lo Contencioso Administrativo. November 12, 2014. Número Único de Radicación: 25000 23 26 000 2000 01335 01. Available for consultation at: <http://www.consejodeestado.gov.co/consultaproce.php>

<sup>474</sup> Consejo de Estado. Sala de lo Contencioso Administrativo. November 12, 2014. Número Único de Radicación: 25000 23 26 000 2000 01335 01. Available for consultation at: <http://www.consejodeestado.gov.co/consultaproce.php>

used for common crimes, which means that it will not expire next year.”<sup>475</sup> Gómez Hurtado, director of the newspaper *El Nuevo Siglo*, was killed on November 2, 1995<sup>476</sup>.

246. Notwithstanding progress in the investigations, the Office of the Special Rapporteur had knowledge that the Attorney General’s Office [*Fiscalía General de la Nación*] summoned journalist María Isabel Rueda to testify, according to the Attorney General’s Office, to create a detailed profile of Gómez Hurtado. The journalist considered the summons by the Attorney General’s Office [*Fiscalía*] as an “unacceptable constraint on freedom of expression” and indicated that what she will contribute “in that summons comes, without exception, from the same information that the Attorney General’s Office [*Fiscalía*] has.”<sup>477</sup> According to available information, María Isabel Rueda in November published a column in the newspaper *El Tiempo* in relation to the murder of Gómez Hurtado<sup>478</sup>.

## **B. Freedom of Expression and the Peace Process**

247. On August 28, 2014, the IACHR published the report “Verdad, Justicia y Reparación: Cuarto informe sobre la situación de derechos humanos en Colombia” (“Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia”). Among other things, the report referred to the present historic moment in Colombia, in relation to the signing of a possible peace accord between the Government and the FARC-EP. The IACHR valued and encouraged progress in the peace dialogues and reiterated its “conviction that the passable route to achieve the objective of a stable and lasting peace must be based on full respect for human rights.”<sup>479</sup> In this regard, the IACHR mentioned that the State is convinced that “nothing would contribute more to the protection of human rights than termination of the armed conflict.”<sup>480</sup>

248. In the framework of the negotiations currently underway in Havana, Cuba, the National Government and the FARC-EP signed a “General Accord for termination of the conflict and construction of a stable and lasting peace. This included an Agenda with the following points: 1) Comprehensive agrarian development policy; 2) Political participation; 3) End of the conflict; 4) Solution of the problem of illicit drugs; 5) Victims; and 6) Implementation, verification and endorsement.”<sup>481</sup> On November 6, 2013, the Government of Colombia and the FARC-EP publicly reported that they had reached agreement on point 2 of the Agenda “Political Participation: Democratic Opening for Construction of the Peace”. In a joint communiqué that they issued on that 6<sup>th</sup> of November, they recalled that “one of the guiding principles of these dialogues is that “Nothing is agreed until everything is agreed”. This means that the agreements we have been building are conditioned to the achievement of a covenant on the entire Agenda, and that as we move forward in the discussions, the agreements reached on each one of the sub-items may be adjusted and complemented”<sup>482</sup>.

249. On December 8, 2013, the Government of Colombia and the FARC-EP presented the second joint report on the progress and the agreement regarding point 2 of the Agenda. In that report, they considered that “the construction and consolidation of peace, within the framework of the end of the conflict,

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<sup>475</sup> Fiscalía General de la Nación. November 24, 2014. [Comunicado de prensa 069](#).

<sup>476</sup> Centro de Memoria Histórica. *Asesinato Álvaro Gómez Hurtado (Universidad Sergio Arboleda)*. Available for consultation at: <http://centromemoria.gov.co/multimedia/cartografia/>

<sup>477</sup> El Tiempo. November 23, 2014. [No me dejaré amedrentar](#); Caracol. November 24, 2014. [María Isabel Rueda se declara víctima de amedrentamiento de la Fiscalía](#).

<sup>478</sup> El Tiempo. November 9, 2014. [Godó bueno, el que se va muriendo...;](#) El Tiempo. November 23, 2014. [No me dejaré amedrentar](#); Caracol. November 24, 2014. [María Isabel Rueda se declara víctima de amedrentamiento de la Fiscalía](#).

<sup>479</sup> IACHR. August 28, 2014. [CIDH publica cuarto informe sobre la situación de derechos humanos en Colombia](#).

<sup>480</sup> IACHR. Verdad, justicia y reparación: Cuarto informe sobre la situación de derechos humanos en Colombia. OEA/Ser.L/V/II. Doc. 49/13. December 31, 2013. Para. 6; Observaciones de Colombia al Proyecto de Informe de la Comisión Interamericana de Derechos Humanos. Nota S-GAIIID-13-048140, on December 2, 2013, Para. 21.

<sup>481</sup> Presidencia de la República. [Resolución 339 de 2012](#). September 19, 2012.

<sup>482</sup> Mesa de Conversaciones para la terminación del conflicto y la construcción de una paz estable y duradera en Colombia. November 6, 2013. [Comunicado Conjunto](#).



requires a democratic extension enabling the emergence of new forces into the political scenario to enrich the debate and deliberation regarding the major national problems, and thus, to strengthen pluralism and, accordingly, the representation of different societal visions and interests, with the appropriate guarantees of participation and political inclusion.”<sup>483</sup> Point 2 of the Agenda “is built on three pillars”: i) “a new democratic opening that would promote political inclusion”; ii) “greater citizen participation”; and iii) breaking the link between politics and arms.<sup>484</sup> On this point of the agenda, among other aspects, it sets forth the need for institutional and regulatory revisions and adjustments in the field of freedom of expression, diversity and pluralism.

250. Within the agreement, the National Government will establish a new Comprehensive Security System for Politicians, with the purpose of “protecting the life of those who that work in politics, as well as to prevent their estigmatization because of their ideas and political activities”. The system is “conceived within a framework of guarantees for the rights and liberties and aims to ensure the promotion and protection of the individual, the respect for life and freedom of thought and opinion, so as to strengthen and deepen democracy”. The System should contribute to create and guarantee a culture of coexistence, tolerance and solidarity, and provide guarantees to prevent any kind of stigmatization and persecution of leaders on account of their political activities, free opinions or opposition.

251. As agreed, the National Government shall draft a bill of guarantees and promotion of citizen participation and other activities that social organizations and movements may undertake, based on, among others, the following guidelines: “to guarantee the right to free and timely access to official information within the framework of the Constitution and the law”; “to regulate the right to rebuttal and rectification, on behalf of the most representative social organizations and movements, in regards to false or insulting declarations by the National Government”; “to grant access to dissemination mechanisms in order to visualize the work and the opinions of the social organizations and movements”.

252. On the other hand, the agreement on point 2, recognizes that mobilization and protests are “forms of political action and indicates that they “are legitimate exercises of the right of assembly, freedom of circulation, freedom of expression, freedom of conscience and opposition in a democracy; and that, in an end of the conflict scenario, different spaces should be guaranteed in order to channel citizen demands, including full guarantees for mobilization, protest and peaceful coexistence”.

253. With the aim of guaranteeing full exercise of these rights, it was agreed that the Government will define the necessary regulatory measures and adjustments based, among others, on the following criteria: “full guarantees for mobilization and protest as part of the constitutional right to freedom of expression, assembly and opposition, privileging dialogue and civility in the treatment of this kind of activities; guarantees for the rights of the protesters and other citizens; necessary guarantees for exercising freedom of information during the mobilization and protest; revision, and, if necessary, modification of the rules applicable to social mobilization and protest; guarantees for the application and respect for human rights in general; strengthening of oversight and control over the action of the means used by the authorities for the treatment of this kind of activities; guarantees for dialogues regarding mobilization and protest and the accompaniment of the General Prosecutor’s Office”.

254. In regards to citizen participation through community, institutional and regional media, it was recognized that such media “shall contribute to enhance citizen participation and particularly to promote civil values, different ethnic and cultural identities, political and social inclusion, national integration and, in general, the strengthening of democracy”. In this regard, it was agreed that the Government of Colombia shall open new bidding processes for the adjudication of community radio stations, placing special emphasis on the zones most affected by the conflict, and thus promote the democratization of information and of the use of

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<sup>483</sup> Mesa de Conversaciones para la terminación del conflicto y la construcción de una paz estable y duradera en Colombia. December 8, 2013. [2do Informe Conjunto. Punto Nro 2 de la agenda, Mesa De Conversaciones.](#)

<sup>484</sup> Alto Comisionado para la Paz. September 24, 2014. [Declaración de Humberto de la Calle: Jefe de la Delegación del Gobierno en La Mesa de Conversaciones.](#)

the available electromagnetic spectrum. Moreover, the State shall “promote the technical training of the community media workers, and the formation and training of their communicators and operators”; shall open spaces in the institutional and regional radio and TV stations; and shall “finance the production and dissemination of contents directed towards fostering a culture of peace with social justice and reconciliation, by the public and community interest media”. It was also agreed that “a closed, institutional TV channel will be enabled, directed to the political parties and movements with valid legal status, for the dissemination of their political platforms, within a framework of respect for the ideas and differences”.

255. On the other hand, the agreement indicated that as a measure of transparency, the “government will promote any necessary adjustments to the regulations aimed at ensuring that official advertisement at the national, departmental and municipal level is allocated pursuant to transparent, objective and equitable criteria, also taking into account the local and the community media and communication spaces”<sup>485</sup>.

256. Finally, the Office of the Special Rapporteur for Freedom of Expression deems of particular importance to positively highlight the measures adopted by the National Government to assure citizen participation and access to information about the negotiating table, through the creation of an official Web Site. This office particularly highlights the fact that all documents and joint communiqués are available to the public in: Spanish, English, French, Sikuani, Wayuú and Embera and there are videos for people with limited speech and auditory faculties. At the same time, it stresses the initiative of the Office of the High Commissioner for Peace [*Oficina del Alto Comisionado para la Paz*] jointly with the Gabriel García Márquez Foundation for a New Iberoamerican Journalism [*Fundación Gabriel García Márquez para el Nuevo Periodismo Iberoamericano (fnpi)*] to hold training sessions called Seminar-workshop on coverage of the conversations for termination of the conflict in Colombia [*Seminario-taller Cobertura de las conversaciones para la terminación del conflicto en Colombia*]. This initiative seeks to train journalists in coverage of the negotiations.<sup>486</sup>

257. The Office of the Special Rapporteur recalls that freedom of expression is “one of the individual rights that most clearly reflects the virtue that marks – and characterizes – human beings: the unique and precious capacity to think about the world from our own perspective and communicate with one another in order to construct, through a deliberative process, not only the model of life that each one has a right to adopt, but the model of society in which we want to live”<sup>487</sup>. Moreover, the Inter-American Commission and Court have underlined in their case law that the importance of freedom of expression within the catalogue of human rights also stems from its structural relationship to democracy<sup>488</sup>. The link between freedom of expression and democracy is so “close” and “indissoluble” that, according to the Inter-American Commission, the very purpose of Article 13 of the American Convention is to strengthen the operation of deliberative and pluralistic democratic systems through the protection and promotion of the free circulation

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<sup>485</sup> Mesa de Conversaciones para la terminación del conflicto y la construcción de una paz estable y duradera en Colombia. December 8, 2013. [2do Informe Conjunto. Punto Nro 2 de la agenda. Mesa De Conversaciones.](#)

<sup>486</sup> Fundación Gabriel García Márquez para el Nuevo Periodismo Iberoamericano (fnpi). [Seminario-taller Cobertura de las conversaciones para la terminación del conflicto en Colombia](#); Fundación Gabriel García Márquez para el Nuevo Periodismo Iberoamericano (fnpi). March 4, 2013. [Comienza el ciclo de seminarios-talleres sobre la Cobertura de las conversaciones para la terminación del conflicto en Colombia.](#)

<sup>487</sup> IACHR. [Annual Report 2009. 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. 7.

<sup>488</sup> IACHR. [Annual Report 2009. 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. Vs. 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. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. Para. 116.

of information, ideas and expressions of all kinds.<sup>489</sup> Article 4 of the Inter-American Democratic Charter characterizes freedom of expression and freedom of the press as “essential components of the exercise of democracy.” In this regard, the Inter-American Court has reiterated “Freedom of expression is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion. It is also a condition sine qua non for the development of political parties, trade unions, scientific and cultural societies and, in general, those who wish to influence the public.”<sup>490</sup>

258. Similarly, the freedom of expression rapporteurs of the UN, the OSCE and the OAS recalled in their first Joint Declaration of 1999 that “freedom of expression is a fundamental international human right and a basic component of civil society based on democratic principles.” Indeed, the full exercise of the right to express one’s own ideas and opinions, and to circulate all available information, as well as the possibility of deliberating in an open and uninhibited manner about the matters that concern us all, is an indispensable condition for the consolidation, functioning and preservation of democratic regimes. The formation of an informed public opinion that is aware of its rights, citizen control over the conduct of public affairs and the accountability of public officials, would not be possible if this right was not guaranteed <sup>491</sup>.

259. Finally, Inter-American case law has explained that freedom of expression is a key instrument for the exercise of all other fundamental rights. As stated by the Inter-American Commission, “lack of freedom of expression is a cause that ‘contributes to lack of respect for the other human rights.’”<sup>492</sup> In short, the preservation of freedom of expression is a necessary condition for the free and peaceful functioning of democratic societies in the Americas. According to the Inter-American Commission, “[f]ull and free discussion keeps a society from becoming stagnant and unprepared for the stresses and strains that work to tear all civilizations apart. A society that is to be free both today and in the future must engage openly in rigorous public debate about itself.”<sup>493</sup>

### C. Murders

260. On February 19, cameraman Yonni [or Jhony] Steven Caicedo was murdered in commune 12 of the city of Buenaventura in the department of Valle del Cauca. According to the information received, Caicedo was on a personal visit when two individuals shot him. Caicedo had worked as a cameraman for the local television channels *TV Noticias* and *Más Noticias* until he had to leave the city because of threats made against him. The threats had occurred seven months before when he was covering a homicide in commune 12 of this city. On that occasion, the cameraman had been approached by two men who had reprimanded him for his work and demanded that he stop recording while prohibiting him from returning to the zone. On that same occasion, the group of men had detained Caicedo until he was able to escape with the help of the Police. At the recommendation of police agents, the cameraman had left the city. On February 21, the National Protection Unit [*Unidad Nacional de Protección*] issued a communiqué in which it condemned the murder of

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<sup>489</sup> IACHR. [Annual Report 2009. 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; IACHR. *Arguments before the Inter-American Court of Human Rights in the Case of Ivcher-Bronstein v. Peru*, cited in 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. 143.d); IACHR. *Pleadings before the Inter-American Court of Human Rights in the Case of “The Last Temptation of Christ” (Olmedo-Bustos et al.) v. Chile*, cited in 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. 61.b).

<sup>490</sup> I/A Court H.R. *La colegiación obligatoria de periodistas* (arts. 13 y 29 Convención Americana sobre Derechos Humanos). Opinión Consultiva OC-5/85 of November 13, 1985. Serie A No.5, Para. 70.

<sup>491</sup> IACHR. [Annual Report 2009. 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.

<sup>492</sup> IACHR. [Annual Report 2009. 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. 9; IACHR. Report No. 38/97. *Case 10.548. Merits. Hugo Bustíos Saavedra. Peru*. October 16, 1997. Para. 72.

<sup>493</sup> IACHR. [Annual Report 2009. 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. 10; IACHR, Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. February 17, 1995. Chapter V. Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights. Título III. OEA/Ser. L/V/II.88. doc. 9 rev. February 17, 1995.

the cameraman and called on the Attorney General's Office [*Fiscalía General de la Nación*] to investigate the facts<sup>494</sup>.

261. The Office of the Special Rapporteur had knowledge of the murder of journalist Luis Carlos Cervantes on August 12 in the municipality of Tarazá, in the Bajo Cauca subregion of the department of Antioquia. According to the information received, Cervantes was traveling as the passenger on a motorcycle when approached by unknown individuals who shot him several times. Cervantes, a journalist for the community radio station *Morena FM* and a correspondent until 2013 for the *Teleantioquia Noticias* channel, had received threats against his life since 2010. At that time, he had stated that these threats could stem from broadcasting reports on presumed cases of corruption in the local government and could come from criminal gangs. The threats had persisted, the last one having been received on July 22, 2014 in which he was told that he had two hours to leave the municipality after the journalist had presumably refused to transmit information about criminal gangs through the radio station. Due to his situation, the Committee for Evaluation of Risk and Recommendation of Measures [*Comité de Evaluación de Riesgo y Recomendación de Medidas (CERREM)*] had approved measures for protection, which would consist of two bodyguards and a conventional vehicle, which had been implemented by the National Protection Unit [*Unidad Nacional de Protección (UNP)*] from June of 2012 until July 24, 2014, the day on which the security scheme was dismantled.<sup>495</sup>

262. Regarding this topic, on August 12, the UNP issued a communiqué in which it said that the decision to terminate the security scheme had been made on June 5, 2014 by virtue of the ordinary level of risk that had been determined by the Preliminary Evaluation Group [*Grupo de Valoración Preliminar*] and which had been ratified by the CERREM. The UNP added that the risk study had indicated that there was no causal nexus between the threats and his journalistic work, among other reasons because for the past year Cervantes was no longer working as a journalist and his work at the radio station was as a musical programmer.<sup>496</sup>

263. One of the most worrisome effects of prolonged inaction and delay in the investigations of many cases in Colombia is the expiration of dates for the statute of limitations for criminal action.<sup>497</sup>

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<sup>494</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. February 26, 2014. [Press Release R21/14 Office of the Special Rapporteur Condemns Murder of Journalist in Colombia](#); Unidad Nacional de Protección. February 21, 2014. [Comunicado – UNP](#); Fundación para la Libertad de Prensa (FLIP). February 20, 2014. [Asesinan a Yonni Steven Caicedo, camarógrafo de Buenaventura](#); Semana. February 21, 2014. [Sicarios asesinan a camarógrafo en Buenaventura](#).

<sup>495</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. August 14, 2014. [Press Release R 85/14 Office of the Special Rapporteur Condemns Murder of Journalist in Colombia](#); Fundación para la Libertad de Prensa (FLIP). August 12, 2014. [La FLIP condena asesinato del periodista Luis Carlos Cervantes, en Tarazá, Antioquia](#); El Colombiano. August 12, 2014. [El periodista Luis Carlos Cervantes fue asesinado en Tarazá](#); Federación Colombiana de Periodistas (Fecolper). August 13, 2014. [Asesinado el periodista Luis Carlos Cervantes, en Tarazá, Antioquia](#); Semana. August 12, 2014. [A periodista asesinado le habían retirado escolta](#); Committee to Protect Journalists (CPJ). August 13, 2014. [Colombian radio director killed after receiving threats](#); Noticias Caracol. August 12, 2014. [Asesinado el periodista Luis Carlos Cervantes en Tarazá, Antioquia](#); Unidad Nacional de Protección. Ministerio del Interior. August 12, 2014. [Comunicado Luis Carlos Cervantes](#).

<sup>496</sup> Unidad Nacional de Protección. Ministerio del Interior. August 12, 2014. [Comunicado Luis Carlos Cervantes](#).

<sup>497</sup> In 2011, the statute of limitations for criminal action had expired for the murders of at least seven 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; 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. 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.

In 2012, the statute of limitations for criminal action had expired for the murders of at least two journalists: John Félix Tirado Castañeda, who was murdered in the municipality of Cartago, department of Valle del Cauca, on August 5, 1992; José Domingo Cortés Soto, murdered in the city of Valencia on November 15, 1992. In 2013 the statute of limitations for criminal action had expired for the murders of at least five journalists: Gerardo Didier Gómez, murdered near the city of Cali on February 11, 1993, Carlos Lajud Catalán, murdered in the city of Barranquilla on March 19, 1993, Nelson de la Rosa Toscazo, murdered in Cartagena on August 3, 1993, Manuel José Martínez Espinosa, murdered on September 28, 1993, and Danilo Alfonso Baquero Sarmiento, murdered on December 26, 1993 in the city of Tame, Arauca. IACHR. Annual Report 2013. [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. 149. Doc. 50. December 31, 2013.

According to information received by the Office of the Special Rapporteur, in 2014 the statute of limitations expired on criminal action with respect to the homicide of journalist Martín Eduardo Múnera, murdered in Medellín on September 3, 1994.<sup>498</sup>

264. 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. Aggressions, detentions and threats against communications media**

265. In February, Univision revealed that military intelligence personnel had spied on Colombian and foreign journalists covering the peace talks in Havana, Cuba<sup>499</sup>.

266. During the month of March, the NGO Free Press Foundation [*Fundación para la Libertad de Prensa (FLIP)*] publicly decried the aggressions made against journalists by police officials, and affirmed that police have become the main aggressor of the press. The NGO explained that on March 19, journalist Manuel Sánchez, from local television channel C, was detained by presumed members of the police in the city of Cali, in the department of Valle del Cauca. Sánchez was detained during protests by transporters in that city when he recorded the arrest of demonstrators by presumed members of the police. The journalist denounced that while detained, he had been repeatedly struck, causing injuries that incapacitated him for 10 days. He had also been sent to the Immediate Reaction Unit [*Unidad de Reacción Inmediata (URI)*] where he was prosecuted and detained for several hours.<sup>500</sup> It also reported that on March 22, Francisco Alvarado, a photographer for the newspaper *La Calle*, was attacked and detained by presumed members of the police. The journalist was photographing the detention of a citizen.<sup>501</sup>

267. Diana Giraldo, assistant director of the regional daily newspaper *Vanguardia Liberal*, in the city of Bucaramanga, received a call in which she was threatened with death on April 1. As reported, the event occurred in a context of a discredit campaign against the media outlet, reportedly organized by people close to the local government.<sup>502</sup>

268. On April 5, writer and journalist Gustavo Álvarez Gardeazabal, of the 'La Luciérnaga' program on *Caracol Radio*, had denounced that he had been the victim of threats and attacks<sup>503</sup>.

269. Esteban Venegas, photographer for *Q'Hubo* and *El Colombiano*, had been detained by officials of the Urban Control Force [*Fuerza de Control Urbano*] of the police while covering the Mayday march in the city of Medellín<sup>504</sup>.

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<sup>498</sup> Committee to Protect Journalists (CPJ). [Martin Eduardo Munera](#); Fundación para la Libertad de Prensa (FLIP). September 16, 2014. [Balance judicial para la prensa. Prescribió el caso del periodista Martín Eduardo Múnera](#).

<sup>499</sup> El Tiempo. February 10, 2014. [Según Univisión, fachada de militares interceptaron 2.600 correos](#); Semana. February 10, 2014. [También 'chuzaron' a periodistas en La Habana](#); Univisión/EFE. February 9, 2014. [Periodistas que cubren proceso paz con FARC fueron espíados, según Univisión](#).

<sup>500</sup> Fundación para la Libertad de Prensa (FLIP). March 28, 2014. [En el 2014 la Policía sigue siendo el principal agresor contra la prensa](#); Canal C 16/You Tube. March 19, 2014. [Agresión a periodista del Canal C](#).

<sup>501</sup> Fundación para la Libertad de Prensa (FLIP). March 28, 2014. [En el 2014 la Policía sigue siendo el principal agresor contra la prensa](#);

<sup>502</sup> Vanguardia Liberal. April 3, 2014. [Amenazan a Subdirectora de Vanguardia Liberal](#); El Tiempo. April 3, 2014. [Subdirectora del periódico Vanguardia Liberal denuncia amenazas](#); Fundación para la Libertad de Prensa (FLIP). April 3, 2014. [La FLIP rechaza la persecución orquestada desde personas vinculadas a la alcaldía de Bucaramanga contra publicaciones del diario Vanguardia Liberal](#);

<sup>503</sup> El Espectador. April 5, 2014. [Periodista Gustavo Álvarez Gardeazabal denuncia amenazas contra su vida](#); ADN. April 7, 2014. [No estoy amenazado / Ariete](#).

270. On May 22, independent journalist Gonzalo Guillen was warned by agents of the DIJIN and the Attorney General's Office [*Fiscalía*] of a new plan to kill him. In this regard, the National Protection Unit [*Unidad Nacional de Protección (UNP)*], increased the journalist's security scheme. The Ombudsman's Office [*Defensoría del Pueblo*] "strongly rejected and condemned the threats"<sup>505</sup>. In 2013, the Office of the Special Rapporteur was informed of the existence of a plan to kill journalist Gonzalo Guillén along with journalists and analysts Claudia López, León Valencia and Ariel Ávila. Because of the threat, the journalists and analysts had temporarily left the country<sup>506</sup>.

271. A journalist and director of *Al Día* in the department of La Guajira, Francisco De la Hoz Sarmiento, denounced in June that starting three months before, he and his colleagues had been the targets of intimidation and were being followed. The journalist affirmed that their telephone lines had been tapped. The Events were reported to the Police<sup>507</sup>.

272. Journalist Sixto Alonso Rojas Acero, host of the radio program 'Democracia al Día', of the station *La Voz Minera de Colombia*, was threatened with death on July 4 in the municipality of Paz del Río, in the department of Boyacá. The station manager received an envelope with a sheet of paper containing letters cut from newspapers that said "informer, we have you in our sights, shut your mouth and leave people alone or die [sapo lo tenemos, en la mira calle la mula deje la gente en paz o muere [sic]]". In his program, Rojas Acero reports on the administration of Paz de Río and its development plan<sup>508</sup>. According to the Colombian Federation of Journalists, the events were reported to the Office of the Special Prosecutor [*Fiscalía General de la Nación*], which reportedly "requested the implementation of protection measures to the chief of police"<sup>509</sup>.

273. Journalist Jorge López Córdoba, coordinator of the newspaper *Al Día* of the El Heraldo publishing house in the department of Magdalena, was attacked by police from the Mobile Anti-Riot Squadron [*Escuadrón Móvil Antidisturbios (Esmad)*] when covering a transit accident that resulted in the death of two young men on the night of July 14. The journalist was struck with a shield, submitted with a wrench, dragged and finally handcuffed. Even though the journalist had shown his journalist's identification, his ID was taken away and damaged. He was then taken to a police post where an officer, realizing that he was a journalist, took off the handcuffs and apologized. The journalist denounced this event to the Office of the Special Prosecutor [*Fiscalía*] while the police announced an investigation to clarify the causes<sup>510</sup>.

274. Journalist Luis Fernando Montoya, director of the newspaper *El Puente* in the city of Honda, Tolima, denounced that on August 14, he received death threats. According to the journalist, text messages

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<sup>504</sup> El Colombiano. May 2, 2014. [Video de la detención de Esteban Vanegas, grabado por él mismo](#); Semana. May 1, 2014. [Denuncian detención ilegal de un fotógrafo en las marchas](#); Federación Colombiana de Periodistas (Fecolper). May 2, 2014. [APA rechaza detención ilegal a fotógrafo de Q'Hubo y El Colombiano](#).

<sup>505</sup> Fundación para la Libertad de Prensa (FLIP). [Plan para asesinar al periodista Gonzalo Guillén sigue vigente y nuevos hechos aumentan su riesgo](#); Reporters Without Borders (RSF). May 30, 2014. [New Plot to Murder Investigative Reporter Gonzalo Guillén](#); Defensoría del Pueblo. October 4, 2014. [Defensoría rechazó amenazas contra el periodista Gonzalo Guillén](#).

<sup>506</sup> IACHR. Annual Report 2013. [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. 149. Doc. 50. December 31, 2013. Para. 190.

<sup>507</sup> Caracol Radio. June 20, 2014. [Los miembros de un periódico en el departamento no han podido establecer de donde vienen las intimidaciones](#); Diario del Norte. June 20, 2014. [Periodista Francisco De la Hoz denuncia persecución en su contra](#).

<sup>508</sup> Federación Colombiana de Periodistas (Fecolper). July 23, 2014. [Amenazan a integrante del programa radial Democracia al Día](#); RCN Radio. July 15, 2014. [Amenazado de muerte comunicador en Paz de Río, Boyacá](#).

<sup>509</sup> Federación Colombiana de Periodistas (Fecolper). July 23, 2014. [Amenazan a integrante del programa radial Democracia al Día](#).

<sup>510</sup> Fundación para la Libertad de Prensa (FLIP). July 16, 2014. [Agentes del ESMAD agreden a periodista del periódico Al Día de Santa Marta](#); El Tiempo. July 15, 2014. [Esmad agrede a periodista de 'Al Día' en Santa Marta](#); El Heraldo. July 16, 2014. [Policías golpean a periodista de AL DÍA en Santa Marta](#); El Informador. July 16, 2014. [Coordinador de noticias de Al Día del Magdalena fue agredido y esposado por miembros del Esmad](#).

declared that he and his colleagues were “military targets”. The journalist indicated that the National Protection Unit [*Unidad Nacional de Protección*] provides him with a security scheme<sup>511</sup>.

275. On August 22, unknown individuals entered the residence of journalist Javier Osuna, director of the *Fahrenheit 451* Foundation and set fire to his equipment. The journalist was carrying out an investigation into victims of the armed conflict and forced disappearance in the department of Norte de Santander. The National Protection Unit [*Unidad Nacional de Protección (UNP)*] ordered emergency protection measures on behalf of the journalist while they carry out a risk analysis<sup>512</sup>.

276. According to the National Protection Unit [*Unidad Nacional de Protección (UNP)*] from January to June, they evaluated 82 cases of threatened journalists and media workers. They also indicated that 55 of these cases were catalogued as being of an extraordinary level<sup>513</sup>. The UNP, has 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>514</sup>. In its response to the Report “Truth, Justice and Reparations: IV Report on the Human Rights Situation in Colombia”, the State reported to the IACHR that currently “the UNP protects 104 journalists, to whom it assigns more than 150 bodyguards, and 56 heightened schemes of protection”<sup>515</sup>.

277. Journalist Amalfi Rosales of the radio program *Noticias Uno* and the newspapers *Al Día* and *El Heraldo de Barranquilla* had left the department of La Guajira because unknown individuals fired shots at his home in the municipality of Barrancas. Rosales reported the attack before the authorities. The journalist had received at least three threats since reporting on supposed links between a former governor and criminal groups in 2013<sup>516</sup>.

278. On September 17, 2014, in the framework of the debate on paramilitarism in the Second Committee of the Senate of the Republic [*Comisión Segunda del Senado de la República*], former president and senator Álvaro Uribe Vélez stated that he was temporarily withdrawing from the debate “to go to the Supreme Court of Justice [*Corte Suprema de Justicia*] to give evidence of the greatest importance in connection with this new defamatory event promoted by the Farc terrorist group, their constant partners; the paramilitary members, their new partners, their old victims and published by *TeleSur* and *Canal Capital*, communications media that serve terrorism, on orders of the President of the Republic”<sup>517</sup>.

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<sup>511</sup> Círculo de periodistas de Bogotá. August 28, 2014. [CPB rechaza fuertes amenazas de muerte contra periodista en el Tolima](#); Ecos del Combeima. August 14, 2014. [Luis Fernando Montoya, periodista del Norte del Tolima, fue amenazado de muerte. El comunicador habló con Econoticias](#).

<sup>512</sup> Reporters Without Borders (RSF). September 3, 2014. [“I Won’t Stop Doing My Job,” Says Colombian Journalist in Open Letter](#); Fundación para la Libertad de Prensa (FLIP). [“No dejaré de hacer mi trabajo”, Javier Osuna](#); Instituto Distrital de Artes (Ideartes). September 3, 2014. [El Idartes rechaza el ataque contra el periodista Javier Osuna](#). Twitter account of Javier Osuna @javierosu451. [4 de septiembre de 2014 - 21:21](#).

<sup>513</sup> <http://www.unp.gov.co/la-unp/Documents/Sub%20evaluaci%C3%B3n%20de%20riesgo.pdf>

<sup>514</sup> Presidencia de la República. [Decreto No. 4065 de 31 de octubre de 2011](#). October 31, 2011. Artículos 1 y 3.

<sup>515</sup> State of Colombia. Progress made in the protection and guarantee of human rights in Colombia (2013-2014) and follow-up recommendations of the IV Country Report by the IACHR: “Truth, Justice and Reparation”. December 24, 2014.

<sup>516</sup> Committee to Protect Journalists (CPJ). September 8, 2014. [Colombian journalist Amalfi Rosales flees after death threats](#); El Heraldo. September 4, 2014. [Autoridades inician plan de protección para periodista amenazada en La Guajira](#); Reporters Without Borders (RSF). September 5, 2014. [Reporter Forced to Flee Her Home After Threats, Shooting](#); Inter American Press Association (IAPA). September 9, 2014. [SIP reclama por agresiones en México, Colombia y Bolivia](#).

<sup>517</sup> Centro Democrático. September 17, 2014. [“Me retiro para dirigirme a la Corte Suprema de Justicia”: Álvaro Uribe](#); Noticias Canal Capital/YouTube. September 17, 2014. [“Canal Capital, medio de comunicación servil al terrorismo” Álvaro Uribe Vélez Senador](#); El Espectador. September 17, 2014. [¿Álvaro Uribe estigmatiza a los medios de comunicación?](#)

279. Due to the above, the director of Canal Capital, Hollman Morris, filed a complaint against senator Uribe Vélez with the Supreme Court of Justice [*Corte Suprema de Justicia*]<sup>518</sup>. In this context, senator Uribe Vélez was summoned by the Attorney General's Office [*Fiscalía*] to present evidence to support his affirmations<sup>519</sup>. On October 8, 2014 The senator was heard by the Attorney General's Office [*Fiscalía*] and ratified his declarations<sup>520</sup>. The Office of the Special Rapporteur takes note of the declarations by the Minister of the Interior, Juan Fernando Cristo, who emphasized that "the government obviously rejects this kind of stigmatizations and this kind of sabotage [...] it is important that, when those accusations are made, when an attempt is made to discredit, thought be given to subsequent effects that that kind of actions could produce, which could endanger people's lives."<sup>521</sup>.

280. The Office of the Special Rapporteur for Freedom of Expression has expressed concern regarding the inflammatory comments made by high public officials against journalist Hollman Morris, current director of *Canal Capital*. In effect, on February 3, 2009, former president of Colombia, Álvaro Uribe, stated in a news conference that Morris "shielded himself by his condition as a journalist to be a permissive accomplice to terrorism, [...], one thing are those friends of terrorism who act as journalists, and another thing are journalists." The head of state added that Morris "took advantage of his situation as a journalist, [...] and he held a terrorist party at an alternate place from that where the soldier and the police were released last Sunday."<sup>522</sup> These statements were made due to the fact that on February 2, 2009, Morris, as a journalist, attended the liberation of four hostages at a clandestine camp of the Revolutionary Armed Forces of Colombia (FARC) in the department of Caquetá. After the comments made by the authorities, Morris reportedly received several phone threats. In previous occasions, the journalist had to leave the country due to serious threats to his life. In this regard, in 2009 the Office of the Special Rapporteur jointly with the United Nations Special Rapporteur for Freedom of Opinion and Expression referred in a press communiqué to the accusations by former president Álvaro Uribe Vélez against journalist Hollman Morris<sup>523</sup>.

281. The Office of the Special Rapporteur recalls that public officials, though entitled to their right to freedom of expression, are subject to strict limitations as a consequence of their particular duties and responsibilities. In this sense, given the State's obligations to ensure, respect and promote human rights, public officials have a duty to ensure that when exercising their right to freedom of expression, they are not disregarding fundamental rights. As the Inter-American Court wrote: "[T]hey 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 be such that they disregard said rights."<sup>524</sup> Therefore, public officials may not, for example, "violate the presumption of innocence by accusing media outlets or journalists of crimes that have

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<sup>518</sup> El Colombiano. September 24, 2014. [Hollman Morris radica denuncia contra Álvaro Uribe](#); RCN La Radio. September 24, 2014. [Director de Canal Capital radica denuncia en contra del senador Álvaro Uribe](#); Semana. September 24, 2014. [¿Puede Hollman Morris llevar a Uribe a la cárcel?](#).

<sup>519</sup> Vanguardia Liberal. October 1, 2014. [Uribe será citado a la Fiscalía por señalamientos contra Canal Capital](#); Canal Capital. September 30, 2014. [Fiscalía General de la Nación citará a interrogatorio al senador Uribe por los señalamientos contra Canal Capital](#); La FM. October 1, 2014. [Fiscalía citará a interrogatorio Uribe por el caso de los 12 millones de dólares](#).

<sup>520</sup> El Tiempo. October 8, 2014. [Álvaro Uribe se ratificó en sus acusaciones contra Hollman Morris](#); Caracol Radio. October 8, 2014. [Uribe ratifica su denuncia contra Hollman Morris](#);

<sup>521</sup> Noticias Canal Capital/YouTube. September 30, 2014. [Gobierno nacional rechaza estigmatización contra Canal Capital](#); El Espectador. September 30, 2014. [Mininterior pidió no estigmatizar al Canal Capital](#); Caracol Radio. September 30, 2014. [Gobierno rechazó estigmatización de Uribe a Canal Capital](#); La FM. September 30, 2014. [Mininterior pide no hacer daño a Canal Capital](#).

<sup>522</sup> The United Nations (UN) Special Rapporteur for Freedom of Opinion and Expression and the Office of the Special Rapporteur for Freedom of Expression of the Inter American Commission on Human Rights (IACHR) of the Organization of American States (OAS). February 9, 2009. [Joint Press Release N° R05/09 The Rapporteurs for Freedom of Expression of the UN and of the OAS Express Their Concern Regarding Comments Made by High Authorities of the Colombian Government Against Journalist](#).

<sup>523</sup> The United Nations (UN) Special Rapporteur for Freedom of Opinion and Expression and the Office of the Special Rapporteur for Freedom of Expression of the Inter American Commission on Human Rights (IACHR) of the Organization of American States (OAS). February 9, 2009. [Joint Press Release N° R05/09 The Rapporteurs for Freedom of Expression of the UN and of the OAS Express Their Concern Regarding Comments Made by High Authorities of the Colombian Government Against Journalist](#).

<sup>524</sup> I/A Court H.R., *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*, Preliminary Objections, Merits, Reparations and Costs, Judgment of August 5, 2008, Series C No. 182, para. 131.



not been investigated and judicially determined.”<sup>525</sup> Furthermore, The Office of the Special Rapporteur recalls that public officials also have a duty to ensure that their statements are not damaging to the rights of those who contribute to the public discourse through the expression and distribution of their thoughts. This includes journalists, media outlets as well as organizations of human rights defenders. In this respect, the Inter-American Court has indicated that officials should look to the context in which they express themselves in order to ensure that their expression does not constitute “forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute with public deliberation through the expression and diffusion of their thoughts.”<sup>526</sup>

282. On September 24, a pamphlet was disseminated issued by the self-proclaimed “Los Rastrojos”. The text threatened 24 people, including two journalists: Leiderman Ortiz Berrio, of *La Verdad del Pueblo*, and Edgar Astudillo, of the *Noticiero Bajo Cauca*<sup>527</sup>. Leiderman Ortiz Berrio is beneficiary of precautionary measures granted by the IACHR in 2010<sup>528</sup>. According to the available information, in the Bajo Cauca region of the Department of Antioquia, seven other journalists were also threatened by criminal gangs<sup>529</sup>, including Calixto Pérez of *Caucasia Estéreo*, who had been threatened by “Los Rastrojos” in 2013. On October 2014, Pérez was forced to flee the region due to new death threats, this time from the self-proclaimed group “Los Urabeños”<sup>530</sup>.

283. On September 29, there was knowledge of a pamphlet issued by “Los Urabeños”. In the text of the pamphlet, threats were made, declaring eight journalists from the cities of Cali and Buenaventura, in the Department of Valle del Cauca, to be “military targets”: Henry Ramírez, Cristian Abadía, Gildardo Arango, Yesid Toro, Julio César Bonilla, Óscar Gutiérrez, Álvaro Miguel Mina and Darío Gómez. The threats would be associated with the journalists’ coverage of the arrest of alias ‘La Chily’, presumed member of “Los Urabeños”. According to the available information, the Office of the Governor of Valle del Cauca “emphatically” condemned the threats and requested that the authorities “join efforts” to clarify the origin of the threats and “provide all necessary guarantees so that journalism may continue its noble task of informing the vallecaucanos”. The Ombudsman requested that the authorities take necessary measures for protection to safeguard the integrity and lives of the communicators<sup>531</sup>.

284. On November 10, journalist Oscar Castaño Valencia, director of the program ‘Oriéntese’ of the channel *Cosmovisión* was kidnapped for two hours and beaten, when he meet with one of his sources in the municipality of Bello, in the department of Antioquia. In the apartment, three armed and masked men

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<sup>525</sup> IACHR. 2009 Annual Report. Volume II: Annual Report of the Special Rapporteur for Freedom of Expression, Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression), para. 204.

<sup>526</sup> I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. para. 139.

<sup>527</sup> Reporters Without Borders (RSF). September 26, 2014. [Dos periodistas en la lista negra del grupo paramilitar ‘Los Rastrojos’](#); Federación Colombiana de Periodistas (Fecolper). September 25, 2014. [Dos periodistas amenazados en panfleto de la banda criminal ‘Los Rastrojos’](#).

<sup>528</sup> IACHR. Annual Report 2010. Chapter III. The Petition System and individual cases. OEA/Ser.L/V/II. Doc. 5 corr. 1. March 7, 2011. MC 254-10 – Leiderman Ortiz Berrio, Colombia. Para. 26.

<sup>529</sup> Álvaro Chedid Amariz, of Teleantioquia Noticias at Zaragoza, Éder Narváez, of Noticiero Bajo Cauca, Leyfar Bravo Hernández, cameraman of Noticiero Bajo Cauca, Omar Martínez, of Caracol TV, Calixto Pérez, of Caucasia Estéreo, Lili Johanna Franco, former reporter of Teleantioquia, and Jaider Mejía, cameraman of RCN Noticias. El País. August 13, 2014. [Ocho periodistas del bajo Cauca antioqueño están amenazados por bacrim](#); El Colombiano. August 13, 2014. [Ocho periodistas del Bajo Cauca están amenazados](#); El Espectador. August 13, 2014. [Ocho periodistas han sido amenazados por bandas criminales en el Bajo Cauca](#).

<sup>530</sup> Caracol Radio. October 9, 2014. [Por amenazas periodista abandona el bajo Cauca en Antioquia](#); El Tiempo. October 10, 2014. [Sale de Caucasia otro periodista amenazado](#). Colectivo de Abogados José Alvear Restrepo/ Agencia de Prensa IPC. October 10, 2014. [Amenazas a periodistas en el Bajo Cauca antioqueño](#);

<sup>531</sup> Caracol. September 30, 2014. [Celeridad en investigaciones por amenazas a periodistas pide Andiaros](#); Fundación para la Libertad de Prensa (FLIP). September 29, 2014. [Doce periodistas amenazados en los últimos siete días](#); El Herald. September 29, 2014. [Clan Úsuga amenaza de muerte a 8 periodistas del Valle del Cauca](#); Reporters Without Borders (RSF). September 30, 2014. [Eight Journalists on New Paramilitary Hit List](#); Semana. September 29, 2014. [Amenazada la libertad de prensa en el Valle](#); Semana. September 29, 2014. [Urabeños amenazan a ocho periodistas](#). El País. September 29, 2014. [Piden extremar protección a periodistas del Valle amenazados por ‘los Urabeños’](#). Defensoría del Pueblo. October 4, 2014. [Defensor del Pueblo rechaza amenazas contra periodistas del Valle](#).

approached Castaño Valencia, “threw him to the floor, [p]laced a gag on his mouth, which they adjusted with [his] scarf, made [him] kneel and then took away [h]is cell phone, [hi]s personal document, recorder and photographic camera, the documents and keys of his automobile, bank cards and other personal effects that he had in [his] pocket”. The journalists affirmed that they forced him to write that he had raped an eight-year-old girl. Castaño was carrying out an investigation into child prostitution and criminal groups. The Metropolitan Police [Policía Metropolitana] of the Valle de Aburrá, the Attorney General’s Office [Fiscalía General de la Nación] and the National Protection Unit [Unidad Nacional de Protección] had knowledge of the case and began their corresponding work<sup>532</sup>.

285. 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.”

### **E. Subsequent liabilities**

286. The Office of the Special Rapporteur had knowledge of the complaint filed against journalist Martha Isabel Cifuentes Moreno, from radio station *Violeta Stereo*, for the alleged crimes of defamation [*injuria*] and slander [*calumnia*]. The complaint had been made by an advisor to the Office of the Mayor of the city of Yopal, department of Casanare. The complaint stemmed from an interview by the journalist on February 18, 2014 of the resident engineer for construction of the Modular Plant of the city, who had spoken of presumed cases of corruption in the contracting of the plant, which has subsequently collapsed. In the interview, others had been linked to the corruption, including, the advisor of the mayor<sup>533</sup>.

287. By means of a ruling on June 25, the Criminal Chamber of the Supreme Court of Justice [Sala Penal de la Corte Suprema de Justicia] refused to admit the motion for appeal filed by the defense Gonzalo López. López was convicted in the second instance by the Superior Court of Cali [Tribunal Superior de Cali] to 18 months and 20 days imprisonment and payment of \$9,500,000 pesos (approximately \$4,500 USD) for having slandered a public employee through comments on the news website of *ElPaís.com.co*. on November 26, 2008 The user wrote the following text in the open blog for comments by users regarding the article entitled “Siguen capturas por cartel becas en Emcali” (Arrests Continue over the Scholarship Cartel at Emcali): “and with such a rat as Escalante who even the Club Colombia and Comfenalco have expelled for improper handling, what could be expected?... the thief discovering thieves? Bah! (Y con semejante rata como es Escalante que hasta del Club Colombia y Comfenalco la han echado por malos manejos que [sic] se puede esperar... el ladrón descubriendo ladrones? bah!”). According to the ruling by the Supreme Court, this commentary was aimed at the then administrative manager for Human Resources the Municipal Companies of Cali [Empresas Municipales de Cali (Emcali)] who served as manager of the Club Colombia and the Valle Sectional Office of Comfenalco [Comfenalco-Seccional Valle]<sup>534</sup>. According to available information, the user may his comment using a pseudonym and from an anonymous e-mail account, which was why the Attorney General’s Office [Fiscalía] traced the IP address from which it was sent and determined the identity of Gonzalo López<sup>535</sup>.

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<sup>532</sup> Fundación para la Libertad de Prensa (FLIP). November 12, 2014. [Periodista denuncia secuestro y extorsión en ejercicio de su labor](#); Colectivo de Abogados José Alvear Restrepo. November 12, 2014. [Amenaza a director de Oriéntese Televisión](#); Reporters Without Borders (RSF). November 14, 2014. [COLOMBIA | RSF pide protección para el periodista Oscar Castaño Valencia](#).

<sup>533</sup> Semana. September 19, 2014. [La periodista que se siente censurada en Yopal](#); Violeta Stereo. September 18, 2014. [Periodistas de Casanare rechazan demanda penal contra Martha Cifuentes](#).

<sup>534</sup> Corte Suprema de Justicia de Colombia. Sala de Casación Penal. June 25, 2014. AP3445-2014. Radicación N° 43746. Available for consultation at: <http://www.cortesuprema.gov.co/>; El Tiempo. July 21, 2014. [Condenan a usuario por comentario en artículo de sitio web de noticias](#).

<sup>535</sup> El País. July 22, 2014. [Polémica por condena a autor de un comentario en internet](#); Digital Rights Latin America & the Caribbean. August 29, 2014. [18 meses de prisión por opinar en Internet](#); Univision noticias. July 23, 2014. [Tenga cuidado con lo que dice a través de Internet](#).

288. The Supreme Court of Justice [Corte Suprema de Justicia] refused to admit the appeal because the suit filed lacked the formal and substantial requisites needed at the appeals unit [sede de casación]. It also stated that its decision was made because the study of the action does not indicate a violation of fundamental rights or guarantees of the subjects of the proceedings that would merit an in-depth finding and also did not consider that the context presented in the lawsuit would require “a ruling to fulfill any of the purposes of the appeal (Article 184 of Law 906 of 2004)”<sup>536</sup>.

289. The Office of the Special Rapporteur recalls that 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>537</sup> In this regard, Principle 11 of the Declaration establishes that, “[p]ublic officials are subject to greater scrutiny by society.”

290. 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>538</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>539</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>540</sup> and recommend that in the event that the rectification is not sufficient, proportional civil liability should apply.<sup>541</sup>

291. The Office of the Special Rapporteur recalls “[p]articipation 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

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<sup>536</sup> Corte Suprema de Justicia de Colombia. Sala de Casación Penal. June 25, 2014. AP3445-2014. Radicación N° 43746. Available for consultation at: <http://www.cortesuprema.gov.co/>

<sup>537</sup> IACHR. Annual Report 2013. [Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Freedom of Expression and the Internet). OEA/Ser. L/V/II. 149. Doc. 50. December 31, 2013. Para. 70; 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.*

<sup>538</sup> IACHR. Annual Report 2013. [Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Freedom of Expression and the Internet). OEA/Ser. L/V/II. 149. Doc. 50. December 31, 2013. Para. 72; 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>539</sup> IACHR. Annual Report 2013. [Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Freedom of Expression and the Internet). OEA/Ser. L/V/II. 149. Doc. 50. December 31, 2013. Para. 72; 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>540</sup> IACHR. Annual Report 2013. [Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Freedom of Expression and the Internet). OEA/Ser. L/V/II. 149. Doc. 50. December 31, 2013. Para. 72; 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>541</sup> IACHR. Annual Report 2013. [Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Freedom of Expression and the Internet). OEA/Ser. L/V/II. 149. Doc. 50. December 31, 2013. Para. 72; 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.

the right to freedom of thought and expression take part in public debate and the political life of a community.<sup>542</sup>

## F. Other relevant situations

292. On October 28, the magazine *Semana* revealed that the Military Intelligence Center [Central de Inteligencia Militar (CIME)] possessed a list of hundreds of personal and official e-mails of national and foreign journalists, employees from the Office of the High Commissioner for Peace [Oficina del Alto Comisionado para la Paz], ambassadors and members of the International Committee of the Red Cross, among others. Some of the people would be communicators from the *BBC*, *New York Times*, *Oglobo* de Brasil, *NRK* (*Norwegian Broadcasting Corporation*) of Norway, *Liberation* of France, *TVE* (Spanish Television), *Telesur*, *Aljazeera*, *RCN Radio*, *El Tiempo*, *Caracol Radio y TV*, *Noticias Uno*, *CM&*, *La Silla Vacía*, *El País* of Cali, *RCN Radio Radio y TV*, *El Espectador*, *Semana*, as well as members of news agencies such as *Reuters*, *AFP* and *AP*. According to the complaint, the men and women journalists on the list had covered the peace process undertaken by the national government in Havana, Cuba<sup>543</sup>.

293. On October 28, the National Army Command [Comando del Ejército Nacional] Issued a communiqué stating that the Military Forces and the National Army [Fuerzas Militares y el Ejército Nacional] “do not tolerate this type of actions and if they have occurred, are willing to go to the final consequences to seek the truth”. They also indicated that having had knowledge (two weeks before) of the database, they ordered that a preliminary investigation be opened and that the Office of the Inspector General of the Army [Inspección General del Ejército] make a special audit of the CIME “without until now having found any evidence of the existence of the mentioned e-mails”. They also assured that “corrective and preventive actions have been carried out to improve control over the process of handling and use of information, which includes the management of documents, hardware, software and human talent to avoid the possibility of recurrence of incidents outside of institutional policies”<sup>544</sup>. Likewise, on October 30, the Office of the Special Prosecutor indicated that it open an investigation regarding the the existence of the database and log with a list of journalists, in possession of military intelligence officials<sup>545</sup>.

294. In September, the existence of a deficit in the national protection system of nearly 70 billion pesos (approximately USD \$30.6 millions) was made public<sup>546</sup>. The Minister of the Interior, Juan Fernando Cristo, and the director of the National Protection Unit [UNP], Andrés Villamizar, announced a plan to reduce costs “without affecting the security of those who, according to risk studies, the protection by means of a security scheme”. In this regard, they also indicated that “These measures will not affect populations such as human rights defenders, lands claimants, victims, journalists, ethnic minorities”<sup>547</sup>. On November 6, the director of the UNP that if they did not receive “in the next hours the necessary funds from the Ministry of the Treasury and Public Credit [MinHacienda], all of the schemes would be suspended during the next 8 days”<sup>548</sup>. Subsequently, it was noted that the Ministry of the Treasury and Public Credit [Ministerio de Hacienda] had

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<sup>542</sup> IACHR. Annual Report 2013. [Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Freedom of Expression and the Internet). OEA/Ser. L/V/II. 149. Doc. 50. December 31, 2013. Para.135.

<sup>543</sup> *Semana*. October 28, 2014. [La polémica lista de Inteligencia Militar](#); *Semana*. October 28, 2014. [Los de la lista](#); Fundación para la Libertad de Prensa. October 29, 2014.

<sup>544</sup> Ejército Nacional de Colombia. October 28, 2014. [Comunicado de Prensa](#).

<sup>545</sup> *El Tiempo*. October 30, 2014. [Fiscalía dice que Ejército oculta información sobre base de datos](#); *Caracol*. October 30, 2014. [Fiscalía colombiana dice que Ejército ocultó información en caso de espionaje](#).

<sup>546</sup> La F.M. September 2, 2014. [MinInterior: hacen falta recursos para garantizar seguridad de amenazados en el país](#). Fundación para la Libertad de Prensa (Flip). November 7, 2014. [Crisis del sistema de protección en Colombia: falta de una postura coherente del gobierno y desprotección judicial para garantizar libertad de prensa](#).

<sup>547</sup> Ministerio del Interior. September 18, 2014. [MinInterior presentó plan de reducción de gastos en esquemas de protección](#); Unidad Nacional de Protección. September 22, 2014. [Medidas de austeridad tomadas por el Gobierno Nacional permitirán un ahorro anual de 65 mil millones de pesos](#).

<sup>548</sup> Twitter account of Andrés Villamizar (@villamizar). [November 6, 2014 - 13:38](#).

transferred an amount of nearly 30 billion pesos, to which the Director of the UNP responded that said money partially resolved the budgetary problem<sup>549</sup>.

295. The Foundation for Freedom of the Press [*Fundación para la Libertad de Prensa (FLIP)*], an organization that participated as a permanent guest on the Committee for Evaluation of Risk and Recommendation of Measures [*Comité de Evaluación de Riesgo y Recomendación de Medidas (CERREM)*],<sup>550</sup> indicated that since “mid-September, the austerity measures that were implemented by the National Protection Unit [*UNP*] have gravely obstructed the work of reporting by journalists who are at risk. They must choose between carrying out journalism without the protection to which they have a right, and not doing their job. In some cases, the journalists must pay the expenses for operation of the protection schemes assigned by the State; in others, authorizations for travel from one place to another are denied.” At the same time, the FLIP indicated that “[t]he schemes have not been withdrawn and this is the premise that the protection authorities have to argue that they are guaranteeing the security of the journalists. However, the protection schemes are not functioning and that is the reason why the National Protection Unit [*UNP*] is not fully guaranteeing journalistic activity.” In relation to the exchanges between the Ministry of Finance and Public Credit [*Ministerio de Hacienda*] and the National Protection Unit [*UNP*], the FLIP indicated that “[o]ver and above the postures of the Ministries of Finance and Public Credit [*Hacienda*], Interior and the National Protection Unit [*UNP*] is the duty to provide protection to people whom the State itself has diagnosed as being in a condition of risk. The Government placed the protected individuals in the midst of its internal tension, provoked unnecessary anxiety among the protected individuals and revealed fragility in the sustainability of the protection program.”<sup>551</sup>

296. 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>552</sup>

## **10. Costa Rica**

### **A. Progress**

297. On January 17, the Constitutional Chamber (IV Chamber) of the Supreme Court of Justice issued resolution 00531 ordering the State to guarantee internet access and to telecommunications, including to carry out the valuation of the infrastructure necessary for the rendering of such services, as well as their assignation to funded projects of the National Fund of Telecommunications [*Fondo Nacional de Telecomunicaciones*] (FONATEL). This ruling was the result of a report filed by a resident of Santa Ana de

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<sup>549</sup> Twitter account of Andrés Villamizar (@villamizar). [November 6, 2014 – 17:12](#); Noticias Caracol/EFE. November 6, 2014. [UNP se reúne con Minhacienda tras anunciar retirada de esquemas de protección](#)

<sup>550</sup> The CERREM is composed of 13 agencies, 5 permanent members and 8 guest agencies and aims to conduct comprehensive risk assessment and recommend protective measures and complementary actions. Unidad Nacional de Protección. [¿Cómo lo hacemos?](#); Ministerio del Interior. [Decreto No. 4912](#). December 26, 2011. Article 38.

<sup>551</sup> Fundación para la Libertad de Prensa. November 7, 2014. [Crisis del sistema de protección en Colombia: falta de una postura coherente del gobierno y desprotección judicial para garantizar libertad de prensa](#).

<sup>552</sup> IACHR. Annual Report 2013. [Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Violence Against Journalists and Media Workers). OEA/Ser. L/V/II. 149. Doc. 50. December 31, 2013. Para. 81; 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.

Nicoya, who claimed not to have access to Internet or telephone.<sup>553</sup> In 2010, the IV Chamber declared that the access to Internet is a fundamental right that the State must protect<sup>554</sup>.

298. On March 21st the Constitutional Chamber (IV Chamber) of the Supreme Court of Justice issued resolution 2014-4035, recognizing the right of journalists to keep sources confidential. The *amparo* remedy was filed by *Diario Extra* based on the wiretapping on the phone of their reporter Manuel Rodríguez Estrada, which were requested and exercised by the Judiciary Investigation Division [*Organismo de Investigación Judicial*] (OIJ) and ordered by the Attached Office of the Public Prosecutor Against Organized Crimes. The ruling states that although wiretaps may be ordered without a court order by the Office of the Public Prosecutor while investigating a criminal act, it shall only be ordered with respect to a suspicious individual, nevertheless, it may never be ordered on a third party not involved in a criminal investigation. Likewise, the IV Chamber considered as aggravating factor that the third party was a journalist; therefore there was a violation of his right to freedom of expression and source confidentiality. Judge Hernández López stated that freedom of expression, freedom of press and source confidentiality constitute “a decisive right for a valid democracy and the full exercise of freedom of expression”. Also, the Constitutional Chamber ordered all wiretaps related with reporter to be eliminated and disallowed and warned the Office of the Prosecutor and the Investigation Organism from engaging in such activities in the future. Although the remedy also included several reporters for the newspaper, the Chamber only ruled in the case of Rodríguez Estrada as his was the wiretap that was proven<sup>555</sup>.

299. On March 21, the Constitutional Chamber (IV Chamber) of the Supreme Court of Justice resolved that the salary of public officials constitutes a transcendental element of the right to access public information. The resolution was rendered within the *amparo* remedy filed on September of 2013 by reporter Alejandro Fernández against the Costa Rican Social Security Office [*Caja Costarricense de Seguro Social*] (CCSS). In the instant case, Fernández requested the CCSS to provide the salary historical record for of all the public officials of the country between 1990 and 2013 in digital format. At that time the entity claimed it needed to create a digital data base to issue the information requested as all their records were on paper. The Constitutional Chamber established that the right to the information and access to the information is above the right of privacy when it comes to the salaries of public officials. Nevertheless, the negative aspect of the Constitutional Chamber resolution is that the State should transfer the cost of computerizing the data to the person requesting access to the public information<sup>556</sup>.

300. On March 26 the Constitutional Chamber (IV Chamber) of the Supreme Court of Justice ruled secret legislative sessions wherein the immunity of a public official in any of the branches of the government is lifted are unconstitutional.<sup>557</sup>

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<sup>553</sup> Sala Constitucional de la Corte Suprema de Justicia. [Sentencia 00531-2014](#). January 17, 2014; CRHoy. July 18, 2014. [Ciudadanos pueden exigir al Estado acceso a Internet como derecho fundamental](#)

<sup>554</sup> Sala Constitucional de la Corte Suprema de Justicia. [Sentencia 12790-2010](#). July 30, 2010.

<sup>555</sup> Sala Constitucional de la Corte Suprema de Justicia. March 21, 2014. [Resuelve recurso de amparo sobre rastreos telefónicos](#); Sala Constitucional de la Corte Suprema de Justicia. Fallos Relevantes Año 2014. Sentencia 004035-2014. Rastreo de llamadas telefónicas a periodista que no es parte de investigación penal no puede ordenarse. Available for consultation at: [http://sitios.poder-judicial.go.cr/salaconstitucional/Centro%20de%20Jurisprudencia/Sentencias%20relevantes/Sentencias%20relevantes.htm#MARZO\\_2\\_014](http://sitios.poder-judicial.go.cr/salaconstitucional/Centro%20de%20Jurisprudencia/Sentencias%20relevantes/Sentencias%20relevantes.htm#MARZO_2_014); La Nación. March 24, 2014. [Sala IV veta rastreos telefónicos a periodistas](#); CRHoy. January 24, 2014. [Sala Constitucional acepta recurso de amparo de Diario Extra y dicta medidas cautelares](#); Colegio de Periodistas de Costa Rica (Colper). March 21, 2014. [Colper aplaude resolución de Sala IV sobre rastreos telefónicos](#); International Press Institute (IPI). March 24, 2014. [Costa Rica court: Surveillance of journalist unconstitutional](#)

<sup>556</sup> El Financiero. March 25, 2014. [Sala IV resuelve que salario de los empleados del Estado es información pública](#); Sala Constitucional de la Corte Suprema de Justicia. Fallos Relevantes Año 2014. Sentencia 004037-2014. Información sobre salario de funcionarios del estado, es un dato público. Available for consultation at: [http://sitios.poder-judicial.go.cr/salaconstitucional/Centro%20de%20Jurisprudencia/Sentencias%20relevantes/Sentencias%20relevantes.htm#MARZO\\_2\\_014](http://sitios.poder-judicial.go.cr/salaconstitucional/Centro%20de%20Jurisprudencia/Sentencias%20relevantes/Sentencias%20relevantes.htm#MARZO_2_014); La Prensa Libre. Marzo 26, 2014. [Salario de funcionarios del Estado será dato público](#)

<sup>557</sup> CRHoy. March 26, 2014. [Sala IV: secreto de sesiones legislativas sobre levantamiento de inmunidad es inconstitucional](#); Nexo. No date. [Derecho a la información vence el secreto en sesiones legislativas](#); Sala Constitucional de la Corte Suprema de Justicia. Fallos Relevantes Año 2014. Sentencia 004894-2014. Sesiones de la asamblea legislativa declaradas secretas. Available for consultation at:

301. In July, a Criminal Court acquitted entrepreneur Alberto Rodríguez Baldí, sued by the ex-president of the country, Laura Chinchilla, for defamation. Rodríguez Baldí published a comment on Facebook social network in which he referred to the ex president as the “the millionaire president”. The court ruled that the publication by the businessman was not a specific offense to Ex-President Chinchilla as the text was open to interpretation.<sup>558</sup>

## B. Legal Reform

302. On August 20, the Legislative Assembly considered a bill to guarantee the respect the freedom of press of journalists. According to the information received, the law included, among other things, an article which will consider as illegal labor practices of journalism companies to make “banning or impeding reporters from investigating or reporting on news or public interest events”; which will be determined by the own criteria of the professional in the field. Equally, the new law would permit the worker to consider his/her contract concluded with no further liability if the editing at the media outlet goes contrary to the values and beliefs of the reporter, among other causes.<sup>559</sup> This bill was sent to the Legislative Plenary and did not pass on September 11.<sup>560</sup>

303. In response to a communication sent by the Office of the Special Rapporteur, the State reported that the bill was presented on April 7, 2008 and in accordance with their “democratic principle” in a June 15, 2010 session, the Legislative Assembly approved a motion to consult with the following institutions: Office of the Attorney General for the Republic, Journalists’ Association, Supreme Court of Justice and Defender Services for Residents. According to the State, the only entities to respond were the Office of the Attorney General and the Journalist’s Association. After the August 20 and September 11 considerations, the bill was placed on the Legislative Plenary Agenda for September 18 wherein it was item 166 in the Initial Debate Section [*Capítulo de Primeros Debates*]<sup>561</sup>. By the time this report was concluded, no further action had been taken<sup>562</sup>. In its communication the Office of the Special Rapporteur highlighted the importance of strengthening the guarantees of the rights to freedom of press and of expression, and the necessity of taking into account the communicative process of the press professionals, with the purpose of not weakening the rights of all the people participating in the information chain for media outlets<sup>563</sup>.

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[http://sitios.poder-judicial.go.cr/salaconstitucional/Centro%20de%20Jurisprudencia/Sentencias%20relevantes/Sentencias%20Relevantes.htm#MARZO\\_2014](http://sitios.poder-judicial.go.cr/salaconstitucional/Centro%20de%20Jurisprudencia/Sentencias%20relevantes/Sentencias%20Relevantes.htm#MARZO_2014)

<sup>558</sup> El País. July 22, 2014. [La justicia costarricense absuelve a un usuario de redes que criticó a Chinchilla](#); La Prensa. July 15, 2014. [Arranca juicio por supuesta difamación a Chinchilla](#); La información. July 21, 2014. [Absuelven a empresario acusado de difamación por expresidenta Chinchilla](#)

<sup>559</sup> Asamblea Legislativa de la República de Costa Rica. Comisión Permanente Ordinaria de Asuntos Sociales. Expediente No. 16.992. Dictamen Afirmativo Mayoría. August 20, 2014. Available for consultation at: <http://www.conare.ac.cr/proyectos/16992%20dic%20afirmativo.pdf>; Entorno Inteligente/El País. August 21, 2014. [COSTA RICA: Proyecto para fortalecer libertad de prensa en Costa Rica llega al plenario](#); Ahora. August 22, 2014. [Avanza proyecto de ley sobre libertad de prensa](#)

<sup>560</sup> Asamblea Legislativa de la República de Costa Rica. Comisión Permanente Ordinaria de Asuntos Sociales. Dictamen Negativo de Minoría. Expediente No. 16.992. September 11, 2014. Available for consultation at: [http://www.asamblea.go.cr/Centro\\_de\\_Informacion/Consultas\\_SIL/Pginas/Detalle%20Proyectos%20de%20Ley.aspx?Numero\\_Proyecto=16992](http://www.asamblea.go.cr/Centro_de_Informacion/Consultas_SIL/Pginas/Detalle%20Proyectos%20de%20Ley.aspx?Numero_Proyecto=16992)

<sup>561</sup> República de Costa Rica. Ministerio de Relaciones Exteriores y Culto. DJO-374-14. September 29, 2014. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>562</sup> Asamblea Legislativa de la República de Costa Rica. [Proyecto de Ley 16992](#). Adición de un nuevo Capítulo Décimo al Título II y de un inciso al Artículo 83 del Código de Trabajo, Ley N° 2 del 27 de agosto de 1943 y sus reformas Ley para garantizar el respeto a la libertad de prensa de los periodistas.

<sup>563</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. Carta al Estado de Costa Rica: Solicitud de información conforme al artículo 41 de la CADH. Proyecto de ley No. 16.992. September 24, 2014. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

304. On August 27, 2014 the Legislative Assembly for the country held the initial debate on the constitutional amendment that in Article 1 stated, “Costa Rica is a Republic, that is democratic, free, independent, multiethnic, and multicultural”. According to the information received, this amendment is aimed towards reducing discrimination and promoting the rights of different groups that inhabit the territory as well as the recognition of the multiethnic component in the country. Although Law No. 7426 states in Article 1, “the Costa Rican population is multiethnic and multicultural” in the context of celebrating Culture Day [*Día de la Cultura*] on October 12, the authorities in that country understand this recognition should be deeper and be enshrined in the constitution. The proposed amendment was sent to the Constitutional Chamber to continue the legislative process according to Article 195 of the Costa Rican Constitution<sup>564</sup>.

## 11. Cuba<sup>565</sup>

305. At the hearing on the “Human Rights Situation of Journalists in Cuba” held in the 150th Period of Sessions of the IACHR on March 25, the Commission learned about the constant violations of the rights to freedom of expression, association and free movement of independent journalists in this country. The aforementioned is evident in arbitrary detentions, attacks, persecutions, harassment, surveillance, work equipment seizures and threats committed by government agents<sup>566</sup>. In this regard the petitioners noted that in the early months of the year, the authorities detained 1817 members of civil society; 31 were independent journalists. Likewise, they noted that at that time there were at least 68 human rights activists in prison, three of them are reporters and their detention was related to their freedom of expression. The petitioners highlighted the cases of reporters Ángel Santiesteban Prats, blogger and novelist; sentenced to five years incarceration. Yoennis de Jesús Guerra García correspondent for the *Yayabo Press* agency, sentenced to eight years imprisonment. Juan Antonio Torres, correspondent for the Official Body of the Communist Party, sentenced to 14 years in jail for espionage.

306. According to the petitioners, the country has a judicial framework that allows for imprisonment and repression of reporters<sup>567</sup>. Pursuant to the 1999 Law 88, no Cuban may express and disseminate their opinion on the public administration, financial management or social policy of the current government. The country has different crimes that are codified to criminalize journalists and protect public officials, such as contempt, attacks, resistance, state of danger, disobedience, associations, meetings and illegal protests, clandestine literature, illegal economic activity, and others. According to the petitioners, there were at least 60 arbitrary detentions related to the exercise of freedom of expression.

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<sup>564</sup> Asamblea Legislativa de la República de Costa Rica. Proyecto de ley “Reforma Constitucional del Artículo 1 para establecer el carácter multiétnico y pluricultural de Costa Rica”. Expediente N° 17.150. September 22, 2008. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; La Nación. August 27, 2014. [Diputados establecen que Costa Rica es un Estado multiétnico y pluricultural](#); Ciudad Nueva. August 28, 2014. [La Constitución de Costa Rica reconocerá el carácter multiétnico y pluricultural de la nación](#); Presidencia República de Costa Rica. August 27, 2014. [Presidente celebra aprobación de proyecto de ley que declara a Costa Rica país multiétnico y pluricultural](#)

<sup>565</sup> This section refers to the freedom of expression in Cuba portion of the Annual Report of the IACHR, found in Chapter IV (b), Volume I, entrusted to the Special Rapporteurship for Freedom of Expression.

<sup>566</sup> IACHR. 150th Period of Sessions. Hearing on the Human Rights Situation of Journalists in Cuba. March 25, 2014. Available at: [http://www.oas.org/en/iachr/media\\_center/PReleases/2014/035A.asp](http://www.oas.org/en/iachr/media_center/PReleases/2014/035A.asp); IACHR. May 13, 2014. [Press Release 35A/14. Report on the 150th Session of the IACHR.](#)

<sup>567</sup> Here, the petitioners mentioned 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://www.cubonet.org/htdocs/ref/dis/021699.htm>



307. The petitioners believe these issues are even more concerning for those reporters in provinces, where it is more difficult to file complaints. They specifically mentioned three media outlets: *Arabescos de Guantánamo*, in the Guantanamo province; *El Bayamés*, in the Granma province; and the monthly *Fernandina de Jagua*, in the province of Cienfuegos. According to the petitioners, in addition to the repressive, legal and criminal measures the media faces in the capital; they also face administrative measures. As in the case of *Arabescos de Guantánamo*, where the director was stripped of his license to practice law and was barred from the Cuban Writers and Artists Union [*Unión de Escritores y Artistas de Cuba*] (Uneac). One of his contributors was detained on the way to the office, and on a different occasion was approached by the Political Police [*Policía Política*]. One of his reporters, who also serves as the guardian of the literary works of a Cuban poet, was threatened with the destruction of the library archives that has "the most substantive information about this city." At *El Bayamés*, where most of the contributors are Protestant, they were reprimanded by the Religion Division of the Communist Party. On the other hand, the equipment of the correspondents for *Fernandina de Jagua* was seized, and disabled persons were threatened with the withdrawal of the assistance they currently receive<sup>568</sup>.

308. Likewise, the petitioners reported on the state control over radio media outlets and how difficult it is for the Cuban population to access the Internet. Nonetheless, they added that new technology has allowed for the development of new areas for independent journalism. The country has developed a community of bloggers that blog about their day-to-day activities, there are 40 critical blogs managed on foreign servers. They have joined and created news agencies<sup>569</sup>.

309. Lastly, petitioners requested the Commission urge the State to (i) repeal the crimes in the Criminal Code that affect freedom of expression in the country; (ii) repeal Law 88 that represses freedom of information; (iii) create a law to regulate the free exercise of freedom of expression; (iv) attend to the bill to modify the 1977 Association Law in order to allow journalists to connect in order to create media outlets and be a professional field; (v) for the IACHR to invite the Cuban Government to participate in the Inter-American Human Rights System in order to facilitate discussion of all the topics relating to freedom of information; and (vi) for the Special Rapporteurship for Freedom of Expression to report specifically on the freedom of expression in Cuba.

310. 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.

311. In the case of Ángel Santiesteban Prats, the IACHR granted precautionary measures on September 26, 2014. These measures were requested on June 13, 2013<sup>570</sup>. Ángel Santiesteban Prats, a writer and author of a blog critical of the government called "Los hijos que nadie quiso" [The Children Nobody Wanted] has reportedly been imprisoned since February 28, 2013, after a Havana provincial court sentenced him in early 2012 to five years in prison for the supposed crimes of "trespassing and battery." On January 28, 2013, the People's Supreme Court reportedly denied his appeal and confirmed his conviction. Santiesteban maintained that the charges against him had been trumped up and were politically motivated.<sup>571</sup> According to the information received by the IACHR, Santiesteban was a victim of different attacks, threats and harassment by the prison authorities. In July, 2014 relatives of the writer and blogger couldn't communicate with him and didn't know his location. The authorities at first stated that he escaped; later his relatives received the news he was on a police station. The time frame where his relatives couldn't communicate with him, occurred after

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<sup>568</sup> IACHR. 150th Period of Sessions. Hearing on the Human Rights Situation of Journalists in Cuba. March 25, 2014. Available at: [http://www.oas.org/en/iachr/media\\_center/PReleases/2014/035A.asp](http://www.oas.org/en/iachr/media_center/PReleases/2014/035A.asp); Cubalex/ Centro de Información Hablemos Press/ Primavera Digital. March 25, 2014. Report on Independent Journalists in Cuba. Document submitted at the 150<sup>th</sup> Period of Sessions, IACHR. Available at: Archives of the Special Rapporteurship for the Freedom of Expression.

<sup>569</sup> Cubalex/ Centro de Información Hablemos Press/ Primavera Digital. March 25, 2014. Report on Independent Journalists in Cuba. Document submitted at the 150<sup>th</sup> Period of Sessions, IACHR. Available at: Archives of the Special Rapporteurship for the Freedom of Expression.

<sup>570</sup> IACHR. Resolution 26/2014. Precautionary Measure No. 206-13. September 26, 2014.

<sup>571</sup> IACHR. [2013 Annual Report. Annual Report of the Office of the Special Rapporteur for the Freedom of Expression](#), Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OAS/Ser.L/V/ii.149. Doc. 50. December 31, 2013. Par. 238.

an interview granted by his son on July 15 to *Televisión Martí* where he said he had been forced to corroborate false accusations against his father. The precautionary measures for Santiesteban Prats were also granted in favor of his son<sup>572</sup>.

312. The Inter-American Commission cautiously received information regarding the detention of Roberto de Jesús Guerra; the reporter and editor of *Centro de Información Hablemos Press*, who was detained at the *José Martí* airport when he was returning from his presentation at the “Hearing on the Human Rights Situation of Journalists in Cuba” in the 150<sup>th</sup> Period of Sessions of the IACHR and after a press event in Mexico. According to reports, the reporter was detained for several hours and the authorities seized documents and work related books<sup>573</sup>.

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

313. Throughout 2014, the Inter-American Commission received information regarding alleged members of state forces conducting numerous short term arrests, detentions, attacks, harassment and threats against journalists, activists, defenders or government opposition members, because of their expressions and positions critical of the governing party; as well as their peaceful demonstrations and protests against the national government. Following are some of the main cases reported.

314. The Commission continued receiving information regarding various harassment, detentions and attacks against the members of the organization Ladies in White [*Damas de Blanco*]. According to the organization, hundreds of women were arbitrarily detained each month by police officers. The majority of these detentions occurred when the Ladies in White tried to go to mass, their Literary Teas or other activities<sup>574</sup>. For example, on January 3 agents of the State Security [*Seguridad del Estado*] and the National Police [*Policía Nacional*] entered the headquarters of this organization in different provinces and seized toys collected to deliver to children on three kings day. In some cases they also seized other objects such as laptops, mobile phones, documents and books, among other things. During the operations, some people were detained, threatened and/or assaulted.<sup>575</sup> On January 5, 73 women in various provinces of Cuba, who were trying to go to mass, were detained<sup>576</sup>. On January 6 and 7 there were acts of repudiation against the members of this organization; Sandra Guerra, Mayelín Peña and Adriana Portales, in the community of Ojo de Agua, in the Mayabeque province, that lasted from the morning hours until noon<sup>577</sup>. In January, the organization reported 319 detentions<sup>578</sup>. Sandra Guerra and Arianna Portales were once more detained on February 19 in the Ojo de Agua community when they were supposed to travel to Havana by bus for a meeting of the organization<sup>579</sup>. On February 23 over 145 women who were trying to go to mass and participate in the march commemorating the death of a certain political prisoner, were detained in different

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<sup>572</sup> IACHR. Resolution 26/2014. Precautionary Measure No. 206-13. September 26, 2014; NTN24. July 23, 2014. [Familiares de Ángel Santiesteban denuncian en La Noche que el escritor cubano desapareció](#). (VIDEO); Infobae. July 23, 2014. [El régimen cubano no se detiene: desapareció Ángel Santiesteban](#); Reporters Without Borders. August 6, 2014. [RSF EXHORTA A LAS AUTORIDADES CUBANAS A QUE ESCLAREZCAN LA SITUACIÓN DE ÁNGEL SANTIESTEBAN-PRATSE](#).

<sup>573</sup> Reporters Without Borders. April 11, 2014. [FRENCH MINISTER MUST NOT IGNORE FREEDOM OF INFORMATION DURING CUBA VISIT](#); Misceláneas de Cuba. April 9, 2014. [Detienen a director de Hablemos Press en el aeropuerto José Martí](#).

<sup>574</sup> Damas de Blanco. Informes Semanales del Movimiento Damas de Blanco. Available for consultation at: <http://www.damasdeblanco.org/index.php/derechos-humanos>

<sup>575</sup> Damas de Blanco. January 8, 2014. [Represión Policial contra las Damas de Blanco, 6 de enero de 2014](#); Centro de Información Hablemos Press. January 6, 2014. [Régimen castrista arremete contra las casas sede de las Damas de Blanco](#); Aciprensa. January 3, 2014. [Cuba: Gobierno detiene líderes opositores y confisca juguetes que iban a ser repartidos en bajada de Reyes](#); Telenoticias/AP. January 4, 2014. [Agentes cubanos confiscan juguetes que los opositores iban a distribuir](#).

<sup>576</sup> Damas de Blanco. January 8, 2014. [Represión Policial contra las Damas de Blanco, 6 de enero de 2014](#).

<sup>577</sup> Centro de Información Hablemos Press. January 6, 2014. [Tres actos de repudio en menos de 24 horas](#).

<sup>578</sup> Damas de Blanco. July 18, 2014. [Informe de represión contra las Damas de Blanco \(de Enero a Julio de 2014\)](#)

<sup>579</sup> Centro de Información Hablemos Press. February 19, 2014. [Detienen a Damas de Blanco de Mayabeque que se reunirían con Berta Soler](#).

regions of the country<sup>580</sup>. The organization reported that 395 women were detained in February<sup>581</sup>. On March 9, 59 women were detained<sup>582</sup>. On March 18, while at a Literary Tea, there were acts of repudiation against the National Headquarters in the Capital, also at least 30 ladies were detained in different cities<sup>583</sup>. The organization reported that 207 women were detained in March<sup>584</sup>. On April 27 at least 87 women were detained<sup>585</sup>. In April, the organization reported 200 detentions<sup>586</sup>. Between May 23 and 24 the authorities detained Berta Soler, the leader of the movement, and over 60 women when they intended to attend a Literary Tea at the headquarters for the organization in Havana. Soler and 54 other women were detained days earlier when they were accompanying a member of the group to file a complaint of domestic violence.<sup>587</sup> The organization reported 571 detentions in May<sup>588</sup>. On June 15 and 22, the group reported over 160 women detained by State agents while the ladies were attempting to go to mass<sup>589</sup>. Additionally, on June 18 over 90 women were detained when attempting to attend a Literary Tea<sup>590</sup>. According to the organization, there were 539 arrests in June<sup>591</sup>, in July there were at least 263 detentions<sup>592</sup> and in August 190 women were detained<sup>593</sup>. On September 28, alleged agents of the State Security Department (DSE) and the National Revolutionary Police (PNR) detained 39 members of the organization, in different provinces across the country, when they intended to go to mass.<sup>594</sup> According to Berta Soler, the spokesperson for the organization, security forces detained 187 women in total during the month of September<sup>595</sup>. During the month of October, the organization reported over 160 detentions<sup>596</sup>. While participating in different activities, at least 140 women were detained in November<sup>597</sup>.

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<sup>580</sup> Centro de Información Hablemos Press. February 25, 2014. [Arrestan a más de 145 mujeres del Movimiento Damas de Blanco en un día](#); Damas de Blanco. [Represión Policial contra las Damas de Blanco. 25 de febrero de 2014.](#)

<sup>581</sup> Damas de Blanco. July 18, 2014. [Informe de represión contra las Damas de Blanco \(de Enero a Julio de 2014\).](#)

<sup>582</sup> Centro de Información Hablemos Press. March 12, 2014. [Detenidas cincuenta y nueve Damas de Blanco sin que se les presentara orden de arresto](#); Damas de Blanco. MArch 11, 2014. [Represión Policial contra las Damas de Blanco. 11 de marzo de 2014.](#)

<sup>583</sup> Damas de Blanco. March 19, 2014. [Informe de Represión del Movimiento Damas de Blanco Laura Pollán. 19 de marzo de 2014.](#)

<sup>584</sup> Damas de Blanco. July 18, 2014. [Informe de represión contra las Damas de Blanco\(de Enero a Julio de 2014\).](#)

<sup>585</sup> Damas de Blanco. April 27, 2014. [Represión Policial contra las Damas de Blanco, 27 de abril de 2014](#); Centro de Información Hablemos Press. April 28, 2014. [Autoridades cubanas detienen a ochenta y siete mujeres.](#)

<sup>586</sup> Damas de Blanco. July 18, 2014. [Informe de represión contra las Damas de Blanco \(de Enero a Julio de 2014\).](#)

<sup>587</sup> El País. May 24, 2014. [Detenidas en La Habana Berta Soler y más de 60 Damas de Blanco](#); Diario de Cuba. May 23, 2014. [Detenidas 60 Damas de Blanco para impedir un encuentro en La Habana](#); Diario de Cuba. May 20, 2014. [Soler: Detenidas 45 mujeres por acompañar a una Dama de Blanco a denunciar 'violencia doméstica'.](#)

<sup>588</sup> Damas de Blanco. July 18, 2014. [Informe de represión contra las Damas de Blanco \(de Enero a Julio de 2014\).](#)

<sup>589</sup> Centro de Información Hablemos Press. June 26, 2014. [Régimen cubano continúa reprimiendo a opositores pacíficos](#); Damas de Blanco. June 25, 2014. [Represión Policial contra las Damas de Blanco. 24 de Junio 2014.](#) Damas de Blanco. June 21, 2014. [Represión Policial contra las Damas de Blanco. 17 de Junio 2014.](#)

<sup>590</sup> Centro de Información Hablemos Press. June 26, 2014. [Régimen cubano continúa reprimiendo a opositores pacíficos](#); Damas de Blanco. June 25, 2014. [Represión Policial contra las Damas de Blanco \(adjunto al informe del 19 de Junio\).](#)

<sup>591</sup> Damas de Blanco. July 18, 2014. [Informe de represión contra las Damas de Blanco\(de Enero a Julio de 2014\).](#)

<sup>592</sup> Damas de Blanco. July 18, 2014. [Informe de represión contra las Damas de Blanco\(de Enero a Julio de 2014\).](#)

<sup>593</sup> Damas de Blanco. August 4, 2014. [Represión Policial contra las Damas de Blanco. 4 de agosto 2014](#); Damas de Blanco. August 12, 2014. [Represión Policial contra las Damas de Blanco: domingo 10 de agosto](#); Damas de Blanco. August 20, 2014. [Informe de Represión a Damas de Blanco. Domingo 17 de agosto](#); Damas de Blanco. August 20, 2014. [Represión Policial contra las Damas de Blanco. 18 de agosto de 2014](#); Damas de Blanco. September 2, 2014. [Represión Policial contra las Damas de Blanco. 31 de agosto de 2014.](#)

<sup>594</sup> Damas de Blanco. September 30, 2014. [Represión Policial contra las Damas de Blanco: 30 de septiembre 2014](#); Centro de Información Hablemos Press. October 3, 2014. [Más de 180 Damas de Blanco detenidas al finalizar septiembre.](#)

<sup>595</sup> Damas de Blanco. September 2, 2014. [Represión Policial contra las Damas de Blanco. 31 de agosto de 2014](#); Damas de Blanco. September 9, 2014. [Represión Policial contra las Damas de Blanco. 9 de Sept. de 2014](#); Damas de Blanco. September 16, 2014. [Represión Policial contra las Damas de Blanco. 16 de sept. de 2014](#); Damas de Blanco. September 23, 2014. [Represión Policial contra las Damas de Blanco. 22 de sept. de 2014](#); Damas de Blanco. September 30, 2014. [Represión Policial contra las Damas de Blanco: 30 de septiembre 2014](#); Centro de Información Hablemos Press. October 3, 2014. [Más de 180 Damas de Blanco detenidas al finalizar septiembre.](#)

<sup>596</sup> Damas de Blanco. October 14, 2014. [Informe semanal Damas de Blanco. Domingo 12 de octubre de 2014](#); Damas de Blanco. October 16, 2014. [Informe Semanal del Movimiento Damas de Blanco \(15 de octubre de 2014\)](#); Damas de Blanco. October 25, 2014. [Informe](#)

315. On May 12 the IACHR broadened the precautionary measure granted on October 28, 2013 to include approximately 237 members of that organization<sup>598</sup>. The decision was related to the events occurring between April 3 and 5 in the city of Gibara, in the province of Holguín, where six members of the organization were assaulted, detained, targets of repudiation acts, as well as having their homes searched where documents and other objects were removed.

316. On January 3, Pablo Morales Marchán, correspondent for *Centro de Información Hablemos Press*, was detained by agents of State Security Department (DSE) and the Revolutionary National Police (PNR) after offering telephone statements to a radio show on the *Radio Martí* station. His statements were related, among others, to the impact the discourse of Raúl Castro has on the Cuban population following his first official media appearance on 2014. The reporter was arrested for several hours<sup>599</sup>.

317. During the month of January journalists Pablo Morales Marchan, Ignacio Luis González Vidal, Denis Noa Martínez and Tamara Rodríguez were also arrested during the course of their work<sup>600</sup>.

318. At the II Summit of the Community of Latin American and Caribbean States (CELAC) held January 28-30 in Havana, there were hundreds of detentions, which could reach more than the 200 mark. According to reports, as of the 23 and up until the conclusion of the Summit, activists, attorneys, oppositionists, reporters, journalists, bloggers, religious leaders, members of the Ladies in White and other organizations were detained; some remained in prison over six days<sup>601</sup>. According to what the IACHR learned, reporters Mario Hecheverría Driggs, David Águila Montero, William Cacer Días, Denis Noa Martínez and Pablo Morales Marchán were detained during the Summit. In the same manner, reporters Raúl Ramírez Puig and José Leonel Silva were detained and threatened so they would not leave their homes during those days. Their respective residences were under surveillance<sup>602</sup>. Similarly, Gabriel Salvia, the General Director of the Center for the Opening and Development of Latin America [*Centro para la Apertura y el Desarrollo de América Latina*] (Cadaf); was removed from the country. He was there as one of the organizers of the II Democratic Forum of International Relations and Human Rights [*II Foro Democrático en Relaciones Internacionales y Derechos Humanos*], a parallel event to the CELAC Summit<sup>603</sup>.

319. Activists Rosario Morales and Melkis Faure were detained for several hours on February 10 after protesting in Havana, where they had signs that denounced government officials such as Fidel and Raúl Castro<sup>604</sup>.

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[de Represión, Movimiento Damas de Blanco Laura Pollán, 21 de octubre de 2014.](#)

<sup>597</sup> Damas de Blanco. November 20, 2014. [Informe de detenciones \(11 de noviembre, 2014\)](#); Damas de Blanco. November 20, 2014. [Informe Semanal del Movimiento Damas de Blanco \(10 de noviembre, 2014\)](#); Damas de Blanco. November 21, 2014. [Informe de Represión, domingo 16 de noviembre de 2014](#); Damas de Blanco. November 25, 2014. [Informe Semanal del Movimiento Damas de Blanco \(25 de noviembre, 2014\)](#).

<sup>598</sup> IACHR. [Precautionary Measure No. 264-13. Topic Ladies in White regarding the Republic of Cuba](#). May 12, 2014.

<sup>599</sup> Centro de Información Hablemos Press. January 3, 2014. [Arrestado corresponsal de Hablemos Press después de dar declaraciones a Radio Martí](#).

<sup>600</sup> Cubalex/ Centro de Información Hablemos Press/ Primavera Digital. March 25, 2014. Report on Independent Journalists in Cuba. Document submitted at the 150<sup>th</sup> Period of Sessions, IACHR. Available at: Archives of the Special Rapporteurship for the Freedom of Expression; Reporters Without Borders (RSF). February 28, 2014. [El bloguero Ángel Santiesteban Prats ya lleva un año encarcelado](#).

<sup>601</sup> IACHR. 150th Period of Sessions. Hearing on the Human Rights Situation of Journalists in Cuba. March 25, 2014. Available at: [http://www.oas.org/en/iachr/media\\_center/PReleases/2014/035A.asp](http://www.oas.org/en/iachr/media_center/PReleases/2014/035A.asp); Centro de Información Hablemos Press. February 3, 2014. [Informe Mensual de Violaciones de los Derechos Humanos - Enero 2014](#); El Nuevo Herald. January 28, 2014. [Condenan las detenciones de disidentes cubanos en el marco de la Celac](#); Infobae. January 29, 2014. [En medio de la Cumbre de la Celac, Cuba agudiza ola represiva contra disidentes](#); CubaNet. January 28, 2014. [252 activistas detenidos en menos de 72 horas](#).

<sup>602</sup> Cubalex/ Centro de Información Hablemos Press/ Primavera Digital. March 25, 2014. Report on Independent Journalists in Cuba. Document submitted at the 150<sup>th</sup> Period of Sessions, IACHR. Available at: Archives of the Special Rapporteurship for the Freedom of Expression.

<sup>603</sup> Martí Noticias. January 27, 2014. [Expulsan de Cuba a Gabriel Salvia \(CADAL\) y aumenta ola de arrestos](#); Infobae. January 28, 2014. [Fui a Cuba a ejercer la libertad de expresión y no tuve posibilidad](#).

<sup>604</sup> Centro de Información Hablemos Press. February 11, 2014. [Dos mujeres protagonizan otra protesta en la calle Montes de La](#)

320. The political police detained at least 30 coalition FANTU-UNPACU (United Anti-Totalitarian Front and Patriotic Union of Cuba) [*Frente Antitotalitario Unido y la Unión Patriótica de Cuba*] activists in the city of Santa Clara upon attempting to congregate for their weekly meeting. Guillermo Fariñas Hernández was one of the detainees who reported he was threatened with death and discussed other alleged attacks on the detainees<sup>605</sup>. On March 3, 24 members of the coalition in the city of Santa Clara were detained when attempting to go to their weekly meeting. According to reports, the detainees were violently attacked when they refused to yell out phrases favoring the Government. This was the eighth consecutive Monday with detentions before the meetings<sup>606</sup>.

321. Carlos Manuel Figueroa Álvarez and Santiago Roberto Montes were detained on February 13 during a civic protest in Cathedral Plaza [*Plaza de la Catedral*] in the Havana Vieja municipality. During the protest, the detainees had signs where they requested freedom for political prisoners and respect for human rights<sup>607</sup>.

322. On February 12, members of the Cuban Community Journalists Network [*Red Cubana de Comunicadores Comunitarios*] were detained and beat in the municipality of Centro Habana. According to reports, Juliet Michelena, José Antonio Sierres, Bily Joe Landa, Juan Carlos Díaz y Yuleidis López, members of the organization were detained and assaulted to be taken into custody<sup>608</sup>.

323. Journalist William Cacer Días was detained on at least two occasions in February. The first was on the 14 of that month, allegedly in a violent manner, by State Security Agents (DSE) and by National Revolutionary Police (PNR) after having interviewed a leader of the Commission for Attention to Political Prisoners and Family Members [*Comisión de Atención a Presos Políticos y Familiares*]. The second took place on February 28 by a state security officer, while he was interviewing residents of a street where there had been landfalls<sup>609</sup>.

324. On February 15, agents for the State Security Department beat and detained several activists who attempted to meet at a house in Santiago de las Vegas belonging to a leader of the Opposition for a New Republic Movement [*Movimiento Opositores por una Nueva República*] (MONR)<sup>610</sup>.

325. On February 18, a group of evangelical pastors belonging to the Pastors for Change [*Pastores por el Cambio*] organization were harassed by paramilitary groups while preaching in public at the Bayamo municipality, in the Granma province<sup>611</sup>.

326. Agents of the National Revolutionary Police (PNR) detained during several hours members of the Opposition for a New Republic Movement (MONR) in the municipality of Cotorro after holding a meeting at a house belonging to a leader of this group. The activists were threatened with future detentions if

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*Habana*; Comisión Cubana de Derechos Humanos y Reconciliación Nacional/Unión Patriótica de Cuba. March 3, 2014. [Cuba: algunos actos de represión política en el mes de febrero de 2014.](#)

<sup>605</sup> Centro de Información Hablemos Press. February 11, 2014. [Otro lunes con detenciones en Santa Clara.](#)

<sup>606</sup> Centro de Información Hablemos Press. March 4, 2014. [Fariñas denuncia que activistas fueron torturados](#); América Tevé. March 5, 2014. [Fariñas denuncia "torturas" a opositores que se niegan a dar vivas a los Castro.](#)

<sup>607</sup> Centro de Información Hablemos Press. February 13, 2014. [Protesta en la Plaza de la Catedral.](#)

<sup>608</sup> Red Cubana de Comunicadores Comunitarios. March 14, 2014. [Se calentó el balcón de los helechos](#); Centro de Información Hablemos Press. February 13, 2014. [Detienen y golpean a miembros de la Red Cubana de Comunicadores](#); CubaNet. February 13, 2014. [Arrestan y golpean a periodistas Red Comunitaria.](#)

<sup>609</sup> Cubalex/ Centro de Información Hablemos Press/ Primavera Digital. March 25, 2014. Report on Independent Journalists in Cuba. Document submitted at the 150<sup>th</sup> Period of Sessions, IACHR. Available at: Archives of the Special Rapporteurship for the Freedom of Expression; Reporteros Sin Fronteras (RSF). February 28, 2014. [El bloquero Ángel Santiesteban Prats ya lleva un año encarcelado.](#)

<sup>610</sup> Centro de Información Hablemos Press. February 19, 2014. [Arremete la policía castrista contra activistas que asistían a una reunión.](#)

<sup>611</sup> Centro de Información Hablemos Press. February 19, 2014. [Más represión, menos predica.](#)

the meetings were to continue and they were prohibited from carrying out an activity to commemorate the February 23 death of Orlando Zapata Tamayo; considered a political prisoner<sup>612</sup>.

327. On February 27, Human Rights activist and member of the organization Ladies in White [*Damas de Blanco*] Melkis Faure Echevarría was violently detained during a protest on a street in Havana. A person who attempted to defend her was attacked<sup>613</sup>.

328. According to reports, different correspondents for the *Centro de Información Hablemos Press* were detained in March during the course of their work. Such were the cases of Ignacio Luis González, William Cacer Díaz, Raúl Ramírez Puig and José Leonel Silva Guerrero<sup>614</sup>.

329. The IACHR learned of the detention of 21 activists Commission for Attention to Political Prisoners and Family Members (CAPPF) after protesting in front of a National Revolutionary Police (PNR) Unit in the municipality of San Miguel del Padrón in Havana on March 12.<sup>615</sup>

330. On April 12, reporter Dania Virgen García was attacked by police officers when she was dropping her nephew off at school. Two reporters for the official television began recording the attack and were detained for that reason for several hours.<sup>616</sup>

331. On April 23 at least 12 members of the Cuban Community Journalists Network were detained in Havana when attempting to meet for their weekly meetings. People who arrived in order to observe and record with their cellular phones were also arrested.<sup>617</sup>

332. The night of April 23, alleged members of the Police held reporter José Ramón Borges in Santa Clara and threatened with taking him to prison if he continued publishing reports on the YouTube Channel NacanVideos and if he continued to be a correspondent for the editing and publishing of the digital magazine *El Cartero Nacán*. According to reports, the journalist was returning to the city from Havana when he was detained and handcuffed at the terminal and taken to a police station where he was interrogated, some components were seized, and his computer was checked without authorization. Borges stated that he was detained on two earlier occasions with the supposed objective of disallowing him from attending the writer's council<sup>618</sup>. On May 5, he was detained once again when travelling to Santa Clara. Borges was held in a cell for about 20 hours. When released, the documents on his laptop were deleted and his USB memory sticks were seized in order to research the content<sup>619</sup>.

333. The Inter-American Commission learned of over 360 detentions of the opposition in early May, allegedly for attempting to meet or participate in peaceful activities. Some cases occurred in the city of Santa Clara where at least 18 activists were detained on May 8 for attempting to place flowers at a

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<sup>612</sup> Centro de Información Hablemos Press. February 19, 2014. [Liberan a activistas detenidos por reunirse](#).

<sup>613</sup> Centro de Información Hablemos Press. February 19, 2014. [Activista paraliza el tráfico en La Habana tras gritar decenas de frases +Video](#).

<sup>614</sup> Cubalex/Centro de Información Hablemos Press/ Primavera Digital. March 25, 2014. Report on Independent Journalists in Cuba. Document submitted at the 150<sup>th</sup> Period of Sessions, IACHR. Available at: Archives of the Special Rapporteurship for the Freedom of Expression; Centro de Información Hablemos Press. March 4, 2014. [Liberan a Editor Multimedia de Hablemos Press](#).

<sup>615</sup> Centro de Información Hablemos Press. March 13, 2014. [Arrestan a 21 miembros de la CAPPF al realizar una protesta frente a Unidad de Policía](#); Observatorio Cubano de Derechos Humanos. March 18, 2014. [Detenciones los días 12 y 13 de marzo de activistas de la CAPPF](#).

<sup>616</sup> Reporters Without Borders. April 17, 2014. [JOURNALIST HELD FOR PAST TEN DAYS, CHARGED WITH "TERRORISM"](#). Inter-American Press Association (IAPA). [Cuba](#). 2014 General Assembly– Santiago, Chile. October 2014.

<sup>617</sup> Martí Noticias. April 24, 2014. [Policía arresta para impedir que reporteros publiquen la represión](#); Martha Beatriz Roque/YouTube. April 24, 2014. [El balcón VCD PAL](#).

<sup>618</sup> Martí Noticias. April 24, 2014. [Policía arresta para impedir que reporteros publiquen la represión](#) (AUDIO)

<sup>619</sup> Martí Noticias. May 7, 2014. [Los riesgos del periodismo ciudadano en Cuba](#) (AUDIO); Comisión Cubana de Derechos Humanos y Reconciliación Nacional. June 2, 2014. [Cuba: algunos actos de represión política en el mes de mayo de 2014](#).

mausoleum of a member of the opposition. On May 12, 31 members of the FANTU-UNPACU coalition UNPACU (United Anti-Totalitarian Front and Patriotic Union of Cuba) [*Frente Antitotalitario Unido y la Unión Patriótica de Cuba*] were detained for attempting to meet; Guillermo Fariñas Hernández was among them. Three activists who attempted to protest were detained in Havana on May 8. In the San Miguel del Padrón municipality, 32 members of the Commission for Attention to Political Prisoners and Family Members (CAPPF) were detained when attempting to meet at their headquarters<sup>620</sup>.

334. Reporter José Antonio Sánchez was arrested in Havana for distributing the pamphlet for the digital magazine *Misceláneas de Cuba* in a city park on May 6. The journalist was interrogated for several hours and he was warned that if he were to distribute the magazine, Law 88 would be applied for printing and distributing “subversive material”. Three other people were detained along with the reporter because they refused to hand over the magazine copies<sup>621</sup>.

335. IACHR received information regarding different attacks against the members of *Centro de Información Hablemos Press* during June. In that regard, on the 11<sup>th</sup>, Robert Jesús Guerra, director and founder, was violently assaulted by a stranger in Havana, causing him several injuries. According to Guerra, he received threatening phone calls prior to the attack<sup>622</sup>. On June 7, correspondent Raúl Ramírez Puig in the Mayabeque province was charged at with an automobile. The passengers warned him to be careful because “anything could happen”. On June 8, his correspondent Mario Hechavarría Driggs, was detained by State Security Department agents for about five hours. Yeander Farrés Delgado, a journalism student and correspondent to the center, was detained for several hours when he was taking pictures of the Havana Capitol. Journalist Magaly Norvis Otero also received threatening phone calls at the office number and on June 12 was called upon by State Security Department agents to change the tone of her articles as the State was displeased. The alleged phone blocking of some journalists in this agency by the Cuban Telecommunications Company [*Empresa de Telecomunicaciones de Cuba*] (ETECSA) was also reported. According to reports, the telephones are disconnected from the only network in the country<sup>623</sup>.

336. On June 11 ten members of the Cuban Community Journalists Network were detained upon arrival to their weekly meeting at the headquarters in Centro Habana. Two plain-clothes women attacked director Martha Beatriz Roque when she was attempting to exit the place in order to see what was going on with the reporters. A security officer arrived afterwards and confirmed she was not allowed to exit the premises<sup>624</sup>.

337. According to reports, 8 activists were detained on June 13 as they protested in Havana. Four of them were sent to prison and would face charges of the alleged crimes of “subversion” [*atentado*] and

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<sup>620</sup> Centro de Información Hablemos Press. May 14, 2014. [Detienen a más de 360 opositores cubanos por intentar reunirse](#); Infobae. May 15, 2014. [El régimen de los Castro detuvo en mayo a más de 360 opositores por intentar reunirse](#); Comisión Cubana de Derechos Humanos y Reconciliación Nacional. June 2, 2014. [Cuba: algunos actos de represión política en el mes de mayo de 2014](#).

<sup>621</sup> *Misceláneas de Cuba*. May 8, 2014. [Amenazado con la Ley No 88 por repartir \*Misceláneas de Cuba\*](#); Martí Noticias. May 7, 2014. [Los riesgos del periodismo ciudadano en Cuba](#); Law No. 88 on Protection of National Independence and the Economy of Cuba. February 16, 1999. “Article 6.1: Whoever compiles, reproduces or divulges subversive material from the Government of the United States of America, its agencies, departments, representatives, officials, or from any foreign firm, in support of the Helms-Burton Law, the embargo and the economic war waged against our people, whose end is to disrupt internal order, destabilize the country and do away with the Socialist State and Cuban Independence, shall be punished by three to eight years imprisonment or a three to five thousand quota fine, or both”. Available at: <http://www.cubanet.org/htdocs/ref/dis/021699.htm>

<sup>622</sup> CubaNet. June 11, 2014. [Golpean en la vía pública a director de \*Hablemos Press\*](#); Reporters Without Borders. June 16, 2014. [IS CUBA HEADING TOWARDS A REPEAT OF THE 2003 BLACK SPRING?](#); *Misceláneas de Cuba*. Junio 11, 2014. [Hablemos Agreden físicamente a director de \*Hablemos Press\*](#).

<sup>623</sup> Centro de Información Hablemos Press. June 11, 2014. [Aumentan represión contra periodistas y colaboradores de \*Hablemos Press\*](#); Reporters Without Borders. June 16, 2014. [IS CUBA HEADING TOWARDS A REPEAT OF THE 2003 BLACK SPRING?](#); *Misceláneas de Cuba*. Junio 11, 2014. [Agreden físicamente a director de \*Hablemos Press\*](#); Diario de Cuba. June 12, 2014. [Periodistas independientes denuncian detenciones, golpizas y amenazas de muerte](#).

<sup>624</sup> Martí Noticias. June 11, 2014. [Arrestan a 10 miembros de la Red Cubana de Comunicadores](#). (AUDIO).

“resisting [arrest]”. Also 39 members of the Commission for Attention to Political Prisoners and Family Members (CAPPF) were detained on June 13 while marching as a tribute to “Remolcador 13 de marzo”<sup>625</sup>. On June 18 ten journalists of the Cuban Community Journalists Network were detained when attempting to meet at headquarters in Havana<sup>626</sup>. At least 23 members of the coalition FANTU-UNPACU (United Anti-Totalitarian Front and Patriotic Union of Cuba) [*Frente Antitotalitario Unido y la Unión Patriótica de Cuba*] were detained when attempting to meet in the city of Santa Clara on June 23. Similarly, 25 activists of the Orlando Zapata Tamayo Civic Action Front were arrested that day when attempting to meet<sup>627</sup>.

338. On July 2 the following members of the Cuban Community Journalists Network were detained: Jorge Bello Domínguez y Yuneisy López González in the municipality of Güira de Melena and Bárbara Fernández Barrero and Misael Aguiar Domínguez in the municipality of San Antonio de Baños. The detentions were made allegedly in order to prohibit them from attending meetings in the capital of the province. According to reports, the journalists were detained in early hours of the day and were released at nightfall. The incident was repeated with Fernández Barrero y Aguiar Domínguez on July 9 in San Antonio de Baños<sup>628</sup>.

339. On July 28, in the city of Matanzas, two alleged National Police Officers temporarily detained independent reporter Oscar Sánchez Madan and inspected his personal property<sup>629</sup>.

340. Journalist Miguel Guerra Pérez was detained in August. According to the information received, he was released on September 1, after being held for one week<sup>630</sup>.

341. On September 6, journalist Bernardo Arévalo was arrested and threatened by alleged National Revolutionary Police (PNR) officers, in the Cienfuegos province. The journalist writes articles critical of the government in the opposition paper *El Cubano Libre Hoy* [Cubans Free Today]. According to statements made by the journalist to Reporters Without Borders, the officers pressured him to leave Cuba threatening to incarcerate him if he didn’t<sup>631</sup>. On September 28, alleged security forces officers detained the journalist again, along with his wife. According to the available information, he was taken to the People’s Power offices at that location; there he was forced to undress and was held for two hours. Additionally, they took his work material. Arévalo Padrón was in prison between 1997 and 2003, charged with “contempt” [*desacato*] of high government authorities.<sup>632</sup>

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<sup>625</sup> Centro de Información Hablemos Press. June 26, 2014. [Régimen cubano continúa reprimiendo a opositores pacíficos](#); Comisión Cubana de Derechos Humanos y Reconciliación Nacional. July 1, 2014. [Cuba: algunos actos de represión política en el mes de junio de 2014](#)

<sup>626</sup> Centro de Información Hablemos Press. June 26, 2014. [Régimen cubano continúa reprimiendo a opositores pacíficos](#).

<sup>627</sup> Centro de Información Hablemos Press. June 26, 2014. [Régimen cubano continúa reprimiendo a opositores pacíficos](#); Comisión Cubana de Derechos Humanos y Reconciliación Nacional. July 1, 2014. [Cuba: algunos actos de represión política en el mes de junio de 2014](#).

<sup>628</sup> Comisión Cubana de Derechos Humanos y Reconciliación Nacional/ Foundation for Human Rights in Cuba August 4, 2014. [Cuba: algunos actos de represión política en el mes de julio de 2014](#); Misceláneas de Cuba. July 11, 2014. [Miembros de la Red de Comunicadores arrestados antes de su reunión semanal](#).

<sup>629</sup> Comisión Cubana de Derechos Humanos y Reconciliación Nacional/ Foundation for Human Rights in Cuba. August 4, 2014. [Cuba: algunos actos de represión política en el mes de julio de 2014](#); Centro de Información Hablemos Press. August 2, 2014. [Detienen a un periodista independiente en la ciudad de Matanzas](#); Cuba Verdad. August 1, 2014. [Detienen para registro a periodista independiente Oscar Sánchez Madan](#).

<sup>630</sup> Inter-American Press Association (IAPA). [Cuba](#). General Assembly - Santiago, Chile. October, 2014. Reporters Without Borders. September 9, 2014. [Independent Journalist Arrested, Pressured to Leave Cuba](#).

<sup>631</sup> IFEX/Reporters Without Borders. September 10, 2014. [Former Political Prisoner and journalist arrested, pressured to leave Cuba](#).

<sup>632</sup> Centro de Información Hablemos Press. October 3, 2014. [Obligan a desnudarse a periodista independiente mientras es grabado \(Audio\)](#); Reporters Without Borders. October 3, 2014. [Cuban Journalist Arrested for Second Time in a Month](#); Diario de Cuba. October 3, 2014. [RSF denuncia el acoso policial al periodista independiente Bernardo Arévalo Padrón](#).



342. On September 13, journalist Ricardo Sánchez Tamayo, correspondent for *Centro de Información Hablemos Press*, was detained for 48 hours; allegedly as retaliation for the distribution of the newspaper in the municipality of Bayamo<sup>633</sup>.

343. On September 30, Roberto de Jesús Guerra, director and reporter for *Centro de Información Hablemos Press*, was detained yet again, this time for five hours at the international airport in Havana, upon returning from Panama. According to his statement, his digital recorder was seized at customs<sup>634</sup>.

344. On October 3, Ignacio Luis González, editor for *Centro de Información Hablemos Press*, was detained again during the recording of images for a report. González was released after three hours of interrogation<sup>635</sup>.

345. On October 7 and 8, Carlos Manuel Pupo Rodríguez, the leader of the Union for a Free Cuba Political Party [*Partido Unión por Cuba Libre*], was detained in the Mayabeque province. According to his report his residence was under the surveillance of the State Security Department and the National Revolutionary Police, for several days, allegedly to prohibit his travel to Havana. He was arrested by officers both times he tried to leave his house that day. He reported that he had received threats from alleged Police officers, who warned him not to travel to Havana<sup>636</sup>.

346. The IACHR received information regarding the November 25 attacks at FANTU (United Anti-totalitarian Front) [*Frente Antitotalitario Unido*] weekly meetings in the city of Santa Clara. According to reports a man with a weapon attempted to attack oppositionist Guillermo Fariñas. In an effort to avoid him others were injured, among them a member of the Ladies in White who had to undergo surgery<sup>637</sup>. The man identified as the attacker was detained<sup>638</sup>.

347. 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."

348. As the United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and the Special Rapporteurship 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

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<sup>633</sup> Centro de Información Hablemos Press. October 3, 2014. [Obligan a desnudarse a periodista independiente mientras es grabado \(Audio\)](#); Reporters Without Borders. October 3, 2014. [Cuban Journalist Arrested for Second Time in a Month](#).

<sup>634</sup> Centro de Información Hablemos Press. October 3, 2014. [Confiscan sistema digital inalámbrico a director de Hablemos Press](#); Reporters Without Borders. October 3, 2014. [Cuban Journalist Arrested for Second Time in a Month](#).

<sup>635</sup> Centro de Información Hablemos Press. October 6, 2014. [Detienen a editor de multimedia de Hablemos Press + \(Audio\)](#).

<sup>636</sup> Comisión Cubana de Derechos Humanos y Reconciliación Nacional/ 14ymedio. November 3, 2014. [Cuba: algunos actos de represión política en el mes de octubre de 2014](#); Centro de Información Hablemos Press. October 10, 2014. [Arrestan por segunda vez en un día al líder del Partido Unión por Cuba Libre + \(Audio\)](#)

<sup>637</sup> Martí Noticias. November 26, 2014. [Fariñas denuncia que en un intento de asesinarle fueron apuñalados cinco disidentes](#); El Nuevo Herald. November 26, 2014. [Dos Damas de Blanco apuñaladas por un seguidor del régimen cubano](#); 14ymedio. November 26, 2014. [Dama de Blanco en estado grave después de una agresión en Santa Clara](#); Diario las Américas. November 27, 2014. [Un hombre apuñala a varios disidentes en casa de Fariñas y deja grave a dos Damas de Blanco](#); Damas de Blanco. November 26, 2014. [La Dama de Blanco María Luisa Arango, 'muy grave' tras ser apuñalada por un seguidor del régimen](#).

<sup>638</sup> CubaNet. November 29, 2014. [Tras las rejas el acusado de acuchillar a la Dama de Blanco](#); de las Américas/EFE. December 3, 2014. [Atacante de disidentes cubanos, Fariñas y Damas de Blanco está arrestado](#).

demonstrators and their demands. They must refrain from making generalizations based on isolated events or the conduct of particular groups.”<sup>639</sup>

349. The IACHR is also reminded that the rights of freedom of assembly and freedom of expression “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>640</sup>

## **B. Other relevant situations**

350. On May 21, blogger and activist Yoani Sánchez launched a new digital news site called *14ymedio*. This paper is the first independent digitally based daily in the country and, according to its website, those who contributed to its creation have a “commitment to truth, freedom and human rights, without ideological or partisan ties.” According to reports, minutes after it was launched, access to the media outlet in Cuba was blocked. Those who attempted to view the site were redirected to ‘Yoani\$landia’, another page with adverse information on Sánchez<sup>641</sup>. Days later the media outlet was unblocked for Cuba<sup>642</sup>.

## **C. Subsequent liabilities**

351. Yoennis [or Yoeni] de Jesús Guerra García, reporter for the *Yayabo Press* agency, was sentenced to seven years imprisonment by the Sancti Spíritus provincial court on March 13. The journalist was arrested in October of 2013 and was held as of that date in the Nieves Morejón jail, charged with “robbery” and “illegal livestock slaughter”. The journalist claimed that his arrest and conviction were related to his critical point of view towards the government and its work as an independent journalist. During his detention he was victimized on several occasions by police violence<sup>643</sup>. In July his sentence was upheld following the denial of an appeal<sup>644</sup>.

352. On April 7, Juliet Michelena Díaz, correspondent to the Cuban Community Journalists Network [*Red Cubana de Comunicadores Comunitarios*] (RCCC), was detained after taking pictures of a police operation in Havana. According to reports, the detention was based on an incident that took place on March

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<sup>639</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>640</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>641</sup> 14ymedio. [Quiénes somos](#); El Espectador/AFP. May 21, 2014. [Lanzan "14ymedio", el primer medio independiente en Cuba](#); CNN en Español/AFP. May 21, 2014. [Hackers' intervienen el portal independiente en Cuba de Yoani Sánchez](#); El Tiempo. May 21, 2014. [Bloquera cubana Yoani Sánchez lanza portal y Gobierno lo bloquea](#); Knight Center for Journalism in the Americas. May 21, 2014. [Cuba bloquea nuevo sitio de noticias de bloquera Yoani Sánchez el día de su lanzamiento](#); Committee to Protect Journalists (CPJ). May 22, 2014. [Cuban blogger Yoani Sánchez launches independent news site](#); El País. May 21, 2014. [El Gobierno cubano bloquea el acceso al diario digital de Yoani Sánchez](#).

<sup>642</sup> Martí Noticias. May 25, 2014. [Accesible 14yMedio para los internautas en la Isla](#); Semana/EFE. May 25, 2014. [Desbloquean en Cuba periódico de Yoani Sánchez](#).

<sup>643</sup> Centro de Información Hablemos Press. March 27, 2014. [Condenan a 7 años de cárcel a periodista independiente de Yayabo Press](#); Reporters Without Borders. April 11, 2014. [FRENCH MINISTER MUST NOT IGNORE FREEDOM OF INFORMATION DURING CUBA VISIT](#); Inter-American Press Association (IAPA). [Cuba](#). 2014 General Assembly – Santiago, Chile. October 2014; Misceláneas de Cuba. March 27 2014. [Declaraciones de periodista preso](#).

<sup>644</sup> Instituto Cubano por la Libertad de Expresión y Prensa (ICLEP). July 10, 2014. [Ratifican sanción a periodista Yoennis Jesús Guerra García](#); Unión Patriótica de Cuba (UNPACU). [Ratifican sanción a disidente](#).

26; when Michelena and other RCCC correspondents witnessed the alleged use of canine units by police to stop a struggle among the city residents; one person was bit. That day, several observers who photographed the incident were detained, including Michelena who was able to hide the photographs. She was rearrested on April 2 when the authorities found out she was writing an article on the incident.<sup>645</sup> During that detention, while in handcuffs, a woman assaulted her; she was released the next day. On April 6, the National Revolutionary Police (PNR) went to her home, allegedly because the woman who assaulted her days earlier received “threats”. Michelena refused to go with the police that day due to the lack of an arrest warrant.<sup>646</sup> Nonetheless, they returned the next day, and she was detained with the use of violence. The trial was set for April 10, however, it was postponed. New documents charge her with subversion [*atentado*]. On April 16, she was transferred to the prison for women known as *Manto Negro*<sup>647</sup>. According to reports, after seven months in prison, Mechelena was released on November 7 when a judge found her innocent on the charge of “subversion” [*atentado*]<sup>648</sup>.

353. The Inter-American Commission learned that Yoelkis Rosabal, Ricardo Pelier and Ernesto Darián Dufuss; three members of the political group Cuban Patriotic Union [*Unión Patriótica de Cuba*] were sentenced to four, three and two years respectively of imprisonment for the alleged crime of public disorderly conduct. All three were detained on May 15, after protesting the detention of Yohannes Arce, another Unpacu colleague, in the municipality of Caimanera in Guantanamo. They were tried on October 24 and alerted as to their conviction on November 12. Likewise in September, Yohannes Arce was sentenced to three years imprisonment for the alleged crime of subversion [*atentado*]<sup>649</sup>.

354. On June 19, Yulio Ferrer Bravo, a Human Rights defender and member of the Commission for Attention to Political Prisoners and Family Members was detained at his residence in Havana. According to what the activist reported, he was detained for yelling “down with Fidel!” during a discussion with his mother. A neighbor reported him to the authorities and hours later alleged agents of the State Security Department (DSE) and Police officers showed up at his residence, attacked him and arrested him. According to reports, he was charged with the supposed crime of “public disorderly conduct<sup>650</sup>”. He was placed on probation in September. On October 9 he had to appear before the Court for Crimes against the Security of the State, but the trial has been continued<sup>651</sup>.

355. On October 16 political prisoner Ángel Yunier Remón Arzuaga went on a hunger strike protesting his six year imprisonment sentence for the alleged crime of attack against the security of the State. Remón, a hip hop singer known as “El Crítico” [The Critic], and a member of the Patriotic Union of Cuba, was

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<sup>645</sup> CubaNet. April 10, 2014. [Tropas élites controlan con perros riñas callejeras](#); Committee to Protect Journalists (CPJ). April 22, 2014. [CPJ condemns jailing of Cuban citizen journalist](#); El Nuevo Herald. April 18, 2014. [Exigen la liberación de la periodista cubana Juliet Michelena](#).

<sup>646</sup> CubaNet. April 18, 2014. [Juliet sólo hizo periodismo ciudadano](#).

<sup>647</sup> Committee to Protect Journalists (CPJ). April 22, 2014. [CPJ condemns jailing of Cuban citizen journalist](#); Centro de Información Hablemos Press. April 8, 2014. [Policía cubana arresta a una reportera de la Red de Comunicadores +Audio](#); CubaNet. April 18, 2014. [Juliet sólo hizo periodismo ciudadano](#); El Nuevo Herald. April 18, 2014. [Exigen la liberación de la periodista cubana Juliet Michelena](#); Martí Noticias. April 18, 2014. [Juliet Michelena: mapa de una mujer encarcelada](#); Reporters Without Borders. April 17, 2014. [JOURNALIST HELD FOR PAST TEN DAYS, CHARGED WITH “TERRORISM”](#).

<sup>648</sup> Committee for the Protection of Journalists (CPJ). November 7, 2014. [CPJ welcomes release of Juliet Michelena Díaz in Cuba](#); Martí Noticias. November 6, 2014. [Declaran inocente a periodista independiente Juliet Michelena](#); CubaNet. November 7, 2014. [Liberan a Juliet Michelena](#); Diario de Cuba. November 8, 2014. [El régimen libera a la periodista independiente Juliet Michelena Díaz](#).

<sup>649</sup> 14ymedio. November 12, 2014. [Condenados a penas entre dos y cuatro años de prisión activistas de la UNPACU](#); Cubaencuentro. November 14, 2014. [Denuncian condenas a tres activistas de Unpacu](#); Martí Noticias. November 13, 2014. [Ratifican sentencias a 3 opositores guantanameros encarcelados desde mayo](#); Comisión Cubana de Derechos Humanos y Reconciliación Nacional/14ymedio. June 23, 2014. [Lista parcial de condenados o procesados por motivos políticos en Cuba](#)

<sup>650</sup> Comisión de Atención a Presos Políticos y Familiares (CAPPF). July 4, 2014. [Detenido Yulio Ferrer Bravo por falso desorden público](#); Misceláneas de Cuba. June 4, 2014. [Arrestado el opositor Yulio Ferrer Bravo](#).

<sup>651</sup> Centro de Información Hablemos Press. October 9, 2014. [Cuba: A juicio activista de la CAPPF, este jueves](#); Misceláneas de Cuba. October 22, 2014. [Suspenden juicio de activista de la CAPPF](#).

detained as of March 26, 2013, when he was arrested for protesting<sup>652</sup>. Remón interrupted his hunger strike in November when he was allowed to appeal the sentence.<sup>653</sup>

356. 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.

357. 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.

358. 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 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.

## 12. Ecuador

359. The IACHR received a communication dated May 7<sup>654</sup> in which the Illustrious State of Ecuador made several objections, remarks, and requests regarding the 2013 Annual Report of Office of the

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<sup>652</sup> Centro de Información Hablemos Press. October 23, 2014. [En huelga de hambre el preso político Ángel Yunier Remón](#); Diario de Cuba. October 15, 2014. [El rapero El Crítico, condenado a seis años de cárcel](#); Centro de Información Hablemos Press. October 15, 2014. [Prisioneros político en Cuba: Cantante cubano "El Crítico" relata los hechos ocurridos en el juicio. + \(Audio\)](#).

<sup>653</sup> Martí Noticias. November 4, 2014. [El Crítico suspende huelga de hambre tras lograr demanda](#); Miami en Cuba. No date. [El Crítico suspende huelga de hambre tras lograr demanda](#).

<sup>654</sup> Republic of Ecuador. Permanent Mission of Ecuador to the OAS. Note 4-2-130/2014. May 7, 2014. Received on May 9, 2014.

Special Rapporteur for Freedom of Expression. The Office of the Special Rapporteur forwarded to the State the information requested on October 3.<sup>655</sup>

**A. Attacks, threats, and arrests against journalists, members of the opposition and protesters**

360. On March 14, David Mármol, an activist from the Yasunidos Collective, was reportedly detained by alleged members of the president's security detail and subsequently beaten by unknown individuals after having made a hand gesture ("thumbs down") in front of the presidential convoy. According to reports, Mármol was gathering signatures against oil drilling in Yasuní National Park in the *Plaza de San Blas*, in the center of the city of Quito, when the president's convoy passed and the activist made his gesture in disapproval of that policy. The last car in the convoy reportedly stopped and an individual presumed to be a bodyguard took him to a detention site where he remained for about an hour. There he was told to apologize to President Rafael Correa. Afterwards, they reportedly dropped him off in a street where he was beaten by unknown individuals.<sup>656</sup> The chief of the Presidential Protection Service, General Luis Castro, reportedly stated that they had been forced to intervene in view of the insults and gestures against the president, and that the security protocols require in such cases that the alleged aggressor be interviewed in order to determine whether he or she poses a threat.<sup>657</sup>

361. Gonzalo Ortiz Crespo, a columnist for the newspaper *Hoy*, reportedly received a threat via email on April 29. In one part of the text, he was reportedly warned that he had been identified, and that something was going to happen to him, because "he who laughs last laughs best."<sup>658</sup>

362. On April 30, three women were arrested for their alleged involvement in acts of sabotage during an operation in which more than 1000 prisoners were transferred from one detention center to another. According to reports, the Judge of the *Unidad de Flagrancia* of Pichincha ordered that the women be held in pretrial detention after the Office of the Public Prosecutor accused them of disorderly conduct and insulting the Minister of Interior, José Serrano, who they had criticized because the new detention center allegedly did not provide the necessary guarantees.<sup>659</sup>

363. On May 6, Marlon Puertas, editor of the digital newspaper *La República* was reportedly threatened on Twitter. A user created the hashtag #untiroamarlon [A Shot to Marlon] and sent it to the journalist publicly. Following the threat, the Minister of Interior reportedly contacted Puertas in order to ask him for details about the threat.<sup>660</sup>

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Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression. Available for consultation at: [http://cancilleria.gob.ec/wp-content/uploads/2014/06/informe\\_relatoria2014\\_final\\_internet-6.pdf](http://cancilleria.gob.ec/wp-content/uploads/2014/06/informe_relatoria2014_final_internet-6.pdf).

<sup>655</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. Communication to the State of Ecuador. October 3, 2014. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>656</sup> Fundamedios. March 20, 2014. [Ciudadano es agredido tras gesto a caravana presidencial](#); El Universo. March 17, 2014. [Miembro de Yasunidos relata supuesta amenaza de miembros de escolta presidencial](#); La República. March 14, 2014. [Reportan que escolta presidencial detuvo a recolector de firmas de Yasunidos](#); Ecuador Inmediato. March 14, 2014. [Recolector de firmas de Yasunidos fue detenido y golpeado presuntamente por caravana presidencial denunció la CEDHU](#).

<sup>657</sup> Ecuador Inmediato. March 17, 2014. [Servicio de Protección Presidencial aclara que no agredió a integrante de Yasunidos](#); El Tiempo. March 18, 2014. [Mármol detenido para indagaciones](#).

<sup>658</sup> Fundamedios. May 2, 2014. [Articulista es amenazado a través de correos electrónicos](#); Ecuador Inmediato. April 30, 2014. [Gonzalo Ortiz Crespo denuncia que ha recibido amenazas en su contra](#).

<sup>659</sup> El Comercio. April 30, 2014. [Tres detenidas durante el traslado de las personas privadas de la libertad a Cotopaxi](#); Últimas Noticias. May 1, 2014. [Detenidas por insultar](#); Ecuador Inmediato. April 30, 2014. [Tres personas detenidas por presuntamente causar disturbios durante traslado a Centro de Rehabilitación de Latacunga](#); Fundamedios. May 13, 2014. [Mujeres son detenidas y procesadas por sabotaje tras manifestación](#).

<sup>660</sup> La República. May 6, 2014. [Amenazan en Twitter a editor de La República](#); Fundamedios. May 8, 2014. [Periodista es amenazado a través de un hashtag en Twitter](#).

364. On July 17, at the end of a march organized by the United Workers and Trade Unions Front [*Frente Unitario de Trabajadores y Sindicatos Obreros*], individuals presume to be members of the National Police reportedly arrested three protesters: Enver Orna, Paúl Velázquez, and Edwin Sánchez. According to reports, the police officers assaulted the youths and detained them for no apparent reason. The youths were transferred to the *Unidad de Flagrancias* and were reportedly charged by the Office of the Public Prosecutor with the offense of rebellion set forth in articles 218 and 221 of the Criminal Code<sup>661</sup>. After the hearing, held on the morning of July 18, they were released and ordered to report to a court authority on a weekly basis as an alternative to detention.<sup>662</sup>

365. On the night of July 17, at an accountability event held by the Pachamama Foundation (dissolved by the government in December, 2013), three foreign activists were reportedly approached by individuals presumed to be immigration officers, who detained and transferred them to a dependence of the office to check their immigration status. They were released by midnight.<sup>663</sup> One of them, Oliver Utne, reportedly had to leave the country the following day after receiving a letter from the Bureau of Immigration and Alien Affairs informing him of the cancellation of his volunteer visa, obtained by working as a collaborator to the Pachamama Foundation, and suggesting that he leave the country in order to avoid, “because of his irregular situation, being the victim of possible violations of his human rights.”<sup>664</sup>

366. On August 6, a press photographer from the newspaper *El Telégrafo* was reportedly beaten on several occasions outside the Provincial Court of Pichincha [*Corte Provincial de Pichincha*], Quito, by an alleged relative of the defendant in a human trafficking case. Later, other individuals reportedly threatened the photographer and the journalist who was covering the hearing to keep them from publishing anything.<sup>665</sup>

367. On August 24, users of the social network Twitter reportedly offered money “for the head” of journalist Emilio Palacio. Interior Minister José Serrano announced that an investigation would be conducted.<sup>666</sup> This threat was reportedly made after President Rafael Correa spoke out against the journalist in his live broadcast *Enlace Ciudadano* No. 387 of August 23. In that speech, the president referred to Palacio as a “psychotic clown” and asked the audience “Don’t you want to just kick a guy like that?”<sup>667</sup>

368. The Office of the Special Rapporteur learned of the alleged detention of some 120 people, 54 of whom were children, in the context of a march organized by trade unions and various civil society organizations against certain government policies on September 17. The march, in the city of Quito resulted in those arrests and left at least 15 police officers injured.<sup>668</sup> During the events of that day, a cameraman from

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<sup>661</sup> El Universo. July 19, 2014. [Investigados por rebelión tras marcha](#); Explored/Hoy. July 18, 2014. [30 días de instrucción por el delito de rebelión](#); Frente de Participación Estudiantil – Susana Pintos. July 28, 2014. [Declaración de respaldo y solidaridad con los compañeros Enver Orna, Paul Velásquez y Edwin Sánchez](#).

<sup>662</sup> Ecuador al día. July 18, 2014. [Marcha: los 3 detenidos fueron liberados](#); Fundamedios. July 19, 2014. [Ambientalista es obligado a irse del país](#); Explored/Hoy. July 18, 2014. [Marcha: los 3 detenidos fueron liberados](#)

<sup>663</sup> La República. July 17, 2014. [Redada migratoria en rendición de cuentas de Fundación Pachamama](#); El Universo. July 18, 2014. [Fundación Pachamama rechaza un acto policial que detuvo brevemente a 3 estadounidenses](#); El Comercio. July 17, 2014. [Operativo migratorio en rendición de cuentas de Pachamama](#).

<sup>664</sup> Fundamedios. July 19, 2014. [Ambientalista es obligado a irse del país](#); Plan V. July 24, 2014. [La expulsión de Oliver Utne](#); La República. July 20, 2014. [Ecologista estadounidense obligado a abandonar Ecuador](#).

<sup>665</sup> El Telégrafo. August 6, 2014. [Equipo periodístico de EL TELÉGRAFO fue agredido y amenazado en cobertura](#); El Universo. August 6, 2014. [Equipo de El Telégrafo fue agredido durante cobertura](#); Fundamedios. August 8, 2014. [Fotógrafo de diario estatal es agredido físicamente](#).

<sup>666</sup> La República. August 24, 2014. [En Twitter, ofrecen cien mil dólares por la cabeza de Emilio Palacio](#); Fundamedios. August 25, 2014. [Ponen precio a la cabeza de periodista exiliado](#);

<sup>667</sup> Enlace Ciudadano. Secretaría Nacional de Comunicación de la República del Ecuador. [Enlace Ciudadano Nro 387 desde Llano Grande, Quito](#). August 23, 2014. [3:30:36 – 3:31:38]; Fundamedios. August 25, 2014. [Ponen precio a la cabeza de periodista exiliado](#); Inter American Press Association (IAPA). August 26, 2014. [SIP: amenazas de presidente Correa contra periodista son extremadamente peligrosas](#); El Comercio. August 25, 2014. [Rafael Correa habla de caerle a patadas a un periodista](#).

<sup>668</sup> Ministerio del Interior de la República del Ecuador. September 18, 2014. [Ministerio del Interior iniciará acción judicial ante agresión a Policía Nacional durante las marchas](#); Fundamedios. September 18, 2014. [Manifestantes apresados e incidentes con la prensa](#)

the Public News Agency of Ecuador and South America [*Agencia Pública de Noticias del Ecuador y Suramérica*] *Andes*, José Vargas, was reportedly assaulted by alleged protesters who stole his press credentials.<sup>669</sup> According to reports, there were new incidents between protesters and police on September 18 and 19.<sup>670</sup>

369. According to the information received, at least 100 individuals had been charged with criminal offenses in the aftermath of the protests, 54 of whom were held in pretrial detention<sup>671</sup>. A group of 60 students detained on September 18, were reportedly being prosecuted for the offense of “property damage” provided for in the Comprehensive Criminal Code, which is punishable by a term of imprisonment from one to three years. During a trial held on 2 and 3 October (after the defendants agreed to be tried through a summary criminal proceedings) Criminal Trial Judge, Daniela Mayorga, determined the dismissal of six of the accused, another 39 were released after having admitted their complicity in the events and were sentenced to perform community service, and 15 were convicted of the offense of “property damage” and sentenced to two months of imprisonment (one of them was reportedly released for medical reasons)<sup>672</sup>. Another group of 31 people arrested in the march held on September 17 were reportedly being prosecuted for the offense of “assault or resisting authority”, provided for in the same Code and punishable by six months to two years in prison.<sup>673</sup> On November 21, the Judge of the *Unidad de Flagrancia* of Pichincha, Tania Molina, closed the case after the prosecutor asked the acquittal of the youths.<sup>674</sup>

370. Reports were received of the alleged physical attacks and harassment of the detainees at the detention centers, as well as several violations of due process.<sup>675</sup>

371. On November 7, the 15 students who were serving prison sentences were released after the Criminal Division of the Provincial Court [*Sala Penal de la Corte Provincial de Justicia*] of Pichincha approved the appeal filed by the defense of the students and ordered their immediate release and reinstatement to classes.<sup>676</sup>

372. On September, the Minister of Education, Augusto Espinosa, announced that students from the Mejía and Montúfar high schools who had taken part in the marches could be expelled.<sup>677</sup> Later in

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[durante jornada de protesta](#); BBC Mundo. September 18, 2014. [Ecuador: violentos disturbios en Quito tras multitudinaria protesta contra Correa](#).

<sup>669</sup> Agencia Pública de Noticias del Ecuador y Suramérica (Andes). September 17, 2014. [Periodista de Andes es agredido por manifestante que participa en marcha de oposición](#); El Telégrafo. September 17, 2014. [Camarógrafo de Agencia Andes fue agredido en marcha del FUT](#); Fundamedios. September 18, 2014. [Manifestantes apresados e incidentes con la prensa durante jornada de protesta](#).

<sup>670</sup> Ministerio del Interior de la República del Ecuador. September 20, 2014. [Investigación será profunda sobre evidencias encontradas en oficinas de profesores, en colegio Mejía](#).

<sup>671</sup> Fundamedios. September 24, 2014. [Al menos 100 personas con procesos penales tras protestas](#); Human Rights Watch. September 20, 2014. [Ecuador: Embestida policial durante protestas](#); El Telégrafo. September 23, 2014. [Espinosa: De 53 detenidos en colegio Mejía, solo 37 son alumnos y todos mayores de edad](#); Ministerio del Interior. October 7, 2014. [“Los 54 detenidos del Instituto Nacional Mejía aceptaron su participación en hechos violentos”](#).

<sup>672</sup> La República. October 3, 2014. [Dos meses de prisión y \\$ 60 de multa para 11 estudiantes detenidos](#); Fundamedios. October 7, 2014. [14 Jóvenes cumplirán dos meses de prisión tras protestas](#); Ecuavisa. October 3, 2014. [15 estudiantes del Colegio Mejía sentenciados a 2 meses de prisión](#); El Universo. October 3, 2014. [De los 60 estudiantes del colegio Mejía detenidos, 39 serán liberados y 4 seguirán presos](#); Human Rights Watch. October 20, 2014. [Ecuador: Police Rampage at Protests](#).

<sup>673</sup> Human Rights Watch. October 20, 2014. [Ecuador: Police Rampage at Protests](#); Fundamedios. September 24, 2014. [Al menos 100 personas con procesos penales tras protestas](#); El Universo. October 28, 2014. [Otra audiencia por protesta estudiantil](#)

<sup>674</sup> El Mercurio. November 18, 2014. [Fiscalía se abstiene de acusar a 31 estudiantes del Mejía](#); El Universo. November 25, 2014. [Jóvenes del Mejía y el Montúfar, reubicados](#).

<sup>675</sup> Human Rights Watch. October 20, 2014. [Ecuador: Police Rampage at Protests](#); Fundamedios. September 24, 2014. [Al menos 100 personas con procesos penales tras protestas](#); Plan V. September 23, 2014. [Crónica de una semana de ira](#).

<sup>676</sup> El Comercio. November 8, 2014. [Estudiantes liberados anoche esperan regresar el lunes al Colegio Mejía](#); La Hora. November 7, 2014. [Los 15 estudiantes del Mejía fueron liberados](#); El Diario. November 7, 2014. [Ordenan la libertad de los estudiantes del Colegio Mejía](#).

<sup>677</sup> El Telégrafo. September 23, 2014. [Espinosa: De 53 detenidos en colegio Mejía, solo 37 son alumnos y todos mayores de edad](#); El Universo. September 23, 2014. [Ministerio de Educación anuncia que identificará a ‘instigadores’ de protestas](#); La República. September 18, 2014. [30 estudiantes serán expulsados por el 17S, anuncia Ministro de Educación](#).

November, in a statement, the Ministry of Education informed that students who participated in the marches could incur in "student misconducts stipulated in the Education Act (LOEI), with the connotation of very serious". Thus for example "causing damage to physical infrastructure and equipment of the educational establishment "," damaging public or private property "and" participating in activities to promote cessation of educational services" would be considered as a misconduct. The communiqué stated that "the sanctions provided in the Act, ranged from disciplinary educational actions to the final separation of the student from the school to be relocated to another facility."<sup>678</sup>

373. On November 24 the Minister of Education reportedly stated that 39 students, 26 from Mejía School and 13 from Montúfar School, would be separated from their schools and relocated to other facilities.<sup>679</sup>

374. 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".

## **B. The Communications Act and its application**

375. On its 2013 Annual Report, the Office of the Special Rapporteur referred to the process of approval and enactment of the Communications Act. In different statements the Office of the Special Rapporteur noted that the Act establishes some important principles regarding the exercise of the right to freedom of thought and expression. Nevertheless, this Office also expressed its concerns over the onerous restrictions that the Law established when regulating these principles, which could make them practically unenforceable, severely impede the exercise of the right to freedom of expression and generate an intimidating effect incompatible with a democratic society<sup>680</sup>. In this section, the Office of the Special Rapporteur documented application of the Act through the sanctions during 2014 to journalists, cartoonists, anchors and media. Although the application of the Law corresponds to subsequent liability, the ambiguity of the terms of the Law and the exorbitant amount of the penalty, they could have a chilling effect on the exercise of the right to freedom of expression in Ecuador.

376. On October 15, the Superintendency of Information and Communication (Supercom) reported that during its first year of operation—from October 15, 2013 to September 25, 2014—it handled "162 proceedings, including complaints, consultations, and citizen requests". Of this total number, 124 pertained to claims and reports of alleged violations of the right to communication. At the same time, the agency opened 12 cases on its own initiative. During this period, the Supercom reportedly issued 43 decisions; 12 finding no infractions, and 31 ordering sanctions. The sanctions reportedly consisted of written warnings to the media, requests for public apologies for discriminatory content, and requests for correction. Sixty-two cases were brought by citizens, 45 by public and private institutions, and 17 by civil society organizations. Some 67 proceedings were shelved because the complaints failed to meet the requirements or were withdrawn by the complainants.<sup>681</sup>

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<sup>678</sup> Ministerio de Educación de la República del Ecuador. September 22, 2014. [Comunicado oficial](#); Fundamedios. September 24, 2014. [Al menos 100 personas con procesos penales tras protestas](#); Plan V. September 23, 2014. [Crónica de una semana de ira](#); El Universo. September 23, 2014. [Ministerio de Educación anuncia que identificará a 'instigadores' de protestas](#).

<sup>679</sup> Ministerio de Educación de la República del Ecuador. November 21, 2014. [Todos los procesos disciplinarios del Mejía resueltos: 16 estudiantes más se reintegran a clases el lunes](#); El Telégrafo. November 24, 2014. [Esta semana concluirá reubicación de estudiantes de los colegios Mejía y Montúfar que participaron en protestas](#); La República. November 24, 2014. [39 alumnos del Mejía y Montúfar deben dejar sus colegios](#).

<sup>680</sup> IACHR. [Annual Report 2013. 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.149. Doc. 50. December 31, 2013. Para. 327 AND ss; 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](#); IACHR. Office of the Special Rapporteur. [Carta al Estado de Ecuador](#). June 28, 2013.

<sup>681</sup> Superintendencia de la Información y Comunicación (Supercom). October 15, 2014. [La SUPERCOM cumple su primer año de](#)



377. The Office of the Special Rapporteur was informed of the penalty assessed by the Superintendency of Information and Communication (Supercom) against the newspaper *El Universo* and cartoonist Xavier Bonilla Zapata “Bonil” on January 31 for the cartoon published on December 28, 2013. According to the information received, the agency imposed a fine against the newspaper equal to 2% of its most recent quarterly sales, while the cartoonist was reportedly ordered to correct the publication within 72 hours. The case is related to a cartoon by “Bonil” published in *El Universo* about the raid carried out at the home of Fernando Villavicencio, an advisor to Assemblyman Clever Jiménez, on December 26. It depicted alleged members of law enforcement carrying away computers and boxes. The strip began with the phrase “Christmas present,” and appealed to satire to address an issue clearly in the public interest. Underneath it was a caption that read, “Police and Prosecutor’s Office raid the home of Fernando Villavicencio and seize documentation on reports of corruption.”<sup>682</sup> During President Rafael Correa’s live broadcast of January 4, he reportedly discredited the cartoon in the segment of the broadcast entitled “dirty trick of the week” calling the cartoonist a “hit man with a pen” that “cowardly vents his sick hatred”. Moreover, the president stated that they would “present a complaint, thank God we now have a Communication Act that protects us.”<sup>683</sup> On January 6, the Superintendent of Information and Communication, Carlos Ochoa, reportedly asked *El Universo* for a copy of the cartoon as well as the “identity of [its] author.”<sup>684</sup> The Supercom reportedly opened an administrative proceeding following internal report No. 001-2014 of January 10, stating that upon review of the cartoon and its caption, “it is evident that it is an inducement to lead readers to believe that the actions of the Office of the Public Prosecutor, with the support of law enforcement, were carried out deceptively [...]. This form of presenting an event through cartoons adversely affects and effectively delegitimizes the authority’s action [...], supports social agitation that creates an erroneous view of the facts, because of the alleged repressive action shown in the images.”<sup>685</sup> The newspaper and the cartoonist were reportedly summonsed to provide a response to the internal report. Following their statements, the Supercom scheduled the adjudicatory hearing for January 28.<sup>686</sup> In its decision of January 31, the Supercom reportedly held that the fine had been assessed against the newspaper “for not abstaining from taking an institutional position on the guilt or innocence of a person involved in the preliminary investigation alluded to in the cartoon and accompanying text.” On February 5, “Bonil” reportedly published the correction of his cartoon and *El Universo* paid the fine assessed against it. The correction shows an “exemplary” raid<sup>687</sup>.

378. On March 24, in Order No. 002-2014-DNGJPO-INPS, the Supercom sanctioned the media outlet Gráficos Nacionales S.A. Granasa, publisher of the newspaper *Extra*, with a fine equal to 10% of its average sales from the most recent quarter, for failing to comply with two requests for correction. As reported by the Supercom, the newspaper had “engaged in recidivism, as established in Article 23(3) of the LOC (Communications Act).” The sanction was reportedly related to the publications of November 23 and 24, 2013, which made reference to the death of the president and public relations officer of the Polytechnic University of Chimborazo (ESPOCH). That school had reported certain observations to the Supercom regarding the publications, and on December 17 the agency reportedly ordered the newspaper to print a

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#### gestión

<sup>682</sup> Superintendencia de la Información y Comunicación (Supercom). [Resolución No. 001-DNGIPO-INPS](#). January 31, 2014; El Telégrafo. January 31, 2014. [El Universo recibe sanción económica; Bonil deberá rectificar \(DOCUMENTO\)](#); Agencia Pública de Noticias del Ecuador y Suramérica (Andes). January 31, 2014. [La Supercom sanciona económicamente a diario El Universo: el caricaturista Bonil deberá rectificar](#); Inter American Press Association (IAPA). February 1, 2014. [Sanción contra dibujante y diario ecuatoriano incentiva la autocensura](#).

<sup>683</sup> Presidencia de la República del Ecuador/Official YouTube channel. January 4, 2014. [Enlace Ciudadano Nro.355 desde Llano Chico, Pichincha](#) [3:26:43].

<sup>684</sup> El Universo. January 7, 2014. [Superintendencia de Información pide copia auténtica y texto de una caricatura](#).

<sup>685</sup> Superintendencia de la Información y Comunicación (Supercom). Reporte interno No. SUPERCOM-001-2014. January 10, 2014. Available for consultation at: <http://www.jrmora.com/blog/wp-content/uploads/2014/01/informe-intercom.pdf>

<sup>686</sup> Superintendencia de la Información y Comunicación (Supercom). [Resolución No. 001-DNGIPO-INPS](#). January 31, 2014; El Telégrafo. January 31, 2014. [El Universo recibe sanción económica; Bonil deberá rectificar \(DOCUMENTO\)](#).

<sup>687</sup> Fundamedios. February 6, 2014. [Caricaturista rectifica y diario paga multa tras sanción](#); El Comercio. February 5, 2014. ['Bonil' rectificó caricatura y cumplió con sanción](#); ABC. February 7, 2013. [El caricaturista de «El Universo» paga la multa impuesta por el Gobierno ecuatoriano](#).

correction. In addition, on December 11, 2013, two individuals reportedly requested that the newspaper make a correction to an article that was published on December 6. The Supercom stated that “In both cases, the newspaper failed to comply with the right of correction established in Article 23(2) of the Communications Act. On this basis, the agency initiated the proceeding on its own motion because the paper had engaged in recidivism, as established in number 3 of that article.”<sup>688</sup> On April 10, the agency reportedly requested that the Office of the Comptroller General of the Republic open an enforcement action to order the collection of the fine assessed against *Extra*, because the newspaper had failed to pay the fine imposed in the order of March 24, 2014.<sup>689</sup>

379. On April 3, in Order SUPERCOM-DNJR-D-021-2014, the Supercom ordered the Corporación Ecuatoriana de Televisión S.A., the *Ecuavisa* Channel, and the host of the program “Contacto Directo,” Alfredo Pinoargote, to issue a public apology “to the Afro-Ecuadorian people and to all persons of diverse sexual orientation” for “discriminatory remarks regarding ethnicity and sexual orientation” made on January 7. The measure was taken after Assemblywoman Alexandra Ocles filed a complaint before the Supercom concerning statements made by Pinoargote that, she argued, denigrated “the Afro-Ecuadorian people and persons of diverse sexual orientation.”<sup>690</sup> On April 10, the Supercom informed that, in compliance with the administrative measure, the journalist reportedly apologized.<sup>691</sup>

380. On May 9, the Supercom reported the issuance of a written warning to the weekly newspaper *El Observador*, of the Province of Pastaza, for having “failed to observe the ethical rule” established in Article 10(1)(A) of the Communications Act, which makes it a requirement “to respect the honor and reputation of persons.” The complaint against the media outlet was reportedly filed by the mayor of Pastaza following the March 28 publication of a humorous article that, in his opinion, would negatively affect the honor and dignity of persons.<sup>692</sup>

381. On May 27, in an Order the Supercom sanctioned the media outlet *Cadena Ecuatoriana de Televisión CA Canal 10 CETV, TC Televisión*, for having disseminated content that was discriminatory on the basis of sex in its segment “El Nalgómetro” [“The Ass-o-Meter”] on the program “Soy el Mejor,” pursuant to Article 62 of the Communications Act (LOC), which prohibits the dissemination of discriminatory content. The Supercom reportedly ordered the network to broadcast, during the same time slot, “a public apology for the sexist treatment of women in that segment.” According to the plaintiff, the segment “El Nalgómetro,” which aired on January 28, showed “women moving their hips and buttocks,” which entailed the “vulgarization of the female body.” In an order dated April 30, the Council of Regulation and for the Development of Information and Communications (Cordicom) reportedly determined that the aforementioned segment violated “the constitutional principle of equality,” and objectifies “the female image, turning it into merchandise for consumption,” and concluded that it amounted to an administrative violation provided for in Article 62 of the LOC.<sup>693</sup> On June 3, in compliance with the Supercom’s order, the manager of *TC Televisión* and the female host of the program “Soy El Mejor,” reportedly offered a public apology to the viewers.<sup>694</sup>

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<sup>688</sup> Superintendencia de la Información y Comunicación (Supercom). March 26, 2014. [SUPERCOM multa a diario Extra por incumplir con un pedido de rectificación.](#)

<sup>689</sup> Superintendencia de la Información y Comunicación (Supercom). April 10, 2014. [SUPERCOM solicita a Contraloría inicio de acción coactiva.](#)

<sup>690</sup> Superintendencia de la Información y Comunicación (Supercom). April 4, 2014. [SUPERCOM emite resolución por contenido discriminatorio en caso Ecuavisa y del presentador Alfredo Pinoargote.](#)

<sup>691</sup> Superintendencia de la Información y Comunicación (Supercom). April 10, 2014. [Disculpas públicas del señor Alfredo Pinoargote.](#)

<sup>692</sup> Superintendencia de la Información y Comunicación (Supercom). May 9, 2014. [SUPERCOM emite amonestación escrita para el Semanario “El Observador”.](#)

<sup>693</sup> Superintendencia de la Información y Comunicación (Supercom). May 29, 2014. [SUPERCOM emite resolución por contenido discriminatorio en segmento ‘El Nalgómetro’.](#)

<sup>694</sup> Superintendencia de la Información y Comunicación (Supercom). June 3, 2014. [Disculpas públicas de TC Televisión y de la presentadora Gabriela Pazmiño.](#)

382. On June 4, the Superintendency of Information and Communication (Supercom) reportedly admitted a complaint against the newspapers *El Universo*, *El Comercio*, *Hoy* and *La Hora* for the alleged violation of the Communications Act (LOC) in reference to the prohibition against prior censorship provided in Article 18. The complaint was filed by Carlos Vera Quintana, coordinator of the Observatory on Communications and Rights [*Observatorio de Comunicación y Derechos*] and Fundación Pensar Crítico, who alleged that the newspapers did not covered “sufficiently” President Rafael Correa’s visit to Chile in May. The complainant considered the omission of information as considered it as an attack on “freedom of expression and the public service it provides to society.”<sup>695</sup> On June 5, the Supercom reportedly admitted a second complaint against the newspaper *La Hora* for failing to provide the “quality and in-depth” that the news coverage of President Correa’s visit to Chile deserved. This complaint was filed by Carlos Zambrano Brandt and alleged the violation of Articles 18 and 22 of the LOC.<sup>696</sup> Article 18 of the LOC establishes, *inter alia*, that “the deliberate and recurring failure to disseminate matters of public interest constitutes an act of prior censorship.” Article 22 refers to the right to receive information that is accurate and in the public interest.<sup>697</sup>

383. These complaints were reportedly filed after President Rafael Correa complained of the lack of media coverage of his visit and asked his supporters to take action in his live broadcast *Enlace Ciudadano* of May 17, 2014. The President stated: “Do you think that these activities of the President of the Republic in Chile, the meeting with Michelle Bachelet, the honorary doctorate [...] Do you think you had the right to be informed of this, right? We’re going to see now how the corrupt press denies us this right, and that is prior censorship, we’re going to see<sup>698</sup> [...] That is corruption mates, that is prior censorship. And it’s not that I’m interested in them giving me publicity or anything—it is your right to be informed. Those businesses don’t understand that because they are private businesses it is not that they can decide what to report and what not to report [...] You have the right to be informed, and all of this was hidden, it was completely ignored in *El Comercio* and *El Universo* [...] They are violating your human rights<sup>699</sup>. Later he stated “Speak out against such corruption, people of Ecuador! This cannot be accepted, make those people understand—if they haven’t understood—that just because they are private businesses, they can’t decide what to communicate or not communicate to us. Their right [sic] is to report on everything that is public interest, and clearly an official visit by the President of the Republic, whether they like it or not, is in the public interest, and the citizens have the right to receive information.”<sup>700</sup>

384. On June 16, the Supercom reported that a written warning had been issued to the newspaper *La Verdad* for failure to comply with ethical rules, regarding respect for “the honor and reputation of persons” (Art 10.1a) and for “the constitutional presumptions of verification, timeliness, contextualization, and corroboration in the dissemination of information of public relevance or general interest” (Art. 10.3a). In the warning, the Supercom advised the medium “of the obligation to correct and improve its practices for the full and effective exercise of the rights to communication,” and admonished it to “refrain from repeating the commission of acts contrary to the LOC” (Communications Act). The sanction reportedly originated with a complaint filed against the newspaper for articles published in February 2014 entitled “The Corruption Alliance,” “Dictatorship in Sucumbíos,” and “Damages to Sucumbíos over \$5 Million.” The articles were

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<sup>695</sup> El Universo. June 5, 2014. [Supercom da trámite a denuncia contra 4 periódicos, entre ellos EL UNIVERSO](#); La República. June 4, 2014. [Supercom llama a audiencia a 4 diarios por no informar visita de Correa a Chile](#); Fundamedios. June 6, 2014. [Diarios denunciados por no publicar sobre visita presidencial](#); Clases de Periodismo. June 5, 2014. [Ecuador: Llamen a audiencia a cuatro diarios por no informar visita de Correa a Chile](#); Luis Eduardo Vivanco’s Twitter account @luisevivanco. [4 de junio de 2014-17:59](#).

<sup>696</sup> Luis Eduardo Vivanco’s Twitter account @luisevivanco. [7 de junio de 2014 – 21:38](#); Luis Eduardo Vivanco’s Twitter account @luisevivanco. [7 de junio de 2014 – 21:37](#); La República. June 7, 2014. [Otra denuncia por no informar como se merecía viaje de Correa a Chile](#).

<sup>697</sup> Asamblea Nacional. [Ley Orgánica de Comunicación](#). Registro Oficial No. 22, published on June 25, 2013.

<sup>698</sup> Enlace Ciudadano. Secretaría Nacional de Comunicación de la República del Ecuador. [Enlace Ciudadano Nro. 374 desde La Merced Quito – Pichincha](#). May 17, 2014. [1:05:54].

<sup>699</sup> Enlace Ciudadano. Secretaría Nacional de Comunicación de la República del Ecuador. [Enlace Ciudadano Nro. 374 desde La Merced Quito – Pichincha](#). May 17, 2014. [1:23:04].

<sup>700</sup> Enlace Ciudadano. Secretaría Nacional de Comunicación de la República del Ecuador. [Enlace Ciudadano Nro. 374 desde La Merced Quito – Pichincha](#). May 17, 2014. [1:30:14].

allegedly “directed at and intended to cause harm to” the complainant, Nancy Morocho Velaña, who at the time was a candidate for prefect of the Province of Sucumbíos. The complainant reportedly requested that the newspaper demonstrate the veracity of the information published. The Supercom determined that the respondent newspaper “published reports without the proper verification and corroboration,” which “indicates the failure to observe the ethical rules” established in the LOC.<sup>701</sup>

385. Also on June 16, the Supercom reported that a sanction had been imposed against the weekly newspaper *El Vocero*, in the city of Nueva Loja, “for having failed to observe the ethical rule concerning human dignity, in relation to respect for the honor and reputation of persons.” The complaint against the newspaper was also reportedly filed by the then-candidate for prefect of the Province of Sucumbíos, Nancy Morocho Velaña, alleging that the newspaper article entitled “Alianza País Breaking apart in Sucumbíos,” which reported that her candidacy had caused a split in the party leadership of Alianza País and broke “the ethical rules provided for in the Communications Act.” According to the complainant, the publication “is unfounded” and is “simply a false opinion [...] that is an attack on the dignity of persons.” After investigating the case, the Supercom determined that “freedom of expression is not *carte blanche* to disseminate or publish content without respecting the rights of persons to their honor and reputation, which is precisely what has occurred in this case.” The Supercom issued a written warning to the paper, “admonishing it to refrain from repeating the commission of acts contrary to the Communications Act.”<sup>702</sup>

386. The newspaper *Hoy* was reportedly fined US \$57,800 by the Supercom “for failing to disclose its circulation figures in 17 editions” corresponding to the months of May and June, as it was reported on July 4.<sup>703</sup> On June 29, 2014, the newspaper *Hoy* reportedly decided to suspend its print edition and to publish only in digital format after denouncing the limits imposed by the government on the financing of its operations. In this respect, *Hoy* reportedly warned that the “gradual loss of freedoms and the curtailment of constitutional rights we are experiencing in Ecuador, the self-censorship imposed by the operation of the Communications Act, and the repeated direct and indirect attacks on the press that is not under government control have created, for more than seven years now, an environment that is totally adverse to the development” of the newspaper.<sup>704</sup> On July 3, the Minister of Communications reportedly issued a statement affirming that “the case of the newspaper HOY is a matter that is neither journalistic nor political; nor does it concern the absence of freedoms in the country—rather, it is exclusively a business matter” due, among other things, to the company’s lack of liquidity.<sup>705</sup> On August 26, the company that published *Hoy*, Edimpres S.A., suspended all of its operations after the decision of the Superintendency of Companies to liquidate it on the basis of its alleged financial troubles. According to the information available, the company decided to enter into a voluntary liquidation process, and named its then director as the liquidator. Nevertheless, the Superintendency of Companies refused to accept the appointment and instead designated its own liquidator.<sup>706</sup> The Minister of Communications reportedly stated that the decision to close was unrelated to freedom of expression or the Communications Act.<sup>707</sup> Moreover, the newspaper had reported losses of over

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<sup>701</sup> Superintendencia de la Información y Comunicación (Supercom). June 16, 2014. [Amonestación escrita para el Diario La Verdad](#).

<sup>702</sup> Superintendencia de la Información y Comunicación (Supercom). June 16, 2014. [SUPERCOM sanciona a Semanario El Vocero](#).

<sup>703</sup> Superintendencia de la Información y Comunicación (Supercom). July 4, 2014. [SUPERCOM emite resolución por incumplimiento de Diario Hoy en difusión de tiraje de 17 ediciones](#).

<sup>704</sup> Explored. June 29, 2014. [HOY cierra un ciclo e inicia nueva etapa](#); El Universo. June 30, 2014. [Diario Hoy empieza su nueva etapa como edición digital](#); El Telégrafo. June 29, 2014. [Diario Hoy lanzará versión impresa semanal](#).

<sup>705</sup> Secretaría Nacional de Comunicación. República del Ecuador. July 3, 2014. [Comunicado Oficial. Caso: Diario Hoy de Ecuador](#).

<sup>706</sup> El Telégrafo. August 24, 2014. [Edimpres S.A. no subsanó pérdidas del capital social](#); El Telégrafo. August 24, 2014. [“Las 730 compañías que están en disolución no pueden seguir operando”](#); El Universo. August 26, 2014. [Superintendencia de Compañías disolvió a empresa que editaba diario Hoy](#); La Nación/EFE-AP. August 27, 2014. [Ecuador: el gobierno de Rafael Correa liquida el diario crítico Hoy](#); El Ciudadano. August 27, 2014. [Directivos de Edimpres S.A optaron por disolución voluntaria de la compañía \(video\)](#).

<sup>707</sup> Secretaría Nacional de Comunicación. República del Ecuador. September 2, 2014. [“Que no se mienta diciendo que el cierre de diario Hoy se produjo por la Ley de Comunicación”](#).

50% of its total capital stock.<sup>708</sup> The Superintendent of Companies asserted that Edimpres S.A. “filed an application for early voluntary dissolution [...], however, the Superintendency by law cannot accept a voluntary dissolution when the company has employment-related debts.” Additionally, the Superintendent stated that “It makes no difference to us whether it is a media outlet, a pharmaceutical company, or a real estate company, what matters is that there are no grounds for dissolution.”<sup>709</sup> The Superintendency of Companies reportedly indicated that “it will dissolve approximately 700 companies that incurred losses 50% or more of their capital stock more than once in two years.”<sup>710</sup>

387. On July 18, the Supercom reported that it had issued a written warning to the manager and legal representative of the media outlet *Mitad del Mundo TV*, *Cayambe Visión Canal Nueve*, and to news director Williams Alonso Ramos Potosí, for failure to comply with the ethical rules established in the Communications Act with respect to the obligation to “abstain from intentionally omitting or distorting elements of the news or opinions disseminated.” The sanction reportedly stemmed from a complaint filed by the media outlet by the mayor of the Canton of Cayambe, William Perugachi, and the Attorney for the Decentralized Autonomous Government of the Canton of Cayambe, Rafael Villamar.<sup>711</sup>

388. On July 21, the Supercom reported that it had imposed a penalty against Editores Esmeraldeños Ediesa S.A., publisher of the newspaper *La Hora*, for “taking an institutional position on the guilt of persons involved in a legal investigation, prior to the issuance of a judgment by a competent judge,” in violation of Article 25 of the Communications Act, which stipulates that the media must refrain “from taking an institutional position on the guilt or innocence of persons involved in a legal investigation or criminal case until a final judgment is issued by a competent judge.”<sup>712</sup> The newspaper was reportedly fined the equivalent of 2% of its most recent quarterly sales. The sanction was said to be based on the publication of an article entitled “Security Video Reveals Alleged Taxi Driver Criminal.” The Supercom was of the opinion that the paper “took a morbid approach to the information surrounding the alleged crime on which the article was based.” The Supercom determined that the images published “create an attraction to an unpleasant and violent act,” and the use of phrases such as “compelling evidence”, “armed homicide with splashes [emaculaciones] of blood” and “the accused gave the stab that killed him” are “assertions that in their context attribute guilt for the commission of a crime to a person involved in a legal proceeding who has not yet been convicted.”<sup>713</sup>

389. On August 6, the Supercom reported that a written warning had been issued to the director of the weekly newspaper *El Milagreño*, Miguel Ángel Laje Muñoz, and to reporter Joel Arturo Moncada Barreno, “advising them of their obligation to correct and improve their practices for the full and effective exercise of the right to communication.” According to the Supercom, the paper failed to observe the ethical rules established in the Communications Act that order the media to “abstain from intentionally omitting or distorting elements of the news or opinions disseminated” in an article about the death of a woman under the headline “Woman Asphyxiated in Her Apartment.”<sup>714</sup>

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<sup>708</sup> El Telégrafo. August 24, 2014. [Edimpres S.A. no subsanó pérdidas del capital social](#); El Telégrafo. August 24, 2014. [“Las 730 compañías que están en disolución no pueden seguir operando”](#); El Universo. August 26, 2014. [Superintendencia de Compañías disolvió a empresa que editaba diario Hoy](#).

<sup>709</sup> Superintendencia de Compañías y Valores/ Oficial YouTube channel. Published on September 5, 2014. [Superintendencia de Compañías disuelve 728 empresas \(Telesur\)](#).

<sup>710</sup> El Telégrafo. August 21, 2014. [La Superintendencia de Compañías y Valores disolverá a 700 compañías](#); Superintendencia de Compañías y Valores/ Oficial Youtube channel. Published on September 5, 2014. [Superintendencia de Compañías disuelve 728 empresas \(Telesur\)](#); La Nación/EFE-AP. August 27, 2014. [Ecuador: el gobierno de Rafael Correa liquida el diario crítico Hoy](#).

<sup>711</sup> Superintendencia de la Información y Comunicación (Supercom). July 18, 2014. [SUPERCOM emite amonestación escrita a ‘Mitad del Mundo TV, Cayambe Visión Canal Nueve’](#).

<sup>712</sup> Asamblea Nacional. [Ley Orgánica de Comunicación](#). Registro Oficial No. 22, published on June 25, 2013.

<sup>713</sup> Superintendencia de la Información y Comunicación (Supercom). July 21, 2014. [La SUPERCOM multa a diario La Hora por tomar posición sobre asuntos judiciales](#).

<sup>714</sup> Superintendencia de la Información y Comunicación (Supercom). August 6, 2014. [SUPERCOM emite amonestación escrita al Semanario ‘El Milagreño’](#).

390. On August 14, the Supercom reported that a penalty had been imposed to the company Gráficos Orenses C.A. (Graforca), publisher of the newspaper *El Nacional*, for failing to disclose its circulation figures in 26 editions, corresponding to the period from June 1-26, 2014, in violation of Article 90 of the Communications Act.<sup>715</sup> A fine equal to 26 times the basic minimum monthly wage was assessed against the medium.<sup>716</sup>

391. On August 18, the Supercom reported that a penalty had been imposed against the biweekly newspaper *Rumiñahui y su gente*, published by the Decentralized Autonomous Government of the Municipality of Rumiñahui, for its failure to publish the entire content of the correction requested by the President of the Sports League of the Canton of Rumiñahui, in violation of Article 23 of the Communications Act. The Supercom reportedly ordered the paper to publish the requested correction in its next edition after the notice.<sup>717</sup>

392. Radio Hit S.A., *Radio Primavera*, and the hosts of the program “Habla Pueblo Habla,” Miguel Mena Villagómez and Manuel Cruz Arévalo, reportedly received a written warning from the Supercom, as reported on September 3. The Supercom issued the warning after it was determined that they had failed to comply with the ethical rule established in Article 10(1)(a) of the Communications Act, which makes it a requirement “to respect the honor and reputation of persons.” The person who reported the program “Habla Pueblo Habla” to the Supercom reportedly claimed to have been a “victim of ‘harassment’ for the past two years” by that program and that eight programs broadcasted in 2014 “injured his reputation, honor and family privacy”. This person additionally stated that, “for this reason, when he completed his term as Mayor of the Canton of Pedro Vicente Maldonado on May 14, 2014, his public credibility was undermined, and his honor and dignity were negatively affected.” Furthermore, the station had reportedly failed to comply with the Supercom’s request to turn over copies of the requested programs.<sup>718</sup>

393. On September 8, the Supercom reported that it had imposed a fine against the newspaper *La Prensa*, in the city of Riobamba, equivalent to 10 times the basic minimum monthly wage, for failing to disclose its circulation figures in its May 7 and July 20, 2014 editions, in violation of Article 90 of the Communications Act.<sup>719</sup>

394. On October 6, the Supercom announced its decision to order the media outlet Centro de Radio y Televisión CRATEL C.A. *Telem Amazonas* to publicly apologize for having disseminated “discriminatory content based on sexual orientation,” in the January 2 broadcast of the program “La Pareja Feliz.” The outlet was said to have violated Article 62 of the Communications Act, which prohibits the dissemination of “discriminatory content that has the intent or effect of diminishing or denying the recognition, enjoyment, or exercise of the human rights enshrined in the Constitution and in international instruments.” The complaint against the media outlet was reportedly filed by the president of Asociación Silueta X. The medium reportedly argued that the program is a comedy and not a journalistic, news, or documentary program, and that although it may be “indecent,” “vulgar,” or “offensive,” that “does not mean that it is discriminatory.” The Supercom reportedly determined that the program showed “annoyance and even repulsion toward a person whose sexual orientation is different from that of others.” According to the order, “media must bear in mind, at all times, that information is a constitutional right and the communication conducted through the media is a public service that must be provided responsibly and with excellence, and must respect human rights and

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<sup>715</sup> Asamblea Nacional. [Ley Orgánica de Comunicación](#). Registro Oficial No. 22, published on June 25, 2013.

<sup>716</sup> Superintendencia de la Información y Comunicación (Supercom). August 14, 2014. [SUPERCOM emite resolución por incumplimiento de Diario El Nacional](#).

<sup>717</sup> Superintendencia de la Información y Comunicación (Supercom). August 18, 2014. [SUPERCOM emite resolución en contra del medio de comunicación ‘Rumiñahui y su gente’](#).

<sup>718</sup> Superintendencia de la Información y Comunicación (Supercom). September 3, 2014. [SUPERCOM emite amonestación escrita a Radio Primavera](#).

<sup>719</sup> Superintendencia de la Información y Comunicación (Supercom). September 8, 2014. [SUPERCOM emite sanción por incumplimiento del art. 90 de la Ley de Comunicación](#).

promote their full applicability; which in the present case has not been met.”<sup>720</sup> On October 9, *Teleamazonas* reportedly broadcast a public apology.<sup>721</sup>

395. In addition, on October 31, the Supercom reported that a new sanction had been imposed against *Teleamazonas* “for the dissemination of content that is discriminatory on the basis of gender and sexual orientation” in the March 31 and April 4 episodes of the program “La Pareja Feliz.” The administrative measure orders the channel’s director to broadcast, during the same time slot, “a public apology to women and to all persons of diverse sexual orientation.” In addition, “it was established that this infraction was a repeat offense,” and therefore the new penalty “is a fine equal to 5 % of its most recent quarterly sales.” The complaint was reportedly filed by the president of the National Council for Gender Equality. The Supercom reportedly forwarded the case to the Council for the Regulation and Development of Information and Communications (Cordicom) for it to issue an order determining whether the content of the programs in question was discriminatory. The Council “determined that the content disseminated by the media outlet was discriminatory on the basis of gender and sexual orientation.”<sup>722</sup>

396. On November 14, the Supercom reported that a penalty had been imposed against the newspaper *El Norte* for “failing to publish, under equal conditions, the story and arguments of an individual involved in a court case, in relation to the news articles published in the September 19, 20, and 25, 2014 editions.” The complainant alleged that the newspaper had published articles “regarding as a foregone conclusion his guilt of the alleged crime of murder,” and “failed to publish information about his legal situation in a balanced manner.” The administrative measure reportedly ordered the paper to publish “the story and arguments that the claimant requests, in order for his current legal situation to be publicized,” within 72 hours of the notice of the decision. In addition, the Supercom reportedly determined that the media outlet “must present a public, written apology” to the person in question.<sup>723</sup>

397. On November 19, the Supercom reported that it had issued a written warning to Gráficos Nacionales S.A. Granasa, the publisher of the newspaper *Extra*, for failing to observe the ethical rule established in Article 10(3)(d) of the Communications Act, which states that the media must “prevent the morbid treatment of information about crimes, accidents, catastrophes, and other similar events.” The sanction reportedly stemmed from the paper’s coverage of a crime that included articles entitled “It Was All Bullets and Machetes,” “Massacre on the Mountain!” “Their Necks Were Hacked with Machetes!” and “Executed One by One with Machete Blows to the Neck.” The Supercom reportedly determined that the newspaper “presented photographs and texts that revictimized the human beings who suffered those attacks,” and disregarded “respect for the privacy of the victims, as well as their relatives who, besides suffering the loss of their loved ones, [had] to withstand the dissemination of images” published “insensitively, without the same consideration.” According to the Supercom, the images “disrespected the dignity and surroundings of the deceased and violated the ethical principles that must be observed by all media in the treatment of journalistic content.”<sup>724</sup>

398. On November 25, the Supercom reported that two sanctions were imposed against the newspaper *Expreso*, published by Gráficos Nacionales S.A. Granasa. First, it reportedly ordered the paper to present a written, public apology to the Refinería del Pacífico for failing to publish a correction requested by the refinery’s General Manager, “of the same characteristics, size, and in the same space in which the original article was published.” According to the Supercom, the paper violated Article 23 of the Communications Act

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<sup>720</sup> Superintendencia de la Información y Comunicación (Supercom). October 6, 2014. [SUPERCOM emite resolución por contenido discriminatorio en el programa ‘La Pareja Feliz’.](#)

<sup>721</sup> Superintendencia de la Información y Comunicación (Supercom). October 24, 2014. [Disculpa pública de Teleamazonas.](#)

<sup>722</sup> Superintendencia de la Información y Comunicación (Supercom). October 31, 2014. [SUPERCOM emite resolución por contenido discriminatorio en cinco capítulos del programa ‘La Pareja Feliz’.](#)

<sup>723</sup> Superintendencia de la Información y Comunicación (Supercom). November 14, 2014. [Diario El Norte infringió el artículo 27 de la Ley de Comunicación.](#)

<sup>724</sup> Superintendencia de la Información y Comunicación (Supercom). November 20, 2014. [Diario Extra es sancionado por tratamiento morboso de la información en dos ediciones.](#)

(LOC), which states that “the media have the legal obligation to publish the appropriate corrections, free of charge, within a 72-hour period calculated from the filing of the claim by the adversely affected party. The corrections must be of the same characteristics and size, and in the same space, section, or time slot.” In addition, the paper was sanctioned with a fine equal to 2% of its most recent quarterly sales for taking an “institutional position on court matters,” in violation of Article 25 of the LOC, which states that the media must refrain from “taking an institutional position on the guilt or innocence of persons involved in a legal investigation or criminal case until a final judgment is issued by a competent judge.”<sup>725</sup>

399. The media outlet *Compañía Radiofónica Orense Emisora Radial CRO* and the host of the radio program “Informativo y Opinión Matinal,” Fernando Ugarte Enríquez, reportedly received a written warning for failing to observe the ethical rule established in the Communications Act which makes it a requirement “to respect the honor and reputation of persons,” as reported by the Supercom on November 27.<sup>726</sup>

400. On November 28, the Supercom reported that it had issued a written warning to the newspaper *El Nacional*, published by Gráficos Orenses C.A GRAFORCA, for failing to observe the ethical rule established in the Communications Act which states that the media must “prevent the morbid treatment of information about crimes, accidents, catastrophes, and other similar events.” The sanction reportedly was based on the August 2 publication of an article under the headline “Case of Suicide under Investigation,” which, according to the Supercom “involved the morbid treatment of information about suicides that occurred in the Province of El Oro.”<sup>727</sup>

401. Between May and November the Supercom sanctioned, on several occasions, eleven media outlets the violation of Article 28 of the Communications Act. This article states that “Any person who feels that he or she has been adversely affected by the reports of a media outlet is entitled to request copies of the programs or publications,” and such request must be answered “within a period of time not to exceed 3 days.” The agency fined each media outlet with “four times the general minimum monthly wage” (about USD \$ 1.360).<sup>728</sup>

### C. Judgment of the Constitutional Court on the Communications Act

402. On September 17, the Constitutional Court denied claims alleging the unconstitutionality of the Communications Act (LOC) for procedural reasons. It also denied actions challenging the constitutionality of 25 articles of the LOC (1, 3, 5, 6, 17, 18, 20, 21, 22, 24, 26, 30, 38, 40, 42, 48, 55, 59, 61, 63, 64, 71, 84, 90, and 96) on substantive grounds, and proceeded to make changes to two articles and to the interpretation of a third one. The Court declared the unconstitutionality of a phrase in Article 2 regarding the entitlement to and enforceability of the rights; as well as the unconstitutional addition of numeral 3 in Article 56, referring to the

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<sup>725</sup> Superintendencia de la Información y Comunicación (Supercom). November 25, 2014. [Diario Expreso inobservó los artículos 23 y 25 de la Ley de Comunicación.](#)

<sup>726</sup> Superintendencia de la Información y Comunicación (Supercom). November 27, 2014. [Radio CRO de Machala recibe amonestación escrita por incumplir norma deontológica.](#)

<sup>727</sup> Superintendencia de la Información y Comunicación (Supercom). November 28, 2014. [Diario 'El Nacional' recibe amonestación escrita por incumplir norma deontológica.](#)

<sup>728</sup> Superintendencia de la Información y Comunicación (Supercom). April 21, 2014. [SUPERCOM sanciona a 'Mitad del Mundo TV, Cayambe Visión Canal Nueve'](#); Superintendencia de la Información y Comunicación (Supercom). May 14, 2014. [SUPERCOM sanciona a la Radio Megaestación FM 92.9](#); Superintendencia de la Información y Comunicación (Supercom). May 28, 2014. [La SUPERCOM sanciona a la Radio Súper W 96.9](#); Superintendencia de la Información y Comunicación (Supercom). June 2, 2014. [La SUPERCOM sanciona a Radio Sky 107.7](#); Superintendencia de la Información y Comunicación (Supercom). June 5, 2014. [SUPERCOM emite resolución por incumplimiento de Teleamazonas en entrega de copias de programas Vivos y La Pareja Feliz](#); Superintendencia de la Información y Comunicación (Supercom). July 18, 2014. [La SUPERCOM sanciona a diario Extra por no entregar copias de ejemplares](#); Superintendencia de la Información y Comunicación (Supercom). August 7, 2014. [SUPERCOM sanciona a 'Canal Digital TV' por incumplir artículo 28 de la LOC](#); Superintendencia de la Información y Comunicación (Supercom). August 7, 2014. [SUPERCOM multa a Radio 'La Voz de su Amigo' por no entregar copias de programa](#); Superintendencia de la Información y Comunicación (Supercom). September 8, 2014. [SUPERCOM sancionó a Diario La Prensa por no entregar copias de ejemplares](#); Superintendencia de la Información y Comunicación (Supercom). September 19, 2014. [SUPERCOM emite resolución en caso de 'Radio Tricolor'](#); Superintendencia de la Información y Comunicación (Supercom). November 21, 2014. [Radio Gaviota, sancionada por no entregar copias de su programación.](#)



powers of the Superintendency of Information and Communication, for which it proceeded to add a phrase. Finally, it declared the partial unconstitutionality of Article 10(4)(i), referring to the ethical rules concerning the media.<sup>729</sup> The unconstitutionality of the LOC had been alleged in three separate actions: the first one filed by legislator Luis Fernando Torres on June 28, 2013, the second by 60 citizens on September 3, 2013, and the third by the Law Clinic of Universidad San Francisco de Quito on December 13, 2013. With eight affirmative votes, the Court ruled in favor of the three plaintiffs.<sup>730</sup> In 2013, the Office of the Special Rapporteur expressed, in a press release as well as in a public letter to the Illustrious State of Ecuador, its concern over the onerous restrictions that the law establishes, which could severely hinder the exercise of the right to freedom of expression and create a significant chilling effect that is incompatible with a democratic society.<sup>731</sup>

#### D. Freedom of expression and the Internet

403. During 2014, there were ongoing complaints by members of the political opposition to the Ecuadorian government that their personal email accounts had been hacked for purposes of stigmatizing them. Thus, for example, in January Martha Roldós, a former presidential candidate and former Assemblywoman, reported that her email account was hacked following the publication of an article in the State-owned newspaper *El Telégrafo* on January 6.<sup>732</sup> *El Telégrafo* stated that, with “documents obtained by this paper,” it had been able to trace the path of Roldós’s initiative to create a foundation and a news agency with international funding. According to *El Telégrafo*, the purpose of Roldós’s initiative was to “support the political opposition,” and would be financed by the National Endowment for Democracy (NED). According to the State-owned newspaper, the objective of that organization is “the weakening of governments that oppose U.S. policies.” *El Telégrafo* quoted *The New York Times*, which reported that the NED had been created “to do in the open what the Central Intelligence Agency (CIA) has done surreptitiously for decades.”<sup>733</sup> On January 7, the Public News Agency of Ecuador and South America [*Agencia Pública de Noticias del Ecuador y Suramérica*] *Andes* reprinted the article and the documents that had been published.<sup>734</sup> On February 3, Roldós reportedly filed a petition before the Office of the Public Prosecutor of Guayaquil to request documents from the director of *El Telégrafo*, Orlando Pérez, in order to learn the origin of the information published by the newspaper.<sup>735</sup> Roldós also reportedly filed a complaint before the Superintendency of Information and Communication (Supercom) on January 23 against *El Telégrafo* and other state-run media for the offense of “media lynching,” but the agency reportedly shelved the complaint. According to the agency, Roldós failed to submit a document proving her identity, and also failed to submit copies of the emails allegedly used to write the articles.<sup>736</sup> On this point, the newspaper *El Telégrafo* indicated that indicó que “it has been clear and transparent: the information published [...] was obtained from the documents in possession of several individuals and through

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<sup>729</sup> Corte Constitucional del Ecuador. [SENTENCIA N.º 003-14-SIN-CC. CASO N.º 0014-13-IN y acumulados N.º 0023-13-IN y 0028-13-IN](#). September 17, 2014. Fundamedios. September 17, 2014. [Corte niega demandas de inconstitucionalidad de la LOC](#); *El Telégrafo*. September 17, 2014. [CC niega demandas contra Ley de Comunicación](#); *El Universo*. September 18, 2014. [Corte Constitucional negó demandas en contra de Ley de Medios](#); Consejo de Regulación y Desarrollo de la Información y Comunicación (Cordicom). September 18, 2014. [Constitucionalidad de la Ley de Comunicación es ratificada por la Corte Constitucional](#).

<sup>730</sup> Fundamedios. September 17, 2014. [Corte niega demandas de inconstitucionalidad de la LOC](#); *El Telégrafo*. September 17, 2014. [CC niega demandas contra Ley de Comunicación](#); IACHR. Annual Report 2013. [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. 149. Doc. 50. December 31, 2013. Para. 337.

<sup>731</sup> IACHR. Annual Report 2013. [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. 149. Doc. 50. December 31, 2013. Para. 327 - 336.

<sup>732</sup> Fox News Latino. January 14, 2014. [Opositora de Ecuador denuncia que su correo fue hackeado, en un intento por desprestigiarla](#); *El Universo*. January 15, 2014. [Martha Roldós denuncia una ‘invasión’ a su correo](#).

<sup>733</sup> *El Telégrafo*. January 6, 2014. [La NED de EE.UU. financiará proyecto mediático en Ecuador](#).

<sup>734</sup> Agencia Pública de Noticias del Ecuador y Suramérica (Andes). January 7, 2014. [Política opositora de Ecuador tramita ayuda financiera con la NED de EEUU para montar fundación y agencia de noticias, confirma diario público](#).

<sup>735</sup> La República. February 3, 2014. [Martha Roldós presenta en Fiscalía pedido contra El Telégrafo](#); Radio Espectáculo. February 3, 2014. [Martha Roldós presenta en Fiscalía pedido contra El Telégrafo](#).

<sup>736</sup> Agencia Pública de Noticias del Ecuador y Suramérica (Andes). February 10, 2014. [Archivan denuncia contra medios públicos de supuesto linchamiento mediático presentado por opositora](#); *El Universo*. February 11, 2014. [Supercom archivó denuncia de Martha Roldós](#); Ecuador en vivo. February 11, 2014. [La Supercom archiva la denuncia de Martha Roldós por linchamiento mediático](#).

requests for information, which is the responsible and professional way to do so. EL TELÉGRAFO traced the path of the initiative and of the underlying requests [...].”<sup>737</sup>

404. The Office of the Special Rapporteur received information about processing of complaints of the Spanish company *Ares Rights* on behalf of the Ecuadorian government in order to delete content from YouTube or websites on grounds of copyright infringement. Thus, for example, on January 13, the newspaper *La República* denounced that one of its YouTube channels had been shut down pursuant to a complaint by *Ares Rights* for the alleged infringement of copyrights held by the state-run channel *Ecuador TV*. The newspaper stated that it occasionally uploaded videos of President Rafael Correa’s Saturday speeches to that channel.<sup>738</sup> According to Google’s transparency report, on January 27 the company *Ares Rights* requested the removal of 955 links based on the infringement of copyrights held by *Ecuador TV*. The site that was reportedly affected was *bajatodo.net*.<sup>739</sup>

405. On April 10, the Twitter account @Diana\_Amores was suspended for 24 hours because of a complaint lodged by *Ares Rights* alleging the infringement of a copyright held by the political party Alianza País by “using the logo.” The user had reportedly published an open letter from President Rafael Correa to that political party, which bore its logo. The user also asserted that this was not the first time she had been affected, given that some photographs of her two tweets were reportedly deleted on February 14.<sup>740</sup>

406. On August 29, *Ares Rights* reported the research portal *Plan V* for the alleged violation of the company’s intellectual property rights. The company reportedly asked the server hosting the portal to delete the content of a news article, under the threat of blocking access to the server. The portal *Plan V* reportedly corrected the photos that had given rise to the company’s request (a screenshot of the company’s Twitter page) and *Ares Rights* subsequently withdrew its complaint.<sup>741</sup>

407. On March 27, President Rafael Correa’s Twitter account was reportedly hacked. The president blamed the “extreme right of certain foreign countries” and the national opposition.<sup>742</sup> Two youths allegedly responsible for the hack were arrested on May 28, but were released by the Judge of the *Unidad de Flagrancia* next day for lack of evidence.<sup>743</sup>

408. On August 25 and 26, the journalism site *lahistoria.ec* reportedly sustained three denial-of-service attacks, which had shut it down. The portal, created on July 14, 2014, published prior to the attacks articles that were reportedly related to the enactment of the Monetary Code.<sup>744</sup>

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<sup>737</sup> El Telégrafo. January 13, 2014. [Tamia News y Mil hojas forman parte de ‘un proyecto más global’](#)

<sup>738</sup> La República. January 13, 2014. [Ecuador TV logra cerrar canal de YouTube de LaRepública](#); Fundamedios. January 15, 2014. [Youtube cierra canal de portal digital por denuncia de Ares Rights](#).

<sup>739</sup> Google. [Transparency Report](#). January 27, 2014.

<sup>740</sup> Fundamedios. April 11, 2014. [Twitter suspende cuenta tras reclamo de Ares Rights](#); Perseguidos Políticos Ecuador. April 11, 2014. [Polémica en redes por bloqueo a tuitera que posteó logo de Alianza PAIS](#); Electronic Frontier Foundation. May 15, 2014. [State Censorship by Copyright? Spanish Firm Abuses DMCA to Silence Critics of Ecuador’s Government](#); El País. December 15, 2014. [La censura en Ecuador llegó a Internet](#).

<sup>741</sup> El Universo. August 29, 2014. [Portal periodístico Plan V denuncia que firma Ares Rights lo quiere bloquear](#); La República. August 30, 2014. [Plan V denuncia que Ares Rights lo quiere bloquear](#); Fundamedios. August 29, 2014. [Ares Rights intenta censurar nota periodística](#); Rayuela Radio. September 1, 2014. [“La acción de Ares Rights contra Plan V es un intento de censura”](#).

<sup>742</sup> El Telégrafo. March 27, 2014. [La cuenta de Twitter del presidente Correa fue hackeada](#); El Universo/AP. March 28, 2014. [Rafael Correa denuncia que su cuenta de Twitter fue hackeada](#); El Comercio. March 27, 2014. [Rafael Correa asegura que su cuenta de Twitter fue ‘hackeada’](#).

<sup>743</sup> El Universo. May 30, 2014. [Dos detenidos para investigar ‘hackeo’ al Twitter del presidente Correa](#); El Comercio. May 29, 2014. [Los jóvenes acusados de hackeo a Twitter de Presidente fueron liberados](#); Panorama. May 30, 2014. [Detienen a dos hombres por hackear el Twitter de Rafael Correa](#).

<sup>744</sup> Fundamedios. August 28, 2014. [Portal de periodismo investigativo cae varias horas](#).

409. The Office of the Special Rapporteur learned of reports of alleged harassment against Facebook pages critical of the administration of President Rafael Correa, which have been subject to massive attacks denouncing them with the objective of having them taken down. This was reportedly the case with the pages “Crudo Ecuador,” “Rokoto Feo,” “A mí ya me aburrió la revolución ¿Y a ti?,” and “Ecuatoriano hasta las huevas,” among others.<sup>745</sup>

410. On September 15, the administrator of the Facebook page “Ecuatoriano hasta las huevas” reported a massive attack of complaints that reportedly caused the page—which had more than 100,000 followers—to be shut down permanently. Following this attack, a new page was reportedly opened. On September 24, Facebook took down the video entitled “Lo que Correa no quiere que veas” [“What Correa doesn’t want you to see”] from that page following a complaint alleging copyright infringement lodged by the company *Ares Rights*, on behalf of the Ministry of Communications (Secom) and the State-run channel Ecuador TV. The video reportedly showed images of the police repression of students during the demonstrations of September 17 and 18, combined with statements by President Correa, who had reportedly praised the police for their work on that day. The Facebook page reportedly contained the message: “Access to the following content that you published on Facebook has been withdrawn or canceled because we have been advised that it is a copyright infringement.” The account administrator reportedly stated that he had taken measures to prevent the video from also being removed from YouTube.<sup>746</sup> On September 29, YouTube also reportedly took down this user’s video, also apparently following a copyright infringement complaint by the Secom.<sup>747</sup>

## E. Stigmatizing statements

411. The Office of the Special Rapporteur has learned of repeated stigmatizing statements that high-ranking government officials have made regarding journalists and media workers. For example, on August 9, 2014, during his live broadcast *Enlace Ciudadano* No. 385, President Rafael Correa reportedly made disparaging remarks about, among others, the cartoonist Xavier Bonilla “Bonil,” and César Ricaurte, the Executive Director of Fundamedios, whom he accused of being “racism,” and having “double standards,” respectively.<sup>748</sup>

412. On March 27, journalist Betty Escobar, who lives in the United States, reportedly published an opinion piece in the newspaper *El Universo*. In the article “Vuelve a Nueva York,” [“Back in New York”] she criticized the trip that President Correa reportedly took to the United States.<sup>749</sup> On March 29, President Correa apparently referred to Escobar as a “hater” who “talks trash from New York.”<sup>750</sup> On April 7, the journalist reportedly received a floral arrangement at her home, with an envelope containing the message:

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<sup>745</sup> Fundamedios. September 26, 2014. [Páginas de Facebook críticas con el gobierno son censuradas](#); El País. December 15, 2014. [La censura en Ecuador llegó a Internet](#); PanAm Post. October 9, 2014. [Ecuador recurre a leyes de EE.UU. para censurar contenidos críticos al régimen de Correa](#); Inter American Press Association (IAPA). [Ecuador](#). General Assembly – Santiago, Chile. October, 2014; La Hora/Issuu. August 27, 2014. [Retiran de Facebook video sobre manifestantes golpeados](#). Pag. 10 (B1); Crudo Ecuador. No date. [El verdadero ataque sistemático](#); Information received by the Office of the Special Rapporteur on December 2014.

<sup>746</sup> Fundamedios. September 26, 2014. [Páginas de Facebook críticas con el gobierno son censuradas](#); PanAm Post. October 9, 2014. [Ecuador recurre a leyes de EE.UU. para censurar contenidos críticos al régimen de Correa](#); El País. December 15, 2014. [La censura en Ecuador llegó a Internet](#); Inter American Press Association (IAPA). [Ecuador](#). General Assembly – Santiago, Chile. October, 2014; La Hora/Issuu. August 27, 2014. [Retiran de Facebook video sobre manifestantes golpeados](#). Pag. 10 (B1).

<sup>747</sup> Fundamedios. October 1 2014. [Youtube retira video anteriormente censurado por Facebook](#); El País. December 15, 2014. [La censura en Ecuador llegó a Internet](#); PanAm Post. October 9, 2014. [Ecuador recurre a leyes de EE.UU. para censurar contenidos críticos al régimen de Correa](#).

<sup>748</sup> Presidencia de la República/Official YouTube Channel. August 9, 2014. [Enlace Ciudadano Nro. 385 desde Jama, Manabí](#) [3:18:00 – 3:39:20].

<sup>749</sup> El Universo. March 27, 2014. [Vuelve a Nueva York](#).

<sup>750</sup> Presidencia de la República/Official YouTube channel. March 29, 2014. [Enlace Ciudadano Nro.367 desde Tumbaco, Pichincha](#) (Published April 4, 2014) [3:09:00 – 3:09:20].

“Your friends from Ecuador we’ll soon visit you.” The same envelopes were reportedly sent to the residence of the journalist’s parents and aunt in the city of Guayaquil, Ecuador.<sup>751</sup>

413. Communications Minister [*secretario nacional de comunicación*] Fernando Alvarado reportedly requested to speak on the *Exa-Democracia* network’s program “*Revista Informativa Democracia*” with a telephone call on August 21. The minister reportedly made disparaging remarks about the participants on a panel that had been held during the program, and accused the network of “directly or indirectly pressuring” the Constitutional Court to rule on the legal actions challenging the Communications Act (LOC) that were pending before the Court at that time.<sup>752</sup>

414. On the live broadcast *Enlace Ciudadano* No. 387 of August 23, President Rafael Correa referred to journalist Emilio Palacio. The president stated, “This psychopath, how could he not cause indignation, comrades? However democratic and tolerant one may be, what would you do in my place, if you saw such a miserable human being as this guy? Would you not kick him? [...] How do you think, if you see a psychotic clown like Emilio Palacio—who is always aiming low blows at me—it would be like an antiseptic. Don’t you want to just kick a guy like that? He has no dignity anymore, he has nothing. These are the psychopaths I have to face, day in and day out.” These statements were apparently provoked by an article published by the journalist that made reference to an alleged secret trip that the president took to New York via private jet in April 2014.<sup>753</sup>

415. According to the information received, beginning on November 8 the Ministry of Communications (Secom) ordered the media to broadcast mandatory government programming entitled “*Esta es la verdadera libertad*” [“This Is True Freedom”].<sup>754</sup> The message consisted of a 3-minute spot featuring a woman dressed in white—who apparently represents freedom—surrounded by six aggressive and intimidating men. These individuals, dressed in black, explicitly represent the owners of banks, media outlets, and businesses. The men, who kidnap “freedom” against her will, ask her to “reconsider,” and they reproach her, among other things, for the fact that things “are going too far.” The representative of the media, for example, says to the woman in a threatening tone: “Just imagine not being able to call anyone a murderer or a thief in our media. On my radio station or television channel, or in my newspaper, I decide what to say and what to keep quiet.”<sup>755</sup>

416. On November 10, in a statement made before and after broadcasting this audiovisual piece, the television station *Ecuavisa* reportedly expressed its disagreement, arguing that the piece was government propaganda that “attempts to polarize public opinion, negatively and deliberately stigmatizing various sectors of society.”<sup>756</sup> On November 11, the television channel *Teleamazonas* also expressed its disagreement with broadcasting this content.<sup>757</sup>

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<sup>751</sup> El Universo. April 15, 2014. [Tuitera afirma que recibió amenazas en EE.UU. y Guayaquil](#); Human Rights Foundation. May 15, 2014. [Ecuador: HRF Condemns Harassment of Journalist in NYC Days After She Was Vilified by Correa](#); Plan V. May 25, 2014. [Censura estatal a través de los copyrights](#).

<sup>752</sup> Revista Informativa Democracia. August 21, 2014. [21-08-2014-Fernando Alvarado-Xavier Castro-Dalo Buca...](#) [2:45 – 14:00].

<sup>753</sup> Enlace Ciudadano. Secretaría Nacional de Comunicación de la República del Ecuador. [Enlace Ciudadano Nro 387 desde Llano Grande, Quito](#). August 23, 2014. [3:30:36 – 3:31:38]; Fundamedios. August 25, 2014. [Ponen precio a la cabeza de periodista exiliado](#); Inter American Press Association (IAPA). August 26, 2014. [SIP: amenazas de presidente Correa contra periodista son extremadamente peligrosas](#); El Comercio. August 25, 2014. [Rafael Correa habla de caerle a patadas a un periodista](#).

<sup>754</sup> Infobae. November 11, 2014. [Ecuavisa declara la guerra a Correa por un video "que polariza"](#); Fundamedios. November 11, 2014. [Cadena del Gobierno provoca el rechazo de canal de TV obligado a difundirla](#).

<sup>755</sup> El Pasado No Volverá/You Tube. November 10, 2014. [La Verdadera Libertad #ElPasadoNoVolverá](#).

<sup>756</sup> Infobae. November 11, 2014. [Ecuavisa declara la guerra a Correa por un video "que polariza"](#); Ecuavisa. November 12, 2014. [Sobre la cadena de la Secom](#); Fundamedios. November 11, 2014. [Cadena del Gobierno provoca el rechazo de canal de TV obligado a difundirla](#).

<sup>757</sup> El Comercio. November 11, 2014. [Teleamazonas también protesta por la cadena de la Secom](#); El Mercurio. November 13, 2014. [Ecuavisa y Teleamazonas se rebelan a cadenas del Gobierno](#); Fundamedios. November 12, 2014. [Teleamazonas también rechaza cadena de gobierno. Cordicom la defiende](#).

417. 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>758</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>759</sup>

418. 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>760</sup>

#### **F. Regulatory reforms**<sup>761</sup>

419. On January 20, President Rafael Correa signed the Regulations to the Communications Act (LOC) into law, amending some of the legal provisions enacted in 2013.<sup>762</sup> Article 3 of the Regulations went beyond the provisions of the LOC and stipulated that media outlets "that operate on the Internet, whose legal personality has been obtained in Ecuador, and that distribute news and opinion content, which have the same rights and obligations that the Communications Act establishes for the media outlets defined in Art. 5 of the Act," would be subject to oversight. For its part, Article 4 of the Communications Act states that that law "does not regulate information or opinions issued in a personal capacity on the Internet."<sup>763</sup>

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<sup>758</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>759</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>760</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>761</sup> At press time for this annual report, the Office of the Special Rapporteur received information that the National Assembly had passed the Telecommunications Act at the second debate, on December 17. Among other provisions, the Act reportedly creates a Telecommunications Oversight and Regulatory Agency that replaces the Superintendency of Telecommunications. One of the articles that has given rise to serious concerns is Article 8, on the Provision of Services during States of Emergency, which stipulates that: "In the event of an attack, domestic or international armed conflict, serious social unrest, public calamity, natural disaster, or national, regional, or local emergency, when the Executive Order declaring a State of Emergency issued by the President of the Republic involves the need for the use of telecommunications services, the providers that operate public telecommunications networks shall have the obligation to allow the direct and immediate control, by the agency responsible for national defense, of the telecommunications services in the affected area. Such control shall cease when the State of Emergency is lifted in accordance with Article 166 of the Constitution of the Republic of Ecuador and the State of Emergency Order." Asamblea Nacional. República del Ecuador. December 17, 2014. [Texto final para votación del Proyecto de Ley Orgánica de Telecomunicaciones](#); Asamblea Nacional. República del Ecuador. December 17, 2014. [Pleno Aprobó En Segundo Debate Ley Orgánica De Telecomunicaciones](#); Fundamedios. December 19, 2014. [Asamblea aprueba Ley que da control al Ejecutivo sobre las telecomunicaciones](#); Telesemana. December 18, 2014. [Asamblea Nacional de Ecuador aprueba Ley Orgánica de Telecomunicaciones](#).

<sup>762</sup> Secretaría Nacional de Comunicación. [Decreto No. 214](#). January 20, 2014.

<sup>763</sup> Asamblea Nacional. [Ley Orgánica de Comunicación](#). Registro Oficial No. 22, published on June 25, 2013.

420. Article 11 of the Regulations establishes that “the deliberate and recurring failure to disseminate matters of public interest constitutes an act of prior censorship when the objective of that concealment is to unlawfully obtain a benefit, favor a third party, and/or harm a third party.”<sup>764</sup>

421. On June 26, the legislative bloc of the Alianza País Movement headed by the President of the National Assembly—who is a member of that party—reportedly submitted a reform bill to the Constitutional Court seeking 17 amends to the Constitution of Ecuador.<sup>765</sup> The Assembly members requested the Court to determine which constitutional procedure corresponds to process each of the reforms.<sup>766</sup>

422. According to the reform bill, Article 384 of the Constitution would include the following initial clause: “Communication as a public service shall be provided through public, private, and community media.”<sup>767</sup>

423. On October 31, the Constitutional Court ruled on the request of “amendments” presented by the group of assembly members. Regarding the reform of Article 384, the Court indicated that the amendments must be processed through the procedure for amending the Constitution, set forth by Article 441 paragraph 2 of the Constitution<sup>768</sup>, because they do not seek to alter the fundamental structure or the nature and constituent elements of the State, do not set constraints on rights and guarantees, and do not change the procedure for amending the Constitution.<sup>769</sup>

424. On this point, the Office of the Special Rapporteur has stated that by considering that the exercise of freedom of expression through any medium is a public service, the State would be assuming extraordinary regulatory powers over the exercise of the fundamental right of each person to freely express him or herself through the medium of his or her choosing.<sup>770</sup> In this sense, it is of special concern that the designation of “communication” as a public service could turn the exercise of the right to freedom of expression into a mere activity subject to regulation by the public authorities and procedures that constrain the expression or dissemination of ideas, opinions and information to government control. According to the Inter-American jurisprudence, because they are linked to an inherent right of every human being, the various manifestations of freedom of expression, which include the exercise of journalism, written, artistic or symbolic expression, among others, cannot be conceived merely as the provision of public services.<sup>771</sup> In this regard, the Office of the Special Rapporteur has stated that freedom of expression is:

“one of the individual rights that most clearly reflects the virtue that marks – and characterizes – human beings: the unique and precious capacity to think about the world from our own perspective and communicate with one another in order to construct, through a deliberative process, not only the

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<sup>764</sup> Secretaría Nacional de Comunicación. [Decreto No. 214](#). January 20, 2014.

<sup>765</sup> Movimiento Alianza País. June 26, 2014. [Alianza PAIS entrega proyecto de enmiendas constitucionales a la Corte Constitucional](#).

<sup>766</sup> Corte Constitucional del Ecuador. November 10, 2014. [Gaceta Constitucional No. 0009. Dictamen](#).

<sup>767</sup> Movimiento Alianza País. June 26, 2014. [Alianza PAIS entrega proyecto de enmiendas constitucionales a la Corte Constitucional](#) (document).

<sup>768</sup> Art. 441. The amendment of one or various articles of the Constitution that does not alter the fundamental structure or the nature and constituent elements of the State, does not set constraints on rights and guarantees, and does not change the procedure for amending the Constitution shall be carried out as follows: [...]2. At the initiative of a number accounting for no less than one third of the members of the National Assembly. The bill of amendment shall be processed in two discussions; the second discussion shall be held, without delay, no later than thirty (30) days after a year has elapsed since the start of the first debate. The amendment shall only be adopted if it is supported by two thirds of the members of the National Assembly. Asamblea Nacional. [Constitución de la República del Ecuador](#).

<sup>769</sup> Corte Constitucional del Ecuador. October 31, 2014. [Corte Constitucional emite dictamen en cuanto a Reforma de la Constitución. Boletín de Prensa 104](#)

<sup>770</sup> CIDH. Relatoría Especial para la Libertad de Expresión. [Carta al Estado de Ecuador](#). June 28, 2013.

<sup>771</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. 70 y 71.

model of life that each one has a right to adopt, but the model of society in which we want to live. All our creative potential in arts, in science, in technology, in politics—in short, all our individual and collective creative capacity—fundamentally depends on the respect and promotion of the right to freedom of expression, in all its dimensions. This is therefore an individual right without which the first and foremost of our liberties would be denied: our right to think by ourselves and share our thoughts with others.”<sup>772</sup>

425. Regarding journalism, the Inter-American Court has stated that it “is the primary and principal manifestation of freedom of expression of thought. For that reason, because it is linked with freedom of expression, which is an inherent right of each individual, journalism cannot be equated to a profession that is merely granting a service to the public through the application of some knowledge or training acquired in a university or through those who are enrolled in a certain professional “colegio.”<sup>773</sup>

426. On July 14, President Rafael Correa forwarded a bill to amend the Telecommunications Act to the National Assembly.<sup>774</sup> This bill proposes the inclusion of an unnumbered article, after Article 13, that states: “Employment obligations of companies using the radio spectrum.- Employees of companies that have contracts with the State for the provision of telecommunications services, and that use the radio spectrum for such purpose, shall receive 3% of the earnings. The remaining 12% shall be paid to the State, which shall allocate those funds to social investment and telecommunications development projects, especially for the universality of service. Such projects must be consistent with the National Development Plan. The employment-related obligations of these companies to their employees shall be their responsibility exclusively, and in no way shall extend to the State.” The bill’s statement of legislative intent establishes that “It is imperative to adjust the specific regulations governing the provision of public services, as well as the operation, use, and benefit of natural resources belonging to the State.” Moreover, it indicates that it is clear that the laws relating to the telecommunications sector have not been adjusted to conform to the new constitutional framework, “and therefore there is a difference between the employees of other strategic sectors, such as the mining and hydrocarbons sector, and those that provide services to companies that use the radio spectrum in the provision of telecommunications services.”<sup>775</sup>

## **G. Access to information**

427. On September 12, the National Assembly published the Monetary and Finance Code in the Official Gazette, approved on July 24. Article 17 on “classified information” states that “For purposes of safeguarding the monetary and financial sustainability of insurance and securities, the Board may classify, for good cause, the information relating to their spheres of management, in accordance with the procedure established for such purpose.”<sup>776</sup>

428. Article 355 of the same legislation establishes that “No individual person or legal entity that learns of secret or classified information may disclose it in whole or in part. Failure to comply with these provisions shall be subject to sanctions under this Code, without prejudice to the respective criminal responsibility.” In this respect, Article 272 stipulates that the sanction shall be “a fine of twenty-five times the basic minimum monthly wage, without prejudice to the appropriate criminal responsibility.”<sup>777</sup>

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<sup>772</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. 7.

<sup>773</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. 70 y 71.

<sup>774</sup> Asamblea Nacional. Proyecto de Ley Reformatoria a la Ley de Telecomunicaciones. July 14, 2014. Available for consultation at: <http://www.asambleanacional.gob.ec/module-proceso-de-ley>; El Telégrafo. July 31, 2014. [Claro y Movistar destinarán el 12% de sus utilidades al Estado desde 2015](#).

<sup>775</sup> Asamblea Nacional. Proyecto de Ley Reformatoria a la Ley de Telecomunicaciones. July 14, 2014. Available for consultation at: <http://www.asambleanacional.gob.ec/module-proceso-de-ley>.

<sup>776</sup> Asamblea Nacional. [Código Orgánico Monetario y Financiero](#). September 12, 2014.

<sup>777</sup> Asamblea Nacional. [Código Orgánico Monetario y Financiero](#). September 12, 2014.

429. According to Inter-American standards, access to information, as an element of freedom of expression protected by the American Convention, is not an absolute right. Rather, it may be subject to limitations that remove certain types of information from public access. Nevertheless, such limitations must be in strict accordance with the requirements derived from Article 13.2 of the Convention—that is, the conditions of exceptional nature, legal establishment, legitimate objectives, and necessity and proportionality. In this precise sense, Principle 4 of the IACHR Declaration of Principles on Freedom of Expression states that “[a]ccess to information (...) 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.”<sup>778</sup>

430. 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>779</sup>

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

431. The Superintendency of Information and Communication (Supercom) reportedly hired two companies to monitor the media 24 hours a day. The Supercom is said to receive daily three reports on the news and opinion content put out by the print, radio, and television media, according to the institution’s “matrix alerts.”<sup>780</sup> It is also reported to have entered into a contract for a quarterly study of the media in order to verify compliance with the Communications Act.<sup>781</sup> In addition, the Index of the Violation of Rights in the Media, kept by the Communications and Rights Laboratory, was created to measure the violation of citizens’ rights in the media.<sup>782</sup>

432. On July 31, the newspaper *La Hora* of Manabí announced its decision to stop publishing its regional edition. They stated that some of the reasons that led them to the decision were the lack of government advertising, a paucity of private advertisers without “fear of the central government,” disproportionate labor costs and conditions, regulations, seizures, taxes, and the restrictions imposed by the Communications Act and the Regulations thereto.<sup>783</sup>

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<sup>778</sup> IACHR. Office of the Special Rapporteur. [The Inter-American legal framework regarding the right to access to information, Second Edition](#). OEA/Ser.L/V/II. CIDH/RELE/INF. 9/12. March 7, 2011. Para. 45.

<sup>779</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>780</sup> Superintendencia de la Información y Comunicación. May, 2014. [Detalle de los procesos de contratación publicados en el portal de compras públicas](#); El Comercio. June 16, 2014. [225 funcionarios para la vigilancia a los medios](#); El Universo. June 3, 2014. [Supercom contrata empresas para monitoreo de los medios](#).

<sup>781</sup> El Comercio. June 16, 2014. [225 funcionarios para la vigilancia a los medios](#); Fundamedios. June 10, 2014. [Se implementan mecanismos de vigilancia a los medios](#).

<sup>782</sup> Ministerio Coordinador de Conocimiento y Talento Humano. June 11, 2014. [El Laboratorio de Comunicación y Derechos presentará el Índice de Vulneración de Derechos en los Medios](#).

<sup>783</sup> La Hora/ISSUU. July 31, 2014. [Un sentido adiós](#); Ecuavisa. August 1, 2014. [Mogrovejo: el cierre de diario La Hora Manabí no tiene que ver con la ley](#); CRE Satelital. July 31, 2014. [Diario La Hora Manabita deja de circular](#).



433. The newspaper *El Meridiano* of Guayaquil announced on August 15 that it was discontinuing its print edition. In an editorial, the paper stated that the move was due to financial reasons related to the decrease in private, legal, and government advertising. The newspaper also announced that it would continue to publish digitally.<sup>784</sup>

434. The opinion program “Alternativa,” which was broadcast by *Radio Pichincha Universal*, was reportedly suspended as of November 28 as a result of the pressure from the mayor of the city of Quito. The program’s host, Marco Pérez, stated that the mayor had complained of “media lynching.”<sup>785</sup>

## I. Subsequent liabilities

435. On January 14, the National Court of Justice of Ecuador denied the petition for cassation [*recurso de casación*] and affirmed the convictions of Assemblyman Cléver Jiménez and advisor and journalist Fernando Alcibíades Villavicencio, who were sentenced to a year and a half in prison, and trade union leader Carlos Eduardo Figueroa, who was sentenced to six months for the false accusation of a crime “criminal judicial defamation” [*delito de injuria judicial*] against President Rafael Correa.<sup>786</sup> The judgment of April 16, 2013 also ordered to them pay damages equal to the monthly salary of the President for each one of the months that had passed between the filing of the complaint against them (August 4, 2011) and the date of the notice of judgment. In addition, the defendants were ordered to apologize publicly to Correa in the print, television, and radio media, and to publish an extract of the judgment in four print media outlets, as well as to pay the President’s attorney’s fees.<sup>787</sup>

436. The case began in 2011, when Jiménez, Villavicencio, and Figueroa filed a complaint with the Office of the Public Prosecutor alleging that on September 30, 2010, President Rafael Correa committed crimes of humanity under Articles 7 and 8 of the Rome Statute, as well as other offenses provided for in the Ecuadorian Criminal Code, including the incitement of political chaos and civil discord. The case was shelved by the National Court of Justice, which called it “malicious and reckless.” The president subsequently brought legal action against the plaintiffs for the false accusation of a crime “criminal judicial defamation” [*delito de injuria judicial*].<sup>788</sup>

437. On March 21, a judge from the National Court of Justice issued an arrest warrant.<sup>789</sup> On March 24, the IACHR granted precautionary measures to protect the right to freedom of expression of Jiménez, Villavicencio, and Figueroa. The request for the precautionary measures was filed as part of a petition alleging the violation of rights enshrined in the American Convention on Human Rights.<sup>790</sup> On July 22,

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<sup>784</sup> Meridiano. August 15, 2014. [MERIDIANO cierra sus puertas](#); Ecuavisa/EFE. August 15, 2014. [Diario Meridiano cierra edición impresa y pasa a versión en Internet](#); Fundamedios. August 21, 2014. [Diario se convierte en 4to medio en suspender edición impresa](#); Radio Equinoccio/Agencia ANE. August 16, 2014. [DIARIO EL MERIDIANO DE GUAYAQUIL DEJO DE CIRCULAR Y CERRO PUERTAS](#).

<sup>785</sup> El Telégrafo. November 30, 2014. [Periodista denuncia que cierre de programa se debe a presiones del Cabildo quiteño](#); Ecuador Inmediato. November 30, 2014. [Otra vez, alcalde de Quito es acusado de “censura previa”, ahora es el periodista Marco Pérez Torres](#); Fundamedios. December 3, 2014. [Programa de opinión sale temporalmente del aire](#).

<sup>786</sup> El Comercio. January 15, 2014. [Corte Nacional ratificó sentencia contra Jiménez](#); Fundamedios. January 15, 2014. [Corte ratifica sentencia de prisión contra asambleísta y periodista](#); Ecuador Inmediato. January 14, 2014. [Corte Nacional de Justicia ratifica sentencia por 18 meses de prisión para asambleísta Cléver Jiménez y Fernando Villavicencio](#); Nodal. January 15, 2014. [Ecuador: Justicia ratifica sentencia de 18 meses a diputado opositor](#).

<sup>787</sup> Corte Nacional de Justicia. Sala Especializada de lo Penal. Causa 17721-2012-0826. Available for consultation at: <http://www.cortenacional.gob.ec/cnj/index.php/consulta-de-causas>; El Ciudadano/ISSUU. [Juicio N° 826-2012-P-L](#).

<sup>788</sup> IACHR. Annual Report 2013. [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. 149. Doc. 50. December 31, 2013. Para. 287.

<sup>789</sup> El Universo. March 21, 2014. [Asambleísta Cléver Jiménez ya tiene boleta para ir a prisión por 18 meses](#); La República. March 22, 2014. [Pachakutik dice que Cléver Jiménez está “a buen recaudo”](#); El Comercio/AP. March 21, 2014. [Ecuador: Emiten orden de prisión contra diputado opositor](#).

<sup>790</sup> IACHR. [Resolución 6/2014](#). Medida Cautelar No. 30-14. March 24, 2014.

Carlos Eduardo Figueroa was arrested and by the end of this report he was reportedly being held at the Men's Detention Center No. 4 in the city of Quito.<sup>791</sup>

438. In February 2014, the Office of the Public Prosecutor reportedly opened a preliminary investigation against Fernando Villavicencio for the publication of the book *Ecuador Made in China*, pursuant to a complaint filed by Marco Gustavo Calvopiña, the general manager of the State-owned company Petroecuador.<sup>792</sup>

439. On July 30, the Constitutional Court reportedly handed down a judgment establishing restrictions on the practice of journalism. According to the information received, it held that the media when disseminating information relating to the indigenous justice system must "avoid all distortions of the meaning of the indigenous justice system, and therefore are required to strictly apply the principles of verification, contextualization, and accuracy. They must, for such purposes, upon the authorization of the indigenous authorities concerned, document and present the relevant aspects of the proceedings for the administration of indigenous justice comprehensively, and not just disseminate an isolated aspect such as the ritual of punishment, thus avoiding the violation of the right to constitutionally protected information."<sup>793</sup>

440. The attorney for the company Sky Jet Elite Corporation, which is owned by an Ecuadorian businessman, filed a criminal complaint against journalist Emilio Palacio and former Assemblyman Cléver Jiménez alleging criminal conspiracy. The complaint apparently states that Palacio received information from Jiménez and that both reportedly contacted a journalist from a television network and turned over information indicating that an aircraft from Sky Jet had transported government officials without recording their identity.<sup>794</sup>

441. The Inter-American Commission on Human Rights, based on the American Convention on Human Rights, established more than a decade ago that the use of criminal law to sanction expressions about public officials is disproportionate and infringes the right to freedom of expression<sup>795</sup>. Particularly, the Commission has held that the use of criminal law to protect the honor of public servants from complaints submitted to the relevant authorities regarding the exercise of their functions is disproportionate. According to the Commission, the imposition of criminal sanctions for expressions used in complaints to the authorities can lead to prevent or inhibit social oversight over public servants.<sup>796</sup>

442. Principle 11 of the IACHR's Declaration of Principles on Freedom of Expression maintains that "Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as 'desacato laws,' restrict freedom of expression and the right to information." Also, Principle 10 of this Declaration establishes that "the protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest."

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<sup>791</sup> El Telégrafo. July 22, 2014. [Policía detiene a Carlos Figueroa](#); Ecuador Al Día. July 22, 2014. [Policía detiene a Carlos Figueroa](#); RPP/EFE. July 22, 2014. [Ecuador: Detienen a opositor sentenciado por injuriar a Correa](#).

<sup>792</sup> Fundamedios. August 1, 2014. [Fiscalía inicia indagación previa contra periodista condenado a prisión](#); Ecuadorenvivo. June 4, 2014. [Fiscal y juez archivan caso de corrupción pese a informe de responsabilidad penal de Contraloría](#).

<sup>793</sup> Corte Constitucional del Ecuador. [SENTENCIA N.º 113-14-SEP-CC](#). CASO N.º 0731-10-EP. July 30, 2014.

<sup>794</sup> El Telégrafo. August 18, 2014. [Abogado de Sky Jet Elite presentó denuncia contra Cléver Jiménez y Emilio Palacio](#); El Ciudadano. August 18, 2014. [Sky Jet Elite presentó denuncia contra Cléver Jiménez y Emilio Palacio](#); Alta Voz. August 21, 2014. [Otra denuncia contra Palacio, Jiménez y Saltos](#).

<sup>795</sup> IACHR. [Annual Report 1994](#). Chapter V (Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights). Título III. OEA/Ser. L/V/II.88. doc. 9 rev. February 17, 1995.

<sup>796</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.

## J. Presidential broadcasts and government interruption of news programs

443. During 2014, the Ecuadorian government continued its practice of issuing obligatory messages to order the publication of government opinion in private media outlets. In recent years, the government has continually used these types of broadcasts, which allow it to interfere directly in radio and television content, without any limitations, in order to express its point of view or challenge journalists and organizations that have issued information critical of the government. The following are a few examples:

444. On January 11, the Ministry of Communications (Secom) reportedly ordered the broadcast of mandatory government programming during the final edition of the program “30 Minutos Plus,” on the television network *Teleamazonas*, hosted by journalist Janeth Hinostroza. The mandatory programming, some 12 minutes long, was reportedly for purposes of airing a speech given by the Vice President of Bolivia, Álvaro García Linera.<sup>797</sup>

445. On February 12, the Ministry of Communications (Secom) reportedly ordered a mandatory broadcast lasting some 10 minutes that interrupted programming on the radio stations in the city of Quito and surrounding areas, in order to air a press conference given by the acting mayor of Quito and pro-government candidate for town council, Jorge Albán.<sup>798</sup>

446. In June, the Ministry of Communications (Secom) reportedly ordered three mandatory government broadcasts criticizing the journalistic work of several media outlets. On June 11, a three-minute government broadcast interrupted the news programs on *Ecuavisa* and *Teleamazonas*, and reportedly criticized the journalistic coverage of those media outlets. On June 12, there was a mandatory government broadcast lasting just over one minute that reportedly interrupted the programming on *Ecuavisa* three times in order to criticize the channel’s journalistic work. In addition, on June 16, a two-and-a-half-minute mandatory government broadcast calling into question an article published by the newspaper *El Comercio* was aired on *Ecuavisa* and *Teleamazonas*.<sup>799</sup>

447. On July 3, the Ministry of Communications (Secom) reportedly ordered the broadcast of five minutes of government programming during the program “Contacto Directo” on *Ecuavisa* in order to refute statements made by the director of the newspaper *Hoy*, Jaime Mantilla, regarding the newspaper’s decision to stop publishing its print edition.<sup>800</sup>

448. The Ministry of Communications (Secom) reportedly ordered a mandatory government broadcast that interrupted the programming of the television stations *Ecuavisa* and *Teleamazonas* on July 14, and disparaged the work of the newspaper *Expreso*, stating that the paper “deceived its readers” with an article published on May 9, 2014 concerning the Ecuadorian Social Security Institute (IESS). On July 15, the newspaper *Expreso* reportedly explained that it had published articles to clarify this issue on May 19 and 21.<sup>801</sup> Also, on July 15, the IESS reportedly conducted an audit on the premises of the newspaper *Expreso*. According to the authorities, this procedure was unrelated to the mandatory government broadcast.<sup>802</sup>

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<sup>797</sup> Fundamedios. January 15, 2014. [Cadena interrumpe última edición de programa investigativo](#). See also, Canal Oficial de la Secretaría Nacional de Comunicación del Ecuador (SECOM). March 14, 2014. [Vicepresidente de Bolivia dicta charla de medio ambiente](#).

<sup>798</sup> Fundamedios. February 14, 2014. [Secom ordena cadena para emitir mensaje de candidato](#); El Comercio. No date. [Alcaldía suspende peajes y baja multa a 10 días de los comicios](#).

<sup>799</sup> Fundamedios. June 23, 2014. [Secom emite una serie de cadenas para descalificar a los medios](#).

<sup>800</sup> Fundamedios. July 4, 2014. [Gobierno emprende campaña contra diario Hoy](#). See also, Canal Oficial de la Secretaría Nacional de Comunicación del Ecuador (SECOM). July 3, 2014. [La realidad de Diario HOY](#).

<sup>801</sup> Fundamedios. July 15, 2014. [Cadena descalifica a periódico y funcionarios hacen inspecciones](#); Expreso. July 15, 2014. [Una cadena nacional para EXPRESO](#).

<sup>802</sup> Expreso. July 16, 2014. [El IESS inicia auditorías en empresas](#); El Universo. July 16, 2014. [IESS inspecciona diario y clínica referidos en cadena del régimen](#); Ecuador Times. July 16, 2014. [IESS hace auditorías en Diario Expreso y Clínica de Guayaquil](#).

449. On July 16, 2014, the Ministry of Communications (Secom) reportedly initiated a campaign called “*La ciudadanía le habla a los medios*” [“The citizens speak to the media”], which entailed the mandatory broadcasting of a series of government programs in which citizens criticized the journalistic work of a specific reporter or interviewer. These broadcasts reportedly interrupted programming only on the private networks *Ecuavisa* and *Teleamazonas*. The television station *Ecuavisa* reportedly announced on August 1 that it would decline to air a government message entitled “*La ciudadanía le habla a los medios*,” which the government had ordered the media to broadcast. The audiovisual product featured various individuals giving their opinions—in many cases critical—regarding journalists and media outlets.<sup>803</sup> *Ecuavisa* released a statement calling into question the fact that the program mentioned journalists “by their full names, in most cases for purposes of discrediting them before the public.”<sup>804</sup> In one of the messages, a citizen refers to *Ecuavisa* journalist and program host Alfonso Espinosa de los Monteros, and recommends that he retire from the profession because of his age.<sup>805</sup> In a letter sent to Secom Director Fernando Alvarado, *Ecuavisa* reportedly maintained that the message was “discriminatory” against the journalist on the basis of his age, in violation of “the Universal Declaration of Human Rights, the Constitution of the Republic, and the Communications Act.”<sup>806</sup>

450. On August 2, the Chairman of the Council for the Regulation and Development of Information and Communications (Cordicom), Patricio Barriga, reportedly sent a letter to Communications Minister Fernando Alvarado, requesting the “immediate suspension” of the audiovisual piece that made reference to *Ecuavisa* journalist Alfonso Espinosa de los Monteros, in order to protect his rights.<sup>807</sup> Fernando Alvarado reportedly apologized to the journalist in a letter dated August 4. The official reportedly expressed, on behalf of the Ministry of Communications, his “sincere apologies, for content that, with no intention to cause harm, could be personally detrimental to his role and professional career as a journalist.”<sup>808</sup>

451. On September 16, a two-and-a-half-minute government broadcast was reportedly ordered during an interview program on *Radio Centro*. The government message called out journalist Carmen Andrade, the host of that program, for a remark she had made while interviewing the political leader of the Avanza Party, Ramiro González.<sup>809</sup>

452. On October 2, a mandatory broadcast ordered by the Ministry of Communications (Secom) reportedly interrupted the program “*Los Desayunos 24 Horas*” on the *Teleamazonas* channel for six minutes, in order to dismiss and call defamatory the remarks reportedly made the previous day by host María Josefa Coronel. The journalist had made reference to alleged police repression during the protests of September 17 and 18, regarding videos that were circulating on the Internet. The government message also apparently called upon the Council for the Regulation and Development of Information (Cordicom) to take action based on alleged discrimination.<sup>810</sup>

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<sup>803</sup> Fundamedios. July 23, 2014. [Se emiten cadenas para enviar mensajes a comunicadores de TV](#); El Ciudadano/You Tube. August 9, 2014. [EC385: La ciudadanía le habla a los medios 1 A Espinosa](#); El Ciudadano/You Tube. August 9, 2014. [EC385: La ciudadanía le habla a los medios 2 A Espinosa](#).

<sup>804</sup> Ecuavisa. August 1, 2014. [Ecuavisa se abstiene de transmitir cadenas con mensajes que descalifican a periodistas y medios](#)

<sup>805</sup> El Ciudadano/You Tube. August 9, 2014. [EC385: La ciudadanía le habla a los medios 1 A Espinosa](#); El Ciudadano/You Tube. August 9, 2014. [EC385: La ciudadanía le habla a los medios 2 A Espinosa](#).

<sup>806</sup> Ecuavisa. August 1, 2014. [Ecuavisa se abstiene de transmitir cadenas con mensajes que descalifican a periodistas y medios](#); Ecuavisa/YouTube. August 1, 2014. Published by archivodigitaleu. [EVN 01 08 2014 Comunicado de Ecuavisa a la Secom](#).

<sup>807</sup> Consejo de Regulación y Desarrollo de la Información y Comunicación (Cordicom). August 2, 2014. [CORDICOM se pronuncia a favor de los derechos de Alfonso Espinosa de los Monteros, periodista de Ecuavisa](#); Ecuavisa. August 3, 2014. [Cordicom pide no emitir pieza audiovisual que critica a Alfonso Espinosa de los Monteros](#); El Comercio/EFE. August 3, 2014. [Cordicom pide suspender emisión de pieza oficial tras protesta de Ecuavisa](#).

<sup>808</sup> El Telégrafo. August 5, 2014. [Fernando Alvarado se disculpó con Alfonso Espinosa de los Monteros](#); El Comercio. August 5, 2014. [Fernando Alvarado ofrece disculpas a Alfonso Espinosa de los Monteros](#); Inter American Press Association (IAPA). [Ecuador](#). General Assembly – Santiago, Chile. October, 2014.

<sup>809</sup> Fundamedios. September 24, 2014. [Cadena descalifica a entrevistadora por su opinión](#).

<sup>810</sup> Fundamedios. October 4, 2014. [Cadena de gobierno pide sanciones contra presentadora](#).

453. According to the information received, on October 7 the Ministry of Communications (Secom) issued a mandatory government broadcast that lasted for five minutes during the interview program 'Buenos Días' on *Radio Visión*, in order to disparage journalist and station director Diego Oquendo.<sup>811</sup> In addition, two other mandatory government broadcasts were issued on November 12 and 14, lasting three and five minutes, respectively, on the same program. Those messages, ordered by the Secom, were reportedly issued for purposes of "clarifying erroneous notions" asserted by Oquendo. The journalist had reportedly been called into question and accused of lying after reporting on alleged economic benefits received by some public servants.<sup>812</sup>

454. On October 20, a mandatory government broadcast by the Ministry of Communications (Secom) lasting some 10 minutes reportedly interrupted *Ecuavisa's* afternoon news program. The purpose of this message was apparently to disprove statements by Assemblyman Andrés Páez that had been broadcast on the program concerning the alleged hiring of internationally renowned actors to take part in the government of Ecuador's campaign against the oil company Chevron.<sup>813</sup>

455. On October 28, the Ministry of Communications (Secom) reportedly ordered the nationwide broadcast of a five-minute radio message disparaging journalist Gonzalo Rosero of the *Exa-Democracia* radio station, as well as analyst Fernando Saltos Alvite. The message warned both of them that their statements "clearly constitute the incitement of financial panic under Article 322 of the new Criminal Code." Days earlier, the analyst had been interviewed by Rosero on his radio program, and they had discussed the use of electronic currency and the possibility that it could give rise to a process of de-dollarization. The government message reportedly maintained that the analyst's statement was "nonsense," since "electronic currency or other means of payment do not jeopardize dollarization."<sup>814</sup>

456. On November 12, the Council for the Regulation and Development of Information and Communications (Cordicom) reportedly issued a statement asserting that the "communications piece ordered by the Ministry of Communications, Secom, does not violate the Communications Act. Article 74(1) allows it to request the airing of spots free of charge in the media in order to disseminate topics of general interest, and it is the media's obligation to broadcast them." The Council stated that the content of the product "promotes public debate on matters of general interest such as human rights, including freedom of expression and citizen participation. Far from polarizing public opinion, it proposes reflection and deliberation on ideas surrounding fundamental topics for the democratic agenda," and it asserted that "it is inappropriate to call it stigmatizing."<sup>815</sup>

457. 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>816</sup> as well as some national bodies of States party to the American

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<sup>811</sup> Fundamedios. October 15, 2014. [Cadena descalifica opinión de periodista.](#)

<sup>812</sup> Fundamedios. November 18, 2014. [Dos cadenas acusan de metiroso a periodista y de tener un emporio familiar.](#)

<sup>813</sup> Canal Oficial de la Secretaría Nacional de Comunicación del Ecuador (SECOM)/You Tube. October 20, 2014. [Réplica ante declaraciones del asambleísta Andrés Páez](#); El Comercio. October 20, 2014. [Secom desmiente pagos a actores estadounidenses en caso MCSquared](#); Plan V. October 22, 2014. [Que Fernando Alvarado abra también sus cuentas: Páez.](#)

<sup>814</sup> Fundamedios. October 30, 2014. [Cadena advierte a periodista y analista con aplicación del código penal.](#)

<sup>815</sup> Consejo de Regulación y Desarrollo de la Información y Comunicación (Cordicom). November 12, 2014. [Comunicado del CORDICOM ante postura de medios y transmisión de cadena "Esta es la verdadera libertad"](#); Agencia Pública de Noticias del Ecuador y Suramérica (Andes). November 12, 2014. [Pieza comunicacional sobre "la verdadera libertad" aviva el debate público sobre los derechos en Ecuador](#); El Telégrafo. November 12, 2014. [Cordicom: cadena de Secom no viola la Ley de Comunicación.](#)

<sup>816</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.

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>817</sup> Additionally, the principle 5 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”.

458. 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>818</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>819</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>820</sup>

#### K. Other relevant situations

459. Relatives of journalist Fausto Valdiviezo, who was murdered on April 11, 2013, were reportedly the victims of threats and attacks during 2014. On April 16, the journalist’s brother Alfredo Valdiviezo reportedly received a death threat in a telephone call in which he was warned not to give any further statements regarding the crime committed against his brother. The caller reportedly also threatened to kill his relatives. This incident was reported to the Office of the Public Prosecutor of the Province of Guayas.<sup>821</sup> On April 24, the journalist’s mother, Luz Moscoso, also received a death threat in a telephone call in which the caller said she would be killed if she continued to talk about her son’s murder. The threat reportedly came after Moscoso gave a press conference at which she asked for the investigations into the crime to continue, after she had learned that on April 23 the Eleventh Criminal Court of Guayas [*Tribunal Undécimo de Garantías Penales del Guayas*] had acquitted four of the five defendants tried for the journalist’s murder.<sup>822</sup> A fifth defendant remained a fugitive from justice.<sup>823</sup> One of the most recent incidents reportedly

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<sup>817</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.

<sup>818</sup> I/A Court H.R. *Case of Apitz-Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 5, 2008. Series C No. 182. Para. 131.

<sup>819</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>820</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>821</sup> Fundamedios. April 16, 2014. [Amenazan a hermano de periodista asesinado hace un año](#); El Universo. April 17, 2014. [Hermano de Fausto Valdiviezo denunció amenazas](#); La República. April 17, 2014. [Hermano de Fausto Valdiviezo denuncia amenazas de muerte](#).

<sup>822</sup> Fundamedios. May 2, 2014. [Amenazas contra familia de periodista asesinado continúan](#); La República. April 24, 2014. [Implicados en crimen de Valdiviezo son declarados inocentes](#); Ecuavisa. April 23, 2014. [Declaran inocentes a los implicados en el asesinato de Fausto Valdiviezo](#); Expreso. June 19, 2014. [La familia de Fausto Valdiviezo denuncia un presunto atentado en su domicilio](#); El Universo. June 19, 2014. [Familia Valdiviezo denuncia tercer atentado en dos meses](#).

<sup>823</sup> Fundamedios. April 25, 2014. [Se declara inocentes a implicados en asesinato de periodista](#); El Comercio. No date. [Tribunal declara inocentes a procesados por caso Valdiviezo](#); Universo. June 19, 2014. [Familia Valdiviezo denuncia tercer atentado en dos meses](#).

occurred in the early morning hours of June 18, when unknown persons allegedly threw some type of acid on the journalist's mother's car in the city of Guayaquil.<sup>824</sup>

460. On September, 2014 in a reply letter sent to the newspaper *El Universo*, former Chairman of the Transitional Council of the Judiciary [*Consejo de la Judicatura de Transición*] Paulo Rodríguez reportedly warned the paper: "If you persist in your attempts to create even a shadow of doubt about me, I will have no choice by to exercise the rest of the powers that the Ecuadorian Nation grants me in defense of my legitimate rights." The reply was apparently related to several pieces of investigative journalism published by the newspaper about alleged irregularities in procurement contracts entered into during the period in which that Council was operating and was presided over by Rodríguez. Rodríguez reportedly told accused the newspaper's director of causing him "incalculable pain and suffering by attempting to tarnish [his] honor for 7 straight days." He also reportedly asserted that the newspaper undertook "a campaign to try to discredit not only [his] good name and honor but also, and rather crudely, the process of moral, ethical, and civil transformation of the Ecuadorian justice system."<sup>825</sup>

### **13. El Salvador**

#### **A. Progress**

461. According to information received, on June 25, the Court of First Instance of San Salvador [*Tribunal Primero de Sentencia de San Salvador*] sentenced an ex employee of the Court of Audit (RAC) [*Corte de Cuentas (CCR)*] to two years imprisonment – later changed to 96 weeks of community service – for the crime of coercion [*coacción*] against journalist Jessica Ávalos.<sup>826</sup> In December of 2011, the journalist was attacked by two members of the trade union of the CCR. On February 6, 2014 an investigating judge [*juzgado de Instrucción*] acquitted the two trade union members, but the Attorney General's Office [*Fiscalía*] appealed the decision and the Criminal Chamber of the First Instance of San Salvador [*Cámara Primera de lo Penal de San Salvador*] annulled the decision, although only in the case of one of the accused.<sup>827</sup>

462. The Office of the Special Rapporteur was informed that on July 9, the president of El Salvador, Salvador Sánchez Cerén, along with other governmental authorities, met with owners, directors and heads of the country's media outlets. At the meeting, information was provided about the government's new public safety policy, and there were conversations about journalistic coverage of the matter. As reported by media outlets, in that context the president made a commitment to respect freedom of the press and of expression.<sup>828</sup>

#### **B. Murders, threats and detentions against media outlets and journalists**

463. On July 12, journalist Carlos José Orellana, a cameraman for the local television channel *Canal 99*, in the city of Santiago de María, department of Usulután, was murdered. According to information received, two unknown individuals attacked him with a knife near his home. The crime was not clearly connected to the journalistic profession. Nonetheless, the Office of the Special Rapporteur urged the

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<sup>824</sup> Fundamedios. June 19, 2014. [Familia de periodista asesinado denuncia atentado tras amenazas](#); El Telégrafo. June 19, 2014. [Atentado contra el carro de la madre de Fausto Valdiviezo](#); El Universo. June 19, 2014. [Familia Valdiviezo denuncia tercer atentado en dos meses](#).

<sup>825</sup> Fundamedios. September 24, 2014. [Exfuncionario advierte a diario en carta de réplica](#); Paulo Rodríguez/ ISSUU. September 10, 2014. [El Ing. Paulo Rodríguez reivindica su honor ante falsas insinuaciones emitidas por el diario El Universo](#).

<sup>826</sup> La Prensa Gráfica. June 27, 2014. [Condenan a empleado de la CCR por coacción a periodista: El Mundo](#). June 27, 2014. [Exempleado CCR condenado por coaccionar a periodista. El Salvador.COM. December 29, de 2014. APES: En 2014 aumentaron las agresiones a periodistas.](#)

<sup>827</sup> La Prensa Gráfica. April 24, 2014. [Acusado de coaccionar a periodista irá a juicio.](#)

<sup>828</sup> Presidencia de la República. July 9, 2014. [Presidente Sánchez Cerén se reúne con medios de comunicación y los llama a unirse por la seguridad ciudadana](#); El Salvador.com. July 9, 2014. [Sánchez Cerén se reúne con representantes de los medios de comunicación](#); El Mundo. July 10, 2014. [Se reúnen gobierno y medios de comunicación.](#)

authorities to investigate the incident and judicially determine any possible connections to journalistic activity and freedom of expression.<sup>829</sup>

464. According to information received, on February 13, journalist Ciro Granados, director of the digital daily newspaper *La Página*, received death threats from a political leader.<sup>830</sup>

465. On July 16, journalist Oscar Martínez, coordinator of the 'Sala Negra' section of the digital newspaper *El Faro*, was detained for some 30 minutes by presumed agents of the National Civil Police [*Policía Nacional Civil (PNC)*]. The media outlet announced that the reporter, who was returning to San Salvador after covering the western part of the country, had been detained by presumed agents, who, claiming they had "orders from above," interrogated him about his investigation and the sources he had interviewed. The agents, who presumably belonged to the 911 service and the Anti-narcotics Division [*División Antinarcóticos*], asked Martínez if he was the author of certain reports published by *El Faro* associated with organized crime and the Police in the zone of Santa Ana and Ahuachapán<sup>831</sup>.

466. El principio 9 de la Declaración de Principios sobre la Libertad de Expresión señala: "[e]l asesinato, secuestro, intimidación, amenaza a los comunicadores sociales, así como la destrucción material de los medios de comunicación, viola los derechos fundamentales de las personas y coarta severamente la libertad de expresión. Es deber de los Estados prevenir e investigar estos hechos, sancionar a sus autores y asegurar a las víctimas una reparación adecuada".

### C. Access to public information

467. The Office of the Special Rapporteur was informed of possible limitations on the implementation of the access to public information Act. According to the Group Promoting the Transparency and Access to Public Information Act [*Grupo Promotor de la Ley de Transparencia y Acceso a la Información Pública*], consisting of diverse civil society organizations, state agencies are excessively classifying public information as reserved. At the same time, the Group [*Grupo Promotor*] has indicated that the Institute for Public Information Access [*Instituto de Acceso a Información Pública (IAIP)*], responsible for overseeing compliance with the law, lacks sufficient budget to properly function.<sup>832</sup> The same problem had been pointed out by the Institute itself. The Commissioner who presides over it, Carlos Ortega, has indicated that its low budget prevents it from exercising greater control and that they await Parliamentary consideration of a supplementary allocation.<sup>833</sup>

468. The media outlet *El Faro* denounced repeated evasions by state institutions in response to requests for access to public information. Among other things, they maintain that there is abusive use of article 21 of the law,<sup>834</sup> which permits certain information to be declared reserved. According to an

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<sup>829</sup> IFEX/Reporters Without Borders (RSF). July 16, 2014. [TV cameraman stabbed to death near his home in El Salvador](#); La Página. July 19, 2014. [PDDH condena asesinato de periodista y amenazas a otro en El Salvador](#); UNESCO. August 21, 2014. [Director-General condemns murder of Salvadoran cameraman Carlos José Orellana](#).

<sup>830</sup> La Página. February 18, 2014 (Last update). [Director de Diario La Página recibe mensaje sobre amenazas de dirigente político](#); Asociación de Periodistas de El Salvador (Apes). February 15, 2014. [Apes condena y pide a las autoridades investigar amenazas en contra del director de diario digital la página](#).

<sup>831</sup> El Faro. July 16, 2014. [Policías de la DAN acosan a periodista de El Faro](#); Asociación de Periodistas de El Salvador (Apes). July 17, 2014. [Comunicado de prensa](#); El Salvador.com. July 17, 2014. [Periódico El Faro denuncia acoso a periodista](#).

<sup>832</sup> El Salvador. September 29, 2014. [Advierten sobre faltas en Ley de Información](#); El Salvador.com. June 6, 2014. [LAIP: Excesivas reservas afectan acceso a la información](#).

<sup>833</sup> El Salvador. September 29, 2014. [Remueven a varios oficiales de acceso a la información](#); June 6, 2014. [LAIP: Excesivas reservas afectan acceso a la información](#).

<sup>834</sup> [Ley de Acceso a la Información Pública](#). April 8, 2011. "Confidentiality statement. Art. 21. If it deems that the information should be classified as confidential, the resolution of the competent authority shall be based on the observance of the following extremes:

- a. That the information falls within one of the grounds for exceptions to access to information under Article 19 of this law.
- b. That the release of the information in question could actually threaten the legally protected interest.



investigation by the media outlet, much of the information that is classified as reserved involves the use of public funds.<sup>835</sup>

469. On July 25, the Constitutional Chamber of the Supreme Court of Justice [*Sala de lo Constitucional de la Corte Suprema de Justicia*] granted an action for protection [*amparo*] filed by a citizen against the Public Information Officer of the Legislative Assembly [*Oficial de Información Pública de la Asamblea Legislativa*], alleging “violation of their rights of petition and access to public information.” In the request for access, the citizen requested information about the list of works of art, royalties and beverages acquired in 2012 by the Legislative Assembly [*Asamblea Legislativa*]. The Official had classified the information as confidential or nonexistent.<sup>836</sup> In ruling 155-2013,<sup>837</sup> the Chamber declared the request for protection [*amparo*] “admissible [*ha lugar*]” and ordered the Public Information Officer of the Legislative Assembly [*Oficial de Información Pública de la Asamblea Legislativa*] “to provide the actor with the list of works of art, Christmas gifts and beverages that were acquired by that state body in 2012, along with the corresponding invoices for each acquisition.”

470. On August 22, the Constitutional Chamber of the Supreme Court of Justice [*Sala de lo Constitucional de la Corte Suprema de Justicia*] declared unconstitutional the Political Parties Act [*Ley de Partidos Políticos*] contained in Legislative Decree N° 307 of February 14, 2013.<sup>838</sup> In ruling 43-2013,<sup>839</sup> the Chamber declared the “unconstitutionality due to omission [*inconstitucionalidad por omisión*]” of the law, for failing to comply –among other things— with “the mandates derived from the right of access to information and the principles of transparency and internal democracy of the political parties.” According to the ruling, the law does not regulate procedures to obtain information on the financing of the political parties, does not create an agency that would guarantee access to that right, and does not regulate the form and conditions to elect the pre-candidates of the parties and candidates for elected office. The Chamber ordered the Legislative Assembly [*Asamblea Legislativa*] to carry out, within two months, “the relevant reforms” according to the considerations of the ruling.<sup>840</sup>

471. According to information received, in compliance with the ruling by the Constitutional Chamber [*Sala Constitucional*], on October 31, the Assembly [*Asamblea*] approved Decree 843, which modifies the Political Parties Act [*ley de Partidos Políticos*].<sup>841</sup> The modifications established that the parties shall facilitate access by the citizenry to information about the names of natural and legal persons who make contributions and the amount of the donations. However, dissemination of this information must have prior authorization from the donors, a requirement that has been questioned by civil society organizations.<sup>842</sup> It also establishes that the political parties must make information on their public financing available to the Audit Court [*Corte de Cuentas*], the Supreme Electoral Tribunal [*Tribunal Supremo Electoral (TSE)*] and the

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c. That the damage that might occur with the release of information exceeds the public interest in knowing the information in question.”

<sup>835</sup> El Faro. October 19, 2014. [Así obstaculiza el gobierno el acceso a la información.](#)

<sup>836</sup> La Página. July 25, 2014. [Sala ordena a Asamblea publicar gastos en obras de arte, regalos y bebidas alcohólicas;](#) El Mundo. July 26, 2014. [Sala ordena a Asamblea dar información sobre regalos, bebidas y arte.](#)

<sup>837</sup> Corte Suprema de Justicia. Sala de lo Constitucional. Amparo 155-2013. July 25, 2014. Available for consultation at: <http://freedominfo.org/wp-content/uploads/documents/155-2013.pdf>

<sup>838</sup> Corte Suprema de Justicia. Sala de lo Constitucional. August 26, 2014. [Comunicado de prensa;](#) El Salvador.com. August 26, 2014. [Corte Suprema de Justicia declara inconstitucional la Ley de Partidos Políticos.](#)

<sup>839</sup> Corte Suprema de Justicia. Sala de lo Constitucional. 26 [Sentencia 43-2013.](#) August 22, 2014,

<sup>840</sup> Corte Suprema de Justicia. Sala de lo Constitucional. 26 [Sentencia 43-2013.](#) August 22, 2014.

<sup>841</sup> Asamblea Legislativa de El Salvador. October 31, 2014. [Decreto N° 843. Refórmase la ley de partidos políticos;](#) Asamblea Legislativa de El Salvador. October 30, 2014. [Se aprueban reformas a la Ley de Partidos Políticos.](#)

<sup>842</sup> La Página. November 4, 2014. [Reformas a ley de Partidos limitan acceso a la información;](#) Contra Punto. November 10, 2014. [Todos los partidos reprueban en transparentar financiamiento;](#) La Prensa Gráfica. November 1, 2014. [Partidos seguirán con anonimato de sus fuentes de financiamiento.](#)

Ministry of Finance and Public Credit [*Ministerio de Hacienda*] “without the need for consent by the donors.”<sup>843</sup>

472. The modifications to the law order each political party to create an Information Access Unit [*Unidad de Acceso a la Información*] and set a time limit of ten business days to supply the requested information. The Assembly [*Asamblea*] determined that a request for information must include a written explanation of how the information is to be used.<sup>844</sup>

473. On the other hand, the reform characterizes as “confidential information,” “activities of a private, personal or family nature of the members, leaders, pre-candidates and candidates for elected office of the political parties.” The reform also enshrines as “confidential information” that which refers to “the donors, members, leaders and pre-candidates for elected office, that contain sensitive personal data, this being understood as referring to creed, religion, ethnic origin, political ideologies or association, trade union membership, sexual preferences, physical and mental health, moral and family situation and other personal information of a similar nature or which could affect the right to honor, personal and family privacy, and a person’s image or labor environment. With regard to candidates for elected office, confidential information shall only be considered that which refers to their ethnic origin, sexual preferences, moral and family situation”. What is characterized as “reserved” information involves “the deliberative processes of the internal bodies of the political parties; their political strategies and electoral campaigns; the contest in terms of all kinds of polls ordered by them. Also, information about ongoing proceedings of any nature being carried out by the Supreme Electoral Tribunal [*Tribunal Supremo Electoral*], to which the political parties are parties, until those proceedings have been definitively resolved.”<sup>845</sup>

474. The First Investigating Judge [*Juzgado 1° de Instrucción*] of San Salvador had decreed total reserve in the criminal trial for the crimes of embezzlement [*peculado*], illegal enrichment [*enriquecimiento ilícito*] and disobedience [*desobediencia*] by private individuals against former president of El Salvador Francisco Guillermo Flores Pérez.<sup>846</sup> Various civic organizations filed an appeal for protection [*recurso de amparo*] against the decision, arguing that it violates the right of access to public information.<sup>847</sup> The Constitutional Chamber of the Supreme Court of Justice [*Sala Constitucional de la Corte Suprema de Justicia*] admitted the action and issued a precautionary measure lifting the reserve on the trial, indicating that necessary measures should be taken to enable the petitioners to have access to the judicial dossier.<sup>848</sup> Subsequently, the Human Rights Ombudsman [*Procurador para la Defensa de los Derechos Humanos*], David Morales, issued a resolution declaring “violation of the rights to due judicial process, for violation of the principle of trial publicity, the rights to access to justice, to freedom of expression, and the right to citizen participation” [*la violación de los derechos al debido proceso judicial, por violación al principio de publicidad procesal, al derecho de acceso a la justicia, a la libertad de expresión, a la información, y al derecho de participación ciudadana*] by the First Investigating Judge [*Juez Primero de Instrucción*]. The Ombudsman [*Procurador*] recommended that the Judge “fully observe the principles of due process, particularly from the perspective of respect for human rights and due transparency that the case merits given its particular transcendence.”<sup>849</sup>

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<sup>843</sup> Asamblea Legislativa de El Salvador. October 30, 2014. [Se aprueban reformas a la Ley de Partidos Políticos.](#)

<sup>844</sup> Asamblea Legislativa de El Salvador. October 30, 2014. [Se aprueban reformas a la Ley de Partidos Políticos.](#)

<sup>845</sup> Asamblea Legislativa de El Salvador. October 30, 2014. [Se aprueban reformas a la Ley de Partidos Políticos.](#)

<sup>846</sup> Asociación de Periodistas de El Salvador (Apes). May 29, 2014. [Comunicado de prensa.](#)

<sup>847</sup> Corte Suprema de Justicia. Sala de lo Constitucional. [Sentencia 506-2014.](#) June 13, 2014.

<sup>848</sup> La Prensa Gráfica. June 13, 2014. [Sala ordena levantar reserva a caso de expdte. Flores;](#) [Transparencia Activa. June 13, 2014. Corte Suprema levanta la reserva total del caso Flores.](#)

<sup>849</sup> Procuraduría para la Defensa de los Derechos Humanos. June 30, 2014. [Procurador emite resolución sobre reserva total en el proceso judicial en contra del ex Presidente Francisco Flores por el destino de fondos donados por Taiwan;](#) [Transparencia Activa. July 1, 2014. Reserva total en caso expresidente Flores restringe derechos civiles y humanos de la población.](#)

475. El principio 4 de la Declaración de Principios de la CIDH afirma que “[e]l acceso a la información en poder del Estado es un derecho fundamental de los individuos. Los Estados están obligados a garantizar el ejercicio de este derecho. Este principio sólo admite limitaciones excepcionales que deben estar establecidas previamente por la ley para el caso que exista un peligro real e inminente que amenace la seguridad nacional en sociedades democráticas”.

#### D. Community radio stations

476. The Association of Radio Stations and Participatory Programs of El Salvador [*Asociación de Radios y Programas Participativos de El Salvador (ARPAS)*] urged the deputies of the Legislative Assembly [*Asamblea Legislativa*] to approve the initiatives of the Community Broadcasting Act [*Ley de Radiodifusión Comunitaria*] and the Public Media Act [*Ley de Medios Públicos*] that are under study by the Parliament. The Association maintains that the bills, the first of which was presented by them along with other organizations, and the second by the Executive Branch, will help to improve the democratization and plurality of the country’s media outlets.<sup>850</sup> According to ARPAS, due to difficulties in gaining access to frequencies, more than 20 community radio stations have joined together to purchase a single radio frequency (92.1 FM) and fragment it so that each may broadcast from their locations<sup>851</sup>

477. On April 9, various social and academic organizations that are part of the Network for the Human Right of Communication [*Red por el Derecho Humano a la Comunicación (REDCO)*], which promotes the right to communication and democratization of the media, filed a suit arguing unconstitutionality against four articles of the Telecommunications Act [*Ley de Telecomunicaciones*]. Among other things, they argue that the law “does not establish limits on the number of concessions that a natural or legal person may receive to exploit the radio spectrum,” which “has led to the establishment of true media oligopolies and monopolistic practices.”<sup>852</sup> They also question the characterization of a concession as a “private good” and its automatic renewal for periods of 20 years.<sup>853</sup> On June 20, the Constitutional Chamber of the Supreme Court of Justice [*Sala Constitucional de la Corte Suprema de Justicia*] admitted the lawsuit alleging unconstitutionality.<sup>854</sup> According to the information received, at the end of this report the lawsuit has not been decided.

478. According to information received, on May 12, the Network for the Human Right of Communication [*Red por el Derecho a la Comunicación (REDHCO)*] had requested that the General Superintendence of Electricity and Telecommunications [*Superintendencia General de Electricidad y Telecomunicaciones (SIGET)*] and the Presidency of the Republic [*Presidencia de la República*] suspended the auction of radio frequencies for the allocation of channels 7, 13, 14, 16, 18 and 20 for television broadcasting, announced some weeks before. The organizations sought to suspend “immediately the auction of radio frequencies to the highest bidder” and that they be allocated “to create more public media and community media.” The organizations view the auction as a mechanism for radiofrequency allocation as undemocratic and exclusive because it establishes the highest bid as the sole criteria.<sup>855</sup>

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<sup>850</sup> Transparencia activa. April 24, 2014. [Exhortan a diputados aprobar iniciativas de leyes de medios públicos y comunitarios](#); Voces. June 13, 2014. [Propuesta de Ley de Radiodifusión Comunitaria un año dormida en la Asamblea](#); Red por el Derecho a la Comunicación (ReDCo). May 12, 2014. [Comunicado de prensa](#).

<sup>851</sup> Arpas. No date. [Nosotros](#); Transparencia Activa. August 12, 2014. [ARPAS acusa a ASDER de mentir sobre proyecto de ley de radios comunitarias](#); Aler. August 14, 2014. [El Salvador: Radios comunitarias desmienten al presidente de ASDER](#).

<sup>852</sup> Aler. [Carta inconstitucionalidad contra régimen de concesiones El Salvador](#). April 9, 2014. Available for consultation: [http://aler.org/index.php?option=com\\_phocadownload&view=file&id=266:carta-inconstitucionalidad-contra-regimen-de-concesiones-el-salvador&Itemid=195&lang=es](http://aler.org/index.php?option=com_phocadownload&view=file&id=266:carta-inconstitucionalidad-contra-regimen-de-concesiones-el-salvador&Itemid=195&lang=es)

<sup>853</sup> Transparencia Activa. April 15, 2014. [Piden declarar inconstitucional 4 artículos de la Ley de Telecomunicaciones](#); Observacom. April 10, 2014. [Sociedad civil presenta recurso de inconstitucionalidad contra ley de telecomunicaciones](#); Comunicándonos. April 10, 2014. [Demanda de inconstitucionalidad en contra la Ley de Telecomunicaciones de El Salvador](#).

<sup>854</sup> El Mundo. August 22, 2014. [Sala admite demanda contra cinco artículos de ley telecomunicaciones](#); Comunicándonos. August 22, 2014. [CSJ admite recurso de inconstitucionalidad contra la Ley de Telecomunicaciones](#).

<sup>855</sup> Red por el Derecho a la Comunicación (ReDCo). May 12, 2014. [Comunicado de prensa](#).

479. On May 16, the Constitutional Chamber of the Supreme Court of Justice [*Sala de lo Constitucional de la Corte Suprema de Justicia*] issued a precautionary measure and suspended the television frequency auction. The tribunal, in the context of a lawsuit alleging unconstitutionality filed against the Telecommunications Act [*Ley de Telecomunicaciones*] by various civic organizations in 2012, resolved to provisionally suspend “the provisions of the Telecommunications Act [*Ley de Telecomunicaciones*] that regulate the procedure for processing applications and granting concessions for use of the radio spectrum, along with the effects of those provisions of the Regulation of the Telecommunications Act [*Reglamento de la Ley de Telecomunicaciones*] that implement them.”<sup>856</sup> The lawsuit alleging unconstitutionality refers to the procedure for handling requests and the public auction of concessions.<sup>857</sup>

480. On June 2, the Attorney General’s Office [*Fiscalía General de la República (FGR)*] reported the start of an ex officio investigation of the General Superintendence of Electricity and Telecommunications [*Superintendencia General de Electricidad y Telecomunicaciones (Siget)*] in relation to the frequencies auction.<sup>858</sup>

### **E. Media concentration**

481. On April 10, the General Superintendence of Electricity and Telecommunications [*Superintendencia General de Electricidad y Telecomunicaciones (Siget)*] resolved to reallocate channel 37 (on the UHF band) to the frequency of channel 11 (VHF), a few hours after channel 37, whose concession was held by the Universidad Francisco Gavidia, was sold to the TV RED S.A. company. VHF band channels are in greater demand than UHF, because of better signal quality and fewer transmission difficulties. The decision was criticized by civic organizations and media outlets who believe it was intended to benefit TV RED, which is owned by a relative of Mexican entrepreneur Ángel González. The Salvadoran Broadcasting Association [*Asociación Salvadoreña de Radiodifusión (Asder)*], and the Salvadoran Association of Advertising Media [*Asociación de Medios Publicitarios Salvadoreños (AMPS)*], published a communiqué requesting that the Attorney General’s Office [*Fiscalía General*] investigate the legality of the procedure.<sup>859</sup>

482. On June 2, the Attorney General’s Office [*Fiscalía General de la República (FGR)*] reported that it would carry out an ex officio investigation into the transference of the frequencies.<sup>860</sup> In August, the Siget board of directors ordered that the reallocation of channel 37 to channel 11 be revoked. Subsequently, the Constitutional Chamber of the Supreme Court [*Sala de lo Constitucional de la Corte Suprema*] ordered compliance with the Board’s decision<sup>861</sup>. On September 23, the Siget confirmed that channel 11 would return to the frequency of channel 37.<sup>862</sup>

483. In March, the General Superintendence of Electricity and Telecommunications [*Superintendencia General de Electricidad y Telecomunicaciones (Siget)*] (SC) requested the Superintendence of Competition [*Superintendencia de Competencia (SC)*] to issue an opinion on “the potential risks in terms of competition (strengthening of dominant position or other related aspects) that could arise due to the possible granting of radio spectrum to existing concessionaires in the television market of El Salvador.”<sup>863</sup> The request

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<sup>856</sup> Sala Constitucional de la Corte Suprema de Justicia. May 16, 2014. [65-2012](#). Inconstitucionalidad; El Mundo. May 16, 2014. [Sala de lo Constitucional suspende subastas de frecuencias de TV](#); La Página. May 16, 2014. [Asociaciones aplauden suspensión de subasta de frecuencias televisivas: Siget respetará la decisión](#).

<sup>857</sup> Corte Suprema de Justicia. Sala de lo Constitucional. 65-2012. Inconstitucionalidad. May 16, 2014. Available for consultation at: <http://www.observatoriojudicial.org.sv/attachments/article/7252/65-2012.pdf>.

<sup>858</sup> La Página. June 3, 2014. [Fiscalía investigará a SIGET por subasta de frecuencias de TV](#); Transparencia activa. June 4, 2014. [Pedirán a Fiscal general investigar todas las concesiones de radios y televisión](#).

<sup>859</sup> El Salvador. May 29, 2014. [Proceso exprés para cambiar el canal 37 al 11](#).

<sup>860</sup> El Salvador. June 2 2014. [Fiscalía investiga subasta de frecuencias de la SIGET](#).

<sup>861</sup> Asociación Salvadoreña de Radiodifusores. September 23, 2014. [Fallo de CSJ avala orden de que Canal 11 vuelva al 37](#).

<sup>862</sup> La Página. September 23, 2014. [Siget confirma que canal 11 volverá a la frecuencia de canal 37](#).

<sup>863</sup> Superintendencia de Competencia. June 5, 2014. [Resolución SC-012-S/OC/R-2014 Res. 05/06/2014](#). Page 9

indicated that the SIGET “is analyzing the feasibility and advisability of designating portions of 6 MHz radio spectrum to be used for television broadcasting, with the idea of allocating at least six channels.” On June 5, the SC issued its opinion by means of a resolution that declares, among other things, the need to carry out a study in collaboration with the SIGET “on the conditions for competition in some of the markets that require use of the radio spectrum. The analysis shall aim to establish whether the markets where the spectrum has a direct use, along with related markets, are subject to an environment of effective competition, identifying agents that have dominant positions.”<sup>864</sup>

484. The SC indicated in its general conclusions that “radio spectrum concessions can play a determining role in conditions of competition in the markets, particularly where they constitute an important element.” It also indicated that the legal system for the process of contracting concessions has a mechanism to evaluate conditions of competition, which “facilitates scenarios where radio spectrum accumulation could be used as an entry barrier, closing off entry to new competitors and thus reducing future competitive pressures.” The SC recommended “urgently reforming” the Telecommunications Act [*Ley de Telecomunicaciones*] “to incorporate special measures and functions under the responsibility of the SIGET and the SC to preventively ensure rational and efficient use of the spectrum to enable effective competition and benefits for consumers.” It also recommended that the modifications be based, among others, on “ensuring effective use of the spectrum and authorizing the application of competitive factors in the respective concession process, supported by criteria that are not exclusively economic.” In this regard, it also recommended that the fixed time period of 20 years duration for concessions contain the prepositions “as much as” [*“hasta”*] and that the rule providing for automatic renewal of those concessions be eliminated, as long as return on the investments made has been ensured.<sup>865</sup>

485. The Salvadoran Radio Broadcasters Association [*Asociación Salvadoreña de Radiodifusores (Asder)*] indicated in relation to the resolution by the SC that “they want to hurt the independent radio broadcasters and television stations and favor the so-called ‘community radio stations’ and media outlets aligned with the government party [and that] this is not only a maneuver against the private television and radio broadcasters, as one might think, but rather against freedom of expression and the right of every Salvadoran to choose and to be duly informed.”<sup>866</sup>

486. The Office of the Special Rapporteur was informed that in November, the SC began a ‘Study on Conditions of Competition in Television Broadcasting.’ [*Estudio sobre condiciones de competencia en la televisión abierta*]. In effect, the SC had sent a letter to television companies on November 10 to participate in that study. In the letter, they also pointed to the relevance of the study, taking into account certain concessions in the next few years.<sup>867</sup>

487. Certain organizations such as the National Advertising Council [*Consejo Nacional de la Publicidad (CNP)*] and the Salvadoran Association of Advertising Agencies [*Asociación Salvadoreña de Agencias de Publicidad (ASAP)*] expressed their concern over that study, taking into account that the SC refers to changes that will be seen in the country with the expiration of those concessions, but without reaching that date nor the performance diagnosis of each media outlet that exploits the spectrum.<sup>868</sup>

488. The Office of the Special Rapporteur recalls that the democratic scope of freedom of expression recognized in the American Convention includes not only the right of all individuals to freely express themselves, but also the right of the public to receive the maximum variety of information and ideas

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<sup>864</sup> Superintendencia de Competencia. June 5, 2014. [Resolución SC-012-S/OC/R-2014 Res. 05/06/2014](#). Page 9.

<sup>865</sup> Superintendencia de Competencia. June 5, 2014. [Resolución SC-012-S/OC/R-2014 Res. 05/06/2014](#). Page 9.

<sup>866</sup> ElSalvador.com. November 19, 2014. [Asder: Superintendencia está inclinada contra TV](#);

<sup>867</sup> ElSalvador.com. November 17, 2014. [Superintendencia de Competencia ordena estudio para revisar concesiones TV](#); Voces. November 18, 2014. [Superintendencia de Competencia impulsa estudio para revisar concesiones TV](#).

<sup>868</sup> La Prensa Gráfica. November 24, 2014. [Preocupación por objetivo de estudio que realizan a medios](#); Diario CoLatino. November 26, 2014. [Superintendente de Competencia califica de “exageradas” preocupaciones por estudio al mercado de la televisión](#).

possible. This means, among other things, that the regulation of radio broadcasting should include setting aside space on the spectrum for a diverse system of media outlets that can together represent a society's diversity and plurality of ideas, opinions, and cultures. In this sense, the different kinds of media (public and independent of the executive, private for-profit, and community or private non-profit) must be recognized and have equitable access to all available transmission technology, including the new digital dividend.<sup>869</sup> 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.

489. The State regulatory framework 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. It is also essential that the entire process of assignment and regulation be in the hands of an independent, technical body of the government. The body should be autonomous and free from political pressures, and it should be subject to the guarantees of due process, as well as judicial review<sup>870</sup>. In this context, and as the Office of the Special Rapporteur has repeatedly indicated, radio broadcasting regulatory frameworks should expressly recognize community media and as a minimum contain the following elements: (a) simple procedures for obtaining permits; (b) the absence of onerous technological requirements that in practice block even the filing of a request for space with the State; and (c) an allowance for using advertising to fund the station.<sup>871</sup> Finally, to assure free, vigorous, and diverse television and radio, private media should have guarantees against State arbitrariness, social media should enjoy conditions that prevent them from being controlled by the State or economic interests, and public media should be independent from the Executive. Principle 12 of the Declaration of Principles holds that, "The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals."

## **14. United States**

### **A. Progress**

490. In January, the city of New York reportedly agreed to pay close to US \$18 million to settle the civil rights claims brought by approximately 1,600 plaintiffs, including journalists, protesters, and passersby who had claimed to have been wrongfully arrested during the 2004 Republican National Convention. Under this agreement, each plaintiff will reportedly receive some US \$6,400.<sup>872</sup> During the 2004 Convention, several journalists were reportedly detained, some for several hours. There was also reportedly confusion over the credentials that would be recognized as valid, as some had been issued by the New York City Police and others by the Convention organizers.<sup>873</sup>

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<sup>869</sup> IACHR. [Annual Report 2009. 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. 68-69.

<sup>870</sup> As the Office of the Special Rapporteur pointed out in its Annual Report 2008, "[r]ules such as the above allow for the protection of commercial channels and radio stations from abusive influences and provide them with the security that they will not be subject to arbitrary decisions, whatever their orientation may be. These types of rules also encourage the existence of state or public television channels and radio stations that are independent of governments and vitally promote the circulation of ideas and information not usually included in commercial programming (because of low profitability), and not generally given air time on social or community channels or radio stations (because of high production costs or because of the topics covered). Finally, regulations such as the ones proposed would enable the recognition and promotion of social communications media such as community channels and radio stations, which play an essential role in the democracies of our region." IACHR. [Annual Report 2008. 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. 106-107.

<sup>871</sup> IACHR. [Annual Report 2008. 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. 227-228; IACHR. [Annual Report 2007. 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. 5-6.

<sup>872</sup> The New York Times. January 15, 2014. [New York City to Pay \\$18 Million Over Convention Arrests](#); The Wall Street Journal. January 15, 2014. [New York City Settles Republican National Convention Arrest Lawsuits](#); CBS New York. January 15, 2014. [City To Pay \\$18 Million To Settle 'Wrongful' Arrests During 2004 RNC](#); Reporters Committee for Freedom of the Press. January 16, 2014. [New York City settles for \\$18 million over RNC arrests of journalists, protesters](#).

<sup>873</sup> IACHR. [Annual Report 2004. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II

491. On May 27, the United States Supreme Court affirmed the decision of the New York Court of Appeals which held that journalist Jana Winter, of the *FoxNews.com* network, was not required to reveal her confidential sources when testifying at a trial held in Colorado against a defendant accused of opening fire inside a movie theater.<sup>874</sup> The case began when Winter published an article in July 2012 stating that the suspect had sent a notebook to his psychiatrist detailing how he would carry out the attack. The journalist reportedly cited two law enforcement officers as anonymous sources. In October 2012, the defense reportedly filed a motion before the District Court for the County of Arapahoe, Colorado, alleging that those sources had violated the gag order. According to the information available, the District Court in Colorado subpoenaed Jana Winter to appear at trial under penalty of prison, and requested that the New York Court of Appeals—the jurisdiction in which the journalist resided—execute this order.<sup>875</sup> On December 10, 2013, the New York Court of Appeals denied the motion, finding that the legal framework of the state grants “a mantle of protection” for confidential sources “that has been recognized as the strongest in the country.”<sup>876</sup> The defense filed its appeal to the Supreme Court on March 6.<sup>877</sup>

492. On June 16, the United States Court of Appeals for the Sixth Circuit<sup>878</sup> ruled that Nik Richie, operator of the digital tabloid *TheDirty.com*, could not be held legally liable for potentially defamatory statements made anonymously by a user on the website. With this decision, the Court of Appeals reversed a decision of the District Court that had held Richie liable and ordered him to pay US \$300,000 in punitive damages. In its decision, the Court of Appeals found that Richie and Dirty World “were neither the creators nor the developers of the challenged defamatory content that was published on the website,” as they did not make a “material contribution” to the illegality of the content and that the law “immunizes providers of interactive computer service against liability arising from content created by third parties.”<sup>879</sup>

493. On June 17, the Court of Specials Appeals of Maryland affirmed the decision of the Circuit Court for Baltimore City to dismiss a defamation suit filed by the Russian businessman founder of the company Midland Consult Ltd., against Journalism Development Network Inc., a nonprofit organization dedicated to investigative journalism. The Court found that the statements made by the medium were not defamatory, and that “the defamation of a company does not create a cause of action for its shareholders or owners.” The case began in November 2012, less than a year after that *Journalism Development Network* published several articles through its Organized Crime and Corruption Reporting Project about the transnational money laundering structures of organized crime groups, in which it mentioned the company

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(The Situation of the Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.122.Doc.4 rev.1. February 23, 2005. Para. 83.

<sup>874</sup> Supreme Court of the United States. Orders of the Court. CERTIORARI DENIED. 13-1096 HOLMES, JAMES V. WINTER, JANA. May 27, 2014. Available for consultation at: [http://www.supremecourt.gov/orders/courtorders/052714zor\\_5fci.pdf](http://www.supremecourt.gov/orders/courtorders/052714zor_5fci.pdf); Fox News. May 27, 2014. [Supreme Court rejects effort to compel FoxNews.com reporter to reveal sources](#); The Denver Post. May 27, 2014. [Fox News reporter Jana Winter won't have to testify about notebook in theater shooting case](#); Reporters Committee for Freedom of the Press. May 27, 2014. [Supreme Court won't hear Holmes appeal over Fox News reporter subpoena in Aurora theater shooting](#).

<sup>875</sup> New York Official Reports. Court of Appeals. [Matter of Holmes v Winter. 2013 NY Slip Op 08194 \[22 NY3d 300\]](#). December 10, 2013; Reporters Committee for Freedom of the Press. March 14, 2014. [Fox News reporter subpoenaed in James Holmes case](#); Fox News. May 27, 2014. [Supreme Court rejects effort to compel FoxNews.com reporter to reveal sources](#); The Denver Post. May 27, 2014. [Fox News reporter Jana Winter won't have to testify about notebook in theater shooting case](#); FoxNews.com. July 25, 2012. [EXCLUSIVE: Movie massacre suspect sent chilling notebook to psychiatrist before attack](#).

<sup>876</sup> New York Official Reports. Court of Appeals. [Matter of Holmes v Winter. 2013 NY Slip Op 08194 \[22 NY3d 300\]](#). December 10, 2013; Reporters Committee for Freedom of the Press. December 10, 2013. [New York high court quashes Fox News subpoena in Holmes theater shooting case](#); Columbia Journalism Review. December 11, 2013. [Jana Winter's victory](#); Fox News. December 10, 2013. [New York's top court blocks Colorado from forcing Fox reporter to reveal sources or face jail](#).

<sup>877</sup> Supreme Court of the United States. [No. 13-1096. James Holmes v. Jana Winter](#). March 12, 2014; The Denver Post. March 10, 2014. [James Holmes' lawyers take Fox News subpoena fight to Supreme Court](#); Columbia Journalism Review. March 7, 2014. [Fox News subpoena case appealed to Supreme Court](#).

<sup>878</sup> United States Court of Appeals for the Sixth Circuit. Sarah Jones v. Dirty Entertainment Recordings *et al.* June 16, 2014. Available for consultation at: [http://www.rcfp.org/sites/default/files/docs/20140616\\_170453\\_jones\\_v\\_dirty\\_world.pdf](http://www.rcfp.org/sites/default/files/docs/20140616_170453_jones_v_dirty_world.pdf); Reporters Committee for Freedom of the Press. June 17, 2014. [Sixth Circuit: TheDirty.com not liable for user's posts, even when commentary added](#).

<sup>879</sup> United States Court of Appeals for the Sixth Circuit. Sarah Jones v. Dirty Entertainment Recordings *et al.* June 16, 2014. Available for consultation at: [http://www.rcfp.org/sites/default/files/docs/20140616\\_170453\\_jones\\_v\\_dirty\\_world.pdf](http://www.rcfp.org/sites/default/files/docs/20140616_170453_jones_v_dirty_world.pdf)

494. On June 23, the United States Court of Appeals for the Second Circuit ordered the release of documents containing the legal analysis used by the government of the United States to justify the targeted killing of terrorism suspects abroad. The case began in June and October 2010 when reporters from *The New York Times* newspaper made a request under the Freedom of Information Act (FOIA) for copies of the opinions and memoranda drafted by the Office of Legal Counsel of the Justice Department to provide the Government's reasoning on the legality of such attacks. In view of the authorities' refusal to acknowledge the existence of the documents, *The New York Times* filed a lawsuit in December 2011. The respective District Court dismissed the lawsuit in January 2013 and the newspaper appealed. In its judgment, the Court of Appeals ordered, among other things, the release of redacted copies of the memoranda from the Office of Legal Counsel regarding the legality of targeted killings and the rationale for the denial of access to each one of the documents that would remain classified (Vaughn Index). In addition, the Court ordered that the other legal opinions drafted by the Office of Legal Counsel that would be kept confidential must be forwarded to the District Court for an *in camera* review to determine their potential release.<sup>881</sup>

495. On October 2, the United States District Court for the District of Columbia denied the Government's request to hold a closed hearing regarding the detention and forced feeding conditions of Abu Wa'el (Jihad) Dhiab, a detainee at Guantánamo since 2002. The case began on April 18, 2014 with a defense motion for a preliminary injunction asking the Court to prevent the Government from enterally feeding him and from forcibly extracting him from his cell. According to the information available, although he was declared eligible for release in 2009, Dhiab has remained in custody since then and went on a hunger strike in protest. In her decision, the judge stated that "One of the strongest pillars of our system of justice in the United States is the presumption that all judicial proceedings are open to the public whom the judiciary serves." In the Court's opinion, the Government "failed to meet its burden of establishing a substantial probability of prejudice to a compelling interest [...] that justified overcoming that presumption."<sup>882</sup>

496. In this same case, on October 3, the District Court ordered the unsealing, under specific conditions, of 28 videos containing images that showed Dhiab being subjected to forced cell extraction and forced feeding, which had been submitted by the government to Dhiab and then admitted to the case file. The request to unseal the videos was filed on June 20, 2014 by several media outlets that acted as third-party intervenors with the consent of the plaintiff Dhiab, including *The New York Times*, *The Associated Press*, *CBS Broadcasting*, *First Look Media*, *The Guardian*, *The McClatchy Company*, *National Public Radio*, *Reuters*, and *The Washington Post*. This would be the first judgment regarding a Guantánamo Bay detainee in which a court ordered the release of classified information in spite of the Government's opposition. In its opinion, the court held that "the fact that the Government has unilaterally deemed information classified is not sufficient to defeat the public's right." In order to keep the case file under seal and limit the public's right to access it, the government must demonstrate, "at a minimum, (1) a specific, tailored rationale for protecting a general category of information, and (2) a precise designation of each particular item of information that purportedly falls within the category described." It held that "The reasons it gives for protecting the information must demonstrate a "substantial probability of harm" to an "overriding interest." In this specific case, the Court

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<sup>880</sup> Court of Specials Appeals of Maryland. Maxim A. Stepanof et al. v. Journalism Development Network Inc. June 17, 2014. Available for consultation at: <http://www.lskslaw.com/documents/Stepanov.pdf>

<sup>881</sup> United States Court of Appeals for the Second Circuit. *New York Times Company v. United States Department of Justice*. Docket Nos. 13-422 (L), 13-445(CON). June 23, 2014. Available for consultation at: <http://caselaw.findlaw.com/us-2nd-circuit/1670577.html>

<sup>882</sup> United States District Court for the District of Columbia. *Abu Wa'el (Jihad) Dhiab v. Barack Obama, et al.* Civil Action No. 05-1457 (GK). Memorandum Opinion. October 2, 2014. Available for consultation at: [http://scholar.google.com/scholar\\_case?case=18085415909983168172&hl=en&as\\_sdt=6&as\\_vis=1&oi=scholar](http://scholar.google.com/scholar_case?case=18085415909983168172&hl=en&as_sdt=6&as_vis=1&oi=scholar); United States District Court for the District of Columbia. *Abu Wa'el (Jihad) Dhiab v. Barack Obama, et al.* Civil Action No. 05-1457 (GK). Memorandum Opinion of October 3, 2014. Available for consultation at: <http://www.lawfareblog.com/wp-content/uploads/2014/10/10-3-20141.pdf>



found that the justifications provided by the Government were “unacceptably vague, speculative, lack specificity, or are just plain implausible.”<sup>883</sup> The Government has reportedly appealed the decision.<sup>884</sup>

## B. Social protests

497. The Office of the Special Rapporteur received information about the excessive use of force by law enforcement and the arrest of hundreds of people, including journalists, during the demonstrations that took place in several cities around the country to protest an alleged pattern of police violence that resulted in the deaths of several African-American persons during this year.<sup>885</sup>

498. At least 212 individuals were reportedly detained in August in the city of Ferguson, Missouri, while protesting the death of Michael Brown, an 18-year-old African-American youth, at the hands of the local police. Most of these arrests were on charges of refusal to disperse.<sup>886</sup> During these protests, the local police implemented a “keep walking”/“five-second” rule, according to which the protesters reportedly had to keep moving during the protests or risk arrest.<sup>887</sup>

499. At least 15 journalists who were covering the protests were reportedly arrested and released. In some instances, the police had threatened them.<sup>888</sup> According to the information available, the following journalists were detained: Wesley Lowery from *The Washington Post*,<sup>889</sup> Ryan J. Reilly from *The Huffington Post*,<sup>890</sup> Rob Crilly from *The Telegraph*,<sup>891</sup> Pearl Gabel from *Daily News*,<sup>892</sup> Robert Klemko from *Sports Illustrated*,<sup>893</sup> Neil Munshi from *Financial Times*,<sup>894</sup> Ansgar Graw from *Die Welt*,<sup>895</sup> Frank Hermann from

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<sup>883</sup> United States District Court for the District of Columbia. Abu Wa'el (Jihad) Dhiab v. Barack Obama, et al. Civil Action No. 05-1457 (GK). Resolution of October 3, 2014. Available for consultation at: <http://www.lawfareblog.com/wp-content/uploads/2014/10/10-3-2014-Dhiab-order.pdf>; United States District Court for the District of Columbia. Abu Wa'el (Jihad) Dhiab v. Barack Obama, et al. Civil Action No. 05-1457 (GK). Memorandum Opinion of October 3, 2014. Available for consultation at: <http://www.lawfareblog.com/wp-content/uploads/2014/10/10-3-20141.pdf>

<sup>884</sup> The Guardian. December 2, 2014. [US to appeal judge's ruling on Guantánamo Bay force-feeding videos](#); National Law Journal. December 2, 2014. [Feds Appeal Order to Release Guantánamo Videos](#).

<sup>885</sup> CNN. August 22, 2014. [Who was arrested in Ferguson?](#); The New York Times. October 13, 2014. [Ferguson Protests Take New Edge, Months After Killing](#); LA Times. October 13, 2014. [Clergy among those arrested in Ferguson police station protest](#); Reuters. November 26, 2014. [More than 400 arrested as Ferguson protests spread to other U.S. cities](#); LA Times. November 25, 2014. [California unrest: Dozens arrested after Michael Brown decision](#); NBC Los Angeles. November 25, 2014 (Updated on November 26, 2014). [Nearly 200 Arrested in LA on Second Day of Ferguson Demonstrations](#); ABC News. December 5, 2014. [223 Arrested as Protesters, Police Clash in New York City Over Eric Garner Decision](#); Freedom of the Press Foundation. August 19, 2014 (Updated on November 26, 2014). [Documenting the Arrests of Journalists in Ferguson](#).

<sup>886</sup> CNN. August 22, 2014. [Who was arrested in Ferguson?](#); Ferguson Crisis. Arrest Data. August 2014. Available for consultation at: <http://i2.cdn.turner.com/cnn/2014/images/08/22/arrest.data.from.8-10.to.8-22.pdf>; CNN. November 11, 2014. [What happened when Michael Brown met Officer Darren Wilson](#).

<sup>887</sup> The Washington Post. October 6, 2014. [Federal Judges Tossed 5 second rule being used by Police in Ferguson Protests](#); The New York Times. October 6, 2014. [Judge Blocks Rule for Ferguson Protesters](#); American Civil Liberties Union. August 21, 2014. [There is no 5-Second Rule for the First Amendment, Ferguson](#).

<sup>888</sup> Freedom of the Press Foundation. August 19, 2014 (Updated on November 26, 2014). [Documenting the Arrests of Journalists in Ferguson](#); The Washington Post. August 18, 2014. [Police in Ferguson arrest and threaten more journalists](#); The Huffington Post. August 20, 2014. [All Of These Journalists Have Been Arrested In Ferguson](#); PEN American Center. October 26, 2014. [Press Freedom Under Fire in Ferguson](#).

<sup>889</sup> The Washington Post. August 14, 2014. [In Ferguson, Washington Post reporter Wesley Lowery gives account of his arrest](#); The Huffington Post. August 13, 2014. [Huffington Post Reporter Arrested In Ferguson](#); The Wire. August 13, 2014. [Ferguson Police Arrest Two Reporters Who Tried to Film Them in a McDonald's](#).

<sup>890</sup> The Huffington Post. August 13, 2014. [Huffington Post Reporter Arrested In Ferguson](#); The Wire. August 13, 2014. [Ferguson Police Arrest Two Reporters Who Tried to Film Them in a McDonald's](#).

<sup>891</sup> The Washington Post. August 18, 2014. [Police in Ferguson arrest and threaten more journalists](#); The Huffington Post. August 20, 2014. [All Of These Journalists Have Been Arrested In Ferguson](#).

<sup>892</sup> Daily News. August 17, 2014. [Daily News journalist handcuffed by police while covering protests in Ferguson, Mo](#); Freedom of the Press Foundation. August 19, 2014 (Updated on November 26, 2014). [Documenting the Arrests of Journalists in Ferguson](#).

<sup>893</sup> The Washington Post. August 18, 2014. [Police in Ferguson arrest and threaten more journalists](#); The Huffington Post. August 20, 2014. [All Of These Journalists Have Been Arrested In Ferguson](#).

*Der Standard*,<sup>896</sup> Scott Olson from *Getty Images*,<sup>897</sup> Kerry Picket from *Breitbart News*;<sup>898</sup> Lukas Hermsmeier from *Bild*,<sup>899</sup> Ryan Devereaux from *The Intercept*,<sup>900</sup> Bilgin Şaşmaz from *Anadolu Agency*,<sup>901</sup> Tom Walters from *CTV News*<sup>902</sup> and Coulter Loeb, de *Cincinnati Herald*.<sup>903</sup> In statements regarding these events, President Barack Obama condemned the excessive use of police force and maintained that “There’s also no excuse for police to use excessive force against peaceful protests or to throw protesters in jail for lawfully exercising their First Amendment rights.” He further indicated that “[P]olice should not be bullying or arresting journalists who are just trying to do their job[s].”<sup>904</sup>

500. On October 6, the United States District Court for the Eastern District of Missouri ruled that the “keep walking”/“five-second” rule implemented by the local police in Ferguson during the August protests was unconstitutional. According to the decision, “The practice of requiring peaceful demonstrators and others to walk, rather than stand still, violates the Constitution.”<sup>905</sup>

501. In November, there were new protests throughout the country following a grand jury decision not to indict the police officer responsible for Michael Brown’s death. At least 61 people were reportedly arrested in Ferguson at the end of several days of protest.<sup>906</sup> According to the information

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<sup>894</sup> The Washington Post. August 18, 2014. [Police in Ferguson arrest and threaten more journalists](#); The Huffington Post. August 20, 2014. [All Of These Journalists Have Been Arrested In Ferguson](#).

<sup>895</sup> The Associated Press/ABC 7 News. August 19, 2014. [D.C.-based journalist among latest arrests in Ferguson, Mo](#); Public Radio International (PRI). August 19, 2014. [A veteran conflict reporter had to go to Ferguson to get arrested for the first time](#); Die Welt. August 19, 2014. [Der Tag, an dem die US-Polizei mein Feind wurde](#); The Associated Press/New York Post. August 19, 2014. [Two shot, 31 arrested as Ferguson erupts again](#).

<sup>896</sup> The Associated Press/ABC 7 News. August 19, 2014. [D.C.-based journalist among latest arrests in Ferguson, Mo](#); Der Standard. August 19, 2014. [Frank Herrmann über seine Festnahme: "Hände auf den Rücken, das Plastikband festgezurr"](#); The Associated Press/New York Post. August 19, 2014. [Two shot, 31 arrested as Ferguson erupts again](#); The Huffington Post. August 20, 2014. [All Of These Journalists Have Been Arrested In Ferguson](#).

<sup>897</sup> The Huffington Post. August 18, 2014. [Getty Photographer Scott Olson Arrested At Ferguson Protest \(UPDATED\)](#); Getty Images. August 19, 2014. [Statement from Pancho Bernasconi, VP, News, on the arrest of Getty Images staff photographer Scott Olson in Ferguson](#); The Associated Press/New York Post. August 19, 2014. [Two shot, 31 arrested as Ferguson erupts again](#); The Huffington Post. August 20, 2014. [All Of These Journalists Have Been Arrested In Ferguson](#).

<sup>898</sup> Breitbart. August 19, 2014. [Breitbart news reporter arrested in Ferguson](#); CNN. August 20, 2014. [6 more journalists arrested in Ferguson protests](#); The Huffington Post. August 20, 2014. [All Of These Journalists Have Been Arrested In Ferguson](#).

<sup>899</sup> The Intercept. August 19, 2014. [A night in Ferguson: rubber bullets, tear gas, and a jail cell](#); BILD. August 19, 2014. [Polizei nimmt BILD-Reporter in Ferguson fest](#); The Huffington Post. August 20, 2014. [All Of These Journalists Have Been Arrested In Ferguson](#).

<sup>900</sup> The Intercept. August 19, 2014. [A night in Ferguson: rubber bullets, tear gas, and a jail cell](#); The Huffington Post. August 20, 2014. [All Of These Journalists Have Been Arrested In Ferguson](#).

<sup>901</sup> Anadolu Agency. August 20, 2014. [US officer suspended after threatening AA journalist with death](#); ACLU. November 10, 2014. [ACLU Sues on Behalf of Journalist Whose Rights Were Violated in Ferguson](#).

<sup>902</sup> CTV News. August 20, 2014. [CTV's Tom Walters among journalists arrested in Ferguson](#); St. Louis Dispatch. August 21, 2014. [Canadian television journalist arrested under order of Capt. Johnson](#).

<sup>903</sup> WCPO Cincinnati. August 21, 2014. [University of Cincinnati student photojournalist returns home after arrest in Ferguson](#); “Correction and update on UC student/photojournalist arrested in Ferguson today: Coulter Loeb. He called. He has been released”. Twitter account of *Cincinnati Herald* @CinciHerald. [August 20, 2014 - 7:34](#).

<sup>904</sup> The Huffington Post. August 14, 2014. [Obama On Ferguson: 'No Excuse For Police To Use Excessive Force'](#); CBS News. August 14, 2014. [Obama: 'Police should not be bullying or arresting journalists'](#).

<sup>905</sup> The Washington Post. October 6, 2014. [Federal Judges Tossed 5 second rule being used by Police in Ferguson Protests](#); The New York Times. October 6, 2014. [Judge Blocks Rule for Ferguson Protesters](#); The Huffington Post. October 6, 2014. [Police violated constitutional rights of Ferguson Protesters. Federal Judge Rules](#); United States District Court for the Eastern District of Missouri. *Mustafa Abdullah vs. County of St. Louis, Missouri, et al.* Case No. 4:14CV1436 CDP. Resolution of October 6, 2014. Available for consultation at: <https://s3.amazonaws.com/s3.documentcloud.org/documents/1310115/5-second-rule-injunction.pdf>

<sup>906</sup> NBC News. November 25, 2014. [Governor Nixon Orders 2,200 National Guard Troops Into Ferguson](#); Kmov.com. November 25, 2014. [61 arrested in Ferguson as protests turn violent](#); Fox News. November 26, 2014. [Police make 44 arrests after another round of protests](#); 12News. November 25, 2014. [61 arrests in Ferguson overnight](#).

available, most of these arrests were made on charges of receiving stolen property and burglary.<sup>907</sup> Journalists Trey Yingst of *News2Share* and Denise Reese of *RT Ruptly* were arrested while covering the protests in Ferguson.<sup>908</sup> At least 180 people were also arrested during protests in California.<sup>909</sup>

502. In New York, the police reportedly arrested at least 200 people during the demonstrations that took place to protest the decision of a grand jury not to indict the police officer responsible for the death of Eric Garner, an African-American resident of Staten Island, New York. Garner suffocated to death when a New York police officer performed a chokehold maneuver in order to wrestle him to the ground and arrest him. The entire event was captured on video. Most of the protesters who were arrested were detained on charges of disorderly conduct and refusal to disperse.<sup>910</sup>

503. The IACHR has reiterated that social protest is a fundamental tool for defending human rights and it is essential for expressing social and political criticism on the activities of the authorities. The Commission has stated that “in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly”<sup>911</sup> and that “the exercise of the right of assembly through social protest must not be subject to authorization on the part of the authorities or to excessive requirements that make such protests difficult to carry out.”<sup>912</sup>

504. In the Joint Declaration on Violence Against Journalist and Media Workers in the Context of Protests adopted in 2013, in the context of demonstrations and 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 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>913</sup> For this reason, the authorities must grant journalists the highest level of assurance for them to carry out their duties. In that regard, they should guarantee that reporters are not detained, threatened or assaulted and that their rights are not restricted in any way for practicing journalism in the context of a protest. The State shall not disallow or penalize live transmissions of events and should abstain from imposing measures that regulate or limit free circulation of information.<sup>914</sup> Reporters should not be called as witnesses by judicial institutions and the authorities should respect their right to source confidentiality. In addition, their work tools and material should not be confiscated or destroyed.<sup>915</sup> The authorities should adopt public discourse that contributes to the prevention

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<sup>907</sup> NBC News. November 25, 2014. [Governor Nixon Orders 2,200 National Guard Troops Into Ferguson](#); Kmov.com. November 25, 2014. [61 arrested in Ferguson as protests turn violent](#); Fox News. November 26, 2014. [Police make 44 arrests after another round of protests](#); 12News. November 25, 2014. [61 arrests in Ferguson overnight](#).

<sup>908</sup> The Huffington Post. November 23, 2014. [On A Night Of Peaceful Protests In Ferguson, One Reporter's Arrest Breaks The Calm](#); RT. November 26, 2014. ['Just trying to do our jobs': Ruptly journalist arrested for covering Ferguson unrest](#); Freedom of the Press Foundation. August 19, 2014 (Updated on November 26, 2014). [Documenting the Arrests of Journalists in Ferguson](#); The Desk. November 23, 2014. [Independent journalist detained at Ferguson protest](#); Interfax. November 26, 2014. [Ferguson police release RT's Ruptly producer Denise Reese](#).

<sup>909</sup> LA Times. November 25, 2014. [California unrest: Dozens arrested after Michael Brown decision](#); NBC Los Angeles. November 25, 2014 (Updated on November 26, 2014). [Nearly 200 Arrested in LA on Second Day of Ferguson Demonstrations](#).

<sup>910</sup> ABC News. December 5, 2014. [223 Arrested as Protesters, Police Clash in New York City Over Eric Garner Decision](#); Daily News. December 4, 2014. [Protesters flood NYC in second night of demonstrations opposing ruling not to indict NYPD cop in Eric Garner's death](#); The New York Times. December 3, 2014. [Wave of Protests After Grand Jury Doesn't Indict Officer in Eric Garner Chokehold Case](#); CNN. December 4, 2014. [Protests after N.Y. cop not indicted in chokehold death; feds reviewing case](#).

<sup>911</sup> IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc.57. December 31, 2009. Para. 197.

<sup>912</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. 139.

<sup>913</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>914</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 violence against journalists by emphatically condemning attacks and investigating the facts and penalizing those responsible, as established in Principle 9 of the IACHR Declaration of Principles.<sup>916</sup> It is also a matter of utmost importance in these contexts for the authorities to have special protocols in place to protect the press in social conflict situations and to instruct security forces on the role the press has in a democratic society.<sup>917</sup>

### C. Attacks and threats against journalists and the media

505. On January 28, Republican Congressman Michael Grimm of New York reportedly threatened Michael Scotto, a journalist from the local television channel *NY1*, saying that he would “throw him off a balcony” if he asked him again about an alleged investigation into his 2010 campaign finances. The incident took place while Scotto was interviewing the congressman about President Barack Obama’s State of the Union Address. At the end of the interview, the reporter asked him about the alleged investigation. Grimm refused to answer and walked away from the journalist. Nevertheless, when the journalist finished his report, Grimm went back and made the threat. Scotto questioned him, saying that it was “a valid question,” to which Grimm responded, “No, no, you’re not man enough, you’re not man enough. I’ll break you in half. Like a boy.” The congressman later apologized publicly.<sup>918</sup>

506. Principle 9 of the IACHR Declaration of Principles on Freedom of Expression, approved in 2000, 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.”

### D. Confidentiality of sources

507. On January 27, in a 2-3 vote, the Colorado Senate Judiciary Committee defeated a bill designed to increase legal protections for reporters and their sources. The bill had been introduced by Senator Bernie Herpin after Jana Winter, a journalist for *FoxNews.com* in New York, was pressured to reveal her sources in the case of a movie theater shooting in Colorado. Winter had published an article stating that the shooting suspect had sent a notebook to his psychiatrist prior to the attack. The suspect’s attorneys had requested that the journalist reveal her sources (*supra* para. 2). The legislative bill would have made it more difficult to subpoena reporters in Colorado, and would have prevented them from having to choose between revealing sources and going to jail.<sup>919</sup>

508. On June 2, the United States Supreme Court rejected the appeal of *New York Times* journalist James Risen seeking the review of the July 19, 2013 decision of the United States Court of Appeals for the Fourth Circuit. That decision ordered the journalist to testify in a case brought by the Department of Justice

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<sup>915</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>916</sup> [Principle 9 of the Declaration of Principles of the IACHR](#): “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation”.

<sup>917</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>918</sup> ABC News. January 29, 2014. [Rep. Grimm Apologizes for Threatening to Throw Reporter Off Balcony](#); Slate. January 29, 2014. [Congressman Threatens Reporter Over On-Camera Follow-Up: ‘I’ll Break You in Half. Like a Boy.’](#)

<sup>919</sup> The Denver Post/AP. January 27, 2014. [Bill to bolster Colo. media shield law fails](#); Fox News. January 27, 2014. [Colorado media shield bill inspired by FoxNews.com reporter fails in 2-3 vote](#); Reporters Committee for Freedom of the Press. January 16, 2014. [Colorado considers bill to bolster reporter shield law](#); Colorado General Assembly. January 27, 2014. [Votes for - SB14-034](#); Colorado General Assembly. [Senate Bill 14-034](#); The Guardian. December 10, 2013. [Fox News reporter will not have to reveal source in Aurora shooting trial](#).

against Jeffrey Sterling, a former CIA agent accused of leaking classified documents. The Department of Justice alleges that Sterling gave classified information to Risen, who had used it in part of his 2006 book *State of War*. The journalist has fought the court orders to testify, invoking his constitutional rights.<sup>920</sup>

509. On June 11, after the decision of the Supreme Court, more than 70 journalists' organizations and press freedom groups sent a letter to the Senate majority and minority leaders, asking that Congress schedule a floor vote "as soon as possible" on the Free Flow of Information Act. The organizations stated that, given Risen's case, as well as the 2013 revelations that the Justice Department secretly obtained the communications records of AP and Fox News reporters, it is clear that "a federal shield law is needed now more than ever to prevent government overreach and protect the public's right to know."<sup>921</sup> On September 12, 2013, the Senate Judiciary Committee passed a new version of this bill. The bill would establish protections from court orders aimed at accessing confidential information obtained in the performance of journalistic work. The bill was introduced in May by Senator Charles "Chuck" Schumer, and if passed, it would be the first federal law of its kind.<sup>922</sup> At press time for this report, the bill had not passed.

510. On August 14, more than 100,000 people, including 20 Pulitzer Prize winners, presented a petition to President Obama and Attorney General Eric Holder, in support of James Risen.<sup>923</sup> In December it was learned that the Department of Justice would not compel James Risen to reveal information on the identity of his sources.<sup>924</sup>

511. 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.

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<sup>920</sup> Supreme Court of the United States. Orders of the Court. CERTIORARI DENIED. 13-1009 RISEN, JAMES V. UNITED STATES, ET AL. June 2, 2014. Available for consultation at: [http://www.supremecourt.gov/orders/courtorders/060214zor\\_m6hn.pdf](http://www.supremecourt.gov/orders/courtorders/060214zor_m6hn.pdf); The New York Times. June 2, 2014. [Supreme Court Rejects Appeal From Times Reporter Over Refusal to Identify Source](#); Committee to Protect Journalists (CPJ). June 2, 2014. [US government should withdraw Risen subpoena](#); Huffington Post/AP. June 2, 2014. [Supreme Court Rejects James Risen's Bid To Protect His Source](#); Reporters Without Borders. June 2, 2014. [James Risen will not be forced to name his sources](#); Inter American Press Association (IAPA). June 3, 2014. [IAPA says US Supreme Court decision is counter to freedom of information](#); IACHR. [Annual Report 2013. 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.149. Doc. 50. December 31, 2013. Para. 429.

<sup>921</sup> Politico. June 11, 2014. [Re: Senate Vote on Free Flow of Information Act \(S. 987\)](#); Politico. June 11, 2014. [Media seeks Senate vote on shield law](#); Newspaper Association of America. June 11, 2014. [75 media companies and journalism organizations call for a Senate floor vote on the Federal shield bill to protect journalists' confidential sources](#); Reporters Committee for Freedom of the Press. June 13, 2014. [Media organizations urge Senate to vote on federal shield bill](#).

<sup>922</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](#); GovTrack.com. [S. 987: Free Flow of Information Act of 2013](#).

<sup>923</sup> Reporters Committee for Freedom of the Press. August 14, 2014. [Free press groups petition Attorney General on behalf of journalist James Risen](#); Columbia Journalism Review. August 4, 2014. [Journalism groups rally around a petition supporting James Risen](#); Journalism groups rally around a petition supporting James Risen; Freedom of the Press Foundation. August 11, 2014. [More Than a Dozen Pulitzer Winners Call on the Justice Dept to End its Pursuit of James Risen](#).

<sup>924</sup> LA Times. December 12, 2014. [New York Times reporter James Risen may be offered deal to avoid jail](#); The Washington Post. December 12, 2014. [Justice Department won't compel Times reporter Risen to reveal source in leak case](#); The Associated Press/ The Guardian. December 12, 2014. [Justice Department 'won't force' journalist James Risen to reveal source](#).

## E. Surveillance programs

512. Based on the documents provided to the press by informant Edward Snowden, *The Washington Post*, *The Intercept*, and *The New York Times*, among other media outlets, continued to reveal information during 2014 about the scope of the surveillance programs implemented by the National Security Agency (NSA). According to the information disclosed, these programs—which may be affecting a significant number of people around the world—allow the United States government to have mass access to global communications data, for purposes of obtaining foreign intelligence information. These revelations were added to the debate that arose in 2013 surrounding the practice of mass collection of private communications by the NSA within the United States and abroad. Within the context of this debate and in response to the criticisms and recommendations made, the United States government took various measures in 2014 for purposes of limiting the scope of some of these programs, favoring transparency, and rebuilding the public’s trust in the intelligence community. Some of the most significant press revelations and government announcements regarding the issue are described below.<sup>925</sup>

513. According to information released on March 18 by *The Washington Post*, the NSA reportedly built a surveillance system capable of recording every (“100 percent”) telephone call made in an unidentified country, which would allow the agency to store and listen to billions of telephone conversations for up to a month after the calls were placed. In this way, according to the newspaper, the agency could reproduce the audio of any telephone call without any requirement that an individual be identified in advance as the object of surveillance. This telephone intercept system, known as MYSTIC, reportedly began in 2009. The tool (RETRO tool) that allows it to listen back on the previously intercepted calls, as well as other related programs, reportedly reached their maximum capacity against a specific country in 2011. According to the newspaper, this was the first surveillance program revealed to date in which it is demonstrated that the agency can capture a country’s entire telephone network.<sup>926</sup>

514. On May 19, the digital newspaper *The Intercept* revealed that the National Security Agency was said to be secretly wiretapping, recording, and storing the audio from nearly all cell phone calls made from The Bahamas. According to the information published by the newspaper, the surveillance program is part of a classified system that goes by the code name SOMALGET, and is being implemented without the knowledge or consent of the government of The Bahamas. According to the newspaper, the agency is apparently using access legally obtained in cooperation with the United States Drug Enforcement Administration (DEA) to open a backdoor to the country’s cellular telephone network, which enables it to secretly eavesdrop on, record, and store for up to one month, the complete audio of every phone call placed to The Bahamas, as well as from and within that country. SOMALGET is reportedly part of the broader program known MYSTIC, which *The Intercept* says is being used to monitor the telecommunications of The Bahamas and several other countries, including Mexico.<sup>927</sup>

515. According to information released by *The New York Times* on May 31, the NSA is said to be secretly collecting an “enormous” number of personal images for its use in a sophisticated facial recognition program. According to the information published by the newspaper, the agency captures “millions of images per day” from the private communications it intercepts through its global surveillance operations. The newspaper explained that “Neither federal privacy laws nor the nation’s surveillance laws provide specific protections for facial images. Given the NSA’s foreign intelligence mission, much of the imagery would involve people overseas whose data was scooped up through cable taps, Internet hubs and satellite transmissions.” It also indicated that “Because the agency considers images a form of communications content, the NSA would be required to get court approval for imagery of Americans collected through its surveillance programs.”

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<sup>925</sup> IACHR. [Annual Report 2013. 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.149. Doc. 50. December 31, 2013. Par. 392-424.

<sup>926</sup> The Washington Post. March 18, 2014. [NSA surveillance program reaches ‘into the past’ to retrieve, replay phone calls](#).

<sup>927</sup> The Intercept. May 19, 2014. [Data Pirates of the Caribbean: the NSA is recording every cell phone call in the Bahamas](#).

According to the information published, the NSA is the only United States government agency with the ability to match images with vast troves of private communications data.<sup>928</sup>

516. On July 5, following a 4-month investigation based on documents turned over to it by Edward Snowden, *The Washington Post* revealed that ordinary Internet users, both U.S. citizens and foreigners, outnumber the foreigners whose communications are the object of surveillance under Section 702 of the Foreign Intelligence Surveillance Act (FISA) and Executive Order 12333. According to the newspaper, 9 out of every 10 users identified in a group of conversations intercepted by the NSA “were not the intended surveillance targets but were caught in a net the agency had cast for somebody else.” The paper explained that under U.S. law, “the NSA may ‘target’ only foreign nationals located overseas unless it obtains a warrant based on probable cause from a special surveillance court.” It indicated that under the rules of the PRISM and Upstream programs, analysts must state a reasonable belief that the target has information of value about a foreign government, a terrorist organization or the spread of nonconventional weapons. According to *The Post’s* own investigation, most of the people “caught up” in those programs are not the targets and would not lawfully qualify as such. Although the agency reportedly follows “minimization” procedures to protect the privacy of individuals in the United States, “the agency’s policy is to hold on to ‘incidentally’ collected U.S. content, even if it does not appear to contain foreign intelligence.”<sup>929</sup>

517. According to information released on July 9 by *The Intercept*, five leaders from the U.S. Muslim community, including the executive director of the largest Muslim civil rights organization in the country (Council on American-Islamic Relations - CAIR) and a prominent defense attorney in terrorism cases, had been the targets of surveillance by the federal government of the United States between the years 2002 and 2008. The information obtained by the newspaper suggests that the surveillance was carried out under a procedure authorized by FISA. Nevertheless, the paper explained that, because the reasons for the government’s targeting of these U.S. citizens for surveillance remains classified, it is impossible to know why their emails were monitored or the scope of the surveillance. It is also impossible to establish under what legal authority the surveillance was conducted, if the leaders were formally targeted under FISA warrants, and what, if anything, authorities found that enabled them to continue the surveillance for prolonged periods of time. According to the information published, the revelation raised serious questions about the practice of secret surveillance of Muslim communities in the country in the context of the fight against terrorism.<sup>930</sup> On the same day July 9, the Office of the Director of National Intelligence issued a joint statement with the Department of Justice on Court-ordered Legal Surveillance of U.S. Persons, indicating that “It is entirely false that U.S. intelligence agencies conduct electronic surveillance of political, religious or activist figures solely because they disagree with public policies or criticize the government, or for exercising constitutional rights.”<sup>931</sup>

518. On July 9, based on the information disclosed, 53 civil society organizations in the United States sent a letter to the President requesting that the government provide a full public explanation of these practices, as well as strengthen the existing protections against the violation of individual liberties and human rights in law enforcement activities. They explained that the facts disseminated by *The Intercept* in July are problematic, since they arise within a larger context of abuse by police and investigative authorities, which have targeted entire communities—particularly American Muslims—for secret surveillance based on their race, religion, ethnicity or national origin. They recalled that “no one should grow up fearful of law enforcement, scared to exercise the rights to freedom of speech, association and worship.” While they acknowledged that they “do not know the scale of surveillance conducted pursuant to the Foreign Intelligence Surveillance Act on American Muslim community leaders and whether there is a pattern of discriminatory abuse in this particular context,” they asserted that this is in large part because of government secrecy. In that respect, they maintained that “We cannot trust government assurances of fairness and legality when

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<sup>928</sup> The New York Times. May 31, 2014. [NSA Collecting Millions of Faces from Web Images.](#)

<sup>929</sup> The Washington Post. July 5, 2014. [In NSA-intercepted data, those not targeted far outnumber the foreigners who are.](#)

<sup>930</sup> The Intercept. July 9, 2014. [Meet the Muslim-American leaders the FBI and NSA have been spying on.](#)

<sup>931</sup> Office of the Director of National Intelligence. July 9, 2014. [Joint Statement by the Office of the Director of National Intelligence and the Department of Justice on Court-ordered Legal Surveillance of U.S. Persons.](#)

surveillance is being conducted without sufficient public oversight,” and they urged the government to provide the public with the information necessary to meaningfully assess the media outlet’s report.<sup>932</sup>

519. In view of these revelations, on January 17, President Barack Obama ordered a transition that would end Section 215 of the Patriot Act (regarding the bulk telephony metadata program), which allows for the collection of telephony metadata, “as it currently exists” and establish a mechanism that preserves the capabilities we need without the government holding this bulk metadata. The president announced that this transition would take place in two steps: as a first step in this transition, the President directed the Attorney General to work with the Foreign Intelligence Surveillance Court to ensure that, “absent a true emergency,” the telephony metadata can be queried only after a judicial finding “[t]hat there is a reasonable, articulate suspicion that the selection term is associated with an approved international terrorist organization.”<sup>933</sup> The President also directed that the query results must be limited to metadata within two hops of the selection term instead of three.<sup>934</sup> The second step announced included the instruction to the Attorney General and to the intelligence agencies to propose new changes to Section 215 of the Patriot Act, without the Government continuing to collect metadata.<sup>935</sup>

520. According to the information disclosed by the State, the initial changes would take effect in February 2014.<sup>936</sup> With regard to the second step of the transition, on March 27, the President announced that the Government should not collect or hold this data in bulk, and that the data should remain at the telephone companies, with a legal mechanism in place that allows the Government to obtain the data pursuant to individual orders from the Foreign Intelligence Surveillance Court (FISC).<sup>937</sup> He noted that new laws would be required in order for these changes to be effective, and he has called on Congress to enact legislation.<sup>938</sup> The President also indicated that, in view of the fact that new legislation had not yet been enacted, he had directed the Department of Justice to seek a 90-day reauthorization of the existing program.<sup>939</sup> The last FISC order authorizing the program was issued on December 4, 2014, and is set to expire on February 27, 2015.<sup>940</sup>

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<sup>932</sup> ACLU and others. [Letter addressed to the President Barack Obama. Re: Secret Surveillance of American Muslim Community Leaders](#). July 9, 2014.

<sup>933</sup> The United States Department of Justice. December 8, 2014. [Joint Statement From the Office of the Attorney General and the Office of the Director of National Intelligence on the Declassification of Renewal of Collection Under Section 501 of the Foreign Intelligence Surveillance Act](#).

<sup>934</sup> The White House. January 17, 2014. [Remarks by the President on Review of Signals Intelligence](#); The Washington Post. January 17, 2014. [Obama calls for significant changes in collection of phone records of U.S. citizens](#); CNN. January 17, 2014. [Despite Obama's NSA changes, phone records still collected](#); IC on the Record. February 6, 2014. [FISC Approves Government's Request to Modify Telephony Metadata Program](#); El País/EFE. January 17, 2014. [Obama plantea que Gobierno deje de controlar datos telefónicos que recoge NSA](#); The United States Department of Justice. December 8, 2014. [Joint Statement From the Office of the Attorney General and the Office of the Director of National Intelligence on the Declassification of Renewal of Collection Under Section 501 of the Foreign Intelligence Surveillance Act](#).

<sup>935</sup> The White House. January 17, 2014. [Remarks by the President on Review of Signals Intelligence](#).

<sup>936</sup> The United States Department of Justice. December 8, 2014. [Joint Statement From the Office of the Attorney General and the Office of the Director of National Intelligence on the Declassification of Renewal of Collection Under Section 501 of the Foreign Intelligence Surveillance Act](#).

<sup>937</sup> The White House. March 27, 2014. [Statement by the President on the Section 215 Bulk Metadata Program](#); The United States Department of Justice. December 8, 2014. [Joint Statement From the Office of the Attorney General and the Office of the Director of National Intelligence on the Declassification of Renewal of Collection Under Section 501 of the Foreign Intelligence Surveillance Act](#).

<sup>938</sup> The White House. March 27, 2014. [Statement by the President on the Section 215 Bulk Metadata Program](#); The United States Department of Justice. December 8, 2014. [Joint Statement From the Office of the Attorney General and the Office of the Director of National Intelligence on the Declassification of Renewal of Collection Under Section 501 of the Foreign Intelligence Surveillance Act](#).

<sup>939</sup> The White House. March 27, 2014. [Statement by the President on the Section 215 Bulk Metadata Program](#).

<sup>940</sup> The United States Department of Justice. December 8, 2014. [Joint Statement From the Office of the Attorney General and the Office of the Director of National Intelligence on the Declassification of Renewal of Collection Under Section 501 of the Foreign Intelligence Surveillance Act](#).



521. On May 22, the House of Representatives of the United States Congress passed the USA Freedom Act by a 303 to 121 vote, with the objective of ending the program for the mass collection of telephonic metadata on individuals in the United States under Section 215 of the Patriot Act.<sup>941</sup> Another version of this bill (S.2685 USA Freedom Act) was introduced to the Senate by Senator Patrick Leahy of Vermont. In November, the Executive Office of the President issued a statement reiterating his strong support for the bill pending before the Senate and urged Congress to pass it. He explained that, “S. 2685 carefully builds on the good work done in the House and has won the support of privacy and civil liberties advocates and the private sector, including significant members of the technology community.” He underscored that “Without passage of this bill, critical authorities that are appropriately reformed in this legislation could expire next summer.”<sup>942</sup> On November 18, the Senate failed to agree upon a motion to proceed with consideration of the USA FREEDOM Act (S. 2685).<sup>943</sup>

522. In June, the Office of the Director of National Intelligence published the *National Statistical Transparency Report Regarding the use of National Security Authorities – Annual Statistics for Calendar Year 2013*. The publication of these data was one of the transparency measures taken by the Obama administration in August 2013, based on the initial revelations of the NSA surveillance programs that year.<sup>944</sup>

523. On July 2, the Privacy and Civil Liberties Oversight Board—an independent agency of the United States Government—issued its *Report on the Surveillance Program Operated Pursuant to Section 702 of the Foreign Intelligence Surveillance Act*.<sup>945,946</sup> In this report, the Oversight Board concluded that “the PRISM collection is clearly authorized by the statute and that, with respect to the ‘about’ collection, which occurs in the upstream component of the program, the statute can permissibly be interpreted as allowing such collection as it is currently implemented.”<sup>947</sup> In addition, although it acknowledged that “the core of the Section 702 program [...] fits within the ‘totality of the circumstances’ standard for reasonableness under the Fourth Amendment,” certain aspects of the law “push the program close to the line of constitutional reasonableness,” and therefore it made recommendations to ensure that “the program remains tied to its constitutionally legitimate core.”<sup>948</sup>

524. The Office of the Special Rapporteur recalls that 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

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<sup>941</sup> GovTrack.com. [H.R. 3361: USA FREEDOM Act](#); The Washington Post. May 22, 2014. [NSA reform bill passes House, despite loss of support from privacy advocates](#); The Verge. May 22, 2014. [House of Representatives passes 'gutted' NSA surveillance reform](#); US News and World Report. May 21, 2014. [Freedom Act Passes House After Compromises](#).

<sup>942</sup> Executive Office of the President. November 17, 2014. [Statement of Administration Policy. S. 2685 – USA FREEDOM Act \(Sen. Leahy, D-VT, and 18 cosponsors\)](#).

<sup>943</sup> New America/Open Technology Institute. November 18, 2014. [Freedom Act, but the fight for surveillance reform continues](#); Congress.gov. [S.2685 - USA FREEDOM Act of 2014](#).

<sup>944</sup> Office of the Director of National Intelligence. June 27, 2014. [ODNI Releases Statistical Transparency Report Regarding Use of National Security Authorities](#).

<sup>945</sup> The Program allows for the acquiring the communications of specifically targeted foreign persons who are located outside the United States, upon a belief that those persons are likely to communicate foreign intelligence, using specific communications identifiers, subject to FISA court-approved targeting rules and multiple layers of oversight.

<sup>946</sup> Privacy and Civil Liberties Oversight Board. [Report on the Surveillance Program Operated Pursuant to Section 702 of the Foreign Intelligence Surveillance Act](#). July 2, 2014. Also see: The Washington Post. July 14, 2014. [Oversight board says NSA data mining puts citizens' privacy at risk but sees no abuse](#).

<sup>947</sup> Privacy and Civil Liberties Oversight Board. [Report on the Surveillance Program Operated Pursuant to Section 702 of the Foreign Intelligence Surveillance Act](#). July 2, 2014.

<sup>948</sup> Privacy and Civil Liberties Oversight Board. [Report on the Surveillance Program Operated Pursuant to Section 702 of the Foreign Intelligence Surveillance Act](#). July 2, 2014.

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.<sup>949</sup>

525. The Office of the Special Rapporteur observes that decisions to undertake surveillance activities that invade the privacy of individuals must be allowed 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.<sup>950</sup>

## **F. Access to Information**

526. On August 27, the District Court for the Southern District of New York ordered the government to detail its reasons for withholding more than 2,000 photographs of detainees held by the United States in foreign prisons.<sup>951</sup> According to the District Court, the government failed to provide evidence to support the alleged risk of harm that could arise from making the images public. The judge emphasized that the certification issued by the government in 2012 to support the classified nature of the photographs was "insufficient" to demonstrate that each one of the photographs had been considered individually by the government when it established the risk of their disclosure. The case began in 2003 when the American Civil Liberties Union requested, pursuant to the Freedom of Information Act (FOIA), access to records concerning the treatment of detainees held by the United States in foreign prisons subsequent to the attacks of September 11, 2001. Although the courts had reportedly ordered the release of the photographs in 2008,<sup>952</sup> in 2009 the Congress enacted new legislation [the Protected National Security Document Act] to keep these images classified for three years if the Secretary of Defense issued a certification determining that their disclosure could endanger United States citizens, members of the U.S. Armed Forces, or employees of the United States government deployed abroad.<sup>953</sup> The certification expired on November 13, 2012.<sup>954</sup> The Court reportedly granted the government less than two additional months to make its arguments on the matter.<sup>955</sup> At press time for this report, the case remains pending and the photographs have not been released.

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<sup>949</sup> IACHR. [Annual Report 2013. 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.149. Doc. 50. December 31, 2013. Para. 415.

<sup>950</sup> IACHR. [Annual Report 2013. 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.149. Doc. 50. December 31, 2013. Para. 415.

<sup>951</sup> District Court of the Southern District of New York. Case 04 Civ. 4151 (AKH) "American Civil Liberties Union et al v. Department of Defense et al." August 27, 2014. Available for consultation at: [https://www.aclu.org/files/assets/torture\\_foia\\_photos\\_ruling.pdf](https://www.aclu.org/files/assets/torture_foia_photos_ruling.pdf)

<sup>952</sup> District Court of the Southern District of New York. Case 04 Civ. 4151 (AKH) "American Civil Liberties Union et al v. Department of Defense et al." August 27, 2014. Available for consultation at: [https://www.aclu.org/files/assets/torture\\_foia\\_photos\\_ruling.pdf](https://www.aclu.org/files/assets/torture_foia_photos_ruling.pdf)

<sup>953</sup> US Congress. [Protected National Security Documents Act of 2009](#). October 28, 2009.

<sup>954</sup> District Court of the Southern District of New York. Case 04 Civ. 4151 (AKH) "American Civil Liberties Union et al v. Department of Defense et al." August 27, 2014. Available for consultation at: [https://www.aclu.org/files/assets/torture\\_foia\\_photos\\_ruling.pdf](https://www.aclu.org/files/assets/torture_foia_photos_ruling.pdf)

<sup>955</sup> The Guardian. October 21, 2014. [US ordered to explain withholding of Iraq and Afghanistan torture photos](#); Common Dreams.

527. On December 9, the United States Senate declassified the findings and conclusions and the executive summary of the report drafted by its Select Committee on Intelligence about the Central Intelligence Agency's Detention and Interrogation Program. The report, approved in December 2012, documents the abuses and acts of torture committed by the CIA from 2001 to 2009 in its secret detention and interrogation program, and is based on the review of millions of pages of CIA documents and other intelligence records. In April of this year, the Select Committee formally requested that the Government declassify part of the report (480 pages). The Committee's full report—some 6,700 pages long—will remain classified.<sup>956</sup> The use of the interrogation techniques documented in the report was outlawed by President Barack Obama when he took office in January 2009, through Executive Order 13491.<sup>957</sup>

528. Principle 4 of the 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”.

### G. Internet and Freedom of Expression

529. In its January 14 judgment in the case of *Verizon v. Federal Communications Commission*, the United States Court of Appeals for the District of Columbia Circuit vacated the Federal Communications Commission's (FCC) net neutrality rules that imposed transparency requirements on Internet service providers and prohibited practices of blocking or discrimination in web traffic [Open Internet Order]. The Court of Appeals held that the net neutrality rules contradicted a prior FCC decision finding that Internet service providers were outside its regulatory scope. The Court held that “even though the Commission has general authority to regulate [broadband infrastructure], it may not impose requirements that contravene express statutory mandate.” In the opinion of the Court of Appeals, “Given that the Commission has chosen to classify broadband providers in a manner that exempts them from treatment as common carriers, the Communications Act expressly prohibits the Commission from nonetheless regulating them as such.” The rules on net neutrality were adopted in 2010.<sup>958</sup>

530. The FCC decided not to appeal the decision and to undertake the review of its rules on the matter.<sup>959</sup> On May 15, the FCC published a proposal for new rules on the protection and promotion of the Open Internet. The Commission set a time frame of 4 months for the receipt of comments and input from the public and interested parties.<sup>960</sup> During this period, the FCC received nearly 4 million comments.<sup>961</sup>

531. On November 10, President Barack Obama announced his proposed plan for an Open and Free Internet and urged the FCC to “answer the call of almost 4 million public comments, and implement the strongest possible rules to protect net neutrality.” In this respect, he indicated that although the FCC is an independent agency and the establishment of net neutrality rules is within its exclusive purview, he proposed

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October 22, 2014. [US Given New Deadline for Torture Photos 'More Disturbing' Than Abu Ghraib.](#)

<sup>956</sup> Senate Select Committee on Intelligence. [Committee Study on the Central Intelligence Agency's Detention and Interrogation Program](#). Findings and Conclusions and Executive Summary. Declassification revisions December 3, 2014; The New York Times. December 9, 2014. [Panel Faults C.I.A. Over Brutality and Deceit in Terrorism Interrogations](#); Reuters. December 9, 2014. [CIA tortured, misled, U.S. report finds, drawing calls for action](#); CBS News. December 8, 2014. [White House confirms Senate torture report to be released Tuesday.](#)

<sup>957</sup> The White House. January 22, 2009. [Executive Order 13491 -- Ensuring Lawful Interrogations.](#)

<sup>958</sup> United States Court of Appeals for the District of Columbia. [Verizon v. Federal Communications Commission](#). January 14, 2014; Sedgwick Law. February 2014. [Net Neutrality Revisited in the Wake of the Court of Appeals' Decision in Verizon v. FCC.](#)

<sup>959</sup> Federal Communications Commission. [Statement by FCC Chairman Tom Wheeler on the FCC's Open Internet Rules](#). February 19, 2014; The Washington Post. February 19, 2014. [FCC to rewrite net neutrality rules, won't appeal court ruling.](#)

<sup>960</sup> Federal Communications Commission. [Protecting and Promoting the Open Internet - Proposed New Rules](#). May 15, 2014. More information available at: <http://www.fcc.gov/openinternet>; Federal Communications Commission. May 15, 2014. [FCC launches broad rulemaking on how best to protect and promote the open internet.](#)

<sup>961</sup> Federal Communications Commission Blog. December 23, 2014. [Setting the Record Straight on Open Internet Comments.](#)

“a new set of rules protecting net neutrality and ensuring that neither the cable company nor the phone company will be able to act as a gatekeeper, restricting what you can do or see online.”<sup>962</sup> The President’s plan provides the following 4 basic rules: (1) No blocking;<sup>963</sup> (2) No throttling;<sup>964</sup> (3) Increased transparency,<sup>965</sup> and (4) No paid prioritization.<sup>966</sup> At press time for this report, the reform of the rules is still under study by the FCC.

532. The Office of the Special Rapporteur has indicated that “[t]raffic 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.”<sup>967</sup> 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 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>968</sup> Also, Principle 5 of the Declaration of Principles provides 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”.

533. On March 7, the United States District Court for the Northern District of Texas dismissed, at the request of the office of the prosecutor, eleven of the seventeen charges against journalist and activist Barrett Brown for sharing in a private chat a link or hyperlink containing information from the private intelligence firm Stratford. The shared information reportedly was obtained illegally by members of the collective Anonymous and included information from credit cards.<sup>969</sup> Brown is the founder of *Project PM*, a crowdsourcing initiative that seeks to generate information on matters related to the intelligence contracting industry in the United States.<sup>970</sup>

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<sup>962</sup> The White House. No date. [Net Neutrality: President Obama’s Plan for a Free and Open Internet](#); The White House/You Tube official channel. November 10, 2014. [President Obama’s Statement on Keeping the Internet Open and Free](#).

<sup>963</sup> According to the plan, “If a consumer requests access to a website or service, and the content is legal, your ISP should not be permitted to block it. That way, every player — not just those commercially affiliated with an ISP — gets a fair shot at your business”.

<sup>964</sup> According to the plan, “Nor should ISPs be able to intentionally slow down some content or speed up others — through a process often called “throttling” — based on the type of service or your ISP’s preferences”.

<sup>965</sup> According to the plan, “[t]he connection between consumers and ISPs — the so-called “last mile” — is not the only place some sites might get special treatment. So, I am also asking the FCC to make full use of the transparency authorities the court recently upheld, and if necessary to apply net neutrality rules to points of interconnection between the ISP and the rest of the Internet”.

<sup>966</sup> According to the plan, “[s]imply put: No service should be stuck in a “slow lane” because it does not pay a fee. That kind of gatekeeping would undermine the level playing field essential to the Internet’s growth. So, as I have before, I am asking for an explicit ban on paid prioritization and any other restriction that has a similar effect”.

<sup>967</sup> IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 30.

<sup>968</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](#).<sup>Point 5 (a).</sup>

<sup>969</sup> United States District Court of the Northern District of Texas. [United States of America v. Barrett Lancaster Brown](#). Criminal No. 3:12-CR-413-L. March 7, 2014; The Guardian. March 5, 2014. [US government moves to drop key charges against Barrett Brown](#); The Nation. March 5, 2014. [DOJ Drops Most of the Charges Against a Journalist Indicted for Sharing a Link](#); Committee to Protect Journalists (CPJ). March 8, 2014. [CPI welcomes dismissal of charges against Barrett Brown](#); Committee to Protect Journalists (CPJ). September 3, 2013. [Journalist Barrett Brown faces prison for posting hyperlink](#).

<sup>970</sup> Project MP. [Wiki Page](#); United States District Court of the Northern District of Texas. [United States of America v. Barrett Lancaster Brown](#). Indictment. December 4, 2012.

534. The charges made against him in 2012, had affirmed his possible criminal responsibility for having copied, in December 2011, a hyperlink to a private chat (Internet Relay Chat Channel) of the *Project PM* that Brown created to facilitate crowdsourcing related to the intelligence contracting industry. The link provided access to a large repertoire of documents from the company Stratford, some of which contained newsworthy information, and others containing information on credit cards. Brown was never accused of participating in obtaining that information.<sup>971</sup> Concerning some other charges,<sup>972</sup> Brown reportedly entered into a plea agreement with the prosecutor's office in April.<sup>973</sup> The journalist is reportedly still being prosecuted for, among others, the offense of access device fraud in relation to the credit card data published by Anonymous. The journalist has been held since 2012. As of April of this year, the parties to the case remained under a gag order that prevented the defense from discussing the case in the media.<sup>974</sup> The judge lifted the gag order April 23 and the documents from the trial were subsequently published.<sup>975</sup>

535. The Office of the Special Rapporteur observes that given the special role that hyperlinks have in the Internet, establishing penalties for their use could cause a devastating chilling effect over the flow of information online. Internet users, including journalists, would remain fearful of possible reprisals for hyperlinking content to which they have no control. The Office of the Special Rapporteur has expressed that “[w]hen 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 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.”<sup>976</sup> In this regard, this office has affirmed that “[o]n 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>977</sup>

536. Also, the Office of the Special Rapporteur recalls that Principle 13 of the Declaration of Principles of the IACHR stipulates: “[d]irect or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.”

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<sup>971</sup> United States District Court of the Northern District of Texas. [United States of America v. Barrett Lancaster Brown](#). Indictment. December 4, 2012; Committee to Protect Journalists (CPJ). September 3, 2013. [Journalist Barrett Brown faces prison for posting hyperlink](#).

<sup>972</sup> 18 U.S.C. § 875(c) — Transmitting a Threat in Interstate Commerce; 18 U.S.C. § 3 (§§ 1030(a)(5)(B) and 1030(c)(4)(A)(i)(I)) — Accessory After the Fact in the Unauthorized Access to a Protected Computer; 18 U.S.C. §§ 1501 & 2 — Interference with the Execution of a Search Warrant and Aid and Abet. The United States District Court of the Northern District of Texas. *United States of America v. Barrett Lancaster Brown*. Plea Agreement. April 2, 2014. Available for consultation at: [https://freebarrettbrown.org/files/BB\\_plea1.pdf](https://freebarrettbrown.org/files/BB_plea1.pdf)

<sup>973</sup> The United States District Court of the Northern District of Texas. *United States of America v. Barrett Lancaster Brown*. Plea Agreement. April 2, 2014. Available for consultation at: [https://freebarrettbrown.org/files/BB\\_plea1.pdf](https://freebarrettbrown.org/files/BB_plea1.pdf); The United States District Court of the Northern District of Texas. [United States of America v. Barrett Lancaster Brown](#). Factual Resumé. December 31, 2014. Available for consultation at: [https://freebarrettbrown.org/files/BB\\_factualresume.pdf](https://freebarrettbrown.org/files/BB_factualresume.pdf); Freebarrettbrown.org. April 3, 2014. [Barrett Brown Signs Plea Deal](#).

<sup>974</sup> RT. September 4, 2013. [Gagged: Federal court says accused hacktivist Barrett Brown can't speak to the press](#); The Guardian. September 4, 2013. [US stops jailed activist Barrett Brown from discussing leaks prosecution](#).

<sup>975</sup> Freebarrettbrown.org. April 23, 2014. [Gag order lifted, documents unsealed](#); Motherboard. April 23, 2014. [Barrett Brown's Case Has Been Unmuted](#); BSwann. May 23, 2014. [Barrett Brown's Court Documents Unsealed: The Implications of the Gag Order](#).

<sup>976</sup> IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 53.

<sup>977</sup> IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 54.

## H. Other relevant situations

537. On June 26, the U.S. Supreme Court overturned a Massachusetts law establishing so-called “buffer zones” around abortion clinics, finding that it “restricts more speech than necessary” by excluding “petitioners” - individuals who approach and talk to women outside such facilities, attempting to dissuade them from having abortions, and not just protesters from sidewalks, streets, and other public roadways “places that have traditionally been open for speech activities and that the Court has accordingly labeled ‘traditional public fora.’” The Massachusetts law was enacted in 2007 and established the so-called buffer zones of 35 feet around the entrances to these abortion clinics, in which protests, psychological support, and other types of speech were prohibited. State officials had asserted that the law was based on a history of harassment and violence against these clinics in Massachusetts, including shootings at two facilities in 1994. In the opinion of the Supreme Court, these zones deprived the petitioners of “depriving them of their two primary methods of communicating with arriving patients: close, personal conversations and distribution of literature. Those forms of expression have historically been closely associated with the transmission of ideas.”<sup>978</sup>

### 15. Grenada

538. On March 6, the House of Representatives of Grenada deleted sections 6, 16, and 25 of the Electronic Crimes Bill. Section 6 provided for up to a year in prison for any person who sends any information via electronic media that is “grossly offensive” or who, knowing its falsehood, reproduces it to cause “annoyance,” “insult,” or “ill will,” while section 16 punished “electronic stalking,” understood as conduct meant to “intimidate, coerce, insult or annoy another person using an electronic system,” with a maximum sentence of 3 years in prison. Section 25 authorized police officers to arrest suspected criminals without a warrant. These sections had been criticized by the International Press Institute (IPI) and other groups because of their potentially harmful effects on freedom of the press and freedom of expression.<sup>979</sup>

539. The Office of the Special Rapporteur expresses its satisfaction at this ruling and believes it represents a step forward in the protection and strengthening of freedom of expression in the region.

### 16. Guatemala

540. Throughout 2014 Guatemala presented accounts of cases of harassment and the filing of several criminal complaints wherein high authorities have played a role, among these, the President of the Republic and the First Lady, against a newspaper that criticizes the Administration. These intimidations go hand in hand with the participation of state organizations that have tax audit powers and at least one case of surveillance and espionage against that same media outlet. The implementation of a protection system for journalists and media workers is still being discussed, although major progress on this matter has not been reported.

541. Likewise, a vast number of assaults on journalists and media workers, purportedly mostly executed by alleged state authorities, also took place. Moreover, the State has not yet complied with the commitment it has made on several occasions to legally recognize community radio and implement proper authorization for access to frequencies; nonetheless it has continued to detain radio personnel and confiscate equipment.

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<sup>978</sup> Supreme Court of the United States. [No. 12-1168. Eleanor McCullen, ET AL., Petitioners v. Martha Coakley, Attorney General of Massachusetts, ET AL.](#) June 26, 2014; The New York Times. June 26, 2014. [Court Rejects Zone to Buffer Abortion Clinic](#); The Wall Street Journal. June 26, 2014. [Supreme Court Invalidates State Law on Abortion Clinic Buffer Zones](#); Time. June 26, 2014. [Supreme Court: Abortion ‘Buffer Zones’ Violate Freedom of Speech](#); The New York Times. December 31, 1994. [Anti-abortion killings: The overview: Gunman Kills 2 at abortion clinics in Boston suburb](#).

<sup>979</sup> The Official Website of the Government of Grenada. March 6, 2014. [House of Representatives withdraws controversial sections of Electronic crimes Bill](#); Grenada’s official Government Information Service. March 7, 2014. [House of representatives withdraws controversial sections of electronic crimes bill](#). International Press Institute (IPI). March 12, 2014. [Grenada Parliament amends electronic defamation law](#); IFEX. March 17, de 2014. [Grenada Parliament amends electronic difamation law](#). See also, Government of Grenada. [Electronic Crimes Bill, 2013](#).

## A. Progress

542. The IACHR learned of the detention of a man who was charged for participating in a 2013 murder of two journalists in the department of Jutiapa. According to the information received, on June 30 the National Civilian Police [*Policía Nacional Civil*] (PNC) had detained Byron Amílcar Vásquez subsequent to an arrest warrant issued by the Criminal Court [*Juzgado de Instancia Penal*] in the city of Guatemala. The detainee was said to have participated in the March 20, 2013 murder of Jaime Napoleón Jarquín Duarte, correspondent for the *Nuestro Diario* newspaper, killed in the city of Pedro de Alvarado. He also participated in the April 7, 2013 murder of Luis Alberto Lemus Ruano, director of *Radio Stereo Café*, owner of the cable television network *Café TV* and vice-president of the Jutiapanecos Journalist Association [*Asociación de Periodistas Jutiapanecos*]<sup>980</sup>.

## B. Threats, detentions and assaults against journalists and media outlets

543. On January 29, persons presumed to be employees of the ‘Cobra’ company (responsible for electricity installation) physically and verbally assaulted *Nuestro Diario* journalist José Daniel García in the Totonicapán department. The assault occurred when the journalist and other reporters were covering the detention of some employees who allegedly assaulted a private security guard. The workers also tried to run over other reporters such as journalist Edgar Domínguez, from *Prensa Libre*<sup>981</sup>.

544. On February 12, Nery Morales, anchor of the ‘Noticias y Más’ program in the municipality of Mazatenango, department of Suchitepéquez, was the victim of an armed attack where he was unharmed. Reportedly, on the night of the attack Morales was driving home in his vehicle when two people on a motorcycle shot at him several times. As they were unable to shoot him, they followed the journalist who sought cover in a fire station where he was offered assistance<sup>982</sup>.

545. On March 29, agents of the National Civilian Police (PNC) assaulted and detained Ottoniel Reyes, reporter for *Nuestro Diario*, after his attempt to take pictures of the detention and assault of his close family members. Reyes was transported to a station where he was intimidated by the police and where he remained for several hours. The reporter was charged with contempt and public disorderly conduct where he received a sentence of six months incarceration but was released upon paying a fine of 850 quetzales (approximately 111 US dollars)<sup>983</sup>.

546. Julio Sicán, a reporter for *Proceso Periodismo Alternativo*, was verbally assaulted and threatened with death by family members of a defendant in the municipality of Antigua Guatemala accused of misappropriation of public funds. The reporter informed that the son of one of the defendants threatened to kill him and asked him to take it outside so they could “fight”.<sup>984</sup>

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<sup>980</sup> Centro de Reportes Informativos sobre Guatemala (Cerigua). July 1, 2014. [Capturan a presunto responsable de asesinato de dos periodistas](#); Prensa Libre. June 30, 2014. [Detienen a sindicado de matar a periodista y exgobernador](#); Lainformacion.com/EFE. July 2, 2014. [Detienen en Guatemala a un sospechoso de asesinar a dos periodistas en 2013](#); Siglo 21. No date. [Detienen a asesino de exgobernador y periodista](#); IACHR. [Annual Report 2013. 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.149. Doc. 50. December 31, 2013. Par. 451

<sup>981</sup> Centro de Reportes Informativos sobre Guatemala (Cerigua). January 30, 2014. [Reportero de Nuestro Diario fue agredido en Totonicapán](#); Human Rights Ombudsman (PDH). January 30, 2014. [PDH se solidariza con periodista de Nuestro Diario](#); Panorama Noticias. January 31, 2014. [Auxiliatura de Totonicapán se pronuncia por agresión contra periodista](#).

<sup>982</sup> Prensa Libre. February 13, 2014. [Periodista sale ileso de atentado en Mazatenango](#); Caracol Radio/EFE. February 13, 2014. [Periodista guatemalteco sale ileso de ataque armado en suroeste del país](#); Centro de Reportes Informativos sobre Guatemala (Cerigua). February 14, 2014. [Periodista sale ileso de ataque armado en Mazatenango](#); Reporters Without Borders. February 20, 2014. [SHOOTING ATTACK ON LOCAL TV NEWS ANCHOR](#).

<sup>983</sup> Centro de Reporteros Informativos sobre Guatemala. May 8, 2014. [Denuncian nueva agresión de fuerzas de seguridad contra periodista](#).

<sup>984</sup> Centro de Reportes Informativos sobre Guatemala (Cerigua). April 5, 2014. [Periodista denuncia intimidaciones por investigar actos de corrupción](#); Comisión de Libertad de Prensa de la Asociación de Periodistas de Guatemala (APG). April 21, 2014. Press Release 15-4-2014. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

547. On August 23, a person who lived with the reporters of the Independent Media Center for Guatemala [*Centro de Medios Independientes de Guatemala*] (CMI-G) was kidnapped, held for several hours, beaten and threatened. According to reports, on top of the beating, threats were made against the work at CMI-G and against reporter Gustavo Illescas, who published articles and videos about the National Civilian Police actions regarding evictions in the Alta Verapaz Department. Two complaints were filed before the Office of the Public Prosecutor regarding the events<sup>985</sup>. Days earlier, the CMI-G had denounced a DDOS (denial of service) attack on their web page as part of the coverage of the Alta Verapaz evictions<sup>986</sup>.

548. Alejandra Martínez, a *Prensa Libre* correspondent, denounced that she had been harassed by the local authorities of Quetzaltenango to reveal her sources for the report on irregular charges to tourist agents by the Tourism Safety Division [*División de Seguridad Turística*]. According to the report, the case was under investigation by the Office of Professional Responsibility [*Oficina de Responsabilidad Profesional*] (ORP) of the National Civilian Police (PNC)<sup>987</sup>

549. As reported, journalist Oswaldo Ical was assaulted and detained for several hours by the inhabitants of the Uspantán village in Quiché, while investigating a kidnapping. Among the inhabitants were members of the Community Development Council [*Consejo Comunitario de Desarrollo*]<sup>988</sup>.

550. On September 18<sup>th</sup>, Pavel Vega and Álex Cruz, reporter and photographer for *elPeriódico* newspaper, were assaulted by the Secret Service of Guatemala during a press conference organized by the vice-president of the country, Roxana Baldetti. Upon arrival, the journalists were denied access to the premises without an explanation. When they were able to get close to the official and while they were asking a question, they were physically and verbally assaulted by agents 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), they also destroyed the photographer's camera. This occurred days after the newspaper reported they were victims of government espionage<sup>989</sup>.

551. On September 18, independent reporter Norma Sansir, *Prensa Comunitaria* contributor, was detained while documenting police action during a protest in the Ch'orti' region in Chiquimula. According to reports, the journalist was detained for four days<sup>990</sup>.

552. As reported, journalist Hugo Barrios for *Nuestro Diario*, was intimidated by alleged members of the National Civilian Police due to a report about a police officer charged with demanding money from people in the city of San Lorenzo, department of San Marcos<sup>991</sup>.

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<sup>985</sup> Centro de Medios Independientes. August 29, 2014. [CMI denuncia ataques en su contra tras cobertura en Alta Verapaz](#); La Hora. September 10, 2014. [Registran casos de intimidación contra periodistas independientes](#); IACHR. 153 Period of Sessions. Situation of Human Rights Defenders in Guatemala. October 28, 2014. Available at: <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=en&session=136&page=2>

<sup>986</sup> Centro de Medios Independientes. August 29, 2014. [CMI denuncia ataques en su contra tras cobertura en Alta Verapaz](#); Centro de Medios Independientes. August 17, 2014. [Ataque DDOS](#)

<sup>987</sup> Prensa Libre. August 28, 2014. [ORP indaga acoso contra periodista](#); Centro de Reporteros Informativos sobre Guatemala (Cerigua). August 27, 2014. [Prensa Libre denuncia presiones contra su corresponsal en Quetzaltenango](#).

<sup>988</sup> Prensa Libre. August 29, 2014. [Liberan a periodista retenido en Uspantán](#); IACHR. 153 Period of Sessions. Situation of Human Rights Defenders in Guatemala. October 28, 2014. Available at: <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=en&session=136&page=2>

<sup>989</sup> *elPeriódico*. September 18, 2014. [Periodistas de elPeriódico agredidos por la SAAS en el Hotel Crowne Plaza](#); Crónica. September 18, 2014. [SAAS agrade a periodistas de elPeriódico y denuncian nueva incursión al matutino](#); Lainformación.com/Europa Press. September 19, 2014. [Agentes del Gobierno agreden a dos periodistas de 'El Periódico' guatemalteco](#); Reporters Without Borders. September 19, 2014. [TWO JOURNALISTS ATTACKED DURING VICE-PRESIDENT'S NEWS CONFERENCE](#).

<sup>990</sup> Centro de Reportes Informativos sobre Guatemala (Cerigua). September 18, 2014. [Policía detiene arbitrariamente a periodista en Chiquimula](#); La Hora. September 19, 2014. [Periodista independiente Norma Sancir continúa detenida](#); Prensa Comunitaria. September 18, 2014. [Región Ch'orti': Detienen ilegalmente a periodista y comunicadora social](#).

<sup>991</sup> Centro de Reportes Informativos sobre Guatemala (Cerigua). September 27, 2014. [Corresponsal en San Marcos denuncia que oficial de la PNC lo amenaza](#); Sala Redacción. November 1, 2014. [Ataques a periodistas: la CIDH ya está informada](#).



553. Reporters Andrea Ortiz Sandoval, of the ‘Regional Informativo de Oriente’ news program, and Remigio López, of the ‘La Verdad’ news program, were assaulted and retained by the director of a distance learning [*telesecundaria*] institute and others in the department of Jalapa. According to the information, the reporters arrived to cover an incident between parents and the public servant; this upset her. The director called family members and they not only threatened the reporters but also retained them for a few minutes trying to take their work equipment. The National Civilian Police intervened so the journalists were let go. Although the reporters wanted to file a complaint with the District Office of the Public Prosecutor, the Prosecutor believed it was too late to do so and did not take the complaint<sup>992</sup>.

554. As reported, journalist Edgar Trigueros was threatened with death by a Councilman of the Jalapa municipality because the reporter denounced traffic irregularities committed by the public officer. The son of the journalist witnessed the events. The councilman was charged for the crimes of threats, abuse of power and child abuse<sup>993</sup>.

555. At the October 28 hearing during the 153 Period of Sessions, “Situation of Human Right Defenders in Guatemala”, the Commission received concerning information regarding the increase of alleged violence and detentions against journalists and reporters in Guatemala; and how impunity reigns among these. Additionally, the petitioners provided information about alleged espionage and cyber attacks to the media and about legal complaints filed against journalists who criticize the Administration in the country. The Commission also received information regarding alleged flaws in the design and implementation of a mechanism for the protection of journalists as well as information regarding the activities of the Unit for the Prosecution of Crimes Against Reporters. In that regard the petitioner organizations stated that, according to official numbers, up until August of 2014 the Unit had opened 444 files for assaults on 89 journalists; 19 of these are women. 60 of the assailants were public servants and 37 were civilians<sup>994</sup>. On their behalf the State declared that it respects journalists and stated that there is not a rise in violence against human rights defenders. Likewise, it avowed the State has created mechanisms and institutions to protect human rights defenders and journalists and that it has protected various at risk persons<sup>995</sup>.

556. 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”.

### C. Journalist Protection Program

557. The IACHR has received information that indicates that a High Level Roundtable and a Technical Roundtable have been created in order to design and implement a journalist protection program in Guatemala. According to the information received, there is disapproval of said organizations because when creating the mechanism there was no effective participation or consultations with civil society or journalists and reporters. Likewise, the information received states that the mechanism lacks legal framework and a

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<sup>992</sup> Centro de Reportes Informativos sobre Guatemala (Cerigua). March 26, 2014. [Reporteros son agredidos por directora de centro educativo](#); Comisión de Libertad de Prensa de la Asociación de Periodistas de Guatemala (APG). March 28, 2014. Comunicado 11-14. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>993</sup> Centro de Reportes Informativos sobre Guatemala (Cerigua). October 23, 2014. [Empleados públicos rendirán declaración por agravios contra la prensa](#); Prensa Libre. October 19, 2014. [Denuncian amenazas contra dos periodistas de Jalapa](#).

<sup>994</sup> IACHR. 153 Period of Sessions. Situation of Human Rights Defenders in Guatemala. October 28, 2014. Available at: <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=en&session=136&page=2>; SEDEM, UDEFEGUA, Centro Civitas. *Situación de defensoras y defensoras de Derechos Humanos en Guatemala: Las agresiones a periodistas-comunicadores Sociales y el impacto en la defensa de derechos humanos*. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>995</sup> IACHR. 153 Period of Sessions. Hearing on the Situation of Defenders of Human Rights in Guatemala. October 28, 2014. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=en&Session=136&page=2>

budget in order to function<sup>996</sup>. On their behalf the State reported that measures were taken to determine what phase the budget approval for the mechanism was in so that it may be included in the budget going before the National Congress to ensure the program has sufficient resources<sup>997</sup>.

558. The IACHR and its Office of the Special Rapporteur have monitored the efforts informed by the government of Guatemala on their willingness to establish of a journalist protection program. In that regard the Rapporteurship has recognized the presentation of the “Plan for Journalist Protection” which will include “a structure for coordination among the Ministry of the 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 Human Rights Ombudsman [*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”<sup>998</sup>. The Rapporteurship also notes the submitted document “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>999</sup>.

559. The Office of the Special Rapporteur has reiterated that it is important for the protection program to be set up pursuant to international parameters and through consultation with civil society and journalist and media worker organizations that 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 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<sup>1000</sup>.

560. In that regard the IACHR and its Office of the Special Rapporteur have defined some of the requirements in the design and implementation of journalist protection programs among these are: 1) political commitment from the State, that must include an adequate legal framework, sufficient human resources, trained and prepared, capable of establishing trust with the persons who seek protection; with corresponding resources with a view to covering the costs of the personnel who work in the program and the specific expenses related to the protective measures provided; adopt rules clearly spelling out the authorities and responsibilities of the officials who will play a role in either implementing or monitoring the protection measures. 2) that it include the adequate identification of potential beneficiaries and an adequate recognition

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<sup>996</sup> IACHR. 153 Period of Sessions. Hearing on the Situation of Defenders of Human Rights in Guatemala. October 28, 2014. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=en&Session=136&page=2>; SEDEM, UDEFEGUA, Centro Civitas. *Situación de defensoras y defensores de Derechos Humanos en Guatemala: Las agresiones a periodistas-comunicadores Sociales y el impacto en la defensa de derechos humanos*. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression. ; elPeriódico. October 1, 2014. [Gobierno sin destinar presupuesto para programa de periodistas](#); Centro de Reportes Informativos sobre Guatemala. October 9, 2014. [Señalan deficiencias en proceso de construcción del Programa de Protección a Periodistas](#).

<sup>997</sup> IACHR. 153 Period of Sessions. Hearing on the Situation of Defenders of Human Rights in Guatemala. October 28, 2014. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=en&Session=136&page=2>

<sup>998</sup> Communication of 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 Presidential Commission to Coordinate Executive Policy in Human Rights (COPREDEH) Ref. P-100-2013/AFAF/MR/hm December 18, 2013. OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013.

<sup>999</sup> IACHR. [Annual Report 2013. Annual Report of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Par. 445 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>1000</sup> IACHR. [Annual Report 2013. Annual Report of the Special Rapporteur for Freedom of Expression](#). Chapter III (Violence Against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Par. 150.

of the grounds on which a potential beneficiary can seek protection; 3) a proper risk assessment, considering the gender perspective, that enables the State to determine the best way to fulfill its obligation to protect, taking into account contextual and specific circumstances and providing for the active participation of the beneficiary; 4) the provision of suitable and effective protection measures that are tailored to both protect beneficiaries' life and integrity corresponding to journalists' needs and allow them to continue their professional activities; 5) clear criteria and procedures for monitoring the effectiveness of the selected measures, and if the measures of protection are ineffective they will have to be adjusted to comport with the situation that the beneficiary is experiencing; 6) assess the risk in order to decide whether the measures of protection should be lifted with the beneficiaries' participation in order to get their view on the question of whether the measures should be lifted; and 7) material protective measures shall be linked to exhaustive and independent investigations by the pertinent authorities to prevent and reduce the sources of the risk<sup>1001</sup>.

#### D. Subsequent Liabilities

561. The IACHR learned of the August 6 public hearing before the Constitutional Court for the appeal filed by Francisca Gómez Grijalva, Maya columnist for the *Prensa Libre* newspaper<sup>1002</sup>. The facts relate to a legal action filed before the Civil Court in May of 2013 by the *Cementos Progreso* (Cempro) company against Gómez Grijalva for a column published in February 2013 titled 'Water or Cement?' [*¿Agua o Cemento?*] that mentions the needs and complaints of 12 communities in the San Juan Sacatepéquez region against the company. In its suit, Cempro requested Gómez Grijalva provide an affidavit regarding what was stated in her column. The Court processed the case in June, 2013, but the columnist was not notified until November of that same year. In December, 2013, Gómez Grijalva presented an *amparo* before the Commercial Division of the Print Court [*Sala Mercantil del Tribunal de Imprenta*] arguing that the case should not have gone to civil court. The *amparo* was rejected, therefore it was filed before the Constitutional Court where it was provisionally granted as of February 23, 2014<sup>1003</sup>.

562. On November 21, 2013, the President of the Republic, Otto Fernando Pérez Molina, filed a complaint in the Tenth Criminal Court of First Instance [*Juzgado Décimo de Primera Instancia Penal*] against José Rubén Zamora Marroquín, journalist and president of the *elPeriódico* newspaper. The complaint alleges drug activity and environmental crimes against the Department of Guatemala for the crimes of coercion, extortion, blackmail, Constitutional violations, and contempt of the directors of State organizations. The complaint was based on the journalist's publications in the newspaper where he is the editor. On December 18, 2013, the judge allowed the complaint and issued, as a precautionary measure, the detention of Zamora Marroquín in order to bar his leaving the country, yet he was not notified until January 8, 2014. On December 27, the judge set a preliminary hearing for February 7, 2014<sup>1004</sup>. By communication on January 23, 2014 the State reported that on January 10, the president had withdrawn the complaint, but stated that in order to "respect his dignity and honor as a human being" the complaint would be transferred to the Press Court. Nonetheless, according to the State, the leader had not "taken action against Mr. Zamora Marroquín"<sup>1005</sup>.

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<sup>1001</sup> IACHR. [Annual Report 2013. Annual Report of the Special Rapporteur for Freedom of Expression](#). Chapter III (Violence Against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Par. 81-84; IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II Doc. 66. December 31, 2011. Par. 487-531.

<sup>1002</sup> Corte de Constitucionalidad República de Guatemala. [Vista Pública No. 186 Expediente 2053-2014](#). August 6, 2014.

<sup>1003</sup> Centro de Medios Independientes de Guatemala (CMI). August 5 and 11, 2014. [Francisca Gómez contra Cementos Progreso y Vista Pública C.C. en defensa de la Libre Emisión del Pensamiento: Caso Francisca Gómez Grijalva](#); Prensa Comunitaria. August 7, 2014. ["No me van a callar"](#); *elPeriódico*. August 9, 2014. [Ningún paso atrás a la libertad de expresión](#).

<sup>1004</sup> Communication from the Permanent Mission of Guatemala to the OAS. M12-OEA-F.2.4.2.1. No. 51-2014 January 24, 2014, forwarding the communication from The Presidential Commission to Coordinate Executive Policy in Human Rights (COPREDEH) Ref. 9-033-2014/AFA/MR/hm de January 23, 2014; Prensa Libre. January 9, 2014. [Repudio por denuncia y arraigo a Jose Rubén Zamora](#); Committee to Protect Journalists (CPJ). January 8, 2014. [Guatemalan government targets elPeriódico editor](#); Knight Center for Journalism in the Americas. January 8, 2014. [New ruling for contempt against the president bars journalist from leaving Guatemala, freezes assets](#).

<sup>1005</sup> Communication from the Permanent Mission of Guatemala to the OAS. M12-OEA-F.2.4.2.1. No. 51-2014 January 24, 2014, forwarding the communication from The Presidential Commission to Coordinate Executive Policy in Human Rights (COPREDEH) Ref. 9-033-2014/AFA/MR/hm de January 23, 2014; El País. January 12, 2014. [El presidente de Guatemala retira su demanda penal contra un](#)

563. The vice president of the Republic, Ingrid Roxana Baldetti Elías, also filed a complaint against Zamora Marroquín before the First Instance Criminal Court of Femicide and other forms of Violence Against Women and Rape and Sexual Exploitation and Human Trafficking [*Juzgado de Turneo de Primera Instancia Penal de Femicidio y otras formas de Violencia contra la Mujer y Violación Sexual, Explotación y Trata de Personas*] for the crime of violence against women in the psychological classification. The complaint was based on the section ‘El Peladero’ of said newspaper where she was linked to alleged corruption cases. In her complaint, Baldetti claimed Zamora has demonstrated “his hate, despise, humiliating her as a woman and mother, for the mere fact that she is one, expecting to exercise control over her, so she submits to his will [...]”. On December 17, 2013, pretrial conditions were imposed for the protection of Baldetti Elías whereby [Zamora] was to abstain from publishing any type of information<sup>1006</sup>. On February 25, the Constitutional Court granted the provisional *amparo* suspending the December 17, 2013 order<sup>1007</sup>.

564. In a January 23, 2014 communication the State informed that the vice presidency had also withdrawn the complaint and stated the case would be filed before a Press Court, “legal action which has not yet been filed”. Nonetheless, the State affirmed that in this case the Office of the Public Prosecutor must decide if a criminal prosecution shall continue. Regarding freedom of expression and the rights of women to a violence-free life, “the State of Guatemala rejects any finger pointing, presumption or declaration that this situation is a violation of the human rights of Mr. Zamora Marroquín, as the internal and domestic legal system is still processing the facts; and it is incumbent upon that system to decide if the alleged crime has been committed, and if Mr. Zamora Marroquín is the perpetrator; in violation of human dignity and honor of the President and Vice-President of the Republic, or if these publications shall be submitted to clarification, the right to reply or correction, or any other civil action by future Order of the Press Court [*Tribunal de Imprenta*]”<sup>1008</sup>.

565. Likewise, the State reported that on January 8, 2014, reporter Zamora Marroquín filed complaints against the President and Vice-President before the General Prosecutor and the Office of the Public Prosecutor alleging feigning a crime and abuse of power. The journalist requested the withdrawal of immunity for both public officials<sup>1009</sup>.

566. The Commission learned that in July, the director of the Guatemalan Social Security Institute [*Instituto Gutemalteco de Seguridad Social*], filed over 30 complaints against *elPeriódico* editor, José Rubén Zamora and other chief editors, in several first instance criminal and civil courts throughout the judiciary system; alleging defamation, incitement to violence, public incitement, insurrection and others. According to

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[periodista](#); Knight Center for Journalism in the Americas. January 13, 2014. [Guatemala’s president and vice president withdraw criminal complaints against newspaper editor](#).

<sup>1006</sup> Communication of the Permanent Mission of Guatemala to the OAS. M12-OEA-F.2.4.2.1. No. 51-2014 January 24, 2014, forwarding the communication from The Presidential Commission to Coordinate Executive Policy in Human Rights (COPREDEH)Ref. 9-033-2014/AFA/MR/hm January 23, 2014; Corte de Constitucionalidad República de Guatemala. [Expediente 787-2014](#). February 25, 2014; Committe to Protect Journalists (CPJ). January 8, 2014. . [Guatemalan government targets elPeriódico editor](#); Knight Center for Journalism in the Americas. January 3, 2014. [Guatemalan court for crimes against women orders journalist not to “disturb” vice president](#).

<sup>1007</sup> Corte de Constitucionalidad República de Guatemala. [Expediente 787-2014](#). February 25, 2014; Crónica. February 26, 2014. [CC ampara a José Rubén Zamora y falla en contra del Gobierno](#); Prensa Libre. February 26, 2014. [Corte de Constitucionalidad ampara a Jose Rubén Zamora](#).

<sup>1008</sup> Communication of the Permanent Mission of Guatemala to the OAS. M12-OEA-F.2.4.2.1. No. 51-2014 January 24, 2014, forwarding the communication from The Presidential Commission to Coordinate Executive Policy in Human Rights (COPREDEH)Ref. 9-033-2014/AFA/MR/hm January 23, 2014; El País. January 12, 2014. [El presidente de Guatemala retira su demanda penal contra un periodista](#); Knight Center for Journalism in the Americas. January 13, 2014. [Guatemala’s president and vice president withdraw criminal complaints against newspaper editor](#).

<sup>1009</sup> Communication of the Permanent Mission of Guatemala to the OAS. . M12-OEA-F.2.4.2.1. No. 51-2014 January 24, 2014, forwarding the communication from The Presidential Commission to Coordinate Executive Policy in Human Rights (COPREDEH) Ref. 9-033-2014/AFA/MR/hm de January 23, 2014.

the public servant, Zamora's columns and other publications from that newspaper have damaged his reputation<sup>1010</sup>.

567. Reportedly, the ex-chief of Roosevelt Hospital [*Hospital Roosevelt*] filed a complaint against José Rubén Zamora for publications in *elPeriódico* related to his actions during the time he held that position. The Sixth Judge of the First Instance Criminal, Drug Activity and Environmental Crimes Court [*Jueza Sexta de Primera Instancia Penal, Narcoactividad y Delitos contra el Ambiente*], began a criminal jury trial. Likewise, the judge ordered a body attachment for the trial. According to published information in *elPeriódico*, the Constitutional Court of Guatemala, through a provisional *amparo*, stayed the jury trial as well as other measures imposed by the Sixth Judge<sup>1011</sup>.

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

569. Regarding possible civil responsibility, the Inter-American Court has established that civil restrictions are exceptional in nature and should not limit the free exercise of expression, 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>1012</sup>.

#### **E. State actions or indirect means of pressure against *elPeriódico***

570. In January, the Superintendence of Tax Administration [*Superintendencia de Administración Tributaria*] (SAT) notified the *elPeriódico* newspaper of an audit requiring different documentation in order to "verify compliance with tax obligations". Among the requested documents were the Value Added Tax monthly filings, sales and provided services book, sales and received services book, payroll and employee wages account, among other financial documents. The audit period was from January 1 to December 31 for the year 2012. The newspaper editor, José Rubén Zamora, categorized this as a "fiscal persecution" and the most recent government assault on the newspaper<sup>1013</sup>.

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<sup>1010</sup> Prensa Libre. July 3, 2014. [IGSS ataca a periodistas](#); Inter-American Press Association (IAPA). July 7, 2014. . [IAPA protests legal action in Guatemala](#); La Prensa/AFP. July 3, 2014. [Denuncian por calumnia y sedición a presidente de un diario en Guatemala](#); Committee to Protect Journalists (CPJ). September 24, 2014. [Who is killing Central America's journalists?](#)

<sup>1011</sup> *elPeriódico*. October 29, 2014. [A raíz de los rumores que corrieron ayer](#); Centro de Reportes Informativos sobre Guatemala (Cerigua). October 29, 2014. [Jose Rubén Zamora informa sobre nueva demanda en su contra](#).

<sup>1012</sup> Inter-American Court. Case of *Tristán Donoso vs. Panamá (Preliminary Objection, Merits, Reparations and Costs)*. Judgment of January 27, 2009. Serie C No. 193. Par. 129.

<sup>1013</sup> Inter American Press Association (SIP). January 22, 2014. [Further pressure being put on Guatemalas el Periodico](#); Crónica. January 22, 2014. [Inicia persecución fiscal contra elPeriódico](#); Centro de Reportes Informativos sobre Guatemala (Cerigua). January 22, 2014. [elPeriódico denuncia persecución "fiscal"](#); Knight Center for Journalism in the Americas. January 22, 2014. [Following lawsuits, cyber-attacks and commercial boycott, Guatemalan newspaper faces audit](#); La Prensa Gráfica/ACAN-EFE. January 23, 2014. [Diario denuncia "acoso fiscal" por parte del Gobierno](#); Email sent by Rodolfo Móvil to the Special Rapporteurship for Freedom of Expression. January 21, 2014. Re: SAT documents *elPeriódico* of Guatemala. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

571. On March 6, the assistant to the Press Secretary of the President [*Secretario de Comunicación Social de la Presidencia*], denied access to Rodrigo Estrada, reporter for *elPeriódico*, to a meeting between the President of Guatemala, Otto Pérez Molina, and the President elect of El Salvador, Salvador Sánchez. Estrada was the only reporter who was denied access, reportedly due to the events occurring at a press conference the week before, where Estrada asked the leader questions which made him uncomfortable<sup>1014</sup>. Estrada was also denied access to the Presidential Residence for a Chiefs of Staff meeting held on April 1<sup>st</sup>, under the pretext that there were orders to deny his admittance. The journalist contacted an attorney as well as personnel in the Office of the Human Rights Ombudsman [*Procuraduría de Derechos Humanos*] so they would appear in order to verify the situation; these circumstances led the Press Secretary to allow him to enter<sup>1015</sup>.

572. The *elPeriódico* newspaper denounced it was a victim of government espionage after the Office of Vice-President of the Republic issued a press release on September 5, refuting information that would be published by the newspaper on the next day. Later the Office of the President of the Republic issued the same press release. In it, the Administration states that the owner of the newspaper, José Rubén Zamora, is trying to create “the perception that both leaders have enriched themselves illegally at a cost to the treasury, omitting valuable information from public judgment and pointing the finger at the leaders, under the guise of freedom of the press, yet in violation of the basic principles of professional journalism”<sup>1016</sup>. The article titled ‘An Afternoon at the Vice-President’s House in the Country’ [*Una tarde en la Finca de la Vicepresidenta*]<sup>1017</sup>, Roxana Baldetti, makes reference to this property which presumably Baldetti had not reported on her tax return, she also refused to publish her property declaration. Baldetti stated that the article was sent to her anonymously, in a sealed envelope; and she decided to issue the press release because the newspaper had not included her version of the facts. Later in a tweet she added that the administration “does not intimidate the press”. The newspaper has reported that its journalists are usually marginalized when attempting to access official sources<sup>1018</sup>. In addition on September 15, the President of the Republic issued another press release wherein he declared his respect of the right to freedom of expression while rejecting “emphatically that this right be used in a mean spirited way through extortion and ongoing blackmail [...] by a reporter, who systematically publishes lies, tainted reports and facts that are very far from the truth”<sup>1019</sup>.

573. Principle 5 of the Declaration of Principles on Freedom of Expression states: “Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression”.

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<sup>1014</sup> *elPeriódico*. March 29, 2014. Impiden entrada a reportero de “*elPeriódico*” a Casa Presidencial. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; *elPeriódico*. March 31, 2014. Se niega acceso a fuentes de información. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1015</sup> *elPeriódico*. July 3, 2014. [Presidente del IGSS plantea lluvia de denuncias contra “\*elPeriódico\*”](#); Prensa Libre. July 3, 2014. [IGSS ataca a periodistas](#); Inter-American Press Association (IAPA). July 7, 2014. [IAPA protests legal action in Guatemala](#); La Prensa/AFP. July 3, 2014. [Denuncian por calumnia y sedición a presidente de un diario en Guatemala](#); Committee to Protect Journalists (CPJ). September 24, 2014. [Who is killing Central America’s journalists?](#)

<sup>1016</sup> Government of Guatemala. Vicepresidency. September 15, 2014. [elPeriódico mantiene campaña de desprestigio contra el Gobierno](#); Government of Guatemala. Office of the Press Secretary for the President of the Republic. September 18, 2014. [Diario El Periódico continúa campaña de desprestigio contra el Gobierno](#).

<sup>1017</sup> *elPeriódico*. September 16, 2014. [Una tarde en la Finca de la Vicepresidenta](#).

<sup>1018</sup> *elPeriódico*. September 16, 2014. [Gobierno evidencia espionaje a la prensa](#); The New York Times/Reuters. September 16, 2014. [Guatemala Government Responds to News Story Before It Is Published](#); El Comercio/AP. September 16, 2014. [Guatemala: Gobierno publica reportaje antes que diario lo haga](#); El Salvador. September 16, 2014. [El Periódico afirma que el Gobierno de Guatemala los espía](#); Inter-American Press Association (IPA). September 16, 2014. [La SIP condenó nuevo abuso del gobierno de Guatemala contra el Periódico](#); Infobae. September 16, 2014. [Guatemala espía a un periódico que investigaba a su vicepresidenta](#); “El Gobierno no amedrenta a la prensa y como comunicadora respeto las normas elementales del periodismo.” Official Twitter Account for Roxana Baldetti @roxanabaldetti. September 15, [2014 – 8:34 PM](#).

<sup>1019</sup> Official Twitter account for Otto Pérez Molina @ottoperezmolina. [September 15, 2014 – 10:33 PM](#).

## F. Community radio

574. On March 14, the Commission learned about the lack of progress the Congress of the Republic has made in order to pass a law to regulate community radio in the country. This situation has led to an increase in the criminalization of unauthorized radio broadcasting<sup>1020</sup>.

575. In that regard it received additional information regarding the detention of Andony Godínez Pérez by the Office of the Public Prosecutor and the National Civilian Police in the raid of a community radio station on February 27 where he volunteered. According to the information received, the officers arrived at the *Radio San José* facilities in the village of San José Cabene in the municipality of San Pedro Sacatepéquez, department of San Marcos, and confiscated the equipment in the radio booth. Similarly, they detained the aforementioned person, a social communications student, during his shift. Godínez was taken to the city detention facility in Quetzaltenánago, which is about 60 kilometers away from the community. Based on this fact, the community responded by retaining two police officers, apparently without any use of force, while awaiting the police release the man. The received information states that a dialogue roundtable was established between the Community Authorities, the people and the Justice of the Peace with jurisdiction in the municipality of San Pedro Sacatepéquez where they reached an agreement on different matters such as the next day release of Godínez, no prosecution of any person for the events occurring after the station raid, as well as the recognition of the radio as a community radio station along with a commitment to impede a new raid on the station. Nevertheless, according to accounts, a prosecution of the student did ensue<sup>1021</sup>. The Office of the Special Rapporteur asked the State for information on this case, but as of the closing of this report has not received an answer.

576. The IACHR also learned that on April 21 there was a raid on two community radio stations in the municipality of Ixcán, department of Quiché, where the authorities confiscated transmission equipment and detained one person. The Office of the Public Prosecutor agents arrived at the radio station *Estéreo Luz*, without any legal documentation and pointing their weapons at the women who were there; they confiscated equipment valued at 30 thousand quetzals (approximately 3,800 US dollars). Additionally there was a raid at *La Voz Sonora* where a man was arrested and equipment, valued at 60 thousand quetzals (approximately 7,700 US dollars),<sup>1022</sup> was confiscated.

577. As of the year 2000, the IACHR and Office of the Special Rapporteur its for the Freedom of Expression have issued recommendations to the State of Guatemala specifically regarding two aspects: the need for a more fair and inclusive legal framework for radio broadcasting and the decriminalization of unlicensed radio broadcasting<sup>1023</sup>. Likewise, on different occasions, the Office of the Special Rapporteur has

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<sup>1020</sup> Video conference with Special Rapporteur Catalina Botero and the representatives of community radio in Guatemala and the State. March 14, 2014. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1021</sup> Video conference with Special Rapporteur Catalina Botero and the representatives of community radio in Guatemala and the State. March 14, 2014. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Alberto Recinos. March 11, 2014. De asociación Muj'ab'1 yol. Email sent to the Special Rapporteurship for Freedom of Expression. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Mark Camp. March 12, 2014. Radio Station Raid, San José in Guatemala. Email sent to the Special Rapporteurship for Freedom of Expression. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Centro de Reportes Informativos sobre Guatemala (Cerigua). February 28, 2014. [Denuncian cierre de radio comunitaria en San Marcos](#); Pedrovisión Noticias. February 27, 2014. [LA NOTA CHAPINA: Reportan incidentes en cierre de "radio pirata"](#).

<sup>1022</sup> Centro de Reportes Informativos sobre Guatemala (Cerigua). April 27, 2014. [Reportan el cierre de dos radios comunitarias en el occidente del país](#); Reporters Without Borders. (RWB) June 27, 2014. [GUATEMALAN POLICE CLOSE TWO COMMUNITY RADIO STATIONS](#).

<sup>1023</sup> IACHR. Special Rapporteurship for the Freedom of Expression. April 18, 2000. [Press Release 24/00. Preliminary Evaluation of the Freedom of Expression in Guatemala. IACHR. Annual Report of the Special Rapporteur for Freedom of Expression 2001](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.114. Doc. 5 rev. April 16, 2002. Par. 114-117; IACHR. [Annual Report 2001. 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.117. Doc. 1 rev. 1. March 7, 2003. Par. 139 – 141; IACHR. March 29, 2003. [Press Release Preliminary Observations of the Inter-American Commission on Human Rights on Culminating its Visit to Guatemala](#). Chapter VII (Freedom of Expression). OEA/Ser.L/V/II.118. Doc. 5 rev. 1. December 29, 2003. Par. 412 – 414; IACHR. [Annual Report 2003. 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.124. Doc. 7. February 27, 2006. Par. 91; IACHR. [Annual Report 2007. Annual Report of the Special](#)

expressed that the use of criminal law to punish violations of radio broadcasting may be problematic in light of the Inter-American Convention on Human Rights. In this respect the IACHR recalls that the establishment of punitive measures for conduct relating to the irregular use or unauthorized use of commercial or community radio broadcasting, would be disproportionate<sup>1024</sup>.

578. It is a matter of great concern to the Inter-American Commission, that regardless of the March 14, 2012 decision of the Constitutional Court wherein it urges the Congress of the Republic to design a specialized legal framework<sup>1025</sup>, as well as an Agreement regarding Identity and Rights of Indigenous Peoples<sup>1026</sup>, Congress has not yet resolved the issue of the legal vacuum preventing the recognition of community radio. In this regard, the Commission reiterates its recommendation that “the State must promote different groups’ access to radio and television frequencies and licenses under conditions of equality and non-discrimination, no matter their technology.”<sup>1027</sup>

## G. Laws Restricting Protest

579. On February 19th the Congress of the Republic passed the legislative initiative for free transit on Roadways without Obstacles [*Circulación por Carreteras Libres de Cualquier Tipo de Obstáculos*] which could present limitations on the right to freedom of expression and protests<sup>1028</sup>. Article 2 establishes “without authorization of the Highway Authority [*Dirección General de Caminos*], placing or building barriers, watchtowers, mounds, barrels, or any other type of obstacle on the asphalt or unpaved thoroughfare is banned [...]”. Some organizations expressed concern for the ambiguous terminology “any other type of obstacle” which may be interpreted as public protests<sup>1029</sup>. In this regard, Article 9 also caused concern as it modifies the Criminal Code which establishes a fine of one to 5 thousand quetzales (approximately between

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[Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.131 Doc. 34 rev. 1. March 8, 2008. Par. 152; IACHR. [Annual Report 2008. 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.134 Doc. 5 rev. 1. February 25, 2009. Par. 133 and 134; IACHR. [Annual Report 2009. 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. 51. December 30, 2009. Par. 237 and 238; IACHR. [Annual Report of the Special Rapporteur for Freedom of Expression 2010](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Par. 281 – 285; 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. Par. 281 – 283; IACHR. [Annual Report 2012. 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.147. Doc. 1. March 5, 2013. Par. 275 – 281; IACHR. [Annual Report 2013. 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.149. Doc. 50. December 31, 2013. Par. 483.

<sup>1024</sup> IACHR. [Annual Report 2013. 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.149. Doc. 50. December 31, 2013. Par. 129; 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. Par. 467.

<sup>1025</sup> Corte de Constitucionalidad de la República de Guatemala. March 14, 2012 opinion. Inconstitucionalidad General Parcial. Expediente 4238-2011; IACHR. [Annual Report of the Special Rapporteur for Freedom of Expression 2012](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. Par. 275

<sup>1026</sup> [Acuerdo sobre Identidad y Derechos de los Pueblos Indígenas](#). March 31, 1995. México, D.F. Paragraph H(2)(b) of Chapter III establishes that the State of Guatemala should “[s]ubmit to the Congress of the Republic the amendments needed in the current radio media Law with the object of making frequencies available for indigenous peoples projects and ensure the observance of the principle of non discrimination in the use of the media. To likewise sponsor the revocation of all provisions in the law that impede indigenous peoples’ rights to have media available for the development of their identity”.

<sup>1027</sup> IACHR. [Annual Report of the Special Rapporteur for Freedom of Expression 2013](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Par. 284.

<sup>1028</sup> Congress of the Republic of Guatemala. Law for Freedom of Transit on Roadways Without Any Type of Obstacles. February 19, 2014. Available at: <http://old.congreso.gob.gt/Legislacion/Decretos1.asp>

<sup>1029</sup> Prensa Libre. February 20, 2014. [Ley prohíbe bloqueo de las carreteras](#); Unidad de Protección a Defensoras y Defensores de Derechos Humanos Guatemala (Udefegua). February 20, 2014. Complaint 1-2014. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; La Hora. September 18, de 2014. [Campesinos manifiestan contra Ley de Títulos](#).



131 and 657 US dollars) and one year imprisonment for those who, among other things, create obstacles in the roadways<sup>1030</sup>.

## H. Other relevant situations

580. On March 13, agents of the National Civilian Police prevented with violence the coverage of a proceeding in the Aguas de las Minas village in the Amatitlán municipality. According to reports, the Office of the Public Prosecutor blocked access to the place where buried vehicles had been found. Nonetheless, some reporters took pictures and videos of the scene, which motivated the violent reaction of the officers<sup>1031</sup>.

581. The Guatemalan Social Security Institute (IGSS) planned to hire a private technical service “to oversee mass media; directed to monitor information, comments, and publications regarding subject matter related to their service operations”. Their responsibilities would include monitoring complaints and exposes about this institution through different social networks and should present “daily reports with statistics showing the number of publications of official accounts by the mass media and their journalists, reporters and columnists”, as well as those made by entities and individuals<sup>1032</sup>. After the controversy created by the news of monitoring the press, IGSS announced that it would cancel the contract of said service as “the journalism industry deserves respect” and it would undertake and “exhaustive analysis of the technical terminology utilized to discredit the mistaken interpretation given”<sup>1033</sup>.

582. As informed, hundreds copies of the 80th edition of magazine *ContraPoder* were reportedly bought in bulk by unknown persons in November. According to the magazine, unknown persons contacted the media outlet in order to buy entire batches of the edition. They had also followed delivery persons asking them to sell all the copies they had and bought entire batches in stores. The edition reported on corruption in the National Civilian Police<sup>1034</sup>.

## 17. Guyana

583. According to the information received by the Office of the Special Rapporteur, the Attorney General of Guyana, Anil Nandlall, reportedly threatened journalist Glenn Lall, editor of the newspaper *Kaieteur News*, warning that his safety and that of the newspaper’s reporters was in danger if they continued with their critical publications. On October 28, the newspaper published the transcript of a telephone conversation between the journalist and the official. According to the transcription that was published in the paper, the Attorney General allegedly stated to the reporter that “If (*Kaieteur News*) [continues to] attack people like that and they have no way of responding [they’re going to] just walk with their weapon into that

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<sup>1030</sup> Congress of the Republic of Guatemala Diario de Centro América. March 14, 2014. “Article 9. Article 158 of the Criminal Code is hereby amended, Rule Number 17-73 of the Congress of the Republic, which now reads: ‘Article 158. Responsibility of others. A fine of one thousand (Q. 1,000.00) to five thousand (Q. 5,000.00) Quetzales shall be imposed and is punishable by up to one year imprisonment, for placing vehicle transit at serious and eminent risk or danger by spilling slippery or flammable substances, total or partial damaging or destroying of signs or by any other means; or not restoring street signs for public roadway safety, when they were removed or altered under necessary circumstances.

Furthermore, shall be punished with such penalty, those who create route returns or perform any cuts to the median strip the roads CA, RN, RD roads; without there being an authorization by the Directorate General of Roads [*Dirección General de Caminos*] and inciters of mounds placement, barrels and other obstacles on the country’s roads without permission from the aforementioned Directorate, or those whose acts impede their withdrawal”

<sup>1031</sup> Comisión de Libertad de Prensa de la Asociación de Periodistas de Guatemala (APG). March 21, 2014. Press Release No. 10-4-2014. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1032</sup> Agencia Guatemalteca de Noticias (AGN). July 23, 2014. [IGSS busca mejorar atención a afiliados por medio de monitoreo de medios](#); Prensa Libre. July 23, 2014. [Revuelo por plan del IGSS para espiar a Prensa](#).

<sup>1033</sup> Prensa Libre. July 24, 2014. [IGSS anula plan para espiar a Prensa](#); La Noticia en Guatemala. July 24, 2014. [IGSS marcha atrás en plan de monitorear medios y ciudadanía](#).

<sup>1034</sup> *ContraPoder*. No date. [La revista que no quieren que leas](#); elPeriódico. November 22, 2014. [Censuran publicación en ContraPoder](#); Prensa Libre. November 23, 2014. [Ven censura en compra masiva de ejemplares de revista](#); *ContraPoder*. No date. [Reportaje completo: Así desaparecieron \(al menos\) Q10 millones de la PNC](#); Centro de Reportes Informativos sobre Guatemala (Cerigua). November 24, 2014. [Censuran edición 80 de revista ContraPoder](#).

same f\*\*\*ing Saffon Street office The official reportedly warned that this would happen “soon,” and advised the reporter that, “the quicker you get out of [there] the better.”<sup>1035</sup>

584. The Guyana Press Association reportedly issued a press release demanding that the government condemn the Attorney General’s statements, which it called “reckless, irresponsible and outrageous.”<sup>1036</sup> Nandall reportedly maintained that it was a call regarding “personal” matters, and that he had sued the editors of *Kaieteur News*, Glenn Lall and Adam Harris, for defamation.<sup>1037</sup> The two main opposition parties in Guyana, *A Partnership for National Unity (APNU)* and *Alliance for Change (AFG)*, called for Nandall’s resignation.<sup>1038</sup> The government stood behind the official and called the newspaper into question for having recorded the conversation “illegally” and taking the statements out of context.<sup>1039</sup>

585. In September, the Commissioner General of the Guyana Revenue Authority, Khurshid Sattaur, sued the *Kaieteur News* and editors Harris and Lall for defamation after the paper published an investigative piece on the performance of the tax authority.<sup>1040</sup>

586. On November 18, the IACHR asked the State to adopt precautionary measures on behalf of the staff of the *Kaieteur News*. In the opinion of the Commission, the information received indicates, in principle, that the newspaper’s staff members are in a serious and urgent situation. Therefore, it requested that the State take measures on their behalf, and provide information on the actions taken to investigate the reported acts in order to prevent their recurrence.<sup>1041</sup>

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

## 18. Haiti

588. The Office of the Special Rapporteur takes note of progress in the investigation into the murder of journalist Jean Leopold Dominique, which took place on April 2000.<sup>1042</sup> Last January 18, almost 14 years after the crime had been committed, an Investigating Judge accused 9 people, a number of whom were close to former president Jean-Bertrand Aristide, including former senator Mirlande Libérous<sup>1043</sup> of the

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<sup>1035</sup> *Kaieteur News*. October 28, 2014. [Attorney General reveals plans to 'hit' Glenn Lall, knews](#); International Press Institute (IPI). October 31, 2014. [Recording said to capture Guyanese official's chilling message for newspaper](#)

<sup>1036</sup> Caribbean Trakker. October 27, 2014. [Guyana Press Association condemns threats against Kaieteur News Staff](#); *Kaieteur News*. October 28, 2014. [Attorney General's threat against Kaieteur News ... Guyana's Press Association expresses alarm](#).

<sup>1037</sup> Government Information Agency (GINA). October 29, 2014. [Recording illegal -AG - focus should be on how conversation was recorded and publicised](#); International Press Institute (IPI). October 31, 2014. [Recording said to capture Guyanese official's chilling message for newspaper](#);

<sup>1038</sup> *Guyana Times*. October 30, 2014. [President stands by AG](#); International Press Institute (IPI). October 31, 2014. [Recording said to capture Guyanese official's chilling message for newspaper](#).

<sup>1039</sup> Government Information Agency (GINA). October 29, 2014. [Recording illegal -AG - focus should be on how conversation was recorded and publicised](#); I News Guayana. October 27, 2014. [Aniltape Scandal: Gov't stands by Attorney General](#); Caribbean 360. October 28, 2014. [Guyana newspaper publisher and government at odds](#).

<sup>1040</sup> *Kaieteur News*. September 26, 2014. [Sattaur moves to silence Kaieteur News...sues for \\$500M](#); *Guyana Chronicle*. September 21, 2014. [Sattaur rubbishes Kaieteur News' claims -moving to courts with libel suit](#); Stabroeknews.com. September 26, 2014. [Sattaur sues Kaieteur News for libel](#).

<sup>1041</sup> IACHR. Resolution 35/2014. Precautionary Measure No. 458-14. [Matter of members of Kaieteur News regarding Guyana](#). November 18, 2014.

<sup>1042</sup> IACHR. [Annual Report 2001. 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. 131- 132.

<sup>1043</sup> *New York Times*. January 18, 2014. [9 in Haiti accused in journalist case](#); Reuters. January 18, 2014. [Nine charged in 2000 murder of Haitian journalist Jean Dominique](#); ArubAwe. No date. [Haiti: 9 accused in journalist murder](#).

Lavalas Party. The Rapporteurship also takes note of the arrest in Argentina and subsequent extradition to Haiti of Phillipe Markington, another of the people accused in this case and a fugitive from Haitian justice.<sup>1044</sup> Jean Leopold Dominique was the owner of the *Radio Haiti Inter* radio station, from where he denounced abuses of power and corruption by the then government presided over by Aristide. On different occasions, the Office of the Special Rapporteur expressed its concern over the lack of progress and of impartiality in the investigation of the case.<sup>1045</sup> In 2001, because of death threats made against the judge, the IACHR requested that the Haitian State adopt precautionary measures to protect the life of Judge Claudy Gassant, to whom the investigation had been assigned following the resignation of two predecessors.<sup>1046</sup>

589. The Office of the Special Rapporteur had knowledge that during demonstrations against the local government of *Petit-Goâve* that took place between August and October, there were at least five cases of journalists who were physically and/or verbally attacked. As reported, the aggressions came from both opponents and sympathizers of the governing party in a politically polarized environment. Lamy Fenold, correspondent for *RFM*, and Séraphin Estimé, correspondent for *Radio Timoun*, were verbally abused by officers of the Corps for Intervention and Maintenance of Order [*Corps d'Intervention et de Maintien d'Ordre*] (CIMO). On October 23, Méance Jean, correspondent for radio *Télé Ginen*, was assaulted with a knife by two opposition demonstrators, according to his version.<sup>1047</sup> Journalists Ephesien Joseph and Guyto Mathieu, director of the radio station *Préférence FM* and a correspondent for the information site *Haiti Libre*, had been the victims of physical assaults and degrading insults on August 29 and September 9, respectively. The director of the radio station *Vision Plus*, Gibsonne Bazile, received threats of arrest from the judicial branch of the locality.<sup>1048</sup> After these incidents, the three journalists' association present in *Petit-Goâve* adopted a resolution to sanction those who commit aggressions against journalists, whether from the government, the opposition or any sector, by denying them access to the microphones of any journalist or correspondent in the locality until they apologize to the journalist victim of the aggression."<sup>1049</sup>

590. The Office of the Special Rapporteur received information on cases of the use of excessive force by the National Police of Haiti during demonstrations against the government that took place on October 17 and 26 in different cities of the country. According to information received, various persons were reported as wounded and 23 as detained: in Puerto Príncipe 18 protesters were arrested, whereas in Les Cayes and Petionville, 3 and 2 were detained, respectively.<sup>1050</sup>

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<sup>1044</sup> Haitian Caribbean News Network. June 23, 2014. [Extradition from Argentina of key suspect in murder of Haiti famous journalist](#); Caribbean News Now!. June 25, 2014. [Key suspect in murder of Haitian journalist extradited from Argentina](#).

<sup>1045</sup> IACHR. [Annual Report 2001. 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.114. Doc. 5 rev. April 16, 2002. Para. 133. Inter American Press Association (IAPA). No date. [Juez del caso de Jean Dominique en Haiti fue suspendido por corrupción](#); Inter American Press Association (IAPA). No date. [Dominique fue herido de bala mortalmente el 3 de abril de 2000](#); Knight Center for Journalism in the Americas. January 22, 2014. [9 persons implicated in the 14-year-old murder of well-known Haitian journalist](#).

<sup>1046</sup> IACHR. July 6, 2001. [Press Release N° 13/01 Inter-American Commission on Human Rights requests precautionary measures to protect Claudy Gassant, the judge investigating the murder of reporter Jean Dominique](#).

<sup>1047</sup> Haiti Libre. October 25, 2014. [Haiti - Security : Shootings in Petit-Goâve, two injured](#); Jamaica Observer. September 11, 2014. [Press watchdog group says journalists in Haiti victims of physical or verbal abuse](#); Reporters Without Borders. September 11, 2014. [Politically-motivated attacks on journalists in Haitian town](#); E-Haiti News. October 27, 2014. [Haiti - 27 Octobre 2014 Revue de la presse locale](#).

<sup>1048</sup> Reporters Without Borders (RSF). September 11, 2014. [AGRESSIONS RÉPÉTÉES CONTRE DES JOURNALISTES À HAÏTI](#); Haiti Libre. September 10, 2014. [Haiti - Politic : Journalists victims of aggression in Petit Goâve...](#); Inter American Press Association (IAPA). [Haiti](#). General Assembly 2014 - Santiago, Chile. October 2014; Haiti Libre. October 4, 2014. [Haiti - Petit-Goâve : 14th day of protest at the call of BOD...](#)

<sup>1049</sup> Haiti Libre. September 29, 2014. [Haiti - Politic : The Journalists of Petit-Goâve sanction their aggressors](#).

<sup>1050</sup> Communication by *Organisation des Volontaires pour la Promotion des Droits Humains -OVPDH*. October 28, 2014 received at IACHR. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Réseau National de Défense des Droits Humains -RNDDH, and Plateforme des Organisations Haïtiennes de Droits Humains -POHDH. October 27, 2014. [Arrestations de Manifestants et de Militants de l'opposition : La POHDH et le RNDDH appellent au respect des garanties constitutionnelles](#); Haiti Libre. October 28, 2014. [Haiti - Politic : The Senators Desras urges the Government to release the protesters...](#); Haiti Libre. October 18, 2014. [Haiti - Politic : Anti-government demonstration dispersed by security forces](#).

591. Last November 12, journalist Gerdy Jérémie filed a formal complaint against two police officers from the Departmental Unit for the Maintenance of Order [*l'Unité départementale de maintien d'ordre*](UDMO), who had attacked him while he was covering a demonstration by motorcycle taxi drivers in Jacmel on November 10. Jérémie is a journalist for *Radio Télé Express Continentale* (RTEC) and a correspondent for the online agency *Alterpresse* and had been beaten by both officers during the demonstration.<sup>1051</sup>

592. 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."

593. The Office of the Special Rapporteur had knowledge of an official communiqué<sup>1052</sup> disseminated on April 8 by the National Telecommunications Council of Haiti [*Conseil National des Télécommunications*], (Conatel), in which they denounced that "certain radio stations, violating the provisions of the Criminal Code and the telecommunications laws and regulation, systematically disseminate false information that could disturb public order, destabilize the institutions of the Republic and undermine the integrity of many citizens."<sup>1053</sup> Conatel also reminded them of the applicable sanctions for any infraction of the conditions for dissemination of information: "The sanction could be progressive and could go as far as nullification of the holder's concession, a two-year suspension for personnel and a fine imposed on individuals pursuant to the law and the regulations."<sup>1054</sup> Those criminal criteria referred to a 1977 law approved under the Jean Claude Duvalier government<sup>1055</sup> which, according to some, would be invalid because it is contrary to the Constitution of 1987 that guarantees freedom of expression in its article 28.<sup>1056</sup> Various organizations have raised their voices due to concerns that this call to order could lead to self censorship by journalists.<sup>1057</sup>

594. Regarding this incident, the Minister of the Interior, Réginald Delva, reportedly committed himself to agree to an urgent meeting with the leaders of Conatel while at the same time reiterating the importance of freedom of expression for democracy and rejecting any threat to its full exercise.<sup>1058</sup>

595. In previous opportunities, the IACHR and the Office of the Special Rapporteur had already pronounced on the risks of vague or imprecise penal norms which, by their ambiguity, result in granting

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<sup>1051</sup> Le Nouvelliste. November 13, 2014. [La journaliste brutalisée Géry Jérémie porte plainte contre ses deux policiers agresseurs](#); Le Nouvelliste. November 11, 2014. [Gerdy Jérémie, une journaliste tabassée à Jacmel](#); Europress. November 12, 2014. [Grupo Medialternatif denuncia agresiones policiales](#); AlterPresse. November 14, 2014. [Haïti-Presse : L'action en justice de la journaliste Gerdy Jérémie, brutalisée par des policiers](#); Pikliz.com. November 26, 2014. [L'Association des journalistes haïtiens porte plainte auprès de l'inspection générale de la police nationale](#).

<sup>1052</sup> Conseil National des Télécommunications (Conatel). April 8, 2014. [Communiqué. Rappel à l'ordre aux stations de radiodiffusion](#).

<sup>1053</sup> Original text: Conatel "constate que certaines stations de radiodiffusion, en violation des dispositions de Code Pénal es des lois et règlements de télécommunications, diffusent de manière systématique de fausses informations susceptibles de troubler l'ordre public, de déstabiliser les institutions de la République et de porter atteinte à l'intégrité de nombre de citoyens".

<sup>1054</sup> Original text: Conatel "la sanction peut être progressive et aller jusqu'à l'annulation de la concession pour le titulaire, à la suspension pour deux ans en ce qui concerne le personnel et à une amende infligée aux participants conformément à la loi et aux règlements".

<sup>1055</sup> Conseil National des Télécommunications (Conatel). [Décret accordant à l'Etat le monopole des services de télécommunications](#). October 12, 1977.

<sup>1056</sup> Haiti Libre. April 12, 2014. [Haïti - Politic : Mirlande Manigat reacted to the call to order of CONATEL](#).

<sup>1057</sup> Reporters Without Borders (RSF). April 15, 2014. [RISQUE DE CENSURE À PRIORI : LE CONSEIL NATIONAL DES TÉLÉCOMMUNICATIONS RAPPELLE LES RADIOS À L'ORDRE](#); Knight Center for Journalism in the Americas. April 21, 2014. [Telecom regulators' warning to Haitian media could lead to self-censorship: RSE](#).

<sup>1058</sup> Radio Kiskeya/ YouTube official channel. April 13, 2014. [Réginald Delva, ministre de l'intérieur, nie que la liberté de la presse soit ou puisse être menacée](#).

broad discretionary powers to administrative authorities are incompatible with the American Convention. Such provisions, due to their extreme vagueness, could support arbitrary decisions that censor or impose disproportionate subsequent liability upon persons or media for the simple expression of critical or dissenting discourse that could be disturbing to the public functionaries that transitorily exercise the authority to apply them. Therefore, the State should clarify which types of conduct can be the object of subsequent liability, to avoid affecting free expression especially when it could affect the authorities themselves.<sup>1059</sup>

596. In addition, as has been indicated by the Office of the Special Rapporteur the use of the criminal law to penalize violations of the radio broadcasting system could 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.<sup>1060</sup>

## 19. Honduras

### A. Progress

597. The Office of the Special Rapporteur was informed that on June 11, the Trial Court of Tegucigalpa with National Jurisdiction [*Tribunal de Sentencia con Jurisdicción Nacional de Tegucigalpa*] sentenced three men to imprisonment who had been found guilty of the murder of journalist Alfredo Villatoro in May of 2012. According to information received, Marvin Alonso Gómez and the brothers Osman Fernando and Edgar Francisco Osorio Arguijo had been arrested weeks after the murder and on March 2014 the court [*tribunal*] had found them guilty, but they were awaiting sentencing.<sup>1061</sup> Villatoro was kidnapped by armed men on May 9. On May 15, his body was found on a lot south of Tegucigalpa with two bullet wounds to the head, dressed in the uniform of a police special operations squadron and with a red handkerchief on his face. The journalist was well-known and influential and served as coordinator of the *HRN* radio network, one of the country's most important, where he conducted an afternoon program.<sup>1062</sup>

598. On August 20, the National Congress [*Congreso Nacional*] overturned the reform of the Law Against Domestic Violence [*Ley Contra la Violencia Doméstica*], which had prohibited the media from publishing information on trials being held for that crime.<sup>1063</sup> The reform had been enacted on September 6, 2013 and modified article 23, which established that acts of violence involve the private sphere so that “communications media shall abstain from publishing or disseminating information associated with domestic violence trials whether they are held at administrative or judicial installations; infringement of this provision shall be punished with a fine of ten (10) to twenty-five (25) minimum wages at their highest value.” The reform also included sanctions and fines for administrative or judicial employees who reveal information about trials.<sup>1064</sup>

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<sup>1059</sup> IACHR. [Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2009](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Par. 519-520.

<sup>1060</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. 467.

<sup>1061</sup> Inter American Press Association (IAPA). June 12, 2014. [IAPA welcomes conviction in Alfredo Villatoro case in Honduras](#); El País. June 12, 2014. [Cadena perpetua a los asesinos de un periodista hondureño](#); El Universal/AFP. June 12, 2014. [Cadena perpetua para asesinos de periodista en Honduras](#); El Herald. June 11, 2014. [Cadena perpetua a asesinos de Alfredo Villatoro](#); Clases de periodismo. June 12, 2014. [Honduras: Asesinos de periodista son condenados a cadena perpetua](#).

<sup>1062</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. May 17, 2012. [Press Release R52/12. The Office of the Special Rapporteur condemns murder of journalist kidnapped in Honduras](#); Knight Center for Journalism in the Americas. May 16, 2012. [Kidnapped Honduran radio journalist found dead](#); Comité por la Libre Expresión (C-Libre). May 16, 2012. [Ángel Alfredo Villatoro Rivera](#); Reporters Without Borders. May 16, 2012. [Kidnapped radio journalist Alfredo Villatoro found shot dead](#).

<sup>1063</sup> Radio Progreso. August 22, 2014. [Juicios contra violencia doméstica podrán ser públicos](#); Campaña Nacional contra los Femicidios. November 21, 2014. [Violencia contra mujeres. un mal imparible e impune en Honduras](#).

<sup>1064</sup> Comité por la Libre Expresión (C-Libre). February 14, 2014. [Múltarán a medios de comunicación que publiquen o divulguen casos de violencia doméstica](#); La Prensa. March 19, 2014. [Prohíben publicar sobre agresiones a mujeres en Honduras](#).

599. The Office of the Special Rapporteur was informed of the reconciliation agreement reached by two police officers accused of the crimes of illegal detention, mistreatment, serious injuries, abuse of authority and damages [*detención ilegal, vejámenes, lesiones graves, abuso de autoridad y daños*] against journalist Juan Carlos Cruz, and three youths in events that occurred in 2009. As reported, the police committed themselves to publicly asking forgiveness through a press conference, along with making a payment to Cruz's journalism team.<sup>1065</sup> On July 31, 2009, Cruz was beaten and arrested by police after having filmed a confrontation between the police and a group of youths who were riding a motorcycle without identification.<sup>1066</sup>

600. The Office of the Special Rapporteur received with satisfaction information about the adoption of positive measures by the National Telecommunications Commission [*Comisión Nacional de Telecomunicaciones*] (Conatel) to guarantee community audiovisual broadcast media access to frequencies on the radio spectrum, through adoption of the Broadcast Services Regulation for Community Purposes [*Reglamento de Servicios de Difusión con fines Comunitarios*] in August of 2013. In an *in loco* visit by the IACHR from December 1 to 5, 2014, the Office of the Special Rapporteur observed the granting of 25 radio spectrum frequencies to diverse communities of the country, including communities of the Miskito people.<sup>1067</sup>

## B. Murders

601. The Office of the Special Rapporteur was informed of the murder of *Radio Progreso* employee Carlos Hilario Mejía Orellana on April 11, in the city of El Progreso, department of Yoro. According to information received, Mejía Orellana was repeatedly stabbed in his home.<sup>1068</sup> Mejía Orellana, along with some of the journalists and the Director of *Radio Progreso*, was the beneficiary of precautionary measures ordered by the IACHR.<sup>1069</sup> According to information received during the *in loco* visit to Honduras by the IACHR from December 1 to 5, the judicial investigation for this murder reportedly ended with the perpetrator being prosecuted.<sup>1070</sup> Additionally, according to information received by the Office of the Special Rapporteur this murder was not related to Mejía Orellana's work at *Radio Progreso*. The Office of the Special Rapporteur appreciates the progress in the investigation and urges the authorities to duly exhaust criminal hypotheses associated with the work of Mejía Orellana.

602. On August 14, journalist Nery Francisco Soto Torres was murdered in the municipality of Olanchito, department of Yoro. According to information received, Soto Torres, who was an anchorman and reporter for *Canal 23*, was entering his home when unknown individuals, who presumably were waiting for him, repeatedly shot him. Soto, who was also the co-producer of the program on *Radio Full FM*, had arrived early at his home because of a power failure. The authorities ruled out robbery as a motive for the murder.<sup>1071</sup>

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<sup>1065</sup> Conexihon. November 3, 2014. [Policías pedirán perdón por vejámenes, detención ilegal y destrucción de equipo de periodista](#); Tiempo. November 4, 2014. [Audiencia de conciliación: Policías pedirán disculpas a periodista por golpearlo](#); Tercer Poder. November 8, 2014. [Policías se disculparán e indemnizarán a periodista para evitar la cárcel](#).

<sup>1066</sup> IACHR. [Annual Report 2009. 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. 317.

<sup>1067</sup> IACHR. December 5, 2014. [Preliminary Observations concerning the Human Rights Situation in Honduras](#); Comisión Nacional de Telecomunicaciones (Conatel). No date. Operadores del Servicio de Radiodifusión Sonora FM y de Televisión con Fines Comunitarios (information delivered to the Office of the Special Rapporteur during the onsite visit carried out December 1 -5, 2014). Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1068</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. April 15, 2014. [Press Release R 39/14/ Office of the Special Rapporteur Condemns Murder of Radio Worker in Honduras](#); Reporters Without Borders. April 14, 2014. [Radio Progreso Employee Murdered After Getting Threats](#); Religión Digital. April 14, 2014. [Carlos Mejía Orellana, asesinado en Honduras](#); La Prensa. April 14, 2014. [Organizaciones condenan asesinato de empleado de Radio Progreso](#); Knight Center for Journalism in the Americas. April 16, 2014. [Honduran media employee killed after having requested police protection for years](#).

<sup>1069</sup> IACHR. Annual Report 2011. Chapter III (The Petition and Case System). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 74. Available for consultation at: <http://www.oas.org/en/iachr/docs/annual/2011/TOC.asp>

<sup>1070</sup> IACHR. December 5, 2014. [Preliminary Observations concerning the Human Rights Situation in Honduras](#).

<sup>1071</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. August 21, 2014. [Press Release R 89/14 Office of the Special Rapporteur Condemns Murder of Journalist in Honduras](#); Committee to Protect Journalists (CPJ). August 19, 2014. [Television anchor shot dead outside his home in Honduras](#); Comité por la Libre Expresión (C-Libre). August 15, 2014. [Periodista es acorralado a tiros frente a](#)

On August 25, the Police arrested two men who were presumably responsible for the murder of the journalist.<sup>1072</sup>

603. On December 15, social communicator Reynaldo Paz Mayes, owner of *Canal 28*, was murdered in the city of Comayagua, department of Comayagua, Honduras. According to information received, Paz Mayes was exercising in the morning at an athletic center in the city when he was attacked by unknown individuals who shot him at least twice. The entrepreneur also directed critical opinion and analysis programs on the situation of the country.<sup>1073</sup>

604. At the hearing “Denunciations of Murders of Journalists and Impunity in Honduras” [*Denuncias de asesinatos de periodistas e impunidad en Honduras*], held on March 25 during the 150<sup>th</sup> Ordinary Period of Sessions of the IACHR, the Office of the Special Rapporteur received information about the increase in violence against journalists and social communicators in the country, which is reflected in 32 murders committed against this group since 2009. According to figures provided by the petitioners, between 2003 and 2013, 38 journalists had been murdered,<sup>1074</sup> and as of January 2014, criminal proceedings had begun in only 8 of the 22 documented murders and sentences had been imposed in just 2 cases. The petitioners attributed this problem of impunity to selective allocation of funds, high levels of corruption as well as non-fulfillment of investigation standards established by the Inter-American Court, which makes it difficult to identify those responsible and effectively bring them to justice. They also expressed concern that murders of journalists are not investigated by the Special Prosecutor’s Office for Human Rights [*Fiscalía Especial de Derechos Humanos*]. They indicated that this climate of violence and impunity has led journalists to censor themselves or end up by fleeing the country. The State, for its part, explained the organization of the system for investigation and administration of justice with respect to crimes against journalists. It reported the creation of a specialized unit to investigate and prosecute cases in which there may have been participation by members of the national police, armed forces or the judicial branch; it also reported the creation of the Special Prosecutor’s Office for Crimes against Life [*Fiscalía Especial de Delitos contra la vida*], which would theoretically be responsible for investigating murders of journalists through its investigative unit of deaths of high social impact [*unidad de investigación de muertes de alto impacto social*], and only in case of participation by a State agent would cases be transferred to the unit for deaths committed by public order agents and employees of the State. The State declared that, as part of its efforts to deal with this worrisome situation, it has requested collaboration from countries such as the United States of America, Spain and Colombia. It emphasized that it has produced various reports since 2010 and has taken part in various public hearings about the subject. The State specified that from 2009 to 2013, the Office of the General Public Prosecutor [*Ministerio Público*] reports 27 cases of deaths of journalists and social communicators; out of these, it mentions between 29 and 32 deaths of journalists. As reported by the State, of the cases prosecuted, homicides have been perpetrated by common criminals or organized crime.<sup>1075</sup>

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[su residencia](#); Reporters Without Borders. August 19, 2014. [Tv Presenter Becomes 7th Journalist to be Killed in Honduras in 2014](#); La Prensa. August 16, 2014. [Consternación en Olanchito por asesinato del periodista Nery Soto](#); El Heraldo. August 16, 2014. [Repudio en Honduras por muerte de otro periodista](#); La Prensa Gráfica. August 16, 2014. [Asesinan a periodista en norte Honduras](#).

<sup>1072</sup> La Prensa. August 26, 2014. [Capturan a supuestos asesinos del periodista hondureño Nery Soto](#); El Heraldo. September 1, 2014. [Detienen a supuestos asesinos del periodista de Olanchito, Nery Soto](#); HRN. August 25, 2014. [Capturan a supuesto asesino del periodista Nery Francisco Soto](#).

<sup>1073</sup> El Heraldo. December 15, 2014. [Acribillan a propietario de canal de TV](#); Proceso Digital. December 15, 2014. [Asesinan a empresario de las telecomunicaciones en Comayagua](#); Inter American Press Association (IAPA). December 15, 2014. [IAPA condemns murder of journalist in Honduras](#); IACHR. Office of the Special Rapporteur for Freedom of Expression. December 17, 2014. [Press Release R154/14. Office of the Special Rapporteur condemns murder of communicator in Honduras](#).

<sup>1074</sup> PEN International. March 25, 2014. [Audencia sobre la situación de la violencia contra periodistas y el problema de la impunidad en Honduras ante la Comisión Interamericana de Derechos Humanos](#). Document delivered to the IACHR at the hearing of March 25, 2014. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1075</sup> IACHR. 150 Period of Sessions. Hearing Reports of Killings of Journalists and Impunity in Honduras. March 25, 2014. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=en&Session=134&page=2>; IACHR. April 4, 2014. [Press Release 35/14. IACHR Wraps Up its 150th Session](#); IACHR. May 13, 2014. [Press Release 35A/14. Report on the 150th Session of the IACHR](#).

605. According to information provided by the State during the *in loco* visit to Honduras by the IACHR from December 1 to 5, 2014, in 2013 investigative dossiers were opened in cases of murders of journalists, indictments [*requerimiento fiscal*] were issued in two cases, and one guilty verdict and two acquittals were handed down. In 2014 seven investigative dossiers were begun in this type of incidents, indictments were handed down in two cases, two guilty verdicts were handed down and one arrest warrant was issued.<sup>1076</sup>

606. 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."

607. 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 and threats against media outlets and journalists

608. Unknown individuals fired shots at the vehicle of Héctor Antonio Madrid Vallecillo, a journalist at *Canal 35* and *Canal 10*, in the city of Tocoa, department of Colón. The incident took place while the journalist was producing the end of the year program. When leaving in the early hours of January 1, he noticed various bullet impacts on his truck. The journalist filed a complaint with the National Criminal Investigation Directorate [*Dirección Nacional de Investigación Criminal*] (DGIC).<sup>1077</sup>

609. The Minister of Education, Marlon Escoto, had threatened journalist Marvin Ortiz, of *Radio Globo*, through his Twitter account. The public servant had written: "Marvin Ortiz of Radio Globo after January 27 I will go and look for you so you can tell me why you insult me and if I owe you something." The public servant had also written against critical journalists and media.<sup>1078</sup>

610. On February 2, sports journalist Ramón Rojas, correspondent for the daily newspaper *Tiempo* and for *Canal 5*, was threatened by one of the presidents of the 'Deporte Savio F.C.' Athletic Club in the city of Santa Rosa de Copan, department of Copán. The incident stemmed from an interview with the team trainer in which the administration was blamed for bad results.<sup>1079</sup>

611. Leonel García Hernández, a journalist for *Canal 19* and *Radio Discovery*, was threatened and intimidated by the head of the Property Registry Office [*Oficina de Registro de la Propiedad*] in the city of Nacaome and by that person's brother, who both went to the social communicator's home. The incident occurred following publication of an investigation into presumed fraud by that institution in signatures on mortgage deeds.<sup>1080</sup>

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<sup>1076</sup> IACHR. December 5, 2014. [Preliminary Observations concerning the Human Rights Situation in Honduras](#).

<sup>1077</sup> Comité por la Libre Expresión (C-Libre). January 3, 2014. [Desconocidos tirotean vehículo de periodista frente al canal de televisión](#); Proceso Digital. January 2, 2014. [Corresponsal de Abriendo Brecha espera pronta acción judicial tras atentado criminal](#).

<sup>1078</sup> La Prensa. January 14, 2014. [Ministro de Educación de Honduras explota en Twitter por supuestos insultos](#); Defensores en línea. January 15, 2014. [Ministro de Educación amenaza a periodista a través de Twitter](#); Comité por la Libre Expresión (C-Libre). January 15, 2014. [Secretario de educación amenaza a periodista a través del Twitter](#).

<sup>1079</sup> Comité por la Libre Expresión (C-Libre). February 5, 2014. [Por difundir información deportiva, periodista recibe amenazas de muerte](#).

<sup>1080</sup> Comité por la Libre Expresión (C-Libre). May 15, 2014. [Comunicador es amenazado por funcionario después de haber revelado caso de corrupción](#).



612. Journalist Alex Sabillón, anchorman and reporter for the news program ‘Hechos de Choloma’ broadcasted by *Multicanal*, was the victim of continuous incidents of intimidation and death threats stemming from a report on corruption at the Aguas de Choloma company, in the department of Cortés.<sup>1081</sup> On May 23, a young man photographed him on various occasions at his home and then fled in a motor vehicle without license plates. On May 27, Sabillón saw a young man who also photographed him while he was carrying out his work as a reporter. The journalist had declared that since one month before, intimidations and threats using text messages, phone calls and taking photographs had increased. After the complaints, the police intensified security measures for the journalist that had been ordered by the Secretariat of Government, Justice, Human Rights and Decentralization [*Secretaría de Gobernación, Justicia, Derechos Humanos y Descentralización*].<sup>1082</sup> On June 16, the Director of the Road Commission of the Office of the Municipal Mayor of Choloma [*Comisión Vial de la Alcaldía de Choloma*], Miguel Callejas, threatened Sabillón with death in the presence of the agent responsible for the journalist’s security. “It doesn’t matter to me to if you go around with police, you son of a whore, we’re going to kill you” said the public servant.<sup>1083</sup> In effect, according to information given to the Office of the Special Rapporteur by the nongovernmental organization C-Libre, the police agent who protected Sabillón was murdered along with the chairman of the Water Board [*Junta de Agua*] of San Francisco El Ceibón, Benito López, after having denounced, through journalist Sabillón, alleged acts of corruption at the Aguas de Choloma company. As a result of this situation, on August 30, 2014 the journalist was forced to leave his place of residence to live in another part of the country.<sup>1084</sup>

613. Journalists Yanina Romero, Carlos Rodríguez and Lourdes Ramírez, of the *KTV* channel, received death threats following publication of a story in which they affirmed that there could be a case of corruption at a hospital in the city of San Pedro Sula in early July.<sup>1085</sup>

614. On August 14, Rogelio Trejo, a journalist at *Honduvision TV* and also correspondent of ‘Hable Como Habla’ in the area, was approached by a person who said “they want to skin you” in the municipality of Choloma, department of Cortés. The social communicator accused the son of the municipal mayor, Leopoldo Crivelli, of responsibility for any attack against him. Days before, the social communicator had denounced Crivelli to the Office of the General Public Prosecutor [*Ministerio Público*] for death threats that Crivelli had allegedly made following publication of photographs associated with the mayor.<sup>1086</sup>

615. Journalist María Chinchilla, correspondent for the news program *Abriendo Brecha*, was threatened by unknown armed individuals in the community of Namasigüe, department of Choluteca. The journalist was in that border zone carrying out an investigation, when unknown individuals yelled at her “we are going to kill you if you continue to do that.”<sup>1087</sup> The National Police offered to provide security for the social communicator.<sup>1088</sup>

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<sup>1081</sup> Comité por la Libre Expresión (C-Libre). December 1, 2014. Agresiones contra periodistas en Honduras (information delivered to the Office of the Special Rapporteur during the onsite visit to Honduras carried out on December 1-5, 2014). Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1082</sup> Comité por la Libre Expresión (C-Libre). May 28, 2014. [Persiste la intimidación y el asecho en contra de reportero de televisión](#); Reporters Without Borders. May 30, 2014. [Another Journalist Murdered in Honduras. No End to Violence in Sight](#); Conexihon. December 2, 2014. [Alex Sabillón, un retrato de la impunidad de los agresores](#).

<sup>1083</sup> Comité por la Libre Expresión (C-Libre). June 17, 2014. [Frente a custodia policial empleado municipal amenaza de muerte a reportero](#); Reporters Without Borders. June 19, 2014. [RWB Encourages Honduras to Step Up Efforts to Combat Impunity](#).

<sup>1084</sup> Comité por la Libre Expresión (C-Libre). December 1, 2014. Agresiones contra periodistas en Honduras (information delivered to the Office of the Special Rapporteur during the onsite visit to Honduras carried out on December 1-5, 2014). Available at: Archives of the Office of the Special Rapporteur.

<sup>1085</sup> Reporters Without Borders. July 25, 2014. [Three Investigative Reporters Get Death Threats in Honduras](#); El Heraldo/EFE. July 25, 2014. [Piden a Honduras que proteja a tres periodistas amenazados de muerte](#); Knight Center for Journalism in the Americas. July 30, 2014. [RSF pide protección a gobierno de Honduras para su correspondiente no país](#).

<sup>1086</sup> Conexihon/Comité por la Libre Expresión (C-Libre). August 18, 2014. [Periodista responsabiliza a hijo de alcalde municipal si sufre atentado](#); Noticias Honduras. August 31, 2014. [Reportero responsabiliza a hijo de alcalde por cualquier atentado](#).

<sup>1087</sup> Conexihon/Comité por la Libre Expresión (C-Libre). September 3, 2014. [Hombres armados amenazan de muerte a periodista en Choluteca](#); El Libertador. September 3, 2014. [Hombres armados amenazan de muerte a periodista hondureña](#).

<sup>1088</sup> Choluteca.net/La Tribuna. September 2, 2014. [Policía brindará seguridad a periodista de Choluteca](#); Radio HRN. September

616. 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.”

#### D. Intimidations and harassments

617. Mario Argeñal, brother of murdered journalist Juan Carlos Argeñal, was the victim of intimidation and harassment for publicly speaking about the case and demanding that the authorities do justice. Mario Argeñal had given interviews to diverse media in which he had pointed to denunciations of corruption made by his brother as the cause of the murder. Days after the murder, he had seen trucks without license plates driving around his home. In February, a man remained parked in front of his home for several hours.<sup>1089</sup> Juan Carlos Argeñal was murdered on December 7, 2013 in the city of Danlí, department of El Progreso.<sup>1090</sup>

618. On August 20, the program ‘Noticiero Independiente’ on radio station *Estéreo Castilla*, in the municipality of Trujillo, was closed following alleged pressures from the mayor of that municipality. Miguel Dubón, host of the program and correspondent for *Radio Globo*, had been notified by the director of the station, who told him of pressure in which he had even been warned that the station could be closed if that news program was not taken off the air.<sup>1091</sup> The incident reportedly occurred after Dubón had denounced on August 18 alleged attempts by the mayor to censor his program that is critical of the local government, through systematic electricity cuts while the program is airing.<sup>1092</sup>

619. Journalist Gilberto Gálvez, correspondent for channel *TEN* and *HRN* in the municipality of La Paz, was threatened with having a formal complaint made against him if he failed to apologize to the Mayor of that municipality for sharing public information. The journalist had received a phone call from the Municipal Corporation counselor [*regidora de la Corporación Municipal*] in which he was told that he should fix this situation “and do not make me file a complaint [*querrela*] against you.”<sup>1093</sup> Additionally, on September 29 the Mayor of the municipality of La Paz criminally sued Gilberto Gálvez for libel and slander because of his comments on social networks. On December 4, happened the reconciliation hearing before the justice of the peace [*Jueza de paz*], in which the Mayor reportedly refused to reach an agreement.<sup>1094</sup>

620. On September 24, the Magistrates of the Superior Audit Tribunal [*Tribunal Superior de Cuentas*] (TSC) blocked the entry of journalists Cesar Silva, of *Globo TV*, and Wilson Herrera, of *Radio Globo*, into that State institution to cover the signing of an event with the Inter-American Development Bank (IDB).

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2, 2014. [Policía dará seguridad a periodista María Chinchilla.](#)

<sup>1089</sup> Defensores en línea/Amnistía Internacional. March 6, 2014. [Honduras: EN PELIGRO HERMANO DE PERIODISTA ASESINADO](#); IFEX/PEN International. June 10, 2014. [Honduras: Murder of two more radio journalists shows need for greater protection.](#)

<sup>1090</sup> 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.](#)

<sup>1091</sup> Comité por la Libre Expresión (C-Libre). No date. [Cierran programa tras denunciar hostigamiento y sabotaje informativo por parte de alcalde de Trujillo](#); Reporters Without Borders. September 2, 2014. [Honduran Radio Program Taken Off Air After Pressure From City's Mayor.](#)

<sup>1092</sup> Comité por la Libre Expresión (C-Libre). August 18, 2014. [Alcalde municipal hostiga a comunicador social y sabotea su trabajo informativo](#); Reporters Without Border. September 2, 2014. [Honduran Radio Program Taken Off Air After Pressure From City's Mayor.](#)

<sup>1093</sup> Comité por la Libre Expresión (C-Libre). September 26, 2014. [Por difundir información pública regidora municipal amenaza con querrelar a periodista](#); Conexihon/Comité por la Libre Expresión (C-Libre). September 26, 2014. [Por difundir información pública regidora municipal amenaza con querrelar a periodista.](#)

<sup>1094</sup> Comité por la Libre Expresión (C-Libre). December 6, 2014. [Alcaldesa somete a periodista a juicio oral por comentarios en Facebook](#); Cubaperiodistas. December 5, 2014. [Honduras: autoridades de La Paz inician proceso contra periodista](#); El Libertador. December 7, 2014. [Alcaldesa hondureña lleva a periodista a tribunales por comentarios en Facebook.](#)

Other media were able to attend the event and the journalists were informed by the receptionist that “there is no authorization for journalists from Globo to enter.”<sup>1095</sup>

621. A soldier from the National Interinstitutional Security Force [*Fuerza de Seguridad Interinstitucional Nacional*] (Fusina) intimidated journalist Isaac Leonardo Guevara Amaya, correspondent for *Radio Progreso*, during coverage of an eviction in the Garífuna community of Barra Vieja in the municipality of Tela, department of Atlántida on September 30. As reported, the journalist was filming a few meters away from the eviction when a soldier approached and said “I’m only going to ask one question, whom are you with, are you part of the problem or part of the solution.”<sup>1096</sup> In February of 2013, presumed agents of the National Police had threatened the journalist.<sup>1097</sup>

#### **E. Bill for the Protection of Men and Women Human Rights Defenders, Journalists, Social Communicators and Operators of the Justice System**

622. On May 28, a Bill for the Protection of Men and Women Human Rights Defenders, Journalists, Social Communications and Operators of the Justice System [*Ley de Protección para las y los Defensores de Derechos Humanos, Periodistas, Comunicadores Sociales y Operadores de Justicia*] was submitted to the National Congress of the Republic [*Congreso Nacional de la República*] by the Executive Branch. The bill contemplates the creation of a consultative and advisory council known as the “National Council for the Protection of Men and Women Human Rights Defenders” [*Consejo Nacional de Protección para las y los Defensores de Derechos Humanos*], along with a General Directorate of Mechanisms for Protection and Analysis of Social Conflicts [*Dirección General de Mecanismos de Protección y Análisis de Conflictos Sociales*], which will be part of the structure of the Secretariat of States in the Offices of Human Rights, Justice, Government and Decentralization [*Secretaría de Estado en los Despachos de Derechos Humanos, Justicia, Gobernación y Descentralización*]. One of its functions is “to draft manuals and protocols for the application of security measures decreed by national authorities and precautionary and provisional measures decreed by the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, respectively, in coordination with the related state institutions.” The bill also contemplates the creation of three technical units: i) Unit for Reception of Cases, Risk Assessment and Immediate Reaction [*Unidad de Recepción de Casos, Evaluación de Riesgos y Reacción Inmediata*], ii) Unit for Prevention, Follow-up and Analysis [*Unidad de Prevención, Seguimiento y Análisis*], which is part of the General Directorate of Mechanisms for Protection and Analysis of Social Conflicts [*Dirección General de Mecanismos de Protección y Análisis de Conflictos Sociales*], which duty is “to permanently follow up on the implementation of provisional, precautionary and security measures decreed by the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights, respectively, and those agreed-upon in consensus with national authorities, to opportunely recommend their continuity, adaptation or revocation,” and iii) Unit for the Protection of Persons at Risk [*Unidad de Protección de Personas en Riesgo*], which is part of the Secretariat of State in the Offices of Security [*Secretaría de Estado en los Despachos de Seguridad*] and would act as a specialized technical body to implement preventive and protective measures as well as urgent measures for protection in keeping with the Resolution issued by the General Directorate of Mechanisms for Protection and Analysis of Social Conflicts [*Dirección General de Mecanismos de Protección y Análisis de Conflictos Sociales*].<sup>1098</sup>

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<sup>1095</sup> Comité por la Libre Expresión (C-Libre). September 25, 2014. [Magistrados del Tribunal Superior de Cuentas impiden que periodistas cubran evento público.](#)

<sup>1096</sup> Conexihon/Comité por la Libre Expresión (C-Libre). October 3, 2014. [Militar intimida a periodista hondureño “Vos con quién estás, sos parte del problema”.](#)

<sup>1097</sup> IACHR. Annual Report 2013. [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. 149. Doc. 50. December 31, 2013. Para. 525.

<sup>1098</sup> República de Honduras. Procuraduría General de la República. Official Letter GTIDH-326-2014 dated September 8, 2014 forwarding Official Letter No. SP-A-111-2014 signed by the Sub Procurador General de la República sent to the Executive Secretary of the IACHR on September 8. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

623. The bill would not refer to the particularities of each beneficiary group in relation to the causes that generate risk, the nature of the risks that they face and their specific needs for protection. The State reported that this classification would be regulated by means of regulations, manuals and action protocols to be issued by the Secretariat of State in the Offices of Human Rights, Justice, Government and Decentralization [*Secretaría de Estado en los Despachos de Derechos Humanos, Justicia, Gobernación y Descentralización*] by means of the General Directorate of Mechanisms for Protection and Analysis of Conflicts [*Dirección General de Mecanismos de Protección y Análisis de Conflictos Sociales*] in coordination with the Secretariat of State in the Offices of Security [*Secretaría de Estado en los despachos de Seguridad*] because a risk assessment must include a causal nexus between the cause that gave rise to the risk, the specific needs and the legal interest that is to be protected.<sup>1099</sup>

624. In early June, the National Congress [*Congreso Nacional*] had approved it in its first reading.<sup>1100</sup> On August 6, the Congress approved the law in its second reading.<sup>1101</sup>

625. Currently, there is no definitive version because the Congress opened a consultation process with the civil society and other involved actors. On August 6, a plenary meeting was held with the civil society, particularly persons who work in the promotion and defense of human rights, which produced a document with recommendations. A second meeting was held with directors of media outlets, journalists, journalists' associations and the Honduran Press Association [*Asociación de Prensa Hondureña*]. The third meeting was held with operators of the justice system and included representatives of the Supreme Court of Justice [*Corte Suprema de Justicia*], the Office of the General Public Prosecutor [*Ministerio Público*], the Bar Association [*Colegio de Abogados*], Association of Judges [*Asociación de Jueces*] and the Association of Prosecutors [*Asociación de Fiscales*]. The fourth meeting was held with representatives from the Ministry of Security [*Ministerio de Seguridad*], Secretariat of Defense [*Secretaría de Defensa*] and representatives of the Armed Forces, National Police, State Directorate of Investigation and Intelligence [*Dirección de Investigación e Inteligencia del Estado*] and the Interinstitutional Security Force [*Fuerza de Seguridad Interinstitucional*] (Fusina).<sup>1102</sup>

626. According to information supplied by the State during the *in loco* visit by the IACHR, the third reading of the bill remains pending in the National Congress of the Republic [*Congreso Nacional de la República*]. During the visit, the Office of the Special Rapporteur Received information about the need for the law that creates the protection mechanism to include an adequate determination of the journalists, social communicators and media employees, and that any measures for protection correspond to the working needs of the social communicators and guarantee the exercise of their freedom of expression. Information was also received about limitations on the representation of journalists and social communicators in the National Council for Protection [*Consejo Nacional de Protección*] established in the bill.<sup>1103</sup>

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<sup>1099</sup> República de Honduras. Procuraduría General de la República. Official Letter GTIDH-326-2014 dated September 8, 2014 forwarding Official Letter No. SP-A-111-2014 signed by the Sub Procurador General de la República sent to the Executive Secretary of the IACHR on September 8. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1100</sup> La Prensa. June 4, 2014. [Aprueban en primer debate ley de protección a periodistas en Honduras](#); Inter American Press Association (IAPA). June 6, 2014. [Honduras law to protect journalists seen as a step forward to end violence](#); El Heraldo. June 9, 2014. [CN aprueba en primer debate ley de protección a periodistas](#).

<sup>1101</sup> Congreso Nacional de Honduras. August 6, 2014. [Congreso Nacional aprueba en segundo debate Ley de Protección a Periodistas y Ley Anti Bullying](#); Teleprensa. August 7, 2014. [CN aprueba en segundo debate Ley de Protección a Periodistas y Ley Anti Bullying](#).

<sup>1102</sup> República de Honduras. Procuraduría General de la República. Official Letter GTIDH-326-2014 dated September 8, 2014 forwarding Official Letter No. SP-A-111-2014 signed by the Sub Procurador General de la República sent to the Executive Secretary of the IACHR on September 8. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1103</sup> IACHR. December 5, 2014. [Preliminary Observations concerning the Human Rights Situation in Honduras](#).

627. 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>1104</sup>

628. In addition, the Office of the Special Rapporteur has reiterated that “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.”<sup>1105</sup> The Office of the Special Rapporteur also noted some of the requirements for protective mechanisms to be effective, in this regard it 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>1106</sup>

629. 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.<sup>1107</sup>

630. Finally, as previously mentioned, the Office of the Special Rapporteur notes that it is important for the programs for protection to take into account the need to guarantee that communicators 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 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 he or she belongs is carrying out and those investigations’ possible connection with the alleged situation of risk under examination.<sup>1108</sup>

## F. Subsequent liabilities

631. On December 9, 2013, journalist Julio Ernesto Alvarado was sentenced by the Criminal Chamber of the Supreme Court of Justice [*Sala de lo Penal de la Corte Suprema de Justicia*] for the crime of “defamation for expressions constituting slander” [*difamación por expresiones constitutivas de injurias*] to one year and four months of imprisonment, special disqualification from practicing journalism for the time period of the main penalty, and civil interdiction [*interdicción civil*] for the time period of the main penalty, as well as the corresponding civil liability. According to information received, on April 28, 2014 the Penalty Enforcement Judge of the Judicial Section of Tegucigalpa [*Juez de Ejecución de las Penas de la Sección Judicial de Tegucigalpa*] admitted an application to commute the sentence of imprisonment and accessory punishments imposed upon the journalist. That decision was partially reversed by the Court of Appeals [*Corte*

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<sup>1104</sup> IACHR. [Preliminary Observations of the IACHR on its Visit to Honduras, May 15 to 18, 2010](#). III. Human Rights situation. OEA/SER.L/V/II. Doc. 68. June 3, 2010. Para. 26.

<sup>1105</sup> IACHR. Annual Report 2013. [Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Violence Against Journalists and Media Workers). OEA/Ser. L/V/II. 149. Doc. 50. December 31, 2013. Para. 78.

<sup>1106</sup> IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Violence against journalists and media workers: Inter-American standards and national practices on prevention, protection and prosecution of perpetrators). OEA/Ser. L/V/II. 149. Doc. 50. December 31, 2013. Para. 81.

<sup>1107</sup> IACHR. Annual Report 2013. [Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Violence Against Journalists and Media Workers). OEA/Ser. L/V/II. 149. Doc. 50. December 31, 2013. Para. 83.

<sup>1108</sup> IACHR. Annual Report 2013. [Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Violence Against Journalists and Media Workers). OEA/Ser. L/V/II. 149. Doc. 50. December 31, 2013. Para. 84.

*de Apelaciones*] on September 2014, which declared that “commutation of the accessory penalties does not apply” (civil interdiction and special disqualification [*interdicción civil e inhabilitación especial*]) to which the journalist was sentenced, nevertheless confirmed the commutation of the prison sentence.<sup>1109</sup> In response to this decision, on October 17, the Centro PEN Honduras and a number of the country’s journalists filed several actions for protection [*recurso de amparo*] with the Supreme Court of Justice [*Corte Suprema de Justicia*], against the order that would disqualify the journalist from practicing his profession for 16 months.<sup>1110</sup> The action for constitutional protection was admitted in December. In addition, the journalist denounced that he had been followed and harassed as the result of decisions handed down in this case.<sup>1111</sup>

632. On November 5, the IACHR issued precautionary measures in this case and requested the State to suspend the execution of the sentence of December 9, 2013 of the Supreme Court of Justice [*Corte Suprema de Justicia*] and that it abstain from carrying out any action to disqualify journalist Julio Ernesto Alvarado from practicing his profession until the IACHR has ruled on the petition filed by the journalist.<sup>1112</sup>

633. The incident dates from the year 2006, when Alvarado, director and host of the program ‘Mi Nación’ on the *Globo TV* channel, on three episodes of the program spoke of irregularities and illegalities allegedly committed by the Dean’s Office of the Faculty of Economic Sciences [*Decana de la Facultad de Ciencias Económicas*] of the Universidad Nacional Autónoma de Honduras. The dean sued Alvarado for defamation [*difamación*], along with a professor from the University who took part as a guest on one of the programs, and the president of the University’s Professors’ Association [*Asociación de Docentes de la Universidad Autónoma de Honduras*], who had published a communiqué questioning the designation of the dean and which had been mentioned by Alvarado on his program. In March of 2011, a trial court in Tegucigalpa [*juzgado de primera instancia*] had found the three men innocent. The dean appealed. In a 2013 Supreme Court decision, the Court annulled the innocent verdict with respect to Julio Ernesto Alvarado, stating that, by reproducing the accusations, the journalist had affected the reputation of the dean.<sup>1113</sup>

634. Indigenous journalist Albertina Manueles Pérez, a correspondent for the community media outlet *Radio Progreso*, had been accused of sedition [*sedición*], and was summoned before a preliminary hearing on June 24. The social communicator, a correspondent in the municipality of San Francisco de

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<sup>1109</sup> República de Honduras. Secretaría de Estado de Relaciones Exteriores y Cooperación Internacional. Note No. 882-DGPE/DPM-14 to the Executive Secretary of the IACHR, dated June 10, 2014, forwarding Official Letter No. SP-A-073-2014 of June 5, 2014. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Conexihon/ Comité por la Libre Expresión (C-Libre). April 30, 2014. [Carta de libertad para periodista Julio Ernesto Alvarado](#); PEN International. October 1, 2014. [Honduras: PEN member barred from journalism after covering corruption in state university](#); Reporters Without Borders. October 1, 2014. [Broadcaster Banned Again from Working as Journalist](#); Honduprensa/Honduras Tierra Libre. September 29, 2014. [Honduras: Funesta decisión de Corte de Apelaciones contra periodista hondureño](#).

<sup>1110</sup> PEN International. October 17, 2014. [Centro PEN Honduras junto a periodistas interponen 13 Recursos de Amparo a favor del periodista Julio Ernesto Alvarado](#); Última Hora. October 18, 2014. [Más de 16 recursos de amparo a favor del periodista Julio Ernesto Alvarado interponen varias organizaciones](#).

<sup>1111</sup> IACHR. 150 Period of Sessions. Hearing Reports of Killings of Journalists and Impunity in Honduras. March 25, 2014. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=en&Session=134&page=2>; PEN International. March 25, 2014. [Audiencia sobre la situación de la violencia contra periodistas y el problema de la impunidad en Honduras ante la Comisión Interamericana de Derechos Humanos](#). Document delivered to the IACHR at the hearing of March 25, 2014. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Knight Center for Journalism in the Americas. March 4, 2014. [Organizations denounce government harassment against two Honduran journalists in recent months](#); PEN International. October 1, 2014. [Honduras: PEN member barred from journalism after covering corruption in state university](#); Reporters Without Borders. October 1, 2014. [Broadcaster Banned Again from Working as Journalist](#).

<sup>1112</sup> IACHR. Precautionary Measure No. 196-14. [Resolución 33/2014 de 5 de noviembre de 2014](#).

<sup>1113</sup> IACHR. 150 Period of Sessions. Hearing Reports of Killings of Journalists and Impunity in Honduras. March 25, 2014. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=en&Session=134&page=2>; PEN International. March 25, 2014. [Audiencia sobre la situación de la violencia contra periodistas y el problema de la impunidad en Honduras ante la Comisión Interamericana de Derechos Humanos](#). Document delivered to the IACHR at the hearing of March 25, 2014. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Committee to Protect Journalists (CPJ). March 10, 2014. [Journalist sentenced to jail for defamation in Honduras](#); Comité por la Libre Expresión (C-Libre). February 5, 2014. [Periodista a un paso de ser arrestado e inhabilitado para ejercer su profesión](#); Knight Center for Journalism in the Americas. April 3, 2014. [Supreme Court in Honduras bars TV anchor from working as a journalist for 16 months](#); Reporters Without Borders. April 3, 2014. [Tv Anchor Still Facing Ban on Working as a Journalist](#).

Opalaca, department of Intibucá, appeared before the First Civil Court [*Juzgado Primero de Letras*] of Intibucá, along with a group of more than 30 indigenous leaders accused of the same crime. The accusation stemmed from occupation of the mayor's office by that community in rejection of the results of the elections of November 2013. The indigenous leaders did not accept the candidate who had been declared the winner by the Supreme Electoral Tribunal [*Tribunal Supremo Electoral*]. According to the journalist, his association with that process stems from his coverage of the occupation of the town hall, as well as the subsequent Indigenous Assembly that was reportedly convened.<sup>1114</sup> On June 24, the Court decided to impose substantive measures consisting of the obligation for the 36 indigenous leaders to sign in at the Peace Court [*Juzgado de Paz*] of San Francisco de Opalaca every 15 days, along with the prohibition against approaching the mayor's office building.<sup>1115</sup> According to available information, on July 23, the Court granted a temporary stay on behalf of the journalist and the rest of those accused of sedition, so that "the Office of the General Public Prosecutor [*Ministerio Público*] within the time limit set by law, may provide sufficient elements for judgment to support a formal indictment [*Auto de Formal Procesamiento*]" when considering that while "participation by the accused in the event (sedition [*sedición*]) has not been proven, the suspicion that the accused may have taken part has been established [...] as that evidentiary elements contained in the dossier and the evidence provided at the Initial Hearing [*Audiencia Inicial*] have established that the installations of the Office of the Municipal Mayor of San Francisco de Opalaca cannot be nor could they have been occupied by the Mayor [...] or his counselors, because that office continues to be occupied by the accuse[d]."<sup>1116</sup> In a letter sent to the IACHR, the State indicated that "Mrs. Albertina Manueles Pérez was not subpoenaed because she is a journalist or correspondent [...] but because she is a leader of the movement that continues to occupy the installation."<sup>1117</sup>

635. The Supreme Court of Justice [*Corte Suprema de Justicia*] admitted a suit for defamation and slander [*difamación y calumnia*] brought by attorney Sonia Inés Gálvez against journalist David Romero, director of *Radio Globo*. Gálvez had also filed suit against *Radio y TV Globo* journalists Ivis Alvarado, César Silva and Rony Martínez for 15 crimes of defamation [*difamación*] for expressions presumably transmitted in the programs 'Interpretando la noticia' and 'Noticias radio Globo.' The Court did not accept the case against the other three journalists.<sup>1118</sup> Days before, the journalist had denounced the threats he received after having published that both Gálvez and her husband, the deputy attorney general of the Office of the General Public Prosecutor [*fiscal general adjunto del Ministerio Público*], are implicated in cases of corruption within the Office of the General Public Prosecutor [*MP*]. As reported, he was followed by unknown individuals.<sup>1119</sup> On

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<sup>1114</sup> Radio Progreso. June 20, 2014. [PERSECUCIÓN JUDICIAL Y CRIMINALIZACIÓN SUFREN INDÍGENAS EN SAN FRANCISCO DE OPALACA](#); Comité por la Libre Expresión (C-Libre). June 18, 2014. [Comunicadora social es acusada por sedición en Honduras](#); Reporters Without Borders. June 25, 2014. [Journalist Accused of Sedition for Doing Her Job in Covering a Political Conflict](#); Honduprensa/Radio Progreso. July 25, 2014. [Corresponsal en San Francisco de Opalaca continúa su labor a pesar de amenazas y criminalización](#).

<sup>1115</sup> Radio Progreso. June 25, 2014. [EN JULIO SERÁ LA AUDIENCIA INICIAL CONTRA 36 INDÍGENAS DE SAN FRANCISCO DE OPALACA](#); Aler. June 25, 2014. [Honduras: Sigue la criminalización de la causa indígena](#); Consejo Cívico de Organizaciones Populares e Indígenas de Honduras (Copinh). June 25, 2014. [Imponen medidas sustitutivas contra 36 líderes Lencas de San Francisco de Opalaca, sigue la criminalización de la causa indígena](#); Honduprensa/Radio Progreso. July 25, 2014. [Corresponsal en San Francisco de Opalaca continúa su labor a pesar de amenazas y criminalización](#).

<sup>1116</sup> Radio Progreso. July 23, 2014. [Sobreseimiento Provisional Dictaron a Indigenas Acusados de Sedición](#); Honduprensa/Radio Progreso. July 25, 2014. [Corresponsal en San Francisco de Opalaca continúa su labor a pesar de amenazas y criminalización](#); República de Honduras. Secretaría de Estado de Relaciones Exteriores y Cooperación Internacional. Note No 1277-DPGE/DPM-14 to the Executive Secretary of the IACHR, dated November 3, 2014, forwarding Official Letter No. SPA 144-2014 of October 27, 2014. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1117</sup> República de Honduras. Secretaría de Estado de Relaciones Exteriores y Cooperación Internacional. Note No 1277-DPGE/DPM-14 to the Executive Secretary of the IACHR, dated November 3, 2014, forwarding Official Letter No. SPA 144-2014 of October 27, 2014. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1118</sup> Reporters Without Borders. August 27, 2014. [Leading Opposition Broadcaster Facing Criminal Libel Charges](#); Radio HRN. August 25, 2014. [Corte Suprema admite querrela en contra de David Romero](#); El Heraldo. August 21, 2014. [Por 15 delitos de difamación acusan a periodistas](#).

<sup>1119</sup> Comité por la Libre Expresión (C-Libre). August 20, 2014. [Periodista que denunció corrupción por parte del Fiscal General Adjunto, teme por su vida](#); Reporters Without Borders. August 27, 2014. [RSF PIDE PROTECCIÓN PARA EL PERIODISTA DAVID ROMERO ELLNER](#); Honduras Tierra Libre. August 20, 2014. [Honduras: periodista David Romero denuncia amenazas de fiscal adjunto // Periodista que denunció corrupción por parte del Fiscal General Adjunto, teme por su vida](#).

September 22, a judge had determined that the journalist would have to go to a public and oral hearing after the reconciliation hearing had failed.<sup>1120</sup>

636. 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."

### G. Community radio stations

637. The Office of the Special Rapporteur had knowledge of an official communication [*nota de emplazamiento*] that had been sent by the country's National Telecommunications Commission [*Comisión Nacional de Telecomunicaciones*] (Conatel) to *Radio Comunitaria Sugua 100.9 FM* located in the Garífuna community Sambo Creek, in the department of Atlántida. According to information received, in the letter sent by Conatel, the agency had indicated that Article 25 of the Telecommunications Act [*Ley de Telecomunicaciones*] had been violated "by installing, building or putting into operation a Telecommunications service without authorization from CONATEL." It also claimed that the radio station belonged to the Organización Fraternal Negra Hondureña (Ofraneh). Both the community radio station and Ofraneh denied this information. Conatel indicated that "in carrying out its duty to administer and control the use of the radio spectrum, on December 4, 2013, it found that the Organización Fraternal Negra Hondureña is illegally using frequency 100.9 MHz in the community of Sambo Creek in the department of Atlántida, without the corresponding authorization having been granted by this regulatory agency, for which reason, and with respect to the constitutional guarantee to the right of defense of September 17, 2014, it summoned the Confraternidad Negra Hondureña to provide its corresponding explanations of this situation." Conatel also stated that "it will make this known to the Office of the General Public Prosecutor [*Ministerio Público*] pursuant to article 39 of the Telecommunications Sector Framework Law [*Ley Marco del Sector de Telecomunicaciones*] and others of the regulation that say: When there are indications of crime, this must be made known to the Office of the General Public Prosecutor [*Ministerio Público*]."<sup>1121</sup>

638. In this respect, during the *in loco* visit by the IACHR in Honduras, the Office of the Special Rapporteur received information from diverse civil society organizations and media outlets about deficiencies in the processes and conditions for granting frequencies to community media. The Office of the Special Rapporteur received with interest observations by representatives from the Garífuna and indigenous peoples in Honduras who assert that the regulatory framework establishes conditions for access that do not recognize the traditional customs and forms of social organization and land-use characteristic of their peoples and that disproportionately impact the exercise of their rights to freedom of expression, information and culture, in violation of ILO Convention 169, which imposes obligations on the States to adopt special measures to safeguard the persons, institutions, properties and cultures of these peoples. It also establishes that such special measures shall be adopted pursuant to the freely expressed will of these peoples.<sup>1122</sup>

639. 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

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<sup>1120</sup> Comité por la Libre Expresión (C-Libre). September 22, 2014. [Un juicio oral y público afrontará periodista acusado de injurias y calumnias](#); Conexihon. September 22, 2014. [A juicio oral el periodista David Romero por 15 casos de difamación](#).

<sup>1121</sup> Comité por la Libre Expresión (C-Libre). September 30, 2014. [Comisión Nacional de Telecomunicaciones pretende cerrar radio garífuna](#); Communication sent by Radio Comunitaria Garífuna Sugua to the Office of the Special Rapporteur for Freedom of Expression dated September 23, 2014. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1122</sup> IACHR. December 5, 2014. [Preliminary Observations concerning the Human Rights Situation in Honduras](#).



exercise their rights to freedom of expression and access to information.<sup>1123</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>1124</sup>

640. 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."

## H. Access to information

641. On March 7, the Law for the Classification of Public Documents Relating to National Security and Defense [*Ley para la Clasificación de Documentos Públicos Relacionados con la Seguridad y Defensa Nacional*] was published in the Gaceta del Diario Oficial de Honduras. According to information received during the *in loco* visit to Honduras, that law has not been consulted with the society and specialized entities. The Commissioners from the Institute for Access to Public Information [*Comisionados del Instituto de Acceso a la Información Pública*] and diverse civil society organizations declared to the Office of the Special Rapporteur that the text contains regressive provisions with respect to the advertising standard established by the currently-in-effect law on access to information, contradicts the current norm in terms of access to information and does not comply with international standards regarding access to public information and protection of national security interests.<sup>1125</sup> The Office of the Special Rapporteur observes that the approved legal text establishes the possibility that security agencies could declare information about security and defense as "secret" and "ultra secret" in the name of the "interest of the nation."<sup>1126</sup>

642. In effect, the law empowers the National Defense and Security Council [*Consejo Nacional de Defensa y Seguridad*] to classify and protect information whose "disclosure could endanger security and national defense and the achievement of national objectives." To that effect, the law establishes four categories for classification of public information "in accordance with the degree of protection required [*sic*]." "Information, documentation or material referring to the internal strategic realm of state agencies" whose dissemination could "produce undesired institutional effects [...] against the effective development of state policies or the normal functioning of public-sector institutions" would be classified as *reserved*. This type of information shall be declassified after five years. *Confidential* information will be considered any information whose publication could "cause imminent risk or direct threat against national security and defense and public order" and "internally damages or harms national security," which is why it could be declassified after 10 years. Information that could "cause imminent risk or direct threat against the constitutional order, security, national defense, international relations and the achievement of national objectives" and could possibly cause "serious internal and external damages to national security" could be classified as *secret* for as

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<sup>1123</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>1124</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.

<sup>1125</sup> Along these lines, see Reporters Without Borders. January 16, 2014. [Secrecy Law Deals Major Blow to Public's Right to be Informed](#); Knight Center for Journalism in the Americas. January 21, 2014. [Honduran Secrecy Law endangers access to public information](#); El Heraldo. January 16, 2014. [Ley de Secretos cercena al IAIP y convenios](#); CNN en Español. January 17, 2014. [Descontento en Honduras por la aprobación de la Ley de Secretos Oficiales](#); La Prensa. January 15, 2014. ["Ley de secretividad es inconstitucional": directora de Instituto de Transparencia](#); Conexihon. December 2, 2014. [Análisis del riesgo de la Ley de secretos en Honduras](#).

<sup>1126</sup> IACHR. December 5, 2014. [Preliminary Observations concerning the Human Rights Situation in Honduras](#); República de Honduras. Gaceta del Diario Oficial de Honduras. [Ley para la Clasificación de Documentos Públicos Relacionados con la Seguridad y Defensa Nacional](#). March 7, 2014.

long as 15 years. Information classified as *ultra secret* could be restricted for up to 25 years. This category includes information that could “cause exceptionally grave internal and external damage to national security if it were publicly available” (Articles 4 and 7).<sup>1127</sup>

643. According to article 7 of the law, “if the circumstances under which the material was declared classified persist, the National Defense and Security Council [*Consejo Nacional de Defensa y Seguridad*] can extend the original classification period by means of a duly justified and reasoned order.” It also provides that any request for declassification outside of these time limits shall only take place in case of national interest or to investigate possible crimes.”<sup>1128</sup>

644. Article 10 of the law establishes that “[a]ny person to whom any classified material becomes known or enters into their possession, pursuant to this law, as long as that condition is satisfied, has the obligation to keep it secret and deliver it to the closest civil, police or military authority.” In this regard, it provides that “when classified material could become known to the communications media, they shall be notified of its character so that its classification will be respected.”<sup>1129</sup>

645. Finally, it is observed that article 14 of the law provides that “no official or employee of the public administration is obligated to reveal classified material in public or private hearings, whether they be administrative or judicial,” unless it involves “information related to the alleged commission of genocide, extrajudicial executions, tortures, forced disappearance, massive sexual violence or crimes against humanity.” If an authority requires information or classified material, this authority shall manage the corresponding authorization before the National Council of Defense and Security.<sup>1130</sup>

646. In the Joint Declaration on Access to Information and Secrecy Legislation, the Special Rapporteurs recalled that “[c]ertain information may legitimately be secret on grounds of national security or protection of other overriding interests. However, secrecy laws should define national security precisely and indicate clearly the criteria which should be used in determining whether or not information can be declared secret, so as to prevent abuse of the label “secret” for purposes of preventing disclosure of information which is in the public interest. Secrecy laws should set out clearly which officials are entitled to classify documents as secret and should also set overall limits on the length of time documents may remain secret. Such laws should be subject to public debate.”<sup>1131</sup> In this regard, the Office of the Special Rapporteur has reiterated that restriction of access to information 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.<sup>1132</sup>

647. Likewise, the Office of the Special Rapporteur recalls that, as stated in the Joint Declaration on Wikileaks of the year 2010 and Joint Declaration on Surveillance Programs and their Impact on Freedom of Expression of the year 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, “whistleblowers,” that being

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<sup>1127</sup> República de Honduras. Gaceta del Diario Oficial de Honduras. [Ley para la Clasificación de Documentos Públicos Relacionados con la Seguridad y Defensa Nacional](#). March 7, 2014.

<sup>1128</sup> República de Honduras. Gaceta del Diario Oficial de Honduras. [Ley para la Clasificación de Documentos Públicos Relacionados con la Seguridad y Defensa Nacional](#). March 7, 2014.

<sup>1129</sup> República de Honduras. Gaceta del Diario Oficial de Honduras. [Ley para la Clasificación de Documentos Públicos Relacionados con la Seguridad y Defensa Nacional](#). March 7, 2014.

<sup>1130</sup> República de Honduras. Gaceta del Diario Oficial de Honduras. [Ley para la Clasificación de Documentos Públicos Relacionados con la Seguridad y Defensa Nacional](#). March 7, 2014.

<sup>1131</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 and Organization of American States (OAS) Special Rapporteur on Freedom of Expression. December 6, 2004. [Joint Declaration on Access to information and on Secrecy Legislation](#).

<sup>1132</sup> IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 60.

government employees 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. The imposition of criminal sanctions must be exceptional and strictly limited according to necessity and proportionality.<sup>1133</sup>

648. Similarly, the Global Principles on National Security and the Right to Information (Tshwane Principles),<sup>1134</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>1135</sup>

649. In June, the Institute for Access to Public Information [*Instituto de Acceso a la Información Pública*] (IAIP) summoned the Ministry of Foreign Affairs [*Cancillería*] to justify the reasons for failing to provide information on local agreements for cancellation and contracting that it had made during the year in consulates and embassies. The petition was formulated by the daily newspaper *El Heraldo*, but the Ministry of Foreign Affairs [*Cancillería*] had refused to provide the information, declaring that the documents contain people’s names. The Ministry of Foreign Affairs [*Cancillería*] would have three days to make its arguments before the IAIP.<sup>1136</sup>

650. On August 11, the daily newspaper *El Heraldo* had denounced that the government had refused to provide information on expenditures incurred by the president of the country, Juan Orlando Hernández, and his delegation during participation by the National Football Team of Honduras at the 2014 Brazil World Cup. According to the daily newspaper, the government had refused to provide information with the argument that it involved information that is secret for reasons of national security.<sup>1137</sup>

651. The authorities of the Technical Fiduciary Committee [*Comité Técnico de Fideicomiso*] (CTF), the body responsible for administering funds from the Population Security Tax [*Tasa de Seguridad Poblacional*], had refused access to information to two journalists from the investigative unit of the *Comité por la Libertad de Expresión* (C-Libre). As reported, journalists Wendy Funes and Signy Fiallos were carrying out an investigation since March on the way in which the CTF and four of the country’s municipal corporations had executed funds from the security tax in four cities. Although the agency had provided some of the information, it was not complete. The journalists filed three appeals with the Institute for Access to Public Information [*Instituto de Acceso a la Información Pública*], which have not yet been resolved. Additionally, the

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<sup>1133</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. December 21, 2010. [Joint Statement On Wikileaks](#); 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. June 21, 2013. [Joint Declaration on Surveillance Programs and their Impact on Freedom of Expression](#).

<sup>1134</sup> Open Society Foundations. June 12, 2013. [The Global Principles on National Security and the Right to Information \(The Tshwane Principles\)](#).

<sup>1135</sup> Open Society Foundations. June 12, 2013. [The Global Principles on National Security and the Right to Information \(The Tshwane Principles\). Principles 37-40](#). Also see: IACHR. [Annual Report 2013. 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.149. Doc. 50. December 31, 2013. Para. 440.

<sup>1136</sup> El Heraldo. June 22, 2014. [IAIP emplazará a Cancillería por negación de información](#).

<sup>1137</sup> Conexihon. August 19, 2014. [Periodistas hondureños sortean amenazas del Estado, empresarios y crimen organizado](#).

transparency portal of the CTF, which it was obligated to have under the Transparency and Access to Public Information Act [*Ley de Transparencia y Acceso a la Información Pública*], had been dismantled.<sup>1138</sup>

## I. Other relevant situations

652. Journalist Gonzalo Rodríguez was fired by senior executives at *Canal 6* presumably for being part of the *Comité por la Libre Expresión* (C-Libre). As reported, before being fired, the owner of the media outlet had asked him directly if he was part of that organization. He was then called by human resources to inform him of his firing. On a previous occasion, he was reprimanded for affecting the interests of one of the channel's clients when making his notes.<sup>1139</sup>

653. Jorge Burgos, director and host of the program 'Suelta la lengua', which was broadcasted by *Canal 6*, denounced that on May 15 his program had been canceled by the management, presumably for the program's critical line against the government of president Juan Orlando Hernández. Burgos and Emy Padilla, a journalist who also hosted the program, indicated that acts of censorship had also occurred during previous broadcasts.<sup>1140</sup>

654. On June 18, the person accused of having murdered journalist Jorge Alberto 'Georgino' Orellana escaped from the prison located in the community of Támara, in the Central District. The accused, who had been jailed in February of 2013, was serving a sentence of 24 years and eight months of imprisonment.<sup>1141</sup> Orellana was a journalist at the *Televisión de Honduras* channel and was murdered on April 20, 2010.<sup>1142</sup>

655. Journalist José Ramón Maldonado, correspondent for the *HCH* channel and journalist of the radio program 'Matutino Ceibeño', declared that the president of the Republic, Juan Orlando Hernández, had asked him to reveal his information source. The incident occurred on July 10, after the journalist had asked the president about alleged incidents of corruption in which the Executive Branch [*poder ejecutivo*] was allegedly involved.<sup>1143</sup>

## 20. Jamaica

### A. Freedom of expression and hate speech

656. The Office of the Special Rapporteur continued receiving information about the systematic publication by some media outlets of articles with messages that could promote hatred and violence against persons belonging to the LGBTI community.

657. For example, on March 23, the *Jamaica Observer* newspaper reportedly published a cartoon indicating "the invasion of Jamaica by homosexuals" [*homos over run Jamaica*], which was alleged to be

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<sup>1138</sup> Comité por la Libre Expresión (C-Libre). September 26, 2014. [Comité Técnico de Fideicomiso niega información sobre fondos de Tasa de Seguridad Poblacional.](#)

<sup>1139</sup> Conexihon/Comité por la Libre Expresión (C-Libre). June 5, 2014. [Medio de comunicación despidió a periodista por pertenecer a C-Libre.](#)

<sup>1140</sup> Comité por la Libre Expresión (C-Libre). May 26, 2014. [Periodista denuncia cancelación arbitraria de su espacio informativo](#); Reporters Without Borders. May 28, 2014. [When Media Bosses Censor Their Own Journalists.](#)

<sup>1141</sup> El Herald. June 19, 2014. [Escapa de la cárcel el asesino del periodista Georgino Orellana](#); Comité por la Libre Expresión (C-Libre). June 20, 2014. [Se fuga asesino de periodista condenado a 24 años de prisión.](#)

<sup>1142</sup> IACHR. [Annual Report 2010. 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. 304.

<sup>1143</sup> Comité por la Libre Expresión (C-Libre). July 15, 2014. [Presidente hondureño intimida a periodista y lo obliga a revelar su fuente informativa](#); Reporters Without Borders. July 17, 2014. [Honduran President Threatens Reporter at Public Event.](#)

comparable to the increase in crime and government corruption.<sup>1144</sup> On July 1, an article was published under the headline “Local churches vow to prevent homosexuality from dominating society,” which contained phrases such as “The local church community is vowing never to sit idly by and allow homosexual lifestyles to infiltrate the Jamaican society.”<sup>1145</sup> On July 13, it published the article “Police hunt gay murder suspect,” which contained statements like “The men who often dress in drag and pose as prostitutes, live subnormal lives and according to the police, pose a serious threat to the New Kingston environment,” and “Police say that they have strong evidence that more than 90 per cent of the robberies were perpetrated by persons purported to be members of the gay community.”<sup>1146</sup> On July 16, the same newspaper published an editorial entitled “Homosexuality: the long, painful search for workable rules of engagement,” apparently justifying that “[a]ll Jamaicans, including entertainers, have the right to hold views against homosexuality without discrimination,” but also calling for tolerance and non-violence.<sup>1147</sup>

658. At the hearing “Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica,” held on October 28 during its 153<sup>rd</sup> Session, the IACHR and its Office of the Special Rapporteur received information about the ongoing stigmatizing and inflammatory speech published by media outlets regarding LGBTI persons. According to the requesting organizations, the State authorities failed to promote positive speech to reduce discrimination and stigma toward LGBTI persons. For its part, the State reported that the government is aware of the debate in Jamaica concerning the rights of LGBTI persons and has made efforts to guarantee those persons’ right to equality. With respect to the public discussions on the issue, the State reported that it takes the position that these issues are protected by the right to freedom of expression in the context of free and private media, and that it takes part in the debate only within the sphere of institutions under the control of the State.<sup>1148</sup>

659. As stated on other occasions, the Office of the Special Rapporteur has expressed its concern over these types of discriminatory statements that can potentially cause violence, depending on the context in which they are disseminated.<sup>1149</sup> In this respect, hate speech directed at against individuals on the basis of their sexual orientation or gender identity that constitutes the incitement of violence is not protected by freedom of expression.<sup>1150</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.

660. 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.

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<sup>1144</sup> Maurice Tomlinson. March 23, 2014. More Anti-gay material from the Jamaica Observer. E-mail message sent to the IACHR. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1145</sup> Jamaica Observer. July 1, 2014. [Local churches vow to prevent homosexuality from dominating society.](#)

<sup>1146</sup> Jamaica Observer. July 13, 2014. [Police hunt gay murder suspect.](#)

<sup>1147</sup> Jamaica Observer. July 16, 2014. [Homosexuality: the long, painful search for workable rules of engagement.](#)

<sup>1148</sup> IACHR. 153d Period of Sessions. Hearing Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica (On the Commission’s initiative). October 28, 2014. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=en&Session=136>

<sup>1149</sup> IACHR. [Annual Report 2013. 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. 149. Doc. 50. December 31, 2013. Para. 562.

<sup>1150</sup> IACHR. [Annual Report 2009. 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.

661. The Office of the Special Rapporteur also learned of the dismissal of Brendan Bain, Director of the Caribbean HIV/AIDS Regional Training (CHART) Network at the University of the West Indies after he testified at a trial before the Supreme Court of Belize in a case seeking to repeal the law that criminalized sex between men. His expert testimony reportedly was in favor of the constitutionality of that law. Supporters of the professor reportedly characterized the event as an attack against freedom of expression. For its part, the University stated that “While the University recognizes the right of Professor Bain to provide expert testimony in the manner he did,” it is “evident” that he had “[l]ost the confidence and support of a significant sector of the communit[y],” “undermining the ability of this programme [CHART] to effectively deliver on its mandate.”<sup>1151</sup> With respect to this issue, the State reported that the matter was pending before the Judiciary.<sup>1152</sup>

## B. Other relevant situations

662. In April, Karyl Walker, the editor of the Court/Crimes desk at the *Jamaica Observer* newspaper, and Abka Fitz-Henley, a reporter and producer at *Nationwide News Network*, reportedly received death threats as a result of their coverage of the trial against the artist Vybz Kartel, who was given a life sentence for murder. According to reports, the journalists received threatening phone calls, directly and/or through other persons, suggesting that they “leave the artist alone.”<sup>1153</sup> Different organizations such as the Media Association Jamaica Limited (MAJ) and the Press Association of Jamaica (PAJ) have reportedly condemned these threats.<sup>1154</sup>

663. Principle 9 of the IACHR Declaration of Principles on Freedom of Expression, approved in 2000, 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”.

664. The Office of the Special Rapporteur views positively the statements made by Jamaica’s Information Minister Sandra Falconer to the effect that the government is taking new measures for the development of the Electronic Media Policy, for which the respective parties have already been consulted. The Minister stated that this policy “will provide an enabling framework for the new media landscape and, importantly, anchor our ambitions in being regional leaders in innovation, content creation, cultural exchange, and promotion and regulation,” and that “we remain determined to ensure that the welfare and diverse needs of the consumer of content are well served.”<sup>1155</sup>

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<sup>1151</sup> RJR News. May 20, 2014. [Bain fired from post as Director of CHART](#); Free Speech Jamaica. May 24, 2014. [UWI Professor Asked to Step Down After Providing Evidence for Anti-Gay Legislation Report](#); The Gleaner. May 24, 2014. [Bain Supporters Planning Mass Protest For Monday](#); News 5. May 27, 2014. [UWI Vice Chancellor says it's not about Freedom of Speech](#); IACHR. 153d Period of Sessions. Hearing Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica (On the Commission’s initiative). October 28, 2014. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=en&Session=136>; Medical Daily. May 27, 2014. [AIDS Expert, Brendan Bain, Fired By University For Saying Homosexuality Is Threat To Public Health; Supporters Protest](#); Supreme Court of Belize. Caleb Orozco and United Belize Advocacy Movement v. The Attorney General of Belize. Expert Report of Brendan Courtney Bain. August 7, 2012. Available for consultation at: <http://www.scribd.com/doc/225461745/Expert-Report-of-Professor-Brendan-Courtney-Bain-on-Dangers-of-Men-Sleeping-With-Men#scribd>; Council on Hemispheric Affairs. July 9, 2014. [LGBT rights under review in Jamaica](#).

<sup>1152</sup> IACHR. 153d Period of Sessions. Hearing Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica (On the Commission’s initiative). October 28, 2014. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=en&Session=136>

<sup>1153</sup> Jamaica Observer. April 14, 2014. [Journalists get death threats](#); Caribbean 360. April 14, 2014. [Journalists who covered Vybz Kartel trial receive death threats](#).

<sup>1154</sup> Media Association Jamaica Limited (MAJ). April 17, 2014. [MAJ Condemns Threats Against Journalists](#); Jamaica Observer. April 14, 2014. [PAJ condemns threat against journalists](#); Caribbean 360. April 15, 2014. [Kartel issues statement from prison following death threats against journalists](#).

<sup>1155</sup> Jamaica Information Service. April 8, 2014. [Work Advancing on Electronic Media Policy](#).

## 21. Mexico

665. The IACHR received concerning information regarding persisting serious attacks against the lives and personal integrity of journalists in Mexico, in detriment to the exercise of freedom of expression. Violence against reporters and journalists increased in 2014, specifically in the areas of the country where there is organized crime. In fact, throughout this year, five male journalists and one female journalist were murdered for causes that may be related to the exercise of freedom of expression. The IACHR also recorded the murder of a child as the consequence of an attack on his father who was a community radio journalist. These deaths took place within the context of threats and general harassment of the press in different regions of the country. On the other hand, little progress is being made on the investigation of these crimes and the established protection mechanisms lack effectiveness. Throughout this year, the IACHR also received information about serious acts of violence and arbitrary detentions that took place during protests and affected tens of protestors and journalists. In fact, the most serious case reported by the IACHR this year, the disappearance of 43 students from Ayotzinapa, Guerrero, began with the repression of a bus caravan in which the students of that municipality were travelling.

666. Mexico also recorded partial progress in the regulation of audiovisual communication services after passing the Secondary Telecommunications Law [*Ley Secundaria sobre Telecomunicaciones*], which established an independent and autonomous organization to apply this policy that affects freedom of expression. Nonetheless, deviating from the international standards in the field, some regulatory authorities – especially the establishment of sanctions on the media – continued in the realm of the Executive Branch.

### A. Progress

667. On February 7, the President of the Republic, Enrique Peña Nieto, enacted the constitutional reform on transparency passed by the Senate for the Republic on November 26, 2013. By enacting this decree, the Federal Institute for Access to Information and Data Protection [*Instituto Federal de Acceso a la Información y Protección de Datos*] (IFAI) became an autonomous constitutional agency with new powers and responsibilities. This autonomy means that its resolutions are “final, binding and unassailable for those subject [them]”. The agency also has the ability to receive and resolve any request for information, not just about the federal government; but about any agency that receives public resources. Likewise it can be privy to matters resolved by counterpart federal agencies, as well as challenges to access to information cases disposed of by other autonomous constitutional organizations and the other branches of the Union, except the Supreme Court of Justice for the Nation. It also allows for the guarantor federal agency to participate in arguments over the constitutionality of acts and regulations. The amendment also broadens the sources of information deemed public, considering political parties, unions, trusts, persons and entities that receive government funds as obligated subjects, in addition to government, congress, judiciary and autonomous authorities, which were already provided in the law<sup>1156</sup>.

668. On February 7, the First Court of the Supreme Court of Justice for the Nation ruled against the *amparo* review seeking protection to the honor and reputation of a public official confronting mass distribution and informational emails as well as critical opinions regarding her performance as academic coordinator for a state university<sup>1157</sup>. For its ruling the high court studied what the standard should be in order to evaluate the lawfulness of the expressions made taking into account the involved parties in the

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<sup>1156</sup> Secretaría de Gobernación. Diario Oficial de la Federación. [Decreto por el que se reforman y adicionan diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos, en materia de transparencia](#). February 7, 2014; Presidencia de la República de los Estados Unidos Mexicanos. February 7, 2014. [La transparencia acompañará y reforzará la transformación que estamos impulsando en el país: Enrique Peña Nieto](#); Presidencia de la República de los Estados Unidos Mexicanos. February 7, 2014. [Principales componentes de la Reforma en materia de Transparencia](#); CNN México. April 7, 2014. [Peña Nieto promulga reforma para dar autonomía al IFAI](#); Siempre. February 7, 2014. [Promulga Peña Nieto reforma en materia de transparencia](#); IACHR. [Annual Report 2013. 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.149. Doc. 50. December 31, 2013. Par. 567.

<sup>1157</sup> Primera Sala de la Suprema Corte de Justicia de la Nación (SCJN). [Amparo Directo en Revisión 3123/2013](#). February 7, 2014.

instant case and the public relevance of the disseminated information. In this analysis, the Court explicitly included Article 13 of the American Convention and the pertinent supervising entities doctrine for compliance with the aforementioned treaty. The Special Rapporteur finds this decision to be very positive and emphasizes the reasoning used by the Supreme Court to reach this conclusion.

669. In the resolution, the Court explained that “[it] adopted what the Office of the Special Rapporteur classified as a dual protection system. Pursuant to this, criticism boundaries are broader when applied to people engaging in public activities or because of their role in a democratic society, have more exposure in the rigorous control of their activities and manifestations than those who have no public impact”. The Supreme Court stated in its resolution: “the emphasis is on the different threshold of protection due to public interest in the activity or performance in a role”. In that regard it explained that “it is unnecessary for a certain percentage of the population to be interested in a certain controversy or that the opinion leaders refer to it in order to decide certain discourse has public relevance, it is relevant merely because citizens exert control on activities of public officials”.

670. The Court emphasized that the aforementioned does not imply that honor and reputation of public officials cannot be protected, but rather that “it must be according to the principles of democratic pluralism and through mechanisms that do not have the potential of creating restraint or self censorship”. The Court added that “[t]his is especially relevant in academia, [since] freedom of thought and expression are essential to university life and activity, where the basic purpose is not transmitting existing knowledge, but also includes the exploration of its limits and possibilities”.

671. Accordingly, the Court ruled that, taking into account “the condition/activity of the target of the criticism - whom at the time of the events was a public official, and the public relevance of the transmitted information since it had as purpose her performance in a public office, the applicable standard in the instant case is ‘actual malice’”, therefore “imposing civil sanctions derived from distributing opinions, ideas or judgment of a public official, is reserved solely for cases where there is false information or an intent to cause damage”. While studying the case, the Court found that the disseminated information was fully supported by the constitution.

## **B. Telecommunications and Radio Broadcasting Laws**

672. The constitutional reform on telecommunications and economic competition was enacted in Mexico on June 10, 2013<sup>1158</sup>. In the 2013 Annual Report 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. The reform introduces important changes to the constitutional legal framework on broadcasting and telecommunications<sup>1159</sup>. On March 24, 2014, the Federal Government submitted a bill on telecommunications and radio broadcasting to the Congressional Senate Chamber of the Union<sup>1160</sup>. On June 16 the Office of the Special Rapporteur and the Rapporteur for Mexico communicated with the State of Mexico requesting information on said bill. The Office of the Rapporteur included matters believed to be important because of possible deviation from international standards: a) Regarding powers and Autonomy of the Federal Telecommunications Institute; b) Internet regulation; c) Personal Data Protection, Right to Privacy and Freedom of Expression; d) Community Radio and Public Media; e) Content Control and Regulation. The State of Mexico responded to the request<sup>1161</sup> that as a result of the legislative process for said bill, the Official

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<sup>1158</sup> Secretaría de 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>1159</sup> IACHR. [Annual Report 2013. 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.149. Doc. 50. December 31, 2013. Par. 573-579.

<sup>1160</sup> Aristegui Noticias. March 24, 2014. [Documento: Iniciativas de leyes en telecom. enviadas al Senado por EPN](#); Excélsior. March 24, 2014. [Senado recibe iniciativa en materia de telecomunicaciones](#)

<sup>1161</sup> United Mexican States. Permanent Mission of Mexico to the OAS. Note OEA-03013, dated July 28, 2014 forwarding the “Mexican State Report in response to the request for information by the IACHR dated June 16, 2014, pursuant to Article 41 of the American Convention on Human Rights” dated July 24, 2014. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.



Federal Gazette [*Diario Oficial de la Federación*] published the decree<sup>1162</sup> on July 14 where the Federal Law on Telecommunications and Radio Broadcasting<sup>1163</sup> and the Law of the Public Radio Broadcasting System for the Mexican State<sup>1164</sup>, and several provisions on telecommunications and radio broadcasting were amended, added and repealed.

*Law of the Public Radio Broadcasting System for the Mexican State*

673. The Law of the Public Radio Broadcasting System for the Mexican State, in its Article 1 created the Public Radio Broadcasting System for the Mexican State, which is a decentralized public body that has its own legal personality and estate, as well as technical and operational independence for decision making and administering. Such organism has as main function the promotion of non-profit radio broadcasting, with the purpose of ensuring the access of the greatest number of people in each of the federal entities to programs whose content promotes, among others, knowledge, national integration, education, cultural and civil values, human rights, gender equality, broadcasting of unbiased objective information that is timely and true on national and international events, with independent editing and which grants the space for independent productions and encourages diversity and pluralism of ideas and opinions to strengthen the democracy in the country.

674. The Public Radio Broadcasting System for the Mexican State will have a Citizen's Council "with the aim of ensuring independence and an impartial and objective editorial policy" (Art. 22). The Citizen's Council will be composed of nine advisors "elected by means of a broad public consultation and two thirds majority of the present members in the Senate Chamber" (Art. 23). The administration and leadership for the Public Radio Broadcasting System for the Mexican State will fall under the responsibility of the Government Board and President of the System (Art. 13). The Government Board will be composed of "a) the President of the System; b) A representative of the Ministry of the Interior; c) A representative of the Ministry of Public Education; d) A representative of the Ministry of Health, and e) Three representatives from the Citizen's Council" (Art. 14). The Public Radio Broadcasting System for the Mexican State will have a budget of: "I. resources assigned by the Expense Budget for the Federation in the corresponding tax year; II. The rights and movable and immovable property assigned by the public sector; III. The income derived from services provided by the system excluding commercials and advertising, and IV. The remaining income received under applicable provisions, that may consist of sponsorships, donations, inheritance, rights and others received from individuals and entities" (Art. 4)<sup>1165</sup>.

675. The IACHR and its Special Rapporteur notes this important progress in public radio broadcasting with satisfaction. Likewise, according to international standards, public media can (and should) play an essential part in ensuring the plurality and diversity of voices necessary in a democratic society. Its role is essential when providing highquality content that is not necessarily commercial, and that reflects the informational, educational and cultural needs of the people. However, for public media really to be able to perform their role, they must be independent of the executive branch; truly pluralistic; universally accessible; with funding adequate to the mandate provided for by law; and they must provide community participation and accountability mechanisms at the different levels of content production, distribution and receipt.<sup>1166</sup>

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<sup>1162</sup> Secretaría de Gobernación. Diario Oficial de la Federación. [Decreto por el que se expiden la Ley Federal de Telecomunicaciones y Radiodifusión, y la Ley del Sistema Público de Radiodifusión del Estado Mexicano; y se reforman, adicionan y derogan diversas disposiciones en materia de telecomunicaciones y radiodifusión](#). July 14, 2014.

<sup>1163</sup> Cámara de Diputados del H. Congreso de la Unión. [Ley Federal de Telecomunicaciones y Radiodifusión](#). July 14, 2014.

<sup>1164</sup> Cámara de Diputados del H. Congreso de la Unión. [Ley del Sistema Público de Radiodifusión del Estado Mexicano](#). July 14, 2014.

<sup>1165</sup> Cámara de Diputados del H. Congreso de la Unión. [Ley del Sistema Público de Radiodifusión del Estado Mexicano](#). July 14, 2014.

<sup>1166</sup> IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter VI (Freedom of Expression and Radio Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Par. 83.

*Federal Law on Telecommunications and Radio Broadcasting*

676. The IACHR considers the 2013 constitutional amendment to be great progress in the field of Telecommunications as it included the creation of an autonomous and independent regulatory and monitoring agency. The Federal Law on Telecommunications and Radio Broadcasting (henceforth “LTFR” or “the Law”) establishes that the Federal Telecommunications Institute “is a public autonomous agency, independent in decision making and operation, an entity with its own budget, with the object of regulating and promoting competition and efficient telecommunications and radio broadcasting development [...]. The Institute is in charge of the regulation, promotion and supervision of use and enjoyment of the radio spectrum, orbital resources, satellite services, public telecommunication networks, as well as access to active and passive infrastructure and other key goods”. In that regard, the Institute is “the authority on matters of economic competition of the telecommunications and radio broadcasting sectors” (Art. 7). The Institute Plenary is the maximum authority on decision making and governing; and it is composed of seven voting commissioners, including the president (Art. 16)<sup>1167</sup>.

677. Without prejudice to the progress made on freedom of expression by the creation of the Institute, the Office of the Rapporteur notes that important attributes to the regulating authority of the media remain within the powers of the Executive Branch. In fact, the Ministry of the Interior, of the executive branch, “shall [have the power to] sanction non compliance of what has been established [in the Federal Law on Telecommunications and Radio Broadcasting] with regard to content, State situations, as well as, when necessary, circumstances governed by other applicable provisions; national networks, bulletins, the National Anthem, contests, and restricted television and audio networks” (Art. 297). Likewise, regarding dispositions governing audiovisual content, the Ministry of the Interior shall “[v]erify the radio and television broadcasts meet the criteria classification, are broadcast in accordance with this Law, including programming for children, within the confines of the broadcasting guidelines in this Law” (Art. 217).

678. According to the general provisions of the sanctioning body, the Institute shall have the independent authority to penalize violations of the Law, of administrative provisions and licenses or authorizations, as well as violations to the “time limits provided for broadcast advertising and the obligations in matters of defending the audience” (Art. 297).

679. In their 2001 and 2007 Joint Declarations, the Special Rapporteurs for freedom of expression underscored that the government entities and bodies in charge of regulating telecommunications policy and enforcing those regulations must be independent of both the influence of political power and the interests of economic groups.<sup>1168</sup> In this regard, the IACHR and its Office of the Special Rapporteur have stated that it is necessary for the rules that govern the creation and operation of this body to ensure that it will have sufficient operating, organizational and administrative guarantees to maintain independence from the pressures of both the political majority and economic interest group.<sup>1169</sup>

680. Regarding control and regulation of content, the Federal Law of Telecommunications and Radio Broadcasting establishes in Article 222 that “[t]he right to information, expression and the reception of

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<sup>1167</sup> Cámara de Diputados del H. Congreso de la Unión. [Ley del Sistema Público de Radiodifusión del Estado Mexicano](#). July 14, 2014.

<sup>1168</sup> United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media and Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights of the Organization of American States (OAS). November 20, 2001. [Joint Declaration about Countering Terror, Broadcasting and The Internet](#); 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, Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights of the Organization of American States (OAS) and African Commission on Human and People’s Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. December 12, 2007. [Joint Declaration on Diversity in Broadcasting](#).

<sup>1169</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. 52.

broadcast content, through the public radio and television broadcasting as well as restricted audio; is free and therefore shall not be subject to any persecution or administrative or judicial investigation, nor shall it be subject to limitation or prior censorship, and shall be exercised within the terms of the Constitution, international treaties and applicable laws". Notwithstanding this, Article 223 establishes that "[r]adio and television broadcasting and restricted audio, within the framework of freedom of expression and idea and information reception, shall foster: I. Family unity; II. Child development in harmony; III. Education system improvement; IV. Broadcasting of artistic, historical and cultural values; V. Sustainable development; VI. Broadcasting of ideas that support our national unity; VII. Gender equality; VII. The dissemination of technical and scientific knowledge, and IX. Proper language use".

681. According to inter-american standards, is essential that the legal framework provide legal certainty to citizens, and define, in the clearest and most precise terms possible, the conditions of exercise and the limitations to which the exercise of the right to freedom of expression is subject.<sup>1170</sup> In addition, it is important to recall that the State must be neutral with respect to the content put out by the media, with the exception of the restrictions expressly authorized in Article 13 of the American Convention, in conjunction with international human rights law standards and in the terms established by that provision.<sup>1171</sup>

682. Regarding community radio broadcasting, Mexico passed a constitutional amendment in 2013 that joined with the Supreme Court ruling on unconstitutionality 26/2006; created a path for equitable regulation on the subject. The Federal Law on Telecommunications and Radio Broadcasting recognized the possibility of station assignments to indigenous peoples and communities in the country, as well as station assignments for social community use<sup>1172</sup>.

683. The Law establishes that for community and indigenous assignments the Institute "shall offer technical assistance to facilitate compliance with requirements [for channel assignments], which shall comply with the social organization and indigenous peoples and community rights" (Art. 85). In that regard, the Institute shall also establish "cooperation mechanisms with the National Commission on the Development of Indigenous Peoples [*Comisión Nacional para el Desarrollo de los Pueblos Indígenas*] or other organizations in order to I. Promote indigenous peoples channel assignments; II. Facilitate the granting of channel assignments to indigenous peoples where they have presence and for them to broadcast in their native language, especially, in those areas where there are no channel assignments, and III. Promote channel assignments for social indigenous usage, to assist in preserving and enriching their languages, knowledge and all elements of their culture and identity" (Art. 87).

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<sup>1170</sup> Similar statements are found in the jurisprudence of the European Court, in virtue of which, the expression 'prescribed by law,' contained in Articles 9 and 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms "not only require[s] that an interference with the rights enshrined in these Articles should have some basis in domestic law, but also refer to the quality of the law in question. That law should be accessible to the persons concerned and formulated with sufficient precision to enable them – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail." *Glas Nadezhda Eood and Elenkov v. Bulgaria*, No. 14134/02, § 45, E.C.H.R. (11/10/2007). Available at: <http://echr.ketse.com/doc/14134.02-en-20071011/view>

<sup>1171</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.

<sup>1172</sup> Pleno de la Suprema Corte de Justicia de la Nación (SCJN). [Inconstitutional Action 26/2006](#). June 7, 2007; Cámara de Diputados del H. Congreso de la Unión. [Ley Federal de Telecomunicaciones y Radiodifusión](#). July 14, 2014. "Article 67. In accordance with its aims, station assignment shall be solely for: [...] IV. Social Usage: The right to offer telecommunications and radio broadcasting services shall be granted for not for profit cultural, scientific, education or community purposes. Among these are community and indigenous assignments, as well as those granted to private, higher education institutions. The assignments for social community usage may be granted to civil society organizations that do not operate for profit or seek profit and that are created under the principles of direct citizen participation, social cohabitation, equity, gender equality and pluralism. The assignments for social indigenous use, may be granted to indigenous peoples and communities in the country in accordance with the guidelines set forth by the Institute with the aim of promoting, developing and preserving their language, culture and knowledge, as well as promoting their traditions and internal rules; following principles that respect gender equality and allow indigenous women to participate in the objectives set forth in the assignment request and additional elements that establish indigenous cultures and identities"; Cámara de Diputados del H. Congreso de la Unión. [Ley Federal de Telecomunicaciones y Radiodifusión](#). July 14, 2014.

684. The Office of the Rapporteur notes the effort the Mexican State has made in legally recognizing community and indigenous peoples media outlets, as well as the will to guarantee different groups have access to assignment. However, the LFTR has some limitations that could unduly affect community and indigenous radio operations as well as the conditions on access to radio broadcasting.

685. For example Article 89 establishes the income limits placed upon channel assignments for social and indigenous community usage. Among others, those assigned these channels may generate income by donations (must be authorized recipients) and through advertising sales to federal public entities, federal agencies and municipalities<sup>1173</sup>. Likewise, Article 90 of the LFTR states that “[u]pon compliance with the requirements established by the Law and those established by the Institute, the requestor shall be granted a broadcasting channel for social and indigenous community usage in accordance with the availability in the corresponding programming for that year”. It also establishes that the Institute must reserve “ten percent of the FM band frequencies for community and indigenous radio stations” and said percentage shall be assigned in the higher radio frequency spectrum. The Institute may also grant “channel assignments in the AM frequency to community and indigenous stations in the amplitude modulation spectrum”.

686. Regarding financing, the LFTR establishes that social community and indigenous usage channels may obtain income through advertising sales to different federal public entities that shall assign 1 percent “of their budget to media communication and authorized advertising for all community and indigenous channels in the country, to be distributed equally among existing assigned channels. Federal entities and Municipalities may assign one percent of their budget to this end in accordance with their respective budgets” (Art. 89. VII). In that regard, the Law also establishes that channels assigned for social community and indigenous usage, on television stations, only use 6 percent air time on advertisements for each channel; regarding radio stations, the limit imposed by the Law on advertising sales is 14 percent (Art. 237. III). For commercial broadcasting channels the percentage of air time on advertising is 18 percent for each channel, and for radio stations this limit is 40 percent air time on advertising (Art. 237.I).

687. In that regard, on September 3, commissioners Adriana Labardini and María Elena Estavillo for the Federal Telecommunications Institute (IFT) presented a proposal to the Institute Plenary; recommending lodging a complaint on the unconstitutionality of the Federal Law on Telecommunications and Radio Broadcasting, among other things for the limits imposed on social-community radio broadcasting. Nevertheless, the Plenary decided not to move forward on the proposal<sup>1174</sup>. The commissioners’ proposal stated, among other things, that bill: a) “[...] limits social channels’s advertising sales only to public authorities”; b) “[...] makes it practically unviable for social usage channels to receive donations”; c) places this radios “in frequencies that are more difficult to tune in and more costly to operate, which once again establishes a harmful discriminatory policy, that goes against the principle of equality which must prevail in State regulations”. In this regard, they stated that these limitations are “[...] an infringement on collective

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<sup>1173</sup> Cámara de Diputados del H. Congreso de la Unión. [Ley Federal de Telecomunicaciones y Radiodifusión](#). July 14, 2014. “Article 89. Social usage channels, in accordance with their goals, may generate income through the following sources://I. In kind or monetary donations; II. Dues and contributions or in collaboration with community receiving the service; III. Product sales, previously broadcast content in accordance with service goals and objectives, pursuant to legal and operational capacity excluding commercials and advertising sales, excluding the provisions in subparagraph VII of this Article; IV. Public entity resources for program content creation, not advertising; V. Studio, editing services and recording equipment rental; VI. Co-investment agreements with other social media in order to better comply with the goals of public service, and VII. Advertising sales for public federal entities that shall assign one percent of their budget to media communication and authorized advertising for all community and indigenous channels in the country, to be distributed equally among existing assigned channels. Federal entities and Municipalities may assign one percent of their budget to this end in accordance with their respective budgets. // The provisions in this subparagraph are only applicable for social community and indigenous usage channels. // Not for profit implies these channels will not seek to accumulate earnings, so that any excess income shall be reinvested in the channel. To receive in kind or monetary donations, social usage channels must be authorized donation recipients in accordance to applicable provision. // Social usage channels offering radio broadcasting services must provide the necessary information to the Institute on an annual basis, for purposes of source and destination verification of funds in compliance with the channel assignment”.

<sup>1174</sup> IFT. X Regular Plenary Session. September 3, 2014. P/IFT/030914/265. Available at: <http://www.ift.org.mx/iftweb/2014/09/x-sesion-ordinaria-del-pleno-3-de-septiembre-de-2014/>. See also, Aristegui noticias. September 4, 2014. [Por 5 votos contra 2, el Ifetel decide “no tocar” la ley en telecom \(video\)](#)

rights in matters of radio broadcasting [...] and on the other hand, this violates the human rights for freedom of expression, broadcasting and right to information”<sup>1175</sup>.

688. On the other hand, Article 230 of the Law establishes that “the assigned broadcasting stations must use the national language. The above without prejudice to also allowing social indigenous channels to use their corresponding native tongue”. In that regard, on October 13 the World Association of Community Radio Broadcasters in Mexico [*Asociación Mundial de Radios Comunitarias Mexico*] (AMARC) issued a press release revealing certain details of the content of ten *amparo* remedies filed against the Federal Law on Telecommunications and Radio Broadcasting. As to Article 230 they stated that it restricts “the use of indigenous language solely to social indigenous channels” and considered the disposition to be “discriminatory and opposite to the right to freedom of expression, in as much as on the one hand, it disallows a sector of the indigenous population that does not live in their community to access content and information in their language; while on the other hand it does not allow those who speak the indigenous language to spread their language in media outlets that are not indigenous”<sup>1176</sup>.

689. In addition, the IACHR has received information that over a year after the constitutional amendment, several months after enacting the LFTR and the IFT there have been no reports on public procedures, nor opportunities to assign frequencies to the community sector of radio broadcasting<sup>1177</sup>.

690. The Association of Community Radio in Mexico (AMARC) notes, regarding the 2013 Constitutional Reform and the expectation of LFTR approval that “the access to radio frequencies becomes a difficult path, as there is no information accessible to the communities indicating what mechanism to utilize or what entity to use [...]. The lack of access to information regarding procedure and requirements to apply, first for the permits and now for the radio channel assignments, has been a constant”<sup>1178</sup>. In that regard, the IACHR recalls that as the new legal framework became effective, no legal obstacles remain in order to quickly proceed in the reparation of historical discrimination regarding indigenous peoples and social community radio stations.

691. Regarding community media, 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>1179</sup> In this respect, it is necessary for the States to legally recognize community media outlets and to provide for the reservation of equitable amounts of spectrum for this kind of media as well as adequate conditions for access to licenses that take account of their circumstances. In addition, community media should benefit from fair and simple licensing procedures, should not have to meet technological or other requirements that amount to disproportionate barriers to access to licenses, and in their operation should not be subject to disparate treatment that is not properly justified.<sup>1180</sup>

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<sup>1175</sup> IFT. [Dictamen sobre la procedibilidad de una controversia constitucional por parte del Instituto Federal de Telecomunicaciones en contra del “Decreto por el que se expiden la Ley Federal de Telecomunicaciones y Radiodifusión y la Ley del Sistema Público de Radiodifusión del Estado Mexicano; y se reforman, adicionan y derogan disposiciones en materia de Telecomunicaciones y Radiodifusión”](#). August 27, 2014.

<sup>1176</sup> Asociación Mundial de Radios Comunitarias (AMARC). October 13, 2014. [Comunicado: Radios Comunitarias, Indígenas y Productores Independientes promueven amparos contra #LeyTelecom](#); La Jornada. October 14, 2014. [Radios comunitarias piden amparo contra artículos de la ley de telecomunicaciones](#)

<sup>1177</sup> El Economista. September 4, 2014. [Radio indígena, la desprotegida de la reforma telecom](#)

<sup>1178</sup> Asociación Mundial de Radios Comunitarias (AMARC). July 2012 to June 2014. Second report on the radio broadcasting situation in Mexico. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1179</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.5rev.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>1180</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. Paras. 92 *et seq.*

692. The IACHR notes the inclusion of several chapters in the LFTR addressing the regulation of the concentration phenomenon, not only in radio broadcasting, but also in the telecommunications market. The regulation provides the Federal Telecommunications Institute the authority to declare “economic agent with substantial power” (operators/providers who holds over half the market when accounting for all services), in cases where operators monopolize frequencies or their market power affects free competition in the entire sector (Articles 262 and 264), and to adopt measures to stop and progressively reverse the concentration process (Articles 266 and 267). The declaration of a principal substantial agent shall be done within a regulated process that respects the principle of due process (Art. 265).<sup>1181</sup>

693. Nevertheless, the LFTR separates the radio broadcasting and telecommunications markets, but it does not break them up into different services (open television, by subscription, radio, etc.), which means that a predominant agent in one of these markets may be prevalent but not a monopoly. This could also expand into the other market (such as telephone and radio broadcasting). Different civil society organizations and experts have alerted that this formula is not enough to regulate the market concentration phenomenon in increasingly converging markets<sup>1182</sup>.

694. The need to promote a media landscape free of monopolies is recognized by the IACHR in Principle 12 of the Declaration of Principles, according to which, “[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 IACHR and the Office of the Rapporteur have indicated that “[i]f these media are controlled by a reduced number of individuals, or by only one individual, this situation would create a society in which a reduced number of individuals, or just one, would exert control over the information and, directly or indirectly, on the opinion received by the rest of the people. This lack of plurality in sources of information is a serious obstacle for the functioning of democracy”<sup>1183</sup>.

695. Regarding the title on judicial cooperation and the chapter on security and judicial obligations of the Federal Law of Telecommunications and Radio Broadcasting, this Office of the Rapporteur has already noted that it contains provisions that could compromise the right to privacy and protection of personal information. For example Article 189 establishes “[t]elecommunications operators and, if applicable, authorized service providers for applications and content must comply with all mandates in writing, based on and motivated by the competent authority within the confines of the law”. Thus, Article 190 section I establishes that telecommunications operators shall “[c]ooperate with security, prosecution and administration of justice agencies, at their geographical location, in real time, from mobile communication equipment, pursuant to the laws”.

696. The Plenary of the Federal Institute for Access to Information and Data Protection (IFAI) resolved not to pursue a case on the unconstitutionality of three articles of the LFTR which, among other things, may allow a general reservation of information of the interviews held between the IFAI commissioners and the persons representing the interests of the agents that are regulated by the same Institute, except for the parties of the procedures followed as litigations, the other commissioners, the Internal Comptroller and the Senate for the Republic in case there is a procedure to remove a commissioner; likewise, such articles may provide the concept of competent authority with ambiguity causing a lack of legal security and may also violate the right of personal data protection and the inviolability of communications. Commissioner chairperson Ximena Puente de la Mora, commissioners Patricia Kurczyn, Eugenio Monterrey and Francisco Javier Acuña believed that Articles 30, 189 and 190 were not a violation of rights to access to information and

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<sup>1181</sup> Cámara de Diputados del H. Congreso de la Unión. [Ley del Sistema Público de Radiodifusión del Estado Mexicano](#). July 14, 2014.

<sup>1182</sup> Observacom. October 2014. [La concentración en la televisión de paga en México: implicaciones, problemas y nuevos retos](#); Proceso. January 12. [Denuncian trato preferencial del IFT a Televisa](#).

<sup>1183</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.5rev.1. December 29, 2003. Para 419.

personal data protection. On the other hand commissioners Areli Cano, Oscar Guerra and Joel Salas stated that “there are technical elements present for questioning constitutionality, and in their opinion, the said articles do not align with the principles and rights enshrined in the Constitution and International Treaties”. The commissioners who advocated for the unconstitutionality case based it on the reasoning that authority granted to security agencies for them to obtain geographical information on devices is not subject to the criteria of proportion, necessity and suitability established by the Mexican Constitution and several international instruments on Human Rights. They also indicated that it would be a due process violation in as much as a court order would not be required to conduct this type of monitoring, thus affecting sensitive personal information<sup>1184</sup>.

697. According to international standards, it is essential to establish the conditions under which the implementation of such surveillance programs or rules is lawful.<sup>1185</sup> 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 expression.<sup>1186</sup> 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.<sup>1187</sup>

698. Moreover, 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.<sup>1188</sup>

### C. Murders

699. On February 11, the body of Gregorio Jiménez de la Cruz, reporter for the police columns of the *Notisur* and *Liberal del Sur* newspapers, was found in the municipality of Las Choapas, in the state of Veracruz. According to the information received, on February 5 an armed group that arrived at his house in the municipality of Coatzacoalcos, state of Veracruz, after the reporter dropped his children off at school kidnapped Jiménez de la Cruz. On February 11, the authorities confirmed they found three bodies in clandestine graves; one of these bodies was reporter Jiménez de la Cruz. The journalist reported a series of kidnappings and disappearances in the municipality. Additionally, according to the reporter’s family, he had been threatened because of an article on crimes committed near a bar in the city. According to the information received, the Veracruz authorities apprehended at least five people and one of those was the alleged mastermind for the murder. Although local authorities originally believed the motive for the crime was a personal vendetta, the Special Public Prosecutor on Crimes against Freedom of Expression [*Fiscalía*

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<sup>1184</sup> Pleno del Instituto Federal de Acceso a la Información y Protección de Datos (IFAI). [IFAI-OA/053/14. Resuelve pleno del IFAI no presentar acción de Inconstitucionalidad en contra de Ley Telecom](#). August 13, 2014.

<sup>1185</sup> IACHR. [Annual Report 2013. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Freedom of Expression and the Internet). OEA /Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 146.

<sup>1186</sup> United Nations (UN). General Assembly. Report of the Special Rapporteur on the promotion and protection of the right of 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>1187</sup> IACHR. [Annual Report 2013. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Freedom of Expression and the Internet). OEA /Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 145.

<sup>1188</sup> IACHR. [Annual Report 2013. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Freedom of Expression and the Internet). OEA /Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 146.

*Especial para la Atención de Delitos contra la Libertad de Expresión*] (FEADLE) reported to the scene and was investigating the case there and following different lines of questioning regarding the practice of the profession. The freedom of expression organizations indicated that there was enough evidence to point to practicing journalism as the possible motive for the murder<sup>1189</sup>. In a March 14 communication, the State reported that as soon as the reporter was kidnapped The Attorney General for the state of Veracruz began the prosecutorial investigation, which resulted in the detention of six people as possible perpetrators. The Third Judge of First Instance [*Juez Tercero de Primera Instancia*] issued prison commitment order for those implicated in the kidnapping and murder of the journalist. The State reported that FEADLE, involved in the case from the beginning, and the public prosecutor for the state of Veracruz, continue with parallel investigations in the city of Coatzacoalcos. The State added that as soon as the facts were learned, precautionary measures for the protection and surveillance of the journalist's house and his family, were provided. His family has assistance from the National Human Rights Commission, the State Human Rights Commission and the State Commission for the Assistance and Protection of Journalists. The Attorney General of Justice for the State Victim Assistance Center [*Centro de Atención a Víctimas del Delito de la Procuraduría General de Justicia del Estado*] also provided service and assistance measures<sup>1190</sup>.

700. After Jiménez was murdered, a group of 16 reporters; some members of the four organizations for freedom of expression such as Reporters on Foot [*Periodistas de a Pie*], Reporters Without Borders (RWB), Center for the Rights of Journalists [*Casa de los derechos de Periodistas*] and Inter-American Press Association (IAPA); formed and Observation Mission in order to investigate the murder. During February 15, 16 and 17, the Mission travelled to Coatzacoalcos and Xalapa, interviewed 60 members of the media, Jiménez's family members and reviewed the articles published by the journalist six months before his murder. The Mission turned the report in on March 19, wherein it studied the possible motives for the crime within the context of violence in the state of Veracruz. In the Mission's view there was "convincing evidence" that Jiménez was kidnapped and murdered for practicing journalism and highlights the fact that the authorities have not studied this angle. The report contained 17 recommendations requesting the State to recognize that the crime was linked to the professional practice [of journalism]<sup>1191</sup>. The report was also turned over to the Veracruz authorities<sup>1192</sup>.

701. The IACHR learned of the murder of Jorge Torres Palacios, columnist for the weekly *El Dictamen* and spokesperson for the Department of Health for the Municipality of Acapulco [*Dirección Municipal de Salud de Acapulco*], in the state of Guerrero. According to the information received, when Torres Palacios was arriving home on May 29, he was kidnapped by a group of armed individuals. In the afternoon hours of June 2, after several tips were called in, the state authorities found his body in a bag in the town of Plan de los Amates, outskirts of the city of Acapulco. Local journalists did not accept official communications wherein the authorities only mentioned the reporter's government job and failed to mention his work as a journalist. According to reports, Torres Palacios wrote a weekly political and security report in his column 'Nothing Personal' [*Nada Personal*], wherein he had criticized the local authorities in the articles preceding his death<sup>1193</sup>. Journalists in different cities in the state protested the murder of the reporter and demanded

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<sup>1189</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. February 14, 2014. [Press Release R12/14 Office of the Special Rapporteur Condemns Murder of Journalist in Mexico](#); Committee to Protect Journalists (CPJ). February 12, 2014. [Missing Mexican Journalist found Dead in Veracruz](#). Animal Político. February 11, 2014. [Encuentran muerto al periodista veracruzano Gregorio Jimenez](#); CNN México. February 11, 2014. [Autoridades encuentran muerto a reportero secuestrado en Veracruz](#); SDP Noticias. February 11, 2014. [Detiene PGJE a autora intelectual y a homicidas del periodista Gregorio Jiménez](#); Knight Center for Journalism in the Americas. February 14, 2014. [Journalists, organizations skeptical of authorities' account of colleague's killing in Veracruz, Mexico](#)

<sup>1190</sup> Estados Unidos Mexicanos. Permanent Mission to the OAS. Note OAS-01044 dated March 14, 2014 forwarding information card following up on the case of Mr. Gregorio Jiménez de la Cruz. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1191</sup> Reporters Without Borders (RWB), Reporters on Foot, Center for the Rights of Journalists, Inter-American Press Association. March 19, 2014. Gregorio: asesinado por informar. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1192</sup> Periodistas de a Pie. April 27, 2014. [Entregan Informe: Gregorio asesinado por informar a autoridades de Veracruz](#).

<sup>1193</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. June 10, 2014. [Press Release R 64/14 Office of the Special Rapporteur Condemns Murder of Journalist in Mexico](#). La Jornada. June 2, 2014. [Hallan el cuerpo del periodista Jorge Torres Palacios, secuestrado en Acapulco](#); SinEmbargo. June 2, 2014. [El cuerpo del periodista y vocero de Salud de Acapulco es hallado a 4 días de ser secuestrado por un comando](#); El País. June 3, 2014. [Hallado muerto un periodista mexicano en Acapulco](#); Reporters Without Borders (RWB).



the authorities, such as the Public Prosecutor for the Republic [*Procuraduría General de la República*] (PGR), assign a special prosecutor to investigate the case<sup>1194</sup>.

702. The IACHR learned of an attack against Indalecio Benítez, founder and director of the *Calentana Mexiquense 98.1 FM* community radio. This attack caused the death of his 12-year-old son on August 1 in the municipality of Luvianos, in the state of Mexico. According to the information available, there was a group of armed men awaiting the return of Benítez and his family to their home, which is also the radio station. The journalist tried to flee but the men began shooting at the vehicle, causing injuries to his 12-year-old son. The journalist sought cover and help at the Marine Base in the area, but his son died minutes later. According to what the journalist said, after he fled from his house, the men shot at the front of the house, entered the residence and threatened other family members who were inside; then they left. According to available information, the reporter filed a complaint with the Public Prosecutor where he requested protection<sup>1195</sup>. The state reported that the Attorney General for the State of Mexico opened an investigation on the events and ordered measures of protection for the journalist's residence<sup>1196</sup>.

703. On August 11, reporter Octavio Rojas Hernández, correspondent for the *El Buen Tono* newspaper, headquartered in Veracruz, was murdered in the municipality of San José Cosolapa, state of Oaxaca. According to the information received by the Office of the Special Rapporteur, Rojas Hernández, who was also the Press Director for the municipality; was at home during the afternoon hours when a man approached the house signaling he was interested in purchasing the car belonging to Rojas Hernández. After the reporter came out of his home the individual shot him at least four times without saying a word. According to the available information, on August 9 the reporter published an article connecting the ex Director of Police for the Municipality of Cosolapa, currently a fugitive, to an organized crime ring that stole fuel. This article was the final one in a series of articles referencing the fuel bandits. Although the articles were not bylined, Rojas Hernández was the only correspondent for the municipality newspaper covering the police<sup>1197</sup>. The Attorney General for the State of Oaxaca reported through a press release that the necessary investigations were open as soon as the alert on the event was received<sup>1198</sup>.

704. On October 11 reporter, activist and community leader, Atilano Román Tirado, host for *Fiesta Mexicana 98.7 FM* radio; was killed in the municipality of Mazatlán, in the state of Sinaloa. According to the information received, when he was shot Román Tirado was hosting his program that morning 'That's how my country is' [*Así es mi tierra*], airing on Saturdays on *Fiesta Mexicana ABC Radio*, when unknown persons entered the radio booth inside the *El Sol de Mazatlán* newspaper headquarters. The activist died after being transported to a hospital. Román Tirado was also a leader of the community movement for those affected by

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June 3, 2014. [MEXICAN JOURNALIST'S BODY FOUND FOUR DAYS AFTER HIS ABDUCTION](#). Committee to Protect Journalists (CPJ). June 5, 2014. [Mexican columnist, abducted, found dead](#)

<sup>1194</sup> La Jornada Guerrero. June 4, 2014. [Exigen justicia en el funeral del periodista Jorge Torres Palacios](#); El Universal. June 4, 2014. [Exigen justicia para reportero](#); Proceso. June 3, 2014. [Exigen a la PGR atraer caso de periodista asesinado en Guerrero](#); La Jornada. June 3, 2014. [Protestan periodistas en Chilpancingo por asesinato de Jorge Torres](#)

<sup>1195</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. August 6, 2014. [Press Release R 83/14 Office of the Special Rapporteur Condemns Attack to Journalist and Murder of his Son in Mexico](#). Animal Político. August 4, 2014. [Así fue el ataque a radio comunitaria de Edomex](#); Committee for the Protection of Journalists (CPJ). August 4, de 2014. [Mexican radio station director's son killed in attack](#); Artículo 19. August 2, 2014. [ALERTA: Grupo armado irrumpe en estación de radio comunitaria](#); Reporters Without Borders (RWB). August 5, 2014. [COMMUNITY RADIO HOST'S 12-YEAR-OLD SON KILLED IN SHOOTING](#). El Economista. August 4, 2014. [Asesinan a hijo de periodista en ataque directo a su casa](#)

<sup>1196</sup> Communication from the Mexican State. Information card on the attack of Indalecio Benítez. August 6, 2014. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1197</sup> IACHR. Office of the Special Rapporteur for the Freedom of Expression. August 16, de 2014. [Press Release R 87/14 Office of the Special Rapporteur Condemns Murder Journalist in Mexico](#). Committee for the Protection of Journalists (CPJ). August 13, 2014. [Mexican reporter shot dead in Oaxaca state](#). Artículo 19. August 12, 2014. [#ALERTA: Procuraduría de Oaxaca no debe descartar vínculo profesional de comunicador asesinado](#); Animal Político. August 13, 2014. [Otro reportero asesinado: Van 79 homicidios contra periodistas desde 2000](#); Reporters Without Borders (RWB). August 13, 2014. [Crime reporter gunned down outside his home in Oaxaca State](#); La Jornada. August 12, 2014. [Piden investigar labor periodística como móvil de asesinato del corresponsal de El Buen Tono](#)

<sup>1198</sup> Gobierno del Estado de Oaxaca. Procuraduría General de Justicia del Estado de Oaxaca. No date. [Investiga PGJE homicidio de comunicador social de Cosolapa](#)

the Picachos dam construction. On his radio program the reporter habitually criticized local authorities and denounced non-compliance with commitments the government had with the community<sup>1199</sup>. According to reports, the Special Public Prosecutor on Crimes against Freedom of Expression (FEADLE) began questioning on the events and the federal ministerial police was participating in the case. The Attorney General for Sinaloa also opened an investigation on the events<sup>1200</sup>.

705. IACHR of the Special Rapporteur learned of the murder, allegedly perpetrated by organized crime, of tweeter @Miut3. The tweeter posted on public security matters in the municipality of Reynosa, state of Tamaulipas on her twitter account and was a correspondent for the *Valor por Tamaulipas* [Courage for Tamaulipas] [web]page. According to reports, on October 16, an image of a murdered woman was posted on her twitter account along with messages encouraging her followers to close their accounts and not risk their lives. The Twitter account was suspended. The aforementioned messages also identified the tweeter allegedly María del Rosario Fuentes Rubio. Fuentes Rubio, a doctor by profession, was reported missing by a family member who stated that on October 15, unidentified armed individuals stopped her outside a company in the municipality of Reynosa<sup>1201</sup>.

706. On October 22, local authorities in Ahome, state of Sinaloa, found the body of reporter Jesús Antonio Gamboa Urías. According to reports, the body was found after the authorities apprehended the alleged murderers who used the journalist's bank card. The suspects divulged the location of the body to the authorities<sup>1202</sup>. Gamboa Urías was the director for the political magazine *Nueva Prensa* who had gone missing on October 10 when he was last seen close to midnight. The journalist's family members reported his disappearance to the local authorities<sup>1203</sup>.

707. The IACHR received information on crimes against journalists and or media workers where, initially, there was no clear nexus to the practice of the profession. In that regard the IACHR believes it is essential the authorities investigate these events without discarding the possible relationship to journalism activities and freedom of expression. On January 23, the body of Miguel Ángel Guzmán Garduño was found at his home. He was a columnist for the *Vertice* newspaper and the ex Communications Director for the Single Union of Public Servants for the State of Guerrero [*Sindicato Único de Servidores Públicos del Estado de Guerrero*]<sup>1204</sup>. On July 29, the body of cameraman, reporter and editor for *Canal 9*, Nolberto Herrera

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<sup>1199</sup> Artículo 19. October 13, 2014. [PGR debe esclarecer asesinato de líder comunero y locutor de radio sinaloense Atilano Román](#); Proceso. October 11, 2014. [Sicarios irrumpen en programa de radio y ejecutan a líder comunero en Mazatlán](#); Noroeste. October 12, 2014. [Asesinan a líder de la Picachos](#); AM. October 13 2014. [Activista es asesinado durante programa de radio](#); La Jornada. October 12, 2014. [En cabina de radio matan al dirigente comunero de Picachos, Atilano Román](#)

<sup>1200</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. October 17, 2014. [Press Release r 124/14 Office of the Special Rapporteur Condemns Murder of Radio Announcer and Expresses Concern Over Disappearance of Journalist in the State of Sinaloa Mexico](#). Communication from the Mexican State. Mexican State Actions – Murder of Atilano Román Tirado. October 17, 2014. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1201</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. November 3, 2014. [Press Release R 129/14. Office of the Special Rapporteur Condemns Murders of Two Communicators in Mexico](#); Artículo 19. October 16, 2014. [Reportan en redes sociales asesinato de twittera de Tamaulipas](#); SinEmbargo. October 16, 2014. [Ciudadana que exhibía por redes al narco en Tamaulipas es secuestrada y asesinada](#); Reporters Without Borders (RWB). October 23, 2014. [A netizen is killed in Tamaulipas](#). Animal Político. OCTOBER 17, 2014. [PGJ-Tamaulipas investiga desaparición y presunto asesinato de periodista ciudadana](#); La Jornada. OCTOBER 17, 2014. [Secuestran y asesinan en Reynosa a tuitera que combatía a narcotraficantes](#); Procuraduría General de Justicia del Estado de Tamaulipas. October 18, 2014. [Comunicado de la Procuraduría General de Justicia del Estado a 18 de octubre de 2014](#)

<sup>1202</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. November 3, 2014. [Press Release R 129/14. Office of the Special Rapporteur Condemns Murders of Two Communicators in Mexico](#); Artículo 19. October 23, 2014. [ALERTA: Asesinan a periodista de Sinaloa que se encontraba desaparecido](#); El Universal/EFE. October 23, 2014. [Localizan a periodista muerto en Sinaloa](#); Línea Directa. October 22, 2014. [Encuentran sin vida al periodista "Tony" Gamboa](#); Almargen. October 23, 2014. [El periodista Jesús Antonio Gamboa fue asesinado a balazos en Los Mochis para robarlo: PGR](#)

<sup>1203</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Press Release R124/14. Office of the Special Rapporteur Condemns Murder of Radio Announcer and Expresses Concern Over Disappearance of Journalist in the State of Sinaloa, Mexico](#). October 17, 2014. Diario de Querétaro. October 14, 2014. [Reportan desaparecido a periodista en Los Mochis](#); RPP/EFE. October 14, 2014. [Reportan desaparición de periodista mexicano en el noroeste de México](#); El Debate. October 15, 2014. [¿Dónde está el periodista "Tony" Gamboa?](#)

<sup>1204</sup> Artículo 19. January 25, 2014. [ALERTA: Últimas agresiones contra la prensa en México](#); SinEmbargo. January 24, 2014.

Rodríguez, was found at his home in the municipality of Guadalupe, state of Zacatecas. He was stabbed at least 20 times with a sharp object<sup>1205</sup>.

708. Principle 9 of the Declaration of Principles on Freedom of Expression 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”.

709. In the Joint Declaration of the year 2012, the Special Rapporteurs for the freedom of expression remarked that the States should ensure that effective and concrete protection is made available on an urgent basis to individuals likely to be targeted for exercising their right to freedom of expression. Specialised protection programmes, based on local needs and challenges, should be put in place where there is an ongoing and serious risk of crimes against freedom of expression. These specialised programmes should include a range of protection measures, which should be tailored to the individual circumstances of the person at risk, including his or her gender, need or desire to continue to pursue the same professional activities, and social and economic circumstances<sup>1206</sup>.

#### **D. Attacks, threats, intimidation, harassment and detentions against journalists and the media**

710. Hernán Villareal Cruz, reporter for the *Presencia* newspaper was beat and threatened by unknown persons on December 14, 2013 in the municipality of Choapas, state of Veracruz. The unknown individuals put the journalist in a vehicle and took him to a remote area. On the way they beat him and told him to “tone it down” and “we won’t kill you because of what you represent [...]”<sup>1207</sup>.

711. On December 21, 2013, the home of Anabel Hernández, reporter for *Proceso* magazine, was invaded by at least 10 armed men who identified themselves as judicial police at first and then as alleged Zeta members. The group kidnapped the journalist’s bodyguard for several hours. A complaint was filed with the Public Prosecutor for the federation assigned to the Special Public Prosecutor on Crimes against Freedom of Expression (FEADLE)<sup>1208</sup>.

712. People with ties to the Popular Unity Party [*Partido Unidad Popular*] (PUP) physically assaulted reporters Antonio Mundaca, Eduardo Jiménez Sandoval, Víctor López and José de Jesús Alcántara for the *El Tuxtepecano* newspaper, in Oaxaca state. The assaults took place on January 1, when the journalists arrived at the municipality to cover the inauguration of the mayor in the municipality of San Miguel

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[Asesinan al periodista Miguel Ángel Guzmán Garduño en Guerrero; la CNDH inicia investigación por el homicidio](#); Animal Político. January 24, 2014. [Asesinan a periodista en Guerrero; CNDH investiga el caso](#)

<sup>1205</sup> Artículo 19. July 30, 2014. [ALERTA: Asesinan a periodista en Zacatecas](#); Reporters Without Borders (RWB). July 31, 2014. [Tv reporter stabbed to death at home in Zacatecas State](#). El Universal/EFE. JULY 30, 2014. [Asesinan a periodista en su casa de Zacatecas](#); Proceso. July 31, 2014. [Asesinan a reportero de Canal 9 de Zacatecas](#)

<sup>1206</sup> United Nations (UN) Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights of the Organization of American States (OAS) and African Commission on Human and People’s Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 25, 2012. [Joint Declaration on Crimes Against Freedom Of Expression](#).

<sup>1207</sup> Proceso. December 15, 2014. [“Levantán”, amenazan y encañonan a reportero en Veracruz](#); SinEmbargo. December 16, 2014. [En dos días, tres periodistas son agredidos por policías y sujetos armados en Zacatecas, DF y Veracruz](#); Independiente de Hidalgo. December 16, 2014. [Levantán y amenazan a reportero de diario Presencia, en Veracruz](#)

<sup>1208</sup> Artículo 19. January 6, 2014. [PGR obligada a esclarecer allanamiento a casa de Anabel Hernández](#); El Diario. December 30, 2013. [Exigen investigación seria por agresión de periodista](#); Zacatecas al día. December 31, 2013. [Allanan El Domicilio De La Periodista Anabel Hernández](#); La Políciaca. No date. [Comando armado allanó domicilio de la periodista Anabel Hernández](#); El Toque. January 6, 2014. [Nueva agresión contra la periodista mexicana, Anabel Hernández](#)

Soyaltepec. People blocking one of the municipality roads attacked the reporters with rocks, sticks and machetes<sup>1209</sup>.

713. Mival editors, publisher for *Pulso* and *San Luis Hoy* newspapers, reported that one of their journalists was attacked in the early morning hours of January 12. According to the report, unknown persons outside the journalist's home who allegedly identified themselves as judicial police blocked him and forced him into a vehicle. There they accused him of a crime, and when the reporter identified himself they asked, "you're the one who publishes the little articles?" while they physically and verbally assaulted him<sup>1210</sup>.

714. On January 23, entrepreneur and partner at the *Notivisión* newspaper, Ulises Mejía del Ángel, was a victim of an attempted illegal detention in the Álamo Temapache municipality, in the state of Veracruz. The perpetrators were caught *in flagrante*, but were released under municipal court order. The newspaper was threatened, therefore the Mechanisms for the Protection of Human Rights Defenders and Federal Secretariat of the Interior (SEGOB) Journalists, as well as other government agencies in the state, ordered a series of protective measures to guarantee the media outlet safety as well as that of its correspondents<sup>1211</sup>.

715. Reporter Sandra de los Santos and the news team for the news portal where she works, *Chiapas Paralelo*, reported alleged intimidation and harassment by the judiciary after one of the journalist's family members was called to testify in an alleged extortion case. The news portal believes, the judicial investigation "contains a series of irregularities that point to this act as one of intimidation to stunt the Chiapas Paralelo news team's exercise of freedom of expression". The media outlet stated that it is not the first time it was the object of government intimidation<sup>1212</sup>.

716. The IACHR learned of different attacks, threats and detentions against reporters and directors of the *Noroeste* newspaper in the state of Sinaloa. Although the newspaper was a victim of attacks in years past, they especially increased in 2014 during the coverage of the capture and development of drug trafficker Joaquín Guzmán Loera 'El Chapo'. The night of February 23, reporters for this newspaper in the city of Mazatlán were threatened by telephone on two calls where it was demanded the information related to the drug trafficker not be published. The threats occurred after the reporters contacted municipality officials while investigating possible ties between the municipality police and the referred drug trafficker; this information was previously published by the national newspapers. The Northwest Publishing Group [*Grupo Editorial Noroeste*] filed a complaint at the Office of the Attorney General for the Republic, stating the right to request protection for the newspaper facilities and reporters<sup>1213</sup>. On February 24, via Facebook social network the newspaper received threats and the publishing company was accused of having ties with an organized crime group<sup>1214</sup>. On February 25, two women, allegedly under custody of the Ministry of Navy, forced a photoreporter for the newspaper to delete the images taken of the building where the drug trafficker was rearrested. If the reporter didn't comply they would take the photography equipment. Other citizens were also forced to delete their images<sup>1215</sup>. On March 2, while covering marches supporting drug trafficker

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<sup>1209</sup> Artículo 19. January 3, 2014. [ALERTA: Cuatro periodistas golpeados y amenazados en Oaxaca](#); El Piñero de la Cuenca. January 1, 2014. [Militantes del PUP asestan golpiza e intentan linchar a fotógrafo y directivos del periódico El Tuxtepecano en Temascal](#)

<sup>1210</sup> La Jornada. January 19, 2014. [Denuncian agresión a reportero en SLP](#); La Orquesta. January 18, 2014. [Nueva agresión a periodista en San Luis Potosí](#); Periodistas en riesgo. January 12, 2014. [Denuncia Editorial secuestro de reportero](#); Centro de Reportes Informativos sobre Guatemala (Cerigua). January 20, 2014. [Denuncian agresión a periodista en San Luis Potosí](#)

<sup>1211</sup> Artículo 19. 25 de enero de 2014. [ALERTA: Últimas agresiones contra la prensa en México](#)

<sup>1212</sup> Artículo 19. January 25, 2014. [ALERTA: Últimas agresiones contra la prensa en México](#); Chiapas Paralelo. January 28, 2014. [Carta abierta al gobernador del estado. Manuel Velasco](#); CNN México. January 31, 2014. [Una periodista de Chiapas denuncia un intento de "amedrentar" a su medio](#); El País. January 29, 2014. [El Gobierno de Chiapas investiga a la familia de una periodista crítica](#)

<sup>1213</sup> Noroeste. February 23 2014. [Amenazan a periodistas de Noroeste](#); Artículo 19. February 24, 2014. [Periodistas del Noroeste son amenazados en Mazatlán](#); Almargen. February 24, 2014. [Amenazan a periodistas de Noroeste que investigaban nexos de policías de Mazatlán con El Chapo](#); Noroeste. February 26, 2014. [Interpone Noroeste denuncia ante PGR](#)

<sup>1214</sup> Noroeste. February 25, 2014. [Amenazan en redes a Noroeste](#); Proceso. February 25, 2014. ["Encapuchadas" obligan a reportero a borrar imágenes de operativo en edificio Miramar](#)

<sup>1215</sup> Noroeste. February 25, 2014. [Intimidación marinos a periodistas y transeúntes y los obligan a borrar fotos](#)

Guzmán Loera, three reporters were beat, allegedly by state and municipal police. The events occurred in the cities of Culiacán and Guamúchil. Recording equipment was confiscated from two of them<sup>1216</sup>. On March 4, in Mazatlán, while covering police activity a reporter for the newspaper was detained and accused by municipal police of being the perpetrator of criminal acts. The reporter appeared on the scene in a car marked with the name of the newspaper when the police detained him and took him to a hospital. He was later released<sup>1217</sup>. Within the first minutes of April 3, the general director for the Northwest Group, Adrián López Ortiz, was jumped, beat and attacked by shooting in the city of Culiacán. López was travelling in his vehicle when another automobile got in his way while a truck blocked him. Two youths got out, beat him and robbed him, and then one shot him. The Attorney General for Sinaloa reported that this attack could have been a robbery, but López Ortiz and Human Rights organizations recalled the series of attacks on personnel for that newspaper<sup>1218</sup>. On September 28, Mazatlán municipal police detained Iván Lizárraga, graphic reporter for the newspaper, after threatening him he was forced to delete images taken of a police operation searching a house allegedly without a warrant. The police handcuffed the reporter and took his personal information<sup>1219</sup>. The event took place after Article 51 bis of the Organic Law of the Office of the Prosecutor General, known as the “Gag Law”, which disabled the coverage of criminal acts, was repealed by the unanimous vote of the Congress for the State of Sinaloa. Lizárraga filed a complaint before the Attorney General for the state<sup>1220</sup>. The newspaper had been threatened and attacked before, for example in 2010, armed individuals shot at the facilities with high caliber weapons<sup>1221</sup>.

717. José Alberto Morales Santos, columnist for *ADN Guerrero* newspaper and worker for the Social Communication Department [*Dirección de Comunicación Social*] for the city of Chilpancingo, state of Guerrero; reported he was threatened by vigilantes who searched his parent’s residence on February 13. The events took place after he published a column where he reported on alleged injustices and acts of torture carried out by the vigilante group of that municipality. Morales filed a complaint with the Office of the Attorney General for the Republic against the leader of the United People and Entities for the State of Guerrero [*Unión de Pueblos y Organizaciones del Estado de Guerrero*] for the crimes of death threats, intimidation and freedom of expression violation<sup>1222</sup>.

718. Federal District police detained Luis Méndez, reporter for the *Somos el Medio* news portal, while he was covering the displacement of blind street vendors on February 18. The officers asked for his identification and did not return it; they asked he delete recorded videos and detained him for about three hours until he was taken before the Office of the Public Prosecutor where he was released, as there were no charges against him<sup>1223</sup>. In the morning hours of March 20, Federal District Police detained Fabiola Gutiérrez

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<sup>1216</sup> Artículo 19. March 3, 2014. [ALERTA: Policías agreden periodistas en Sinaloa al cubrir Marcha](#); Noroeste. March 3, 2014. [Someten y golpean policías a periodistas](#); Clases de Periodismo. March 4, 2014. [El diario amenazado por su cobertura de la captura de ‘El Chapo’](#).

<sup>1217</sup> Noroeste. March 5, 2014. [Esposan y detienen a reportero de Noroeste](#); 24 Horas. March 6, 2014. [Siguen agresiones a Noroeste: detienen y esposan a reportero](#)

<sup>1218</sup> Noroeste. April 3, 2014. [Balean a director general de Noroeste](#); Artículo 19. April 3, 2014. [FEADLE obligada a investigar ataque contra Director de Noroeste](#); Milenio. April 3, 2014. [Balean a director del periódico Noroeste en Culiacán](#); Proceso. April 3, 2014. [Continúan agresiones contra Noroeste: balean al director general](#)

<sup>1219</sup> Noroeste. September 28, 2014. [Aplica “ley mordaza” Policía de Mazatlán](#); Artículo 19. September 29, 2014. [Detienen a fotógrafo de Noroeste por documentar operativo](#)

<sup>1220</sup> Noroeste. October 1, 2014. [Demandan abogados cese de comandante policiaco](#); Proceso. August 21, 2014. [Sepultan “ley mordaza” en Sinaloa](#); CNN México. August 21, 2014. [El Congreso de Sinaloa deroga por unanimidad la ‘ley mordaza’](#); *El Economista*. August 21, 2014. [Derogan “Ley Mordaza” en Sinaloa](#)

<sup>1221</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. Par. 637.

<sup>1222</sup> Proceso. February 14, 2014. [Denuncia reportero acoso de autodefensas de Guerrero](#); Libertad Guerrero. February 14, 2014. [Reportero denuncia penalmente a Bruno Plácido por amenazas e intimidaciones](#); Diario 21. February 15, 2014. [Demanda penalmente reportero a Bruno Plácido por amenazas](#); Agencia IRZA. February 14, 2014. [Reportero demanda penalmente a Bruno Plácido por amenazas e intimidaciones](#); José Alberto Morales Santos. February 21, 2014. Solicito su valiosa intervención. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1223</sup> Artículo 19. February 18, 2014. [Alerta: Policías capitalinos detienen a periodista](#); Animal Político. February 20, 2014. [17 periodistas detenidos en DF por documentar en vía pública](#)

Quiroz, reporter for the same portal, while she was covering an operation to displace street vendors. Along with her detention, the authorities detained some students who tried to defend her. After over 30 hours of detention, they were all released<sup>1224</sup>.

719. On February 28, the Chilpancingo home of reporter Pedro Arzate García in the State of Guerrero was subject to illegal invasion by unknown individuals. They entered while the reporter, anchorman for *Siga TV* network, was on his way to the local Prosecutor's office to request protection and file complaints on criminal acts against him. That morning, the reporter noticed a car that was following him in front of his office; therefore he decided not to go in to his office. As a consequence of the events, the authorities provided the provisional and extraordinary measure of two bodyguards to go with him<sup>1225</sup>.

720. Gustavo Sánchez, general director for the *La Policiaca del Istmo* news portal, was threatened three times within two months, seemingly because of his media outlet publications in Salina Cruz, state of Oaxaca. The first [threat] was on March 10 when during the broadcast of his news radio program he received an on air phone call where a man warned him he had already "located him to kill him". That first threat was reported to the Public Prosecutor for the Republic and the office opened an investigation at table 13 of the Special Public Prosecutor on Crimes against Freedom of Expression (FEADLE), but no progress was made until May. In May, after publishing an article on the portal on May 2, the journalist received text messages on his cellular telephone where he was told he would suffer the consequences for publishing information pertaining to a local television anchor. The third threat took place on May 5 when unknown hooded individuals blocked him and threatened to kill him if he did not take down an article from his portal<sup>1226</sup>.

721. On March 12, Balbina Flores Martínez, correspondent for Reporters Without Borders (RWB), received a threatening phone call from a man who identified himself as "commander". The reporter filed a complaint with Special Public Prosecutor on Crimes against Freedom of Expression (FEADLE) and before the Federal District Human Rights Commission<sup>1227</sup>.

722. Authorities of the municipality of Chinameca, state of Veracruz, including the mayor, threatened reporter Abel Martínez Reyes for the *Notisur* and *El Mañanero* newspapers. The threats came about on several occasions during the month of March and they referenced published articles wherein these authorities were mentioned as having participated in alleged crimes. One of these threats was directed at Isidro Domínguez Sánchez, owner of the political weekly *La Libertad*. A complaint on this threat was filed by both of them before the Special Prosecutor for Journalist Complaints in Veracruz<sup>1228</sup>.

723. On March 16, unknown persons entered the home of Darío Ramírez, the general director for *Artículo 19* Mexico and Central America Office, and stole work documents, computers and other personal items. The event occurred days before the organization released its annual report on the violence faced by

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<sup>1224</sup> Artículo 19. March 20, 2014. [Alerta: Policías del DF detienen ilegalmente a periodista de "Somos El Medio"](#); Cimac Noticias. March 24, 2014. [Detiene STC de manera arbitraria a reportera Fabiola Gutiérrez](#); Somos el Medio. March 23, 2014. [Corrupción, extorsión, censura, brutalidad policiaca y contubernio institucional en los casos de Fabiola Quiroz y Víctor Cilia](#)

<sup>1225</sup> Artículo 19. March 1, 2014. [Alerta: Periodista es hostigado y es allanada su casa en Guerrero](#); Cencos. March 1, 2014. [Alerta LE: Periodista es hostigado y es allanada su casa en Guerrero](#); Clases de Periodismo. March 2, 2014. [México: Allanan casa de periodista hostigado](#)

<sup>1226</sup> Artículo 19. May 9, 2014. [#ALERTA: Periodista de Oaxaca amenazado de muerte por tercera ocasión](#); Artículo 19. March 11, 2014. [Alerta: Periodista de Oaxaca recibe amenaza de muerte](#); Reporters Without Borders (RWB). May 23, 2014. ["Las autoridades mexicanas deben otorgar protección cuanto antes a los periodistas amenazados"](#); Diario Avanzada. May 25, 2014. [Amenazan de muerte a periodistas en Oaxaca y el DF; CNDH realiza investigaciones](#)

<sup>1227</sup> Reporters Without Borders (RWB). March 13, 2014. [La corresponsal de RSF recibe llamadas amenazantes](#); Artículo 19. March 13, 2014. [Alerta: Corresponsal de RSF en México es amenazada](#); World Association of Newspapers and News Publishers (WAN-IFRA). March 19, 2014. [WAN-IFRA calls on Mexican authorities to investigate threats against freedom of expression advocate](#)

<sup>1228</sup> Artículo 19. March 31, 2014. [México: Alcalde y Síndico de Chinameca, Veracruz, amenazan a periodistas](#); Diario Presencia. April 4, 2014. [Y siguen las amenazas...](#)

journalists in the country. This was the fifth incident against personnel for that organization, taking place after April 2013 when Ramírez and other employees of the organization received death threats<sup>1229</sup>.

724. The Communications Coordinator for the PRI Parliamentary Group in Congress [*Coordinador de Comunicación Social del Grupo Parlamentario del PRI en la Cámara de Diputados*] intimidated political columnist Denise Dresser and launched a misinformation and smear campaign against her after her March 31 publication. In her article, the columnist cited a *New York Times* newspaper article that revealed intelligence information linking a public official to the alleged protection of a Sonora drug trafficker. Besides smearing her journalism, he published personal information about the reporter on social networks. Based on this, Dresser requested protection<sup>1230</sup>.

725. On April 4, members of the Mexican Army attacked three journalists in the city of Nuevo Laredo, state of Tamaulipas. Abisaf Rubio, the director for *Agencia Rubios News* and the reporters Mario Mosqueda and Neftali Antonio Gómez, arrived at a scene to document a traffic accident between a passenger transportation vehicle and an army patrol; this was why the soldiers were upset and they threatened to “make them disappear”. According to several sources, they also physically assaulted them and ruined their equipment. The reporters filed a complaint before the Tamaulipas Public Prosecutor for the Republic<sup>1231</sup>.

726. In the early morning of April 6, the editorial office of the newspaper *El Buen Tono* which is edited in the state of Veracruz received a threatening call informing the following: “we are now going to destroy you; we will burn your newspaper down”. The complaint for the threat was filed before the Public Prosecutor<sup>1232</sup>. In November of 2011, armed men entered the editing office, destroyed computers, spilled gasoline in the offices and lit the building on fire. The employees in the building were able to escape<sup>1233</sup>.

727. On April 18, unknown individuals entered the home of Miguel Badillo, director for the *Contralínea* magazine. On June 23, unknown persons attacked the magazine facilities. They removed computers, and audio and recording equipment. As of 2007 the magazine reported several attacks possibly related to their publications<sup>1234</sup>. On July 18 the IACHR granted precautionary measures to the *Contralínea* magazine and its editing team after considering that “the rights to life and physical integrity of the members” of the magazine were “are at high risk”<sup>1235</sup>.

728. On May 13, Martha Durán de Huerta, correspondent for the *Proceso* magazine and for *Radio Nederland* radio, received a death threat call. In the reporter’s view, the threat could be related to her line of work as she covers femicide [homicide of females], corruption, abuse of power and drug trafficking cases. Days before the threat, Durán was following up on the murders of women in the state of Mexico and the case of a young woman from Holland who was murdered in Ciudad Juárez in 1998. The journalist went to the

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<sup>1229</sup> Artículo 19. March 17, 2014. [ALERTA: La casa del Director General de ARTICLE 19 es allanada](#); Aristegui Noticias. March 18, 2014. [Allanan la casa del Director de Artículo 19: solicita protección](#)

<sup>1230</sup> Artículo 19. April 15, 2014. [#ALERTA: Denise Dresser intimidada por escribir libremente](#); Proceso. April 15, 2014. [Denuncia Artículo 19 “intimidaciones” contra Denise Dresser por texto sobre Beltrones](#); Aristegui Noticias. No date. [Dresser, “intimidada” tras publicar columna sobre Beltrones: Artículo 19](#)

<sup>1231</sup> Artículo 19. May 13, 2014. [FEADLE obligada a investigar agresión de militares a periodistas tamaulipecos](#); El Punto Crítico. April 7, 2014. [Agreden a periodistas en Nuevo Laredo](#); AgenciaRNNoticias/Official Network YouTube. April 5, 2014. [Soldados de la policía Estatal Agreden a Reporteros y Chofer de transporte urbano](#)

<sup>1232</sup> Artículo 19. April 7, 2014. [#ALERTA México: Diario El Buen Tono de Veracruz recibe amenazas](#); El Buen Tono. April 8, 2014. [Ante el MP, denuncian amenaza contra El Buen Tono](#); Almargen. April 11, 2014. [El acoso a El Buen Tono de Córdoba: amenazan con volver a quemar las instalaciones del diario](#)

<sup>1233</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](#); Artículo 19. April 7, 2014. [#ALERTA México: Diario El Buen Tono de Veracruz recibe amenazas](#)

<sup>1234</sup> Contralínea. June 24, 2014. [Asaltan instalaciones de Contralínea](#); Reporters Without Borders (RWB). July 3, 2014. [Break-in at Mexico City-based independent magazine](#)

<sup>1235</sup> IACHR. [Resolution 21/2014](#). Matter of members of the Contralínea Magazine. Mexico. July 18, 2014.

Federal District Human Rights Commission [*Comisión de Derechos Humanos del Distrito Federal*] (CDHDF) to report the event. On May 27 the reporter also filed a complaint with the Attorney General for DF<sup>1236</sup>.

729. Luis Enrique Sánchez, the director of information portal *Poblanerías*, was the victim of a burglary at his home, where unknown individuals entered on July 28 and stole his computer equipment. Since no other items were taken, the journalist felt it was a message. Days earlier, the reporter criticized public officials for their actions in a protest that turned violent<sup>1237</sup>.

730. On July 29, Claudia Guerrero, the director for *El Veraz* newspaper, edited in Xalapa, state of Veracruz; was subject to intimidation and attacks by alleged members of the 400 Peoples Movement [*Movimiento los 400 Pueblos*]; who surrounded her house (also the media outlet headquarters) and blocked access to it. The individuals also launched a series of projectiles at her vehicle. The reporter filed a complaint before the Public Prosecutor. In 2012, the reporter had also been a victim of attacks from this movement<sup>1238</sup>.

731. On August 17, there was a break-in at the home of Elmer Sosa, caricature artist for *Diario Cambio* in the state of Puebla. The burglars took three computers and two portable data storage units where he stored 10 years worth of work. The event took place weeks after the cyber attacks on the newspaper portal that took it offline for several days. In 2014, the newspaper, one of the heavier critics of the performance of the current governor Moreno Valle, was subject to threats and verbal intimidation by individuals close to the state public administration<sup>1239</sup>.

732. In the early morning hours of September 2, unknown individuals shot at the Xalapa residence of Ignacio Domínguez, director for the *Tinta Verde* weekly, in the state of Veracruz. The journalist and his family were not hurt in the event. The attackers left a pig's head with an intimidating message for the journalist; this was the practice of drug trafficking organizations. The magazine specializes in agriculture and live stock issues and serious critics about government policy<sup>1240</sup>.

733. On September 4, reporter Karla Janeth Silva Guerrero was violently beaten by several individuals as they said "quit being so ballsy in your articles". According to reports, the individuals arrived at the office of the correspondent for *el Heraldo* in León, Sinaloa municipality, state of Guanajuato, and attacked her. Earlier that morning, several individuals had gone in search of the journalist. The reporter, who was hospitalized, testified about the events before the Public Prosecutor. The subjects had also attacked the office assistant and damaged the equipment and facilities. According to available information the dissatisfaction stems from Silva Guerrero's articles tendency to criticize local administration<sup>1241</sup>. The Special Public Prosecutor on Crimes against Freedom of Expression (FEADLE) for the Office of the Public Prosecutor for the

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<sup>1236</sup> Artículo 19. May 27, 2014. [#ALERTA Periodista presenta denuncia ante la PGJDF por amenaza de muerte](#); Reporters Without Borders (RWB). May 23, 2014. ["las autoridades mexicanas deben otorgar protección cuanto antes a los periodistas amenazados"](#); Diario Rotativo. May 27, 2014. [Dejan en desamparo a periodista amenazada de muerte](#)

<sup>1237</sup> SinEmbargo. July 30, 2014. [Periodista de TV es asesinado en Zacatecas con al menos 20 puñaladas: RSF pide investigar si fue por su profesión](#); Artículo 19. July 29, 2014. [ALERTA: Roban en la casa del director de Poblanerías.com](#); Clases de Periodismo. August 19, 2014. [México: Denuncian agresiones contra periodistas de Puebla](#)

<sup>1238</sup> Proceso. July 30, 2014. [Por acoso y agresión, periodista veracruzana denuncia a los 400 Pueblos](#); Artículo 19. July 31, 2014. [ALERTA: Periodista es agredida por Movimiento de los 400 Pueblos](#); E-consultation. July 30, 2014. [Claudia Guerrero interpone denuncia por agresiones de 400 Pueblos](#); Cencos. August 4, 2014. [OSC exigen seguridad para la periodista Claudia Guerrero](#)

<sup>1239</sup> Artículo 19. August 18, 2014. [ALERTA: Roban la casa del caricaturista del Diario Cambio](#); Proceso. August 19, 2014. [Exige Artículo 19 investigar robo a caricaturista en Puebla](#); Revista Variopinto. August 20, 2014. [Roban casa de caricaturista del "Diario Cambio"](#).

<sup>1240</sup> Reporters Without Borders (RWB). September 4, 2014. [Veracruz: el periodista Ignacio Domínguez sale ileso de un atentado en su domicilio](#); NTN24/AFP. September 2, 2014. [Director de un semanario mexicano sale ileso de un atentado en su hogar](#); El Heraldo de Veracruz. September 4, 2014. [CNC condena agresión al periodista Ignacio Domínguez](#)

<sup>1241</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. September 9, 2014. [Press Release R96/14 Office of the Special Rapporteur Condemns Attack to Journalist in Mexico](#); El Universal. September 5, 2014. [Irrumpen en redacción y golpean a reportera en Silao](#); Reporters Without Borders (RWB). September 5, 2014. [Local newspaper correspondent beaten in her office in Guanajuato State](#); Política. September 5, 2014. [Exigen que se investigue agresión a reportera en Guanajuato](#); Enfoque/MVS. September 6, 2014. [Exigen condiciones óptimas para ejercer el periodismo tras agresión a reportera en Guanajuato](#); Committee to Protect Journalists (CPS). September 8, 2014. [Mexican Journalist Attacked After Receiving Threats](#)



Republic opened an investigation on the events<sup>1242</sup>. In a press conference held on September 11, the Attorney General for the State of Guanajuato blamed Nicasio Aguirre Guerrero, the General Director for Public Safety in the Silao municipality for being the mastermind of the attack. The public official is a fugitive. An announcement was made about the detention of two of the alleged attackers<sup>1243</sup>. The criminal judge for Silao found there was enough evidence to take Luis Gerardo Hernández and Joaquín Valero to trial for the alleged assault on the journalist and office assistant. He also ordered the pretrial detention of the men. The defendants were charged with injury, robbery and threats. Although he was not officially a subject of the investigation, during the hearing on September 16, the alleged attackers linked Jorge Alejandro Fonseca Durán, the Chief Operating Officer for the Police of Silao [*Jefe Operativo de la Policía de Silao*], to the attacks on Silva<sup>1244</sup>. On September 20 the detention of Fonseca Durán was announced<sup>1245</sup>. On September 24, the Attorney General for Guanajuato reported the detention of José Samuel “N”, the alleged perpetrator of the attacks against the reporter<sup>1246</sup>.

734. On November 21, the Human Rights Ombudsman for the State of Guanajuato [*Procuraduría de los Derechos Humanos del Estado de Guanajuato*] (PDHEG), closed the investigation on the case of the attack against Silva Guerrero and concluded that the Municipal Public Administration of Silao “did not comply with its obligation to protect journalists and media workers at risk” keeping in mind that the journalist had reported her at risk situation to the then Operations Coordinator for the Municipal Police of Silao. Additionally it resolved, “the injuries, robbery and threats in question are part of a case with municipal agent involvement and did not have the simple goal of attacking the right to human dignity of Karla Janeth Silva Guerrero but rather retaliation and intimidation for her journalism activities”. Based on this, the PDHGE set forth seven recommendations to the Municipal President of Silao among these; public apology on behalf of the institution recognizing its responsibility in the violation of the freedom of expression, as well as granting guarantees of no repetition; such as initiating proceedings against the officers related to the events in order to clarify them; payment of pecuniary damages; include modules on the protection of the right to freedom of thought and expression and journalist awareness in education programs and public safety officer training; also to adopt adequate prevention mechanisms to avoid violence against journalists<sup>1247</sup>. The President for the Municipality accepted all the recommendations and offered a public apology without journalist being present<sup>1248</sup>.

735. This attack caused a group of reporters to go to Congress in the State of Guanajuato to deliver a document wherein they requested the classification of the crime of Attack against the Freedom of Expression [*Atentado Contra la Libertad de Expresión*] in the Criminal Code for the State. The journalists also

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<sup>1242</sup> SinEmbargo. September 6, 2014. [Gobernador de Guanajuato afirma que llegará “hasta las últimas consecuencias” tras agresión a reportera](#); El Heraldo. September 6, 2014. [PJE ya tiene pistas](#); AM. September 8, 2014. [Condenan agresión a reportera](#)

<sup>1243</sup> SinEmbargo. September 11, 2014. [El director de la policía de Silao ordenó golpear a la periodista, dice la PGJE: hay 2 detenidos, él está prófugo](#); Animal Político. September 12, 2014. [Jefe de la policía de Silao, autor intelectual de agresión a reportera en Guanajuato](#); La Jornada. September 11, 2014. [Señala PGJE a jefe de la policía de Silao por agresión a reportera](#); El País. September 11, 2014. [La justicia busca a un jefe de policía por ordenar una paliza a una periodista](#); Milenio. September 12, 2014. [Jefe policiaco, autor de la golpiza a reportera: fiscal](#)

<sup>1244</sup> Proceso. September 16, 2014. [Llevarán a juicio a agresores de la reportera Karla Silva](#); Huellas. September 17, 2014. [Sin cargos alcalde implicado en agresión de periodista Karla Silva](#); Uno TV. September 17, 2014. [Vinculan a otro policía en agresión a reportera de Silao](#); Plano Informativo. September 17, 2014. [Agresores de periodistas no atentaron contra la libertad de expresión: juez](#)

<sup>1245</sup> El Universal. 20 de septiembre de 2014. [Cae segundo mando por agresión a periodista en Silao](#); La Jornada/Notimex. 20 de septiembre de 2014. [Detienen al subdirector de la policía de Silao por agresión a reportera](#); Animal Político. 24 de septiembre de 2014. [Detienen a presunto agresor de reportera de Silao](#)

<sup>1246</sup> Procuraduría General de Justicia del Estado de Guanajuato. September 24, 2014. [Autor material de agresión a periodista es detenido en operaciones conjuntas de la PGJE y la SSPE](#); Noticieros Televisa. September 24, 2014. [Cae cuarto implicado en agresión a periodista de Guanajuato](#)

<sup>1247</sup> Procuraduría de los Derechos Humanos del Estado de Guanajuato. November 21, 2014. [Comunicado de Prensa 06-2014](#).

<sup>1248</sup> El Universal. November 28, 2014. [Edil acepta recomendaciones por agresión a periodista](#); SinEmbargo. November 29, 2014. [Alcalde de Silao ofrece disculpa “institucional” a la reportera golpeada de El Heraldo](#); El Debate. November 29, 2014. [Edil ofrece disculpa a periodista por golpiza](#)

requested the acceleration in the approval of the Law for the Protection of Human Rights Defenders and Journalists, as well as the removal of the public officials who were allegedly involved in the attack<sup>1249</sup>.

736. After publishing an article in the online magazine *Era* questioning the state the governor of Veracruz was in at a public event on September 16, the correspondents for that media outlet were targets of intimidation in an effort to find out who leaked the audio recording for the article<sup>1250</sup>. The events lead to the publication of an article on September 18 holding the government of Veracruz responsible for “any attacks on the correspondents of this publication”<sup>1251</sup>.

737. The IACHR received reports on attacks against the *Luces del Siglo* magazine, edited in the Cancún municipality, Quintana Roo state; including systematic cloning of print and online issues. Magazine director, Agustín Ambriz, reported that the publication – which has criticized the governor’s administration of the state-, has been cloned 48 times by other editions with articles favorable to the local government<sup>1252</sup>. The Quintana Roo government denied participation in cloning the magazine<sup>1253</sup>. Based on the complaint, in October a federal judge ordered to the governor Borge and three main collaborators to cease the “defamation” against Madero<sup>1254</sup>. On October 1, the spokesperson for the State Government gave statements to the media claiming the weekly cloned itself with the alleged goal of extortion against the State and to play the victim in order to gain publicity<sup>1255</sup>.

738. In the early morning hours of September 30, unknown individuals shot at the home of reporter Margarito Juárez; who reports on the police section for *Página 24* newspaper and for *Canal B15* network in the city of Fresnillo, Zacatecas state. According to reports, several shots hit the journalist’s residence but he and his family were not injured<sup>1256</sup>. The reporter had previously been intimidated, such as in the early morning hours of December 14, 2013 when his car was stolen and found, completely charred, in the city outskirts. It was interpreted as a threat because there were issues of *Página 24* magazines on top of the vehicle<sup>1257</sup>.

739. The IACHR received information in October on harassment of national and local journalists in Iguala, Guerrero state. Allegedly the so-called ‘falcons’ (individuals used by organized crime to reports the

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<sup>1249</sup> El Universal. September 17, 2014. [Periodistas piden legislar ataque a la libertad de expresión](#); El Siglo de Torreón. September 17, 2014. [Piden periodistas legislar ataque a la libertad de expresión](#); AM. September 18, 2014. [Apuran aprobar ley a favor de periodistas](#)

<sup>1250</sup> Artículo 19. September 19, 2014. [ALERTA: Hostigan a colaboradores de medio por cuestionar aparente “estado inconveniente” del Gobernador de Veracruz](#); Revolución tres punto cero. September 22, 2014. [Por cuestionar aparente “estado de ebriedad” de Javier Duarte, hostigan a periodistas #Audio](#)

<sup>1251</sup> Revista Era. September 18, 2014. [Revista Era responsabiliza al Gobierno de #Veracruz](#)

<sup>1252</sup> Animal Político. September 25, 2014. [Luces del Siglo ha sido clonada 48 veces, acusa su director](#); Aristegui Noticias. September 25, 2014. [‘Luces del Siglo’ acusa a Roberto Borge de orquestar “terrorismo”](#); Aristegui Noticias. September 25, 2014. [Fotos: Así clonaron en Quintana Roo las portadas de ‘Luces del Siglo’](#)

<sup>1253</sup> Animal Político. September 29, 2014. [“Nunca clonamos la revista Luces del Siglo”: Gobierno de Quintana Roo](#); Aristegui Noticias. September 25, 2014. [Gobierno de Borge niega clonar revistas y ofrece “apoyo” para dar con responsable](#)

<sup>1254</sup> Proceso. October 7, 2014. [Juez federal ordena a Borge cesar “actos de infamia” contra revista](#); NotiCaribe. October 7, 2014. [NUEVA SUSPENSIÓN CONTRA BORGE: Ordena juez federal a Gobernador y funcionarios cesar “actos de infamia” contra dueña de Luces del Siglo](#); Diario de Yucatán. October 8, 2014. [Dan amparo contra el gobierno](#)

<sup>1255</sup> El Universal. October 1, 2014. [ORoo acusa a semanario de ‘autoclonación’](#); Luces del Siglo. October 1, 2014. [Oroo acusa a semanario de ‘autoclonación’](#); Aristegui Noticias. October 1, 2014. [Gobierno de Quintana Roo acusa de “autoclonación” a ‘Luces del Siglo’](#); Artículo 19. October 1, 2014. [Irresponsables las declaraciones de vocero de Quintana Roo: Darío Ramírez](#)

<sup>1256</sup> La Jornada. September 30, 2014. [Disparan contra casa de periodista en Zacatecas](#); Zacatecas Online. September 30, 2014. [Agreden a balazos vivienda de periodista fresnillense](#); Proceso. September 30, 2014. [Balean casa de periodista de ‘Página 24’ en Fresnillo](#); Imagen. September 30, 2014. [Hombres armados atacan vivienda del periodista Margarito Juárez](#)

<sup>1257</sup> Proceso. December 15, 2013. [Roban y queman automóvil de un reportero en Zacatecas](#); SinEmbargo. December 15, 2013. [En dos días, tres periodistas son agredidos por policías y sujetos armados en Zacatecas, DF y Veracruz](#); Vanguardia. September 16, 2013. [Queman carro de un reportero en Zacatecas](#)

goings on in the city) would take pictures of them and follow them on foot and on motorcycles<sup>1258</sup>. This happened after the disappearance of the Ayotzinapa students.

740. In the early morning hours of October 19, the truck belonging to reporter Brenda Nava Mancilla, director of *La Noticia en la Montaña* newspaper, edited in Tlapa de Comonfort municipality, Guerrero state was set on fire. The reporter claimed that days before the event, the Hospital de la Madre y el Niño Indígena Guerrense [Indigenous Warrior Mother and Child Hospital] director had allegedly threatened her after publishing on alleged hospital mismanagement. According to reports, the journalist tried to file a complaint before the Public Prosecutor for Tlapa, but the offices were closed because of the polarization surrounding the region after the disappearance of 43 student teachers. The journalist contacted the Attorney General for Guerrero to request opening investigation and to ensure her safety as well as the safety of her family<sup>1259</sup>.

741. The Commission has knowledge of a video where alleged federal police officers in the state of Guerrero used firearms to threaten television journalists who were travelling in a truck in the Cocula municipality on their way to a clandestine grave<sup>1260</sup>. The Ministry of the Interior issued a press release stating the perpetrators of the attack were officers from the Intelligence and Investigation Division of the Federal Police who were working undercover in the alleged arrest of one of those responsible for the disappearance of the Ayotzinapa youths<sup>1261</sup>.

742. News portal *SinEmbargo*, reported that the delegate for Cuajimalpa in the Federal District was threatening them in different ways demanding they take down the page containing photographs of him. According to reports, in 2012 the portal published a news article with photographs from his Facebook social network page. Other media outlets picked up these photographs. On October 24, 2014, a man showed up at the offices for the media outlet asking for the managers and refusing to leave until the pictures were taken down. The man left once the police was called. Before this event, *SinEmbargo* editing and private cell phones received calls and emails from a man identifying himself as the delegate's attorney, demanding the pictures be taken down or "face the consequences"<sup>1262</sup>.

743. The IACHR received information about audio disseminated on October 28, where allegedly the Secretary of the Interior for the State of Querétaro could be heard ordering the censorship and assault on reporter Juan Manuel Azuza, host for the program 'El Guardián de la Noche' [Guardian of the Night] on *Radio 92.7 FM* for allegedly discussing the lack of safety in the state on his program. The person in the audio orders, "kicks his ass". Through a press release, about 75 journalists reported threats, discrimination and repression by public officers of the state<sup>1263</sup>. Days later, the public official admitted it was his voice on the audio and regretted "making that incorrect statement" and affirmed "utmost respect for the media". He added that they filed charges for espionage with the Attorney General for Justice (PGJ) and the Public Prosecutor for the Republic (PGR)<sup>1264</sup>.

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<sup>1258</sup> SinEmbargo. October 11, 2014. [Iguala es una ciudad de halcones, dicen periodistas; los persiguen y toman fotos](#)

<sup>1259</sup> Artículo 19. October 20, 2014. [Incendian vehículo de periodista de Guerrero](#); Animal Político. October 20, 2014. [Amenazan e incendian camioneta de periodista en Guerrero](#); Libertad Guerrero. October 19, 2014. [Amenazan e incendian camioneta de la periodista Brenda Nava Mancilla, en Tlapa de Comonfort](#); Libertad Guerrero. October 19, 2014. [Carta Abierta Club de Periodistas de Guerrero](#)

<sup>1260</sup> Proceso. October 27, 2014. [Federales vestidos de civil agreden a periodistas en Cocula](#); SinEmbargo. November 15, 2014. [Guerrero se vuelve territorio hostil para periodistas, denuncian comunicadores y ONG's](#); Juan Rivas/YouTube. October 27, 2014. [Agentes federales agreden a periodistas](#)

<sup>1261</sup> Proceso. October 28, 2014. [Segob da su versión de ataque contra periodistas en Guerrero](#); SinEmbargo. October 28, 2014. [Elementos de Inteligencia encubiertos atacaron a periodistas en Guerrero: Segob](#)

<sup>1262</sup> SinEmbargo. October 24, 2014. [Delegado de cuajimalpa amenaza por foto armado](#); Artículo 19. October 24, 2014. [Delegado de Cuajimalpa amenaza a Sin Embargo](#)

<sup>1263</sup> Proceso. October 29, 2014. [Funcionario de Querétaro ordena "romperle la madre" a comunicador](#); SinEmbargo. October 28, 2014. [AUDIO evidencia al Secretario de Gobierno de Oro por mandar golpear a un periodista](#); Inter-American Press Association (IAPA). November 5, 2014. [IAPA protests censorship, repression of Mexican journalists](#)

<sup>1264</sup> Animal Político. November 3, 2014. [El secretario de gobierno de Querétaro reconoce que ordenó "romperle la madre" a locutor](#); SinEmbargo. November 3, 2014. [Secretario de Gobierno de Querétaro reconoce que ordenó agredir a periodista](#)

744. The IACHR learned about the November 1 attempted kidnapping of the Spanish journalist Melchor Miralles, ex director of *El Mundo TV* and columnist for the Spanish Newspaper *ABC*, in the city of Tapachula, Chiapas state. According to the information received, Miralles was in the city shooting a documentary about immigration crosses Mexico towards United States. That day in the early morning hours Miralles received a call at his hotel room by a man identifying himself as a drug cartel leader, who threatened the journalist, his news team and his family in Madrid if he did not obey his orders which included him leaving the hotel room in a taxi and going to a specified area. Locked in his hotel room, the journalist contacted his team who contacted the police. After several hours, the team was able to leave the hotel room and left the country that same day<sup>1265</sup>.

745. On November 19, journalists *Isaín Mandujano*, correspondent for *Noticias MVS* and Gabriela Coutiño, for *Proceso* magazine, were assaulted by a Chiapas legislator security detail. The journalists went to a place where the public official was giving a conference and upon requesting statements from the legislator they were beat. Additionally they were kicked out of the place<sup>1266</sup>.

746. Principle 9 of the Declaration of Principles on Freedom of Expression 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”.

#### **E. Freedom of expression and social protests**

747. During 2014, the IACHR received information on a series of facts and laws that could limit the rights of expression, protest, assembly and association.

748. In that regard, the Free Movement Law for the Federal District [*Ley de Movilidad del Distrito Federal*], was published on July 14, establishing that citizens must inform the authorities 48 hours before a demonstration, which must have a “perfectly legal goal”, disallowing for the use of main roads and establishing that Public Safety Department [*Secretaría de Seguridad Pública*] “shall take measures necessary to ensure main roads with continuous flow are not blocked”<sup>1267</sup>. The constitutionality of the law is being questioned with regard to the Articles related to public demonstrations in two cases; one filed by the Federal District Human Rights Commission and the other by the National Human Rights Commission<sup>1268</sup>.

749. On November 14, the First and Second Federal District Administrative Courts presided over three *amparo* cases filed opposing the Free Movement Law for the Federal District. In their rulings, the judges cite Inter-American standards on social protests and the right to freedom of expression, placing the three-part test on the provisions above the law. In that regard, social protests are recognized as an exercise of the right to freedom of expression and association. Regarding the provisions in question, the judges noted, among other things, that “to demand a specification of the ‘perfectly’ legal objective of the protest is repressive” to the exercise of these rights as they cannot be previously qualified, “because in and of itself the exercise of the fundamental right to freedom of expression and freedom of thought is legal”. Likewise, they found that to demand a forty-eight hour advance notice on a demonstration, “restricts the right to temporary public

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<sup>1265</sup> ABC. November 4, 2014. [Melchor Miralles: «Me están secuestrando»](#); El Mundo. November 4, 2014. [Secuestro fallido del periodista Melchor Miralles](#); El Correo. November 4, 2014. [Intentan secuestrar a Melchor Miralles en México](#)

<sup>1266</sup> 24 Horas. November 19, 2014. [Seguridad de Beltrones agrede a periodistas en Chiapas \(+video\)](#); SDP Noticias. November 19, 2014. [Equipo de seguridad de diputado Manlio Fabio Beltrones agrede a periodistas \(VIDEO\)](#); Alerta Chiapas/YouTube. November 19, 2014. [Seguridad Privada de Manlio Fabio Beltrones agrede a periodistas de Chiapas](#)

<sup>1267</sup> Asamblea Legislativa del Distrito Federal. [Ley de Movilidad del Distrito Federal](#). July 14, 2014. Art. 212 -214; Artículo 19. July 15, 2014. [El Distrito Federal, una entidad más que legisla contra la protesta](#); Servicios y Asesoría para la Paz (SERAPAZ). April 2014. [Control del espacio público. informe sobre retrocesos en las libertades de expresión y reunión en el actual gobierno](#).

<sup>1268</sup> Comisión Nacional de los Derechos Humanos México. August 13, 2014. [Demanda de acción de inconstitucionalidad promovida por la Comisión Nacional de los Derechos Humanos](#); Comisión de Derechos Humanos del Distrito Federal. August 2014. [ACCIÓN DE INCONSTITUCIONALIDAD](#).

protests” which is disproportionate as “when an event that shakes public opinion takes place or when a situation leads to social unrest” there is an immediate need to demonstrate and a wait time is inappropriate<sup>1269</sup>. For the judiciary “[t]o demand the State or a certain group of society, the respect [*sic*] of human rights through a public protest, in its very nature, must be free of repression, robust and open, even including vehement, cutting and unpleasant scathing of public, political, and government persons, over any social unrest or even in the worst of cases, a scenario that is not advisable or desirable; social rejection” of government institutions. In summary, “there must be a respect for expression of ideas and feelings, to include public opinion, although they may be unfavorable to the receiver.”<sup>1270</sup>

750. Likewise, the court found that the maintaining “peace and order a priori” is not a necessary and appropriate limitation, as the rule does not comply with the standards for the establishment of a limitation “ aimed at preventing real and verifiable effects, which could include a threat to democratic society, or, affect certain fundamental rights of others”. In that regard, they noted that “the interruption of traffic on a main road for a demonstration, although it is an important reason, cannot be a justification” to limit or restrict [demonstrations]. The court also noted the inhibiting effect of the lack of clarity on the applicable guidelines for the possible security measures imposed by the Public Safety [Department], “the public has no possibility of knowing what the legal consequences would be if they utilized main roads during a demonstration, thus creating uncertainty and reducing the possibilities of free exercise of fundamental rights”. Based on the above, Articles 212 to 214 of the law cannot be applied to the petitioners<sup>1271</sup>.

751. According to reports, the Quintana Roo Congress passed the Civic Legislation for the State of Quintana Roo [*Ley de Ordenamiento Cívico del Estado de Quintana Roo*]. The latest version, published on July 4, allows for the use of public roads during protests, and states that individuals “may not limit or restrict vehicular or pedestrian travel” and prohibits the blocking of public roadways (Articles 15 and 29. XXXV). Some of the infractions included are “carry out acts that illegally affect the normal functioning of state and municipal, economic, tourist and socio-political activity of the state of Quintana Roo” or excessive noise (Art. 29. VI and XXXVII). The Law states that public administration will “take necessary measures” if demonstrations, marches or stand ins create “disruption in public order or peace, impedes, makes difficult or obstruct to providing a public service or produces acts of violence” (Art. 18)<sup>1272</sup>.

752. On the other hand, on December 10, 2013 the Joint Federal District and Human Rights Commissions [*Comisiones Unidas del Distrito Federal y de Derechos Humanos*] adopted an opinion on the Federal District Public Demonstrations Law [*Ley de Manifestaciones Públicas en el Distrito Federal*]<sup>1273</sup>. According to the information received, the original proposal would set protests schedules (between 11:00am and 6:00pm) with a mandatory 72-hour notice to the authorities. The bill established that the authorities could “block or modify demonstrations, considering the risk to public protection and environmental contingencies”. Likewise, protesters would be barred from “threatening or insulting” or “intimidate or force the authorities to solve an issue in the way they desire”. On the other hand, the authorities could dissolve the

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<sup>1269</sup> Red TDT. November 30, 2014. [Juzgados federales confirman que la ley de movilidad viola derechos humanos en un contexto de criminalización de la protesta social](#); Animal Político. December 5, 2014. [La Ley de Movilidad del DF es anticonstitucional](#); Juzgado Segundo de Distrito en Materia Administrativa en el Distrito Federal. [Juicio de Amparo Número 1693/2014](#). February 14, 2014.

<sup>1270</sup> Comisión Nacional de los Derechos Humanos México. August 13, 2014. [Demanda de acción de inconstitucionalidad promovida por la Comisión Nacional de los Derechos Humanos](#); Comisión de Derechos Humanos del Distrito Federal. August 2014. [ACCIÓN DE INCONSTITUCIONALIDAD](#); Juzgado Segundo de Distrito en Materia Administrativa en el Distrito Federal. [Juicio de Amparo Número 1693/2014](#). February 14, 2014.

<sup>1271</sup> Juzgado Primero de Distrito en Materia Administrativa en el Distrito Federal. February 14, 2014. Juicio de Amparo Número 1689/2014. Available at: [http://sise.cjf.gob.mx/SVP/word1.aspx?arch=10/0010000015811369011.doc\\_1&sec=Carlos\\_David\\_Bautista\\_Lozano&svp=1](http://sise.cjf.gob.mx/SVP/word1.aspx?arch=10/0010000015811369011.doc_1&sec=Carlos_David_Bautista_Lozano&svp=1); Juzgado Primero de Distrito en Materia Administrativa en el Distrito Federal. February 14, 2014. Juicio de Amparo Número 1690/2014. Available at: [http://sise.cjf.gob.mx/SVP/word1.aspx?arch=10/0010000015811736009.doc\\_1&sec=Carlos\\_David\\_Bautista\\_Lozano&svp=1](http://sise.cjf.gob.mx/SVP/word1.aspx?arch=10/0010000015811736009.doc_1&sec=Carlos_David_Bautista_Lozano&svp=1); Juzgado Segundo de Distrito en Materia Administrativa en el Distrito Federal. February 14, 2014. Juicio de Amparo Número 1693/2014. Available at: [http://sise.cjf.gob.mx/SVP/word1.aspx?arch=726/0726000015815412003.doc\\_1&sec=Manuel\\_Vizcarra\\_N%C3%BA%C3%B1ez&svp=1](http://sise.cjf.gob.mx/SVP/word1.aspx?arch=726/0726000015815412003.doc_1&sec=Manuel_Vizcarra_N%C3%BA%C3%B1ez&svp=1)

<sup>1272</sup> Poder Legislativo del Estado de Quintana Roo. [Ley de Ordenamiento Cívico del Estado de Quintana Roo](#). July 4, 2014.

<sup>1273</sup> Animal Político. December 11, 2013. [Los puntos que debes conocer de Ley de Manifestaciones](#); Excélsior. December 11, 2013. [Aprueban dictamen sobre Ley de Manifestaciones Públicas en el DF](#)

demonstration. Additionally, the bill stated that “the right to freedom of association or peaceful assembly with any legal objective, in other words, when aiming for something that is not contrary to public morals or public policy”<sup>1274</sup>. In a communication dated February 12, 2014, the State reported that the bill was still under analysis and that part of the legislative process in the Mexican State includes “an analysis of the bills introduced by Legislative Commissions in order to thoughtfully consider and select bills that promote and protect the human rights of society as a whole”<sup>1275</sup>.

753. This information was also presented during the ‘Human Rights and Social Protest in Mexico’ hearing during the IACHR 153 Period of Sessions on October 30. There the petitioners alleged that as of 2012 the authorities had the tendency to restrict this right. Said tendency was seen in bills, some are already law, and restrictive federal and local regulations that regulate the use of public space for social protests, require advanced notice to the authorities, use ambiguous language, and allow for criminal punishment. The petitioners also stated that as part of this tendency towards excessive use of force, the authorities use said force not only on the demonstrators, but also against those documenting the events. The State on the other hand expressed respect for social protests as a tool for the right of freedom of expression, and added that the regulations are geared towards ensuring the safety of the demonstrators as well as the safety of the population as a whole. An example of the above, is the regulation for use of force by authorities. Likewise, the State declared that it has a Mechanism for the Protection of Human Rights Defenders and Journalists, which has protected people at risk<sup>1276</sup>.

754. The IACHR also received information on several attacks, detentions and/or threats against journalists, the press and protesters by security forces or unknown individuals.

755. In that regard the IACHR learned of an attack on five journalists in the context of the march commemorating the anniversary of the ‘Corpus [Christi] Thursday Massacre’ [*Masacre del jueves de corpus*] or the ‘Falcon Strike’ [*Halconazo*] in Mexico City. According to reports, the attacks took place while the journalists were recording hooded people in civilian clothes painting walls and breaking the windows of businesses where the march was taking place. The attackers hit and in some cases ruined the journalist’s work equipment. Some of the assaulted reporters included Luis Castillo, for *Reforma* newspaper; Leonardo Casas for the *Quadratín* agency; Marco Ugarte for *Associated Press*, who was hospitalized; Paris Martínez for *Animal Político* and Néstor Negrete a freelance reporter<sup>1277</sup>.

756. On July 9, there were confrontations between different community populations in the Chalchihuapan municipality in the state of Puebla and the authorities; as the authorities attempted to dissolve a demonstration that blocked a roadway. According to reports, four people were detained and others were injured. One of them was a 13-year-old boy, allegedly hurt by a rubber bullet shot by police. The child died on July 19<sup>1278</sup>. The National Human Rights Commission determined there was wrongful use of force by the authorities at this protest and that the projectile shot by the police was the cause of the child’s death<sup>1279</sup>.

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<sup>1274</sup> Gaceta Parlamentaria. [Ley de Manifestaciones Públicas en el Distrito Federal](#). October 3, 2013. Art. 5, 8, 9 and 11.

<sup>1275</sup> Estados Unidos Mexicanos. Permanent Mission to the OAS. Note OEA-00555 addressed to the Office of the Special Rapporteur for Freedom of Expression. February 12, 2014. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1276</sup> IACHR. 153 Period of Sessions. Hearing on Human Rights and Social Protest in Mexico. October 30, 2014. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/153/default.asp>; IACHR. November, 7, 2014. [Press Release 131/14. IACHR Wraps Up its 153rd Session](#)

<sup>1277</sup> Animal Político. June 10, 2014. [“Anarquistas” agreden a periodistas en marcha por el “Halconazo”](#); Artículo 19. June 10, 2014. [Personas vestidas de civil y encapuchadas agreden a periodistas durante marcha #10JunioMx](#); El Universal. June 14, 2014. [CNDH indaga agresión a reporteros en marcha del 10 de junio](#); El Occidental. June 14, 2014. [CNDH investiga agresiones a periodistas en marcha del 10 de Junio](#)

<sup>1278</sup> SinEmbargo. July 9, 2014. [Pobladores de Chalchihuapan, Puebla, se enfrentan con policías tras bloquear autopista; reportan al menos 18 heridos](#); Pulso. July 20, 2014. [Muere niño poblano tras disparos de policías en manifestación](#); Animal Político. July 20, 2014. [Muere niño herido en enfrentamiento con la policía: SSP-Puebla niega uso de balas de goma](#); CNN México. July 25, 2014. [‘El gobierno de Puebla buscó pagar mi silencio’: Madre de menor fallecido](#). La Jornada. July 9, 2014. [Chocan pobladores de San Bernardino, Puebla, con policías; cuatro heridos graves](#)

<sup>1279</sup> Milenio. September 11, 2014. [Proyectil lanzado por policías causó muerte de menor en Puebla: CNDH](#); CNN México. September 11, 2014. [La CNDH responsabiliza a la policía de Puebla por la muerte de un menor](#)

757. The Inter-American Commission and Office of the Special Rapporteur received with concern the report on the disappearance of 43 *Escuela Normal Rural de Ayotzinapa* students in Iguala, Guerrero state, on September 26 when buses were travelling to Chilpancingo. According to reports, roads were blocked by patrol cars from where indiscriminate shooting took place. During the events about 20 students were detained, six people died, three of which were students, and 43 students were reported missing. For this reason, the IACHR granted precautionary measures on October 3 and requested the State to activate the mechanisms necessary to determine the whereabouts of the students in order to protect their rights to life and personal integrity<sup>1280</sup>. Throughout the investigation of the case, 22 police officers that allegedly caused the death of six people were detained. For this reason, on September 30, the mayor requested permission to facilitate the investigations. After the October 5, statement of alleged members of United Warriors [*Guerreros Unidos*], reportedly the police handed the students over to this criminal organization and they (the organization) killed the students. Later, the Public Prosecutor for the Republic acknowledged that the mayor for Iguala and his wife have ties to this criminal organization, where his wife was the leader. The public official ordered the attack against the students, allegedly to avoid a protest in his municipality. The couple was on the run, but was detained on November 4<sup>1281</sup>.

758. Demonstrations within the country grew after the first attack on September 26 and the development of the investigation on the disappearance. The objective has been to demand justice for the youth and punishment for those responsible<sup>1282</sup>. The IACHR has received information about violent acts arising out of these protests wherein reporters, protestors, Human Rights defenders and/or people documenting the events were assaulted and detained.

759. In that regard, the night of November 8 after protesters met at the main square, Mexico City, a group of individuals painted and threw an object at city buildings and also tried to burn down the National Palace. Members of the Federal District security forces attacked the individuals at the scene and detained at least 18 individuals who allegedly did not participate in the events at the National Palace<sup>1283</sup>.

760. Journalists Carlos Navarrete Rubio for *El Sur* newspaper, and Jesús Eduardo Guerrero Ramírez for *La Jornada de Guerrero* newspaper, were attacked by Guerrero state police on November 11 even though they identified themselves as members of the press. The events took place while covering the violent displacement of teachers who were at Institutional Revolutionary Party [*Partido Revolucionario Institucional*] (PRI) headquarters in the city of Chilpancingo, Guerrero protesting the disappearance of the Ayotzinapa students. According to reports, photo reporters Sebastián Luna and Anwar Delgado were also beat and threatened when they attempted to help Navarrete. The police also threatened other journalists who were documenting the event<sup>1284</sup>.

761. While covering the ‘Caravan for Ayotzinapa’ [*Caravana por Ayotzinapa*] in Oaxaca, photo reporters Hugo Velasco and Luis Plata were hit by a Molotov cocktail (petrol bomb) causing first and second degree burns to Velasco, and leaving Plata without serious injuries. According to reports, the event occurred

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<sup>1280</sup> IACHR. [MP 409/14. Resolution 28/2014](#). Students of the rural school “Raúl Isidro Burgos”. Mexico. October 3, 2014.

<sup>1281</sup> CNN México. November 7, 2014. [43 claves para entender el caso Ayotzinapa, a cuatro meses de su inicio](#); Animal Político. November 26, 2014. [Normalistas cumplen dos meses desaparecidos: cronología del caso Ayotzinapa](#); Univisión Noticias. December 6, 2014. [Cronología de la desaparición de los 43 estudiantes de Ayotzinapa](#)

<sup>1282</sup> Artículo 19. November 23, 2014. [El sistema de justicia no debe de ser utilizado para inhibir la protesta social y se debe garantizar el derecho a la libre reunión y asociación pacífica](#); El Financiero. November 21, 2014. [Día de Acción Global por Ayotzinapa, habrá cierres viales y manifestaciones en todo el país](#)

<sup>1283</sup> Animal Político. November 10, 2014. [Libres los 18 detenidos por el incendio en Palacio Nacional; el INAH denunciará](#); Cencos. November 9, 2014. [Lista de detenidos tras manifestaciones del 8 de noviembre](#); Freedom of Expression and Social Protest Front. November 27, 2014. Crime Classification and repression of the November 8, 2014 social protest in Mexico City. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1284</sup> Artículo 19. November 12, 2014. [Policías de Guerrero golpean a periodistas durante manifestación](#); SinEmbargo. November 15, 2014. [Guerrero se vuelve territorio hostil para periodistas, denuncian comunicadores y ONG's](#); Reporters Without Borders (RWB). November 17, 2014. [At least seven journalists injured at protest about 43 missing students](#)

while documenting a group of hooded individuals throwing rocks and Molotov cocktails at the Institutional Revolutionary Party (PRI) offices in Oaxaca<sup>1285</sup>.

762. According to the information received by the IACHR, during the November 20 demonstrations, the most violent protest took place where several individuals were assaulted and detained. The reported information conveys that the first confrontation between protestors and the authorities in Mexico City, where close to the city's international airport, at least 18 journalists and other individuals were assaulted. Some of the reported events included taking pictures from and assaulting Marlen Mondragón for the Subversion Agency [*Agencia de Subversiones*]; the security forces illegal detention by corralling (method used by the police when they surround a group of people) six journalists for *Somos El Medio*, *Regeneración Radio*, *Política Media* and *Contralínea* magazine<sup>1286</sup>.

763. The night of November 20, different demonstrations that took place in Mexico City met at the main square where violent acts took place after a small group of individuals in front of the National Palace threw objects, firecrackers and even Molotov cocktails at the building and Federal Police Officers there. The Federal Police, in collaboration with the Federal District Police and the Auxiliary Federal District Police allegedly responded to the attack by violently dismantling the protest by attacking and insulting those present. In that context, security forces and some civilians attacked at least 14 journalists and reporters, and others, even though they identified themselves as members of the press. Some of those attacked include Eduardo Verdugo, photo reporter for *Associated Press*, his camera was also stolen, David Rodríguez, for *Quadratín*; Juan Omar Fierro, for *MVS Radio*; Ángel Huerta García, for *Radio Zapote*; Diego Simón Sánchez, photo reporter for *Cuartoscuro*; María Idalia Gómez, for *Eje Central* and *24 Horas*; Eduardo Miranda, photo reporter for *Proceso*; Yohali Reséndiz, for *Excélsior*; Raúl Flores and Carlos Valente, respectively reporter and cameraman for *Grupo Imagen*<sup>1287</sup>. According to reports, 15 people, most of them presumably students, were detained. Out of these, 11, including a Chilean citizen, were taken to the Special Deputy Attorney General's Office for Organized Crime Investigation [*Subprocuraduría Especializada de Investigación de Delincuencia Organizada*] (SEIDO) a division of the Public Prosecutor for the Republic. These individuals were not allowed to communicate and were transferred to federal penitentiaries outside Mexico City for the crimes of criminal association, rioting and attempted homicide. Civil organizations requested the National Human Rights Commission determine if the detainees were subjected to torture<sup>1288</sup>. The individuals were released on November 29 due to lack of evidence<sup>1289</sup>.

764. On December 1, demonstrations continued in Mexico City where alleged members of the Federal District Public Security Secretariat [*Secretaría de Seguridad Pública del Distrito Federal*] (SSPDF) attacked at least 28 journalists and Human Rights defenders. There were also illegal detentions of protestors,

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<sup>1285</sup> Artículo 19. November 18, 2014. [Con bombas molotov agreden a fotoperiodistas en Oaxaca](#); El Piñero de la Cuenca. November 17, 2014. [Durante protesta por Ayotzinapa en Oaxaca, foto periodistas "arden" tras alcance de bombas molotov, lanzadas por encapuchados](#)

<sup>1286</sup> Artículo 19. November 20, 2014. [Jornada de protestas pacíficas por Ayotzinapa, con acciones ilegales hacia comunicadores y defensores](#); Freedom of Expression and Social Protest Front. November 27, 2014. Human Rights violations in November 20, 2014 protests in Mexico City. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1287</sup> Artículo 19. November 21, 2014. [Policías y civiles agreden a periodistas y defensores durante violento desalojo del Zócalo de la Ciudad de México al finalizar jornada de protestas por Ayotzinapa](#); Reporters Without Borders (RWB). November 25, 2014. [Another 14 journalists injured in protests over 43 missing students](#); Aristegui Noticias. November 21, 2014. [6 videos de la represión policiaca en el #20NovMx](#); Freedom of Expression and Social Protest Front. November 27, 2014. Human Rights violations in November 20, 2014 protests in Mexico City. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1288</sup> Instituto Mexicano de Derechos Humanos y Democracia. November 24, 2014. [Comunicado](#); CNN México. November 23, 2014. [Padres de detenidos por #20NovMx denuncian violaciones a derechos humanos](#); Milenio. November 25, 2014. [¿Quiénes son los 11 detenidos en el Zócalo?](#); Freedom of Expression and Social Protest Front. November 27, 2014. Human Rights violations in November 20, 2014 protests in Mexico City. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1289</sup> La Jornada. November 29, 2014. [Liberan a los 11 detenidos durante marchas del 20NovMx](#); Excélsior. November 30, 2014. [Liberan a los 11 detenidos en el Zócalo; faltaron pruebas: Poder Judicial](#); Milenio. December 1, 2014. [Detenidos durante protestas acusan agresiones y torturas de policías](#)



pedestrians, defenders, reporters and people documenting the events<sup>1290</sup>. Some of those attacked were part of the *La Voladora Radio*, community radio team including Verónica Galicia, Erick García and Eduardo Celestino, who were not only attacked, but also had their equipment stolen as they reported on alleged police officers dressed in civilian clothes, ordering protestors be hit<sup>1291</sup>. According to reports, the violent acts resulted in at least three detentions for the crime of damages<sup>1292</sup>.

765. The IACHR 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.” Accordingly, the authorities must provide journalists with the maximum guarantees in order for them to perform their functions. In this respect, they must ensure that journalists are not arrested, threatened, assaulted, or limited in any manner in their rights as a result of practicing their profession in the context of a public demonstration. The State must not prohibit or criminalize live broadcasts of events, and must abstain from imposing measures that regulate or limit the free circulation of information. Journalists must not be called as witnesses before the courts, and the authorities must respect the right to the confidentiality of sources of information. In addition, their work materials and tools must not be destroyed or confiscated.<sup>1293</sup>

## F. Protection Mechanism for Human Rights Defenders and Journalists

766. The IACHR and Office of the Special Rapporteur favorably view the creation of a Protection Mechanism for Human Rights Defenders and Journalists in the country as a manifestation of the State’s commitment to protect defenders and journalists at risk.

767. During the hearing ‘Human Rights Public Policy and Good Practices in Mexico’ requested by the State and held on March 27, during the 150 period of sessions at the IACHR, the State reported that the mechanism would include hefty budget allocations and technical assistance from international agencies that specialize in freedom of expression, such as Freedom House. It added that there have been 165 requests to participate in the mechanism and that 31 States of the Republic have agreed to provide collaboration and coordination with protective measures and 211 measures have been issued to protect 238 individuals<sup>1294</sup>.

768. Nonetheless, the IACHR and the Office of the Special Rapporteur have received information regarding the shortcomings of the mechanism in practice. Such shortcomings are related to structural deficiency, lack of transparency and accountability, and an alleged public policy absence in compliance with State obligations. In that regard, information received indicates that there is a 70 per cent processing backlog of the cases filed with the mechanism<sup>1295</sup>. Reports also included slow risk evaluation and identification of

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<sup>1290</sup> Artículo 19. December 1, 2014. [Se repiten agresiones contra periodistas y defensores durante protestas](#); Centro de Medios Libres. December 2, 2014. [#1dMx Mancera vuelve al ataque: Brutales golpizas contra el derecho a la manifestación en la Ciudad de México, 7 detenidos](#) (VIDEOS); Animal Político. December 4, 2014. [Video prueba que funcionario del GDF participó en disturbios del #1dMx](#)

<sup>1291</sup> World Association of Community Radio in Mexico (AMARC). December 3, 2014. [Organizaciones denuncian agresiones de la SSPDF contra integrantes de radio comunitaria](#); El Independiente de Hidalgo. December 6, 2014. [Denuncian agresiones de la policía del DF contra integrantes de radio comunitaria](#)

<sup>1292</sup> Animal Político. December 2, 2014. [Los 3 detenidos después de la marcha #1dMx declaran por provocar daños](#); El Informador. December 2, 2014. [Politécnicos protestan por liberación de detenidos](#)

<sup>1293</sup> United Nations (UN) Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights of the Organization of American States (OAS). September 13, 2013. [Joint Declaration on Violence against Journalists and Media Workers in the Context of Protests](#).

<sup>1294</sup> ICHR. 150 Period of Sessions. Hearing on Human Rights Public Policy and Good Practices in Mexico. March 27, 2014. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/150/default.asp>

<sup>1295</sup> Instituto Mexicano de Derechos Humanos y Democracia. March 27, 2014. [OSC exigen al Secretario de Gobernación atender los problemas estructurales de Mecanismo de Protección a Personas Defensoras de Derechos Humanos y Periodistas](#); WOLA. April 3, 2014. [Preocupación sobre el Mecanismo de Protección para Personas Defensoras de Derechos Humanos y Periodistas en México](#); Artículo 19. Re: Important information on the Mechanism for the protection of Human Rights Defenders and Journalists simulation. Communication sent to the IACHR Executive Secretariat. March 31, 2014. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

measures to adopt and lacking enough personnel for risk evaluation. Also, lacking protocols that ensure an immediate reaction to new attacks and adequate methodology for case follow up. Along these lines, information was received indicating that the first months of the year where at least 10 journalist and media cases were documented as being the targets of attacks or threats even while under country protective measures or open criminal complaints for attacks suffered in years past<sup>1296</sup>.

769. Similarly, on April 21 the Inter-American Commission sent an information request to the State and received a response on May 26. In the response the State stated that between March 10 and 26, the non-government agency Freedom House Mexico, joined the National Executive Organization [*Coordinación Ejecutiva Nacional*] (CEN) for the Mechanism in an evaluation of the support project. On March 29, the assessment was presented to the Government Board, and based on that the 2014 work plan was approved. The plan included, among other things, technical strengthening in three areas where methodologies needed adjustment: risk assessment, in the procedures and proceedings developed at the National Executive Organization (to improve the case information structure, the implementation of a database and improvement on personnel training for risk analysis), and lastly measures regarding the Risk Evaluation Protocol and the Risk Level Assessment Tool<sup>1297</sup>.

770. After two sessions taking place in July and August, the Government Board for the Mechanism resolved to issue protective measures to 85 human rights defenders and journalists who “were at risk in the proper exercise of their duties”. The implementation of these measures would be “as soon as possible” in coordination with federal, state and municipal authorities<sup>1298</sup>.

771. The IACHR and the Office of the Special Rapporteur would particularly like to point to the importance of assigning and training of personnel necessary for its proper operation; guaranteeing that studies and implementation of urgent, preventative and protective measures are carried out in an adequate manner, meeting the deadlines set by law, and that the urgent measures and protective measures granted are not replaced or withdrawn prior to the resolution of potential disagreement and; guaranteeing the coordination of the different State federal agencies, as well as with the federal entities for its adequate operation.

## G. Subsequent Liabilities

772. Irene Muñoz, the General Director for Messages and New Technology for the Federal District Government [*Directora General de Mensaje y Nuevas Tecnologías del Gobierno del Distrito Federal*] (GDF), filed a criminal complaint on January 27 against blogger ‘Renegado Legítimo’ before the Central Investigation Prosecutor for Special Matters in the Federal District Office of Attorney General [*Fiscalía Central de Investigación para Asuntos Especiales de la Procuraduría General de Justicia del Distrito Federal*] (PGJDF). On January 27 the blogger published an investigation that showed the public official allegedly favored “friendly media outlets” with GDF official advertising. In the complaint, the public official requested the blogger be investigated for alleged events that “constitute a crime” against her person<sup>1299</sup>.

773. The IACHR learned of the case of Mayan reporter and activist Pedro Celestino Canché Herrera in the municipality of Felipe Carrillo Puerto in the state of Quintana Roo. He has been held since August 30 on charges of criminal sabotage. According to reports, the event arose from the journalist’s

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<sup>1296</sup> IACHR. Letter to the State of Mexico: Mexican Mechanism for the protection of Human Rights Defenders and Journalists. April 17, 2014. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1297</sup> Estados Unidos Mexicanos. Mexican Permanent Mission to the OAS. Note No. OEA-02252 to the IACHR Executive Secretariat. May 28, 2014. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1298</sup> Almargen. September 1, 2014. [Suman 85 periodistas y activistas con medidas cautelares del Mecanismo de Protección de la Segob](#); La Jornada. August 31, 2014. [Brindarán protección a 44 defensores y periodistas en situación de riesgo](#); El Universal. July 18, 2014. [Brindarán protección a 41 periodistas y defensores](#)

<sup>1299</sup> Artículo 19. January 30, 2014. [Aleria: Funcionaria del DF demanda a bloguero](#); Proceso. January 31, 2014. [Bloguero acusa a funcionaria del GDF de traficar con publicidad y lo demandan](#); Blog RL. No date. [Acto de intimidación: Irene Muñoz denuncia a este bloguero](#); SDP Noticias. February 13, 2014. [Piden a Mancera respeto a la libertad de expresión tras denuncia a bloguero](#)

coverage of an encampment against the Water and Sewer Commission (CAPA) for the municipality, which began on August 11 and was violently displaced on August 19 by the authority. People who were documenting the event were also attacked. The event resulted in the detention of 40 individuals; nine of whom are still charged with rioting, and attacking and insulting the police. Canché documented the repression, which was disseminated via different media outlets<sup>1300</sup>. On August 21, the Quintana Roo government issued a press release stating the Legal Department for CAPA filed a criminal complaint against the detained protestors, who allegedly stated in their sworn statements that they “recognized they were manipulated, sponsored by political interests. In fact most admitted they do not live in Felipe Carrillo Puerto and that they were hired by a person named Pedro Celestino Canché Herrera to block access to the CAPA offices”<sup>1301</sup>. The reporter denied association with any political group and asked the governor to hold a public debate on the protestors’ displacement. Later other public officials attacked Canché because of his work and he learned that there was an arrest warrant for him in the CAPA complaint for criminal sabotage. On August 27, the journalist requested an *amparo* against the arrest warrant, which was accepted; nonetheless he was still detained on August 30. On September 5, a judge ordered pretrial detention. On September 23 Canché was transported to a municipality hospital because of injuries caused by other inmates upon his arrival at the detention facility. The reporter was released from the hospital two days later. Reports on the case stated there were irregularities with the investigation and evidence against Caché, for example the expert who went to the scene one day before investigation was opened, as well as the testimonies against him classifying the fact that Canché spoke to the protestors and recorded the events as “criminal activity”<sup>1302</sup>.

## H. Access to Public Information

774. On January 13, the Javaltón Community Meeting [or Jabaltón], in the municipality of Chenalhó, state of Chiapas, removed Mariano Gutiérrez and his family after he refused to pay a fine for requesting information on the expense for municipality public works. Gutiérrez is a member of the Community Comptrollers Council [*Consejo de Contralorías Comunitarias*] (CCC), an organization promoting the exercise of the right to information jointly with the organization Mesoamerican Voices [*Voces Mesoamericanas*], organizations that have questioned the inconsistencies in public expenses for the municipality public works. In October 2013, through a Deed of Agreement of Chenalhó Constitutional City Hall, a fine of four thousand pesos (approximately 290 dollars) was imposed on Gutiérrez and the members of Mesoamerican Voices were barred from passing through municipal territory. The Meeting also threatened with removing other members from the community<sup>1303</sup>.

775. On February 20, the First Circuit Administrative Tribunal [*Tribunal Colegiado en Materia Administrativa del Primer Circuito*] adjudicated that medical files on the President of the Republic or any other federal public official are private and confidential. The resolution is a response to a denied *amparo* remedy filed by the *Artículo 19* organization before the Sixth District Federal District Administrative Court [*Juzgado Sexto de Distrito en Materia Administrativa del Distrito Federal*], for access to information on the president’s health; considered a matter of public interest. In the February 20 ruling, the Tribunal determined that “personal information is privileged” regardless of the individual or position<sup>1304</sup>.

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<sup>1300</sup> Proceso. August 30, 2014. [Detienen en Quintana Roo a periodista y activista maya](#); Aristegui Noticias. August 30, 2014. [Detienen en Quintana Roo a periodista crítico del gobernador Roberto Borge](#); Artículo 19. No date. [Pedro Canché: encarcelado por informar](#)

<sup>1301</sup> Gobierno del Estado de Quintana Roo. August 21, 2014. [Oficinas de Capa en Felipe Carrillo Puerto operan con toda normalidad](#)

<sup>1302</sup> Artículo 19. November 24, 2014. [Gobierno federal niega protección a periodista maya; gobernador de Quintana Roo ataca voces críticas](#); Artículo 19. November 12, 2014. Re. Case of journalist Pedro Celestino Canché Herrera. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1303</sup> Artículo 19. January 21, 2014. [#ALERTA Chiapas: Asamblea expulsa a miembro por ejercer derecho a la información](#); Fundar. January 14, 2014. [En medio de expulsiones y amenazas se crea el Consejo de Contralorías Comunitarias de Chenalhó y se lanza Campaña informativa por el Derecho a Saber](#); Mirada Sur. January 16, 2014. [Expulsan a familia en la comunidad javaltón por exigir transparencia](#)

<sup>1304</sup> Artículo 19. February 20, 2014. [El estado de salud del Presidente es secreto y representa un retroceso al DAI](#); Proceso. February 20, 2014. [Ponen candados al expediente médico de Peña](#); Animal Político. February 20, 2014. [Expediente clínico de Peña Nieto se queda en reserva](#); Artículo 19. February 17, 2014. [Desde el poder judicial, retrocesos en transparencia](#)

776. Principle 4 of the IACHR 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”.

## I. Freedom of Expression and Internet

777. On July 30, the online newspaper portal *Cambio* in the state of Puebla was the victim of a cyber attack that took it offline for 36 hours. Weeks before the attack, the newspaper criticized state police behavior during demonstrations where they used rubber bullets and caused the death of a child<sup>1305</sup>.

778. The page for Public Allocations project ([www.designaciones.org](http://www.designaciones.org)) was hacked by changing the results of a poll on the appointment of the president of the National Human Rights Commission (CNDH). During the appointment process of the new president of the CNDH, the purpose of the project was to inform about this process and set up a poll for individuals to vote for the candidates they considered were best suited for the position. On November 1, IT support for the page reported a system intrusion and a vote alteration in favor of several candidates, including Raul Plascencia, the ex-president of the institution<sup>1306</sup>. The project is a “citizen observatory for the analysis on the procedures to appoint public officials with the main goals of promoting transparency and contributing to the right to information creating a space for public deliberation on the procedures and candidate suitability”<sup>1307</sup>.

779. The news website *SinEmbargo* was attacked by denial of service (DoS) taking it offline for 24 hours. The attack occurred after the death threats and discrediting campaign and harassment against the portal and its content director, Alejandro Páez Varela. Such campaign of threats and attempts to take the portal offline began in early October and was at its height when a known singer reported her account was hacked to threaten Páez Varela. The attacks were reported<sup>1308</sup>.

780. On November 13, news portals *Plumas Libres* and *AGN* in the state of Veracruz were targets of a denial of service (DoS) cyber attack, barring users from accessing the portals for at least 12 hours. The attack took place in the context of the protest marked Central American and Caribbean Games (CAC)<sup>1309</sup>.

781. The IACHR learned of attacks against different informative media online pages during November. The media outlets were reporting on acts of alleged corruption or irregularities in public office. According to reports, the *e-consulta* portal in the state of Puebla was attacked on November 18, data bases and files for the site were destroyed, and content could not be uploaded. These attacks continued for several days<sup>1310</sup>. On November 21 the *Chiapas Paralelo* portal was victim to an attack overloading the server thus taking it offline until November 24<sup>1311</sup>. On the other hand the *Mientras Tanto en México* portal, in Jalisco state

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<sup>1305</sup> Artículo 19. August 1, 2014. [ALERTA: Ataque informático inhabilita página web del Diario Cambio](#); Animal Político. July 31, 2014. [Denuncian ciberataque a diario crítico con gobierno de Puebla](#); Periodistas en riesgo. July 31, 2014. [Diario en Puebla denuncia ataque cibernético](#)

<sup>1306</sup> Artículo 19. November 1, 2014. [Hackean página del proyecto designaciones.org para alterar encuesta sobre la designación de titular de la CNDH](#); Fundar. November 3, 2014. [Hackean página del proyecto designaciones.org para alterar encuesta sobre la designación de titular de la CNDH](#)

<sup>1307</sup> Publi Appointments. [Acerca de @Designaciones](#).

<sup>1308</sup> Artículo 19. November 13, 2014. [Inacción de FEADLE vulnera trabajo de Sin Embargo](#); SinEmbargo. October 26, 2014. [Belinda dice que le hackearon el Facebook para difamar a periodistas de SinEmbargo](#); ContraPunto. November 11, 2014. [ATACAN PORTAL DE “SIN EMBARGO”, ES EL SEGUNDO EN UN MES](#); Animal Político. November 12, 2014. [Denuncia Sin Embargo nuevo ataque cibernético](#)

<sup>1309</sup> Animal Político. November 14, 2014. [Reportan ataque cibernético contra los portales Plumas Libres y AGN de Veracruz](#); Artículo 19. November 17, 2014. [En Veracruz, ataques cibernéticos a Plumas Libres y AGN vulneran libertad de expresión](#); Proceso. November 14, 2014. [Denuncian ataque cibernético dos medios de comunicación de Veracruz](#)

<sup>1310</sup> Artículo 19. November 25, 2014. [Atacan portales de noticias de Puebla, Chiapas y Jalisco](#); E-consulta.com. November 19, 2014. [Atacan desde el gobierno estatal al portal e-consulta](#)

<sup>1311</sup> Artículo 19. November 25, 2014. [Atacan portales de noticias de Puebla, Chiapas y Jalisco](#); Cerigua. November 26, 2014. [Reportan ataques cibernéticos contra tres medios de comunicación](#)

was victim to two attacks in less than a week, saturating the server and impeding access to information. The second attack occurred after publishing video criticizing police actions in past demonstrations. This was the fourth attack of its kind on this media outlet<sup>1312</sup>.

## J. Legal Reforms

782. According to reports, on December 4 the General Law on Children and Adolescent Rights [*Ley General de los Derechos de Niñas, Niños y Adolescentes*] was published. The law contains important provisions on the protection of the rights to freedom of expression and access to children and adolescent information, including measures to make effective those rights for children of indigenous or disabled groups. The law also specifically states that, “children and adolescent freedom of expression includes the right to ensure their opinion is taken into account regarding the issues that directly affect them, their family members or communities (Articles 64 and 65)<sup>1313</sup>.

783. On the other hand, the IACHR learned about a series of provisions in the law that restrict the right to freedom of expression and would impose sanctions on media outlets with the purpose of protecting the best interest of the child. In that regard, the law establishes the following as violations: (i) “transmission of images, voice or data affecting or objectively impeding the integral development of children and adolescents, or that justify the crime” by licensees in radio and television (Art. 148. III)<sup>1314</sup>; (ii) any handling of an image, name, personal information or reference that allow the identification of children or adolescents “that undermines their honor or reputation, [or is] contrary to their rights or puts them at risk, according to the best interest of children” by a media outlet, including written press (Articles 148. IV and 77); and (iii) broadcasting images or voices of children or adolescents by media, including written press, which endanger “in an individual or collective manner, the life, integrity, dignity or violate the exercise of the rights of children and adolescent, even when they are altered, blurred or do not specifically reveal their identity, [likewise] they shall avoid the diffusion of images or new which propitiate or may discriminate, criminalize or cause and stigma of them (Articles 148. IV and 77). The law sets forth a three thousand to thirty thousand days of current minimum wage in the Federal District as a fine, and an additional fine of five thousand to seven thousand days of current minimum wage in the Federal District, “for each day the information, data or image is transmitted or available in electronic media controlled by the assigned channel or written media outlet (Art. 149)”. Sanctions are imposed by the Ministry of the Interior, with the recourse of administrative review (Articles 151. III and 152)<sup>1315</sup>.

784. According to the law, the Attorney’s Office for Protection and any interested party may file before the proper administrative authorities, for sanctions on the media (Art. 70). On the other hand, “the Attorney’s Office for Protection shall have the authority to move for collective action before the corresponding governing body, with the objective of having [the governing body] order the media to abstain from broadcasting information or content that places life, integrity, dignity and other children and adolescent rights at risk, be it individually or collectively; and when necessary to make reparations for the damage caused” (Art. 70). Likewise, in case of danger, discrimination, criminalization or stigma, affected children and

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<sup>1312</sup> Artículo 19. November 25, 2014. [Atacan portales de noticias de Puebla, Chiapas y Jalisco](#); SinEmbargo. November 21, 2014. [Sitio crítico de Guadalajara, Mientras Tanto en México, recibe ataque cibernético](#)

<sup>1313</sup> Secretaría de Gobernación. Diario Oficial de la Federación. [DECRETO por el que se expide la Ley General de los Derechos de Niñas, Niños y Adolescentes, y se reforman diversas disposiciones de la Ley General de Prestación de Servicios para la Atención, Cuidado y Desarrollo Integral Infantil](#). December 4, 2014.

<sup>1314</sup> Secretaría de Gobernación. Diario Oficial de la Federación. [DECRETO por el que se expide la Ley General de los Derechos de Niñas, Niños y Adolescentes, y se reforman diversas disposiciones de la Ley General de Prestación de Servicios para la Atención, Cuidado y Desarrollo Integral Infantil](#). December 4, 2014; “Article 68. According to the provisions set forth in the Federal Law of Telecommunications and Radio Broadcasting with respect to the programming for children and adolescent, as well as the classification criteria issued according to the same, licenses granted in matters of radio broadcasting and telecommunications shall fulfill the obligations of licensees of abstaining of disseminating or transmit information, images or audios that affect or stop objectively the integral development of children and adolescents, or which refer to crimes, violating the principle of the best interest of children.

<sup>1315</sup> Secretaría de Gobernación. Diario Oficial de la Federación. [DECRETO por el que se expide la Ley General de los Derechos de Niñas, Niños y Adolescentes, y se reforman diversas disposiciones de la Ley General de Prestación de Servicios para la Atención, Cuidado y Desarrollo Integral Infantil](#). December 4, 2014.

adolescents, via their legal representative, or if applicable the corresponding Attorney's Office for Protection, may file civil actions requesting the reparation for damages, as well as initiate procedures of administrative liability (Art. 80). Lastly, the law establishes that "in proceedings before judicial bodies, a request may be made to suspend or block user accounts in electronic media as a precautionary measure, in order to avoid the broadcasting of images, sounds or data that may violate the best interests of children" (Art. 81)<sup>1316</sup>.

785. According to reports, on December 11 Congress for the State of Chihuahua passed an amendment to the Municipal Code that empowers State City Halls to punish "the display, broadcast or commercialization in public spaces, of extremely violent material or any other attack on morality, private life, rights of others and that creates public unrest". According to a State Congress press release, the changes made have the goal of punishing all display, broadcast or commercialization in public places of pornographic material, with the goal of protecting vulnerable sectors of society, such as children and adolescents<sup>1317</sup>.

786. The IACHR recalls that in order for any restriction to the right to freedom of expression to be compatible with the American Convention, it must respect the rules established in Article 13.2 thereof. In this regard, the Inter-American Court has found that although freedom of expression is not an absolute right, restrictions to it must be exceptional in nature and cannot limit its full exercise beyond what is strictly necessary, and in no case may it become a direct or indirect mechanism of prior censorship.

787. According to the rules established by the American Convention, in order to be lawful, all limitations to freedom of expression must satisfy a strict three-part test, which requires that the sanctions (1) are clearly and precisely defined under pre-existing substantive and procedural law; (2) are designed to accomplish objectives authorized by the Convention; and (3) are necessary in a democratic society to accomplish the aim pursued; strictly proportionate to the aim pursued; and suitable for obtaining the aim pursued. These conditions must be verified simultaneously and it is incumbent upon the authority imposing the limitation to demonstrate that all of them have been met. This test is applied with special intensity when the prohibitions are established by means of the criminal law.

788. In previous opportunities, the IACHR and the Office of the Special Rapporteur had already pronounced on the risks of vague or imprecise penal norms which, by their ambiguity, result in granting broad discretionary powers to administrative authorities are incompatible with the American Convention. Such provisions, due to their extreme vagueness, could support arbitrary decisions that censor or impose disproportionate subsequent liability upon persons or media for the simple expression of critical or dissenting discourse that could be disturbing to the public functionaries that transitorily exercise the authority to apply them. Therefore, the State should clarify which types of conduct can be the object of subsequent liability, to avoid affecting free expression especially when it could affect the authorities themselves.<sup>1318</sup>

## **K. Protection of Sources**

789. Representatives of the Office of the General Auditor (AGE) for the State of Guerrero [*Auditoría General del Estado de Guerrero*] filed a criminal complaint against the reporters for *La Jornada Guerrero, El Sur* and *Puntual*, for them to reveal their sources utilized in the publishing of an article where alleged irregularities in different State City Halls public accounts for 2012 were exposed. Likewise, five local

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<sup>1316</sup> Secretaría de Gobernación. Diario Oficial de la Federación. [DECRETO por el que se expide la Ley General de los Derechos de Niñas, Niños y Adolescentes, y se reforman diversas disposiciones de la Ley General de Prestación de Servicios para la Atención, Cuidado y Desarrollo Integral Infantil](#). December 4, 2014.

<sup>1317</sup> Congreso del Estado de Chihuahua. December 11, 2014. [Sancionarán la exhibición de material pornográfico y/o violento en lugares públicos](#)

<sup>1318</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. Par. 519; IACHR. [2009 Annual report. 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. Par. 65-68.

councilmen urged the reporters to reveal their sources<sup>1319</sup>. The reporters for several media outlets protested at the Congress of the State of Guerrero to demand compliance with source protection<sup>1320</sup>.

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

## L. Community Radio

791. On February 28 community reporter Alma Delia Olivares was detained and transported to a medium security federal penitentiary for females in Mayarit after being charged with “auditory contamination” a crime that does not exist in Mexican legislation. The journalist was detained for five days and was released after paying a 25 thousand Mexican peso bond (approximately 2,000 US dollars). The initial charges were changed to “wrongful use of national property”<sup>1321</sup>.

792. On March, the IACHR had knowledge of a ruling issued by the Unitary Circuit Court [*Tribunal Unitario de Circuito*], sentencing Paola Ochoa, for *Radio Comunitaria Identidad* [Identity Community Radio], formerly *Radio Diversidad* [Diversity Radio] in Veracruz, to two years in prison, a fine of 16,440 Mexican pesos (approximately 1.260 US Dollars) and the loss of civil and political rights for using a frequency without authorization. Her case was initiated in 2009 when the Public Prosecutor for the Republic (PGR) detained three radio hosts. One of them was station director Juan José Hernandez, who received the same sentence in 2012. Ochoa was detained first as a witness and then became a defendant in the case and was later convicted<sup>1322</sup>.

793. On March 25 community radio station *Política y Rock ‘n’ rol* [Politics and Rock and Roll] in the Hermosillo municipality, Sonora state was shut down by Federal Telecommunications Institute personnel. The radio equipment, from this station with a flare for youth and composed of individuals in the feminist movement, was confiscated<sup>1323</sup>.

794. Maya language community radio station *Kin Mayab* in Mérida, state of Yucatán, was shut down on April 22 by Public Prosecutor for the Republic (PGR) agents. Microphones, the transmitter, console and computer were confiscated during the operation<sup>1324</sup>.

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<sup>1319</sup> Artículo 19. April 2, 2014. [#ALERTA: Congresistas de Guerrero atacan el derecho de reserva de fuentes periodísticas](#); La Jornada Guerrero. March 27, 2014. [Pide diputado a reportera revelar quién le dio información de las cuentas públicas](#); Proceso. April 7, 2014. [Hostigan a tres reporteras para que revelen sus fuentes en Guerrero](#)

<sup>1320</sup> Proceso. April 8, 2014. [Protestan reporteros en Congreso de Guerrero por hostigamiento a tres colegas](#); Quadratín. April 9, 2014. [Se manifiestan periodistas en el Congreso de Guerrero](#); Los Ángeles Press. April 10, 2014. [Periodistas de Guerrero exigen respetar secrecía de fuentes a diputados](#)

<sup>1321</sup> Asociación Mundial de Radios Comunitarias (AMARC). March 7, 2014. [Tras 5 días de injusto encarcelamiento logran liberación bajo fianza de comunicadora comunitaria](#); La Jornada. March 8, 2014. [Liberan a locutora comunitaria; sigue proceso y modifican cargos imputados](#); Agencia Popular de Comunicación Suramericana (APC Suramerica). March 20, 2014. [México: Comunicadoras populares son detenidas por ‘contaminación auditiva’](#)

<sup>1322</sup> Asociación Mundial de Radios Comunitarias (AMARC). March 14, 2014. [Pronunciamento: A pesar de la Reforma Constitucional en Telecomunicaciones persiste la criminalización de comunicadoras y comunicadores comunitarios](#); Animal Político. August 12, 2014. [Van cuatro detenidos por operar radios comunitarias sin permiso en lo que va de año](#); Asociación Mundial de Radios Comunitarias (AMARC). July 2012 to June 2014. Second report on community radio broadcasting in Mexico. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; IACHR. [Annual Report 2012. Annual 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.147. Doc. 1. March 5, 2013. Par. 390; IACHR. [Annual Report 2010. Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2010](#). Chapter II. (Evaluation on the state of freedom of expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Par. 761.

<sup>1323</sup> Asociación Mundial de Radios Comunitarias (AMARC). July 2012 to June 2014. Second Report on the radio broadcasting situation in México. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1324</sup> Asociación Mundial de Radios Comunitarias (AMARC). July 2012 to June 2014. Second Report on the radio broadcasting situation in México. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

795. On June 18, *Impacto FM* radio station in Santo Domingo Tonalá, Oaxaca state, was shut down by Specialized Unit for the Investigation of Crimes against the Environment and Prescribed by Law [*Unidad Especializada en Investigación de Delitos contra el Ambiente y Previstos en Leyes Especiales*] operatives. Salvador Medina and Leslie Saavedra, reporters for the station, were detained during the operation and charged with unlawful use of a radio frequency<sup>1325</sup>.

796. On August 4, the equipment of community radios of nauatl origin *La Voz del Pueblo* in Zacatepec and *Radio Axocotzin* in Tlaxcalancingo, state of Puebla state, was confiscated in a Federal Telecommunications Institute (IFT) and federal police operation. According to reports, the radio station members were threatened and injured. The media outlets were reporting on the devastating consequences of mega projects and gave a voice to the communities who opposed the projects. The event took place with threats of criminal prosecution<sup>1326</sup>.

797. Information was received on alleged retaliation on community radio stations *Radio Huave*, *Radio Xadani*, *Radio Voces de los Pueblos* [People's Voices Radio] and *Radio Totopo* as a consequence of their covering the ikots and binizá indigenous communities rejecting wind mill projects and defending territory<sup>1327</sup>.

798. As it has been repeatedly indicated by the Special Rapporteur, the norm on community broadcasting must recognize the special characteristics of this medium, and must contain, at a minimum, the following elements: (a) the existence of simple procedures for obtaining licenses; (b) no demand of severe technological requirements that would prevent them, in practice, from even being able to file a request for space with the state; and (c) the possibility of using advertising to finance their operations.<sup>1328</sup> Finally, to assure free, vigorous, and diverse television and radio, private media should have guarantees against State arbitrariness, social media should enjoy conditions that prevent them from being controlled by the State or economic interests, and public media should be independent from the Executive. Principle 12 of the Declaration of Principles holds that, "The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals." Likewise, on different occasions, the IACHR and the Office of the Special Rapporteur has expressed that the use of criminal law to punish violations of radio broadcasting may be problematic in light of the Inter-American Convention on Human Rights. In this respect the IACHR recalls that the establishment of punitive measures for conduct relating to the irregular use or unauthorized use of commercial or community radio broadcasting, would be disproportionate<sup>1329</sup>.

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<sup>1325</sup> Asociación Mundial de Radios Comunitarias (AMARC). July 2012 to June 2014. Second Report on the radio broadcasting situation in México. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression. Animal Político. August 12, 2014. [Van cuatro detenidos por operar radios comunitarias sin permiso en lo que va de año](#)

<sup>1326</sup> La Jornada de Oriente. August 5, 2014. [Con armas largas, agentes desmantelan radios comunitarias de Zacatepec y Tlaxcalancingo](#); Aristegui Noticias. August 18, 2014. [Denuncian amenazas y agresiones a radios comunitarias](#); Asociación Mundial de Radios Comunitarias (AMARC). July 2012 to June 2014. Second Report on the radio broadcasting situation in México. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1327</sup> Aristegui Noticias. August 18, 2014. [Denuncian amenazas y agresiones a radios comunitarias](#); Contralínea. August 24, 2014. [Alto a las agresiones y hostigamientos a las radios comunitarias](#); Quadratín. August 22, 2014. [Denuncian y discuten agresión a Radios Comunitarias en Amilcingo](#)

<sup>1328</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. 25 February 2009. Para. 227 and 228; 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. 8 March 2008. Para. 5 and 6.

<sup>1329</sup> IACHR. [Annual Report 2013. 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.149. Doc. 50. December 31, 2013. Par. 129; IACHR. [2009 Annual Report. 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. 30 December 2009 Para. 104.



## M. Government Advertising

799. According to a report by the World Association of Newspapers and News Publishers (WAN-IFRA) and the Center for International Media Assistance (CIMA) public advertising assignment is the most applied method of direct censorship. As there are no clear and specific guidelines, it is used to influence and blackmail media outlet owners and journalists<sup>1330</sup>.

800. The Special Rapporteur recalls that Article 13.3 of the American Convention establishes that: “The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.” Principle 13 of the Declaration of Principles of the IACHR 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.

## N. Other relevant situations

801. On January 22, journalist Sofía Valdivia was informed that she was under investigation by the Public Prosecutor for the Republic (PGR) for “organized crime” seemingly as a consequence for posting on her Twitter account about the alleged reappearance of an organized crime group in Oaxaca. An alleged police officer approached her and showed her a document stating that the director of the PGR Fifth Specialized Investigation Unit for Crimes Against Freedom of Expression for Oaxaca [*Quinta Agencia Investigadora Especializada para la Atención de Delitos Cometidos contra la Libertad de Expresión de la PGR en Oaxaca*], Alfonso Jarquín Díaz, “immediately” requested a “detailed and exhaustive” investigation on her for “organized crime or any other crime”. The journalist was not given a copy of the document<sup>1331</sup>. On January 31, the attorney for the journalist received a notice addressed to the reporter by PGR stating that Valdivia was not under investigation. The document dated January 24 stated that “inquiries on PGR/OAX/OAX/V/45/2014, in this Ministerial Agency I direct, show that you are not tied to it as a defendant, witness, injured party or victim [...]”<sup>1332</sup>.

802. On January 30, the Eighteenth Civil Court of the Federal District ruled in favor of Layda Negrete and Roberto Hernández, the producers of the documentary ‘Presumed Guilty’ [*Presunto Culpable*], on the cases against them for non-pecuniary damages. In September of 2012 some of the people who appear in the documentary sued the creators claiming their image was unlawfully used. The court believed the plaintiffs case was legally deficient<sup>1333</sup>. On February 4, the Eighth Civil Court of the Federal District also absolved the plaintiffs of the non-pecuniary damages case against them<sup>1334</sup>. ‘Presumed Guilty’ and their producers were in an earlier case in 2011 where a judge ordered the documentary no longer be shown days after its premiere. In 2013, the Sixth Circuit Tribunal for the Help Center for the third region of the Judiciary for the Federation [*Sexto Tribunal Colegiado de Circuito del Centro Auxiliar de la Tercera Región del Poder*

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<sup>1330</sup> World Association of Newspapers and News Publishers (WAN-IFRA). March 26, 2014. [REPORT: ‘Soft’ Censorship Poses Significant Dangers to Press Freedom in Mexico](#). Knight Center for Journalism in the Americas. University of Austin, Texas. April 1, 2014. [Gobierno mexicano presiona a los medios con medidas indirectas, dice nuevo informe](#)

<sup>1331</sup> Artículo 19. January 23, 2014. [#ALERTA En Oaxaca, periodista que informó por Twitter la reaparición de grupo criminal es investigada por la PGR](#); Animal Político. January 24, 2014. [Por un tuit, PGR investiga a periodista por “delincuencia organizada”](#); Oaxaca Digital. January 25, 2014. [Supuestos agentes de la PGR acosan a la periodista Sofía Valdivia](#)

<sup>1332</sup> Animal Político. February 6, 2014. [Que siempre no, PGR notifica a periodista oaxaqueña que no es investigada](#)

<sup>1333</sup> CNN México. January 30, 2014. [Un juez absuelve a productores de ‘Presunto culpable’ de 19 demandas](#); El Universal. January 31, 2014. [Rechazan cargos a productores por “Presunto Culpable”](#)

<sup>1334</sup> Animal Político. February 4, 2014. [Ahora sí absuelven de todos los cargos a Presunto Culpable](#); Milenio. February 5, 2014. [“Presunto culpable”, libre de cargos](#)

*Judicial de la Federación*], reversed the amparo ruling barring the showing and commercialization of the documentary. The documentary questions the Mexican judicial system and exhibits the case against José Antonio Zúñiga Rodríguez, convicted to 20 years in prison for homicide, with no clear evidence and with witnesses who placed the suspect elsewhere at the time of the crime. In April of 2008, after 28 months in prison, the Fifth Federal District Court of Justice, [*Quinta Sala del Tribunal de Justicia Distrito Federal*] acquitted him for reasonable doubt<sup>1335</sup>.

803. The Public Prosecutor for the Republic (PGR) in Veracruz opened an investigation against six Greenpeace activists after their participation in a protest at the public facilities for Mexican Petroleum (Pemex) on March 1. According to the reports, during the protest, the activists rolled out a banner on the Pemex tower on the drive for energy reform by President Enrique Peña Nieto. This is why the Naval Police detained them and presented them before PGR charged with “breaking and entering”. One of the activists, Rosina González, was charged with damaging federal property for allegedly rendering a lamp useless; the lamp was valued at 78 thousand Mexican pesos (approximately 5,800 dollars). This crime carries four to ten years in prison. The activists were released on March 3 after paying a 100 thousand Mexican pesos (approximately 7,400 dollars) bond<sup>1336</sup>.

804. The IACHR learned that the Baja California Superior Court of Justice (TSJBC) confirmed the order of imprisonment against reporter Carmen Olsen for insulting authority on June 5<sup>1337</sup>. The case has its genesis in January 2013 when the journalist, director for *rosaritoenlanoticia.info*, portal filed a criminal complaint before the Public Prosecutor for the Republic (PGR) alleging she was assaulted by municipal police and insulted by the then director of Public Safety in *Playas de Rosarito*, Baja California state. On January 31, the reporter was incorporated into the Protection Mechanisms for Human Rights Defenders and Journalists; therefore she had protection issued by the Governing Board of that entity<sup>1338</sup>. Nonetheless at that time the authorities also filed a case against the journalist, charging her with insulting and assaulting the authorities. During 2013, the alleged attacking police officers were prosecuted and a judge ordered them to be imprisoned. Notwithstanding, on October 21, the Fifth Court for TSJBC reversed the ruling for lack of evidence. In November of 2013, that same court issued an arrest warrant for the journalist, appealed by Olsen. On June 4, the journalist was informed of the commitment to prison order against her. The reporter also faces a defamation case, as she was sued by an assistant of the then Public Safety Director<sup>1339</sup>.

805. On August 21, the Congress of the State of Sinaloa revoked Article 51 Bis of the State Public Prosecutor Organic Law [*Ley Orgánica de la Procuraduría General del Estado*], amended on July 30 after protests from journalists and other sectors of society<sup>1340</sup>. This article known as the ‘Gag Law’, forced the media to be limited to the press releases issued by the government in order to access information on crimes and violence. The law barred the media “access to the scene of the crime, audio or video recording, or taking pictures of those involved in a crime, and to information related to public safety or the public prosecutor”.

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<sup>1335</sup> IACHR. [Annual Report 2013. 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.149. Doc. 50. December 31, 2013. Par. 654 y 655.

<sup>1336</sup> Artículo 19. April 1, 2014. [Inaceptable que MP Federal en Veracruz investigue a seis activistas de Greenpeace](#); Greenpeace. March 27, 2014. [Criminaliza Pemex la protesta social](#); Noticias Terra. March 27, 2014. [Pemex criminaliza protesta social, acusa Greenpeace](#); Greenpeace. March 3, 2014. [Liberan a activistas detenidos en Veracruz](#).

<sup>1337</sup> IFEX/Artículo 19. June 17, 2014. [Confirman auto de formal prisión contra periodista en México](#); Revolución tres punto cero. June 9, 2014. [Se confirma “simulación de Estado” con cárcel a periodista Carmen Olsen](#); Noticias MVS. June 6, 2014. [Confirman auto de formal prisión contra periodista en BC pasa de víctima a acusada: Artículo 19](#).

<sup>1338</sup> IACHR. [Annual Report 2013. 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.149. Doc. 50. December 31, 2013. Par. 604.

<sup>1339</sup> El Piñero de la Cuenca. March 17, 2014. [Periodista Carmen Olsen: Amenazas, golpes y autocensura](#); Artículo 19. June 5, 2014. [Confirman auto de formal prisión contra periodista en BC](#); Periodismo Negro/Noticias APN. June 4, 2014. [ARTICLE 19 y CCDHN preocupados por el hostigamiento contra periodista en Baja California](#).

<sup>1340</sup> Congreso del Estado de Sinaloa. [Ley Orgánica de la Procuraduría General de Justicia del Estado de Sinaloa](#). August 21, 2014; Poder Ejecutivo del Gobierno del Estado de Sinaloa. [Iniciativa que deroga el Artículo 51 Bis de la Ley Orgánica de la Procuraduría General de Justicia del Estado de Sinaloa](#). August 5, 2014; CNN México. August 21, 2014. [El Congreso de Sinaloa deroga por unanimidad la ‘ley mordaza’](#); Terra/AFP. August 21, 2014. [Derogan polémica ley que limitaba cobertura de crímenes en un estado mexicano](#).

The law also barred any Public Prosecutor public official from “reporting to the media on any matter without the explicit authorization of the Prosecutor General of Justice or the access unit”<sup>1341</sup>.

806. The man charged with the murder of Regina Martínez Pérez, reporter for the *Proceso* magazine, was rearrested by Ministerial Police and imprisoned on October 20 to serve his 38 year sentence for homicide and aggravated robbery. The man was convicted on April 9, 2013 by the Third First Instance Court for Xalapa Judicial District [*Juzgado Tercero de Primera Instancia del distrito judicial de Xalapa*], this court also imposed a fine and an almost 8 thousand dollar reparation. Nonetheless, on August 8, 2013 the Seventh Criminal Court for the Superior Court of Justice in Veracruz [*Sala Penal del Tribunal Superior de Justicia del Estado de Veracruz*] reversed the conviction based on due process prejudicial to the defendant<sup>1342</sup>. In June of 2014 the Fourth Criminal and Labor Court [*Cuarto Tribunal en Materia Penal y del Trabajo*] overturned the ruling based on a dissatisfaction appeal filed by the journalist’s family members. On July 10, the Seventh Criminal Court of the Superior Court of Justice for the State [*Séptima Sala Penal del Tribunal Superior de Justicia del Estado*] (TSJE) ordered the defendant’s rearrest<sup>1343</sup>. On April 28, 2012 the body of Regina Martínez Pérez showing signs of violence, was found in her home in the state of Veracruz. The journalist covered matters related to state politics and organized crime. Additionally, days before her death she published an article on alleged irregularities committed by local authorities. *Proceso* magazine where the journalist worked has claimed it has doubts on the individual’s arrest and confession. According to *Proceso*, there were inconsistencies in the homicide investigation: the most relevant being the fingerprints found at the scene of the crime do not match the defendant’s. Additionally, the convicted person stated Mexican authorities tortured him for him to confess to the murder<sup>1344</sup>.

807. On October 29, the IACHR received information on the attack against Ernesto Villanueva, professor for the Universidad Autónoma de México and correspondent for media outlets such as *Proceso* and *El Norte*. According to reports, the bulletproof car Villanueva was travelling in was shot at; the professor was not hurt. In his earlier statements Villanueva stated he received threats because of a series of articles wherein he tied a public official to drug trafficking<sup>1345</sup>.

808. On October 30, residents of the state of Baja California filed 250 *amparos* against the State Congress for repealing a Civil Code regulation that impedes the abolishment of crimes against honor established in the State Criminal Code. According to reports, on July 3, Congress voted to repeal, but it established a provisional article stating that the abolishment would not be in effect until the Civil Code is reformed<sup>1346</sup>.

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<sup>1341</sup> Poder Ejecutivo del Gobierno del Estado de Sinaloa. [Iniciativa de la Nueva Ley Orgánica de la Procuraduría General de Justicia del Estado de Sinaloa](#). July 16, 2014; Artículo 19. August 1, 2014. [Posicionamiento: Aprobación en Sinaloa de la Ley Mordaza atenta contra la libertad de expresión](#); Committee to Protect Journalists (CPJ). August 4, 2014. [CJP Calls on Mexican authorities in Sinaloa to repea restrictive law](#).

<sup>1342</sup> IACHR. [Annual Report 2013. 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.149. Doc. 50. December 31, 2013. Par. 651.

<sup>1343</sup> AGN Veracruz. October 22, 2014. [PGJE recaptura a Jorge Antonio Hernández alias “El Silva”](#); Caracol Radio/EFE. October 22, 2014. [Recapturan y encarcelan a asesino de la periodista mexicana Regina Martínez](#); Universal. October 23, 2014. [Cae asesino de la periodista Regina Martínez, otra vez](#); Gobierno del Estado de Veracruz. October 22, 2014. [Reaprehende PGJ a homicida sentenciado de Regina Martínez](#)

<sup>1344</sup> IACHR. [Annual Report 2013. 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.149. Doc. 50. December 31, 2013. Par. 651; 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. Par. 356.

<sup>1345</sup> *Proceso*. October 29, 2014. [Atentan contra el académico Ernesto Villanueva en CU: acusa a Diego Valadés](#); Excelsior. October 29, 2014. [Denuncia UNAM atentado contra académico en CU](#); El Universal. October 29, 2014. [Fue un sicario profesional: Ernesto Villanueva](#)

<sup>1346</sup> Periodismo Negro/APN. November 3, 2014. [Presentan 250 amparos contra XXI Legislatura de Baja California](#); Monitor BC. November 3, 2014. [Burla y simulación del Congreso en la difamación y calumnia](#); Animal Político. Julio 11, 2014. [Periodistas se amparan contra el Congreso de Baja California](#)

## 22. Nicaragua

### A. Aggressions, Detentions and Threats against Journalists, Opposition Communications Media and Demonstrators

809. The Office of the Special Rapporteur received information according to which members of the National Police [*Policía Nacional*] and the antiriot group had violently repressed a demonstration in the locality of Chichigalpa on January 18, causing the death of one person and injuring at least three more, including a 14-year-old child. As reported, a group of ex-sugarcane cutters were protesting a few meters from the San Antonio Sugar Mill [*Ingenio San Antonio*], from whom they were demanding a settlement due to becoming ill from chronic renal insufficiency, when that night the officers began to shoot at the demonstrators.<sup>1347</sup>

810. In January, presumed members of the Frente Sandinista threaten to close the radio station *Voz Evangélica de la Costa Atlántica* (VECA). As reported, the threat was received just before regional elections and presumably as a reprisal for denunciations made by the media about irregularities in the fishing sector.<sup>1348</sup>

811. Auxiliadora Romero, a member of the Community Movement of Matagalpa [*Movimiento Comunal de Matagalpa*], had been summoned to appear at a court in the municipality of Rancho Grande after having participated in a march against mining exploitation in that municipality and having painted a sign on the home of the B2Gold company, the entity in charge of that exploitation. The hearing had been postponed twice due to failure to attend by the public defender's office.<sup>1349</sup>

812. On March 8, during a march to commemorate International Women's Day, the Office of the Special Rapporteur was informed that the National Police [*Policía Nacional*] had prevented it from being held by not permitting the demonstrators to complete their route and carry out the closing ceremony. As reported, the demonstrators had reached an agreement with the authorities regarding the route, but on the day of the demonstration, different groups, including an antiriot group, prevented them from completing the route. The police attacked the women who had insisted on completing the route. Demonstrators supporting the government had gathered in the place intended for finishing the march.<sup>1350</sup>

813. During coverage of the eviction of merchants who were demonstrating in front of the installations of the General Directorate of Customs Services [*Dirección General de Servicios Aduaneros (DGA)*] in Managua, members of the police threatened, attacked and insulted Izayana Martínez and Lucía Navas, journalists from the newspaper *La Prensa*. The officers tried to make Martínez get into a patrol car to take her to a station when the communicator was returning to the newspaper to search for her press card. This was recorded by other journalists who screamed at the officers that she really was a journalist, and the insistence of the other communicators led the police to free Martínez. Navas was also the target of insults and threats that she would be detained if she did not leave the area.<sup>1351</sup>

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<sup>1347</sup> Confidencial. January 20, 2014. "[Fue una masacre, nos tiraron a matar](#)"; El País. January 21, 2014. [La sangre enturbia los cañaverales de Nicaragua](#); Centro Nicaragüense de Derechos Humanos (CENIDH). January 30, 2014. [Informe del CENIDH sobre la represión policial en el municipio de Chichigalpa, Chinandega, el 18 de enero del 2014](#).

<sup>1348</sup> La Prensa. No date. [Los CPC amenazan con cerrar radio VECA](#); Centro de Investigaciones de la Comunicación (CINCO). [Estado de la Libertad de Expresión en Nicaragua 2013 – 2014](#). September 6, 2014.

<sup>1349</sup> Centro Nicaragüense de Derechos Humanos (CENIDH). March 5, 2014. [CENIDH acompaña a defensora de derechos humanos criminalizada por la justicia por su labor de defensa de derechos](#).

<sup>1350</sup> La Prensa. March 9, 2014. [Represión contra mujeres en su día](#); Hoy. March 9, 2014. [POLICÍA BLOQUEA MARCHA](#); Centro Nicaragüense de Derechos Humanos (CENIDH). March 10, 2014. Statement sent to the Special Rapporteur for Freedom of Expression. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1351</sup> La Prensa. May 14, 2014. [Periodistas de LA PRENSA agredidas](#) (VIDEO); Hoy. May 13, 2014. [Policía agrede a periodistas de La Prensa](#); Centro PEN Guatemala. May 16, 2014. [Protesta por maltrato a periodistas](#); Statement regarding assault on journalists and photographers. July 17, 2014. Communication sent to the Inter-American Commission on Human Rights (IACHR). Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

814. A vehicle tried to hit Edgardo Trejos, a journalist for *Canal 2*, when he was covering a protest by workers from the Health Consumables Center of the Ministry of Health [*Centro de Insumos para la Salud del Ministerio de Salud*] against that entity on July 9. Trejos was interviewing the distribution director of the Health Consumables Center [*Centro de Insumo para la Salud*] when the vehicle hit him from behind. The vehicle then escaped through a hospital gate. This event was denounced to the National Police [*Policía Nacional*].<sup>1352</sup>

815. On July 16, during coverage of a demonstration in front of the Supreme Electoral Council [*Consejo Supremo Electoral*] building in the city of Managua, a journalistic team from *Canal 12* was attacked by presumed government supporters who had arrived to violently dissolve the demonstration. As reported, this group attacked journalist Jeaneth Obando and her cameraman, Javier Castro, whose equipment they destroyed. The cameraman was aided by a photographer for the newspaper *La Prensa*, Manuel Esquivel, who was also attacked. These events, in which the same group also attacked and took away cameras from some of the demonstrators, occurred in the presence of the National Police [*Policía Nacional*].<sup>1353</sup> The incident was rejected by Bayardo Arce<sup>1354</sup>, advisor to President Daniel Ortega for economic matters.

816. On July 18, around 50 journalists protested in front of the headquarters of the National Police [*Policía Nacional*], in the city of Managua, for what they consider to be the indolence of the police and the impunity of the aggressors in repeated attacks against reporters by supposed sympathizers of the government of Daniel Ortega. The group presented the police spokesperson with a document signed by more than 70 journalists containing a list of aggressions against communicators during the past 18 months that had presumably occurred in the presence of officers from that institution, as well as other aggressions by agents of the police.<sup>1355</sup>

817. On October 5, Carlos Argüello Lorente was detained at his home by several agents of the National Police [*Policía Nacional*] who then took him to a detention center where he remained for 24 hours. During this time, he was interviewed twice about his work activity and links to leaders who organize demonstrations against the *El Gran Canal* project, as well for allegedly making blankets for those demonstrations.<sup>1356</sup>

818. During the hearing on the “General Situation of Human Rights in Nicaragua” [“Situación general de derechos humanos en Nicaragua”] held during the 152<sup>nd</sup> Extraordinary Period of Sessions of the Inter-American Commission for Human Rights in Mexico City, the Office of the Special Rapporteur received information on the obstacles that persist for exercising the right to social protest and regarding state persecution of people and groups who are identified as government opponents, which is represented in aggressions in the framework of social protest, acts of harassment and de-legitimization of the work of men

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<sup>1352</sup> Confidencial. July 9, 2014. [Agredido periodista de Canal 2](#); Trinchera de la Noticia. July 10, 2014. [¿Atentado a la libertad de prensa?](#); Reporters Without Borders (RSF). July 22, 2014. [JOURNALISTS WANT PROTECTION AGAINST ATTACKS BY GOVERNMENT SUPPORTERS](#); Statement regarding assault on journalists and photographers. July 17, 2014. Communication sent to the Inter-American Commission on Human Rights (IACHR). Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; La Prensa. July 18, 2014. [Periodistas exigen respeto](#).

<sup>1353</sup> Hoy. July 17, 2014. [No toleran protestas](#); La Prensa. July 17, 2014. [Violencia orteguista contra las mujeres](#) (VIDEO); Confidencial. July 16, 2014. [Agreden a periodista de Canal 12](#); Trinchera de la Noticia. July 17, 2014. [Indignación por agresión a equipo de Canal 12](#); Nicaragua Hoy. July 16, 2014. [Nicaragua: Reprimen a garrotazos manifestación de mujeres y agreden a periodista](#); Reporters Without Borders (RSF). July 22, 2014. [JOURNALISTS WANT PROTECTION AGAINST ATTACKS BY GOVERNMENT SUPPORTERS](#); Statement regarding assault on journalists and photographers. July 17, 2014. Communication sent to the Inter-American Commission on Human Rights (IACHR). Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1354</sup> Lainformacion.com. July 18, 2014. [Asesor del presidente de Nicaragua critica agresión a periodistas](#).

<sup>1355</sup> Hoy. July 18, 2014. [Periodistas denuncian agresiones](#); Contra Punto/EFE. July 18, 2014. [Nicaragua: Periodistas protestan por indolencia policial ante agresiones](#); La Prensa. July 18, 2014. [Periodistas exigen respeto](#); Statement regarding assault on journalists and photographers. July 17, 2014. Communication sent to the Inter-American Commission on Human Rights (IACHR). Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1356</sup> La Prensa. October 8, 2014. [Policía intimidada](#); Confidencial. October 14, 2014. [Chinos e injusticias por tonelada](#); Centro Nicaragüense de Derechos Humanos (CENIDH). October 30, 2014. Communication sent to the Special Rapporteur for Freedom of Expression. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

and women human rights defenders by groups who say that they identify with the Government. For its part, the State indicated that there are no reports on restrictions of this right and that the country has a law that regulates social protest. It added that there is no protocol for protection for demonstrators or journalists, but affirmed that aggressions at demonstrations come from opposition groups in several occasions.<sup>1357</sup>

819. 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."

820. The Joint Declaration on violence against journalists and media workers in the context of protests, adopted in 2013, indicates that during demonstrations and situations of social unrest, the work of journalists and media workers, as well as the free flow of information, "is essential to keeping the public informed of the events. At the same time, it plays an important role in reporting on the conduct of the State [...] preventing the disproportionate use of force and the abuse of authority." Accordingly, the authorities must provide journalists with the maximum guarantees in order for them to perform their functions. In this respect, they must ensure that journalists are not arrested, threatened, assaulted, or limited in any manner in their rights as a result of practicing their profession in the context of a public demonstration. The State must not prohibit or criminalize live broadcasts of events, and must abstain from imposing measures that regulate or limit the free circulation of information. Journalists must not be called as witnesses before the courts, and the authorities must respect the right to the confidentiality of sources of information. In addition, their work materials and tools must not be destroyed or confiscated.<sup>1358</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>1359</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>1360</sup>

## **B. Access to Public Information and Public Officials**

821. The Office of the Special Rapporteur continues to receive information about alleged obstacles to gaining access to public information, especially for media considered to be from the opposition. The country has a Public Information Access Law [*Ley de Acceso a la Información Pública (LAIP)*], Law 621 of 2007, which among other provisions establishes that state institutions should have Public Information Access Offices [*Oficinas de Acceso a la Información Pública*] which would have "as their mission to facilitate access to information to those who demand it, creating a system for organization of information and files, with its respective index of information in its safekeeping."<sup>1361</sup> However, public information is being controlled by the Communications and Citizenry Council [*Consejo de Comunicación y Ciudadanía*], an agency coordinated by the

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<sup>1357</sup> IACHR. 152nd Special Session. Hearing on the general human rights situation in Nicaragua. August 14, 2014. Available for consultation at: <http://www.oas.org/es/cidh/multimedia/sesiones/152/default.asp>; IACHR. August 15, 2014. [Press Release 86/14. IACHR Wraps Up its 152nd Special Session.](#)

<sup>1358</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>1359</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>1360</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>1361</sup> Comisión de Gobierno Electrónico de Nicaragua. [LEY DE ACCESO A LA INFORMACIÓN PÚBLICA. LEY No. 621.](#) Capítulo II DE LA OFICINA DE ACCESO A LA INFORMACIÓN PÚBLICA Y DEMÁS ÓRGANOS. May 16, 2007.

first lady, Rosario Murillo. Information is being handled through this Council in a centralized fashion because it is the only body authorized to supply information.<sup>1362</sup>

822. Information was also received about the prohibition for public officials to make declarations to the media, along with the impossibility for the media to attend governmental events or press conferences.<sup>1363</sup>

823. Regarding this matter, during the hearing on the “General Situation of Human Rights in Nicaragua” [“Situación general de derechos humanos en Nicaragua”] held during the 152 Extraordinary Period of Sessions of the Inter-American Commission for Human Rights in Mexico City, the petitioners alleged that there are difficulties in gaining access to public information. The State, for its part, indicated that almost all governmental and public institutions have a public information access office, but acknowledged that there are sometimes delays in providing information and that the law itself establishes which information is public and which is restricted. It added that there is sufficient information on line on the webpages of government institutions and that the problem is that the organizations do not use existing mechanisms to gain access to information.<sup>1364</sup>

824. 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.”

### C. Government Advertising

825. According to information received, a tendency persists in the country to use official advertising in a discretionary matter in accordance with the editorial line of the communications medium.<sup>1365</sup> This situation led certain communications media to take measures to reduce their personnel payroll. These cases included Radio *El Pensamiento* and Radio 800<sup>1366</sup>.

826. 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.”

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<sup>1362</sup> Freedom House. [Nicaragua Report 2014](#); Inter American Press Association (IAPA). [Nicaragua](#). General Assembly 2014 – Santiago, Chile. October, 2014; Centro Nicaragüense de Derechos Humanos (CENIDH). October 30, 2014. Communication sent to the Special Rapporteur for Freedom of Expression. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1363</sup> Inter American Press Association (IAPA). [Nicaragua](#). General Assembly 2014 – Santiago, Chile. October, 2014; Centro Nicaragüense de Derechos Humanos (CENIDH). October 30, 2014. Communication sent to the Special Rapporteur for Freedom of Expression. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1364</sup> IACHR. 152nd Special Session. Hearing on the general human rights situation in Nicaragua. August 14, 2014. Available for consultation at: <http://www.oas.org/es/cidh/multimedia/sesiones/152/default.asp>;

<sup>1365</sup> IACHR. 152nd Special Session. Hearing on the general human rights situation in Nicaragua. August 14, 2014. Available for consultation at: <http://www.oas.org/es/cidh/multimedia/sesiones/152/default.asp>; IACHR. August 15, 2014. [Press Release 86/14. IACHR Wraps Up its 152nd Special Session](#); Inter American Press Association (IAPA). [Nicaragua](#). General Assembly 2014 – Santiago, Chile. October, 2014; Centro Nicaragüense de Derechos Humanos (CENIDH). October 30, 2014. Communication sent to the Special Rapporteur for Freedom of Expression. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1366</sup> Trinchera de la Noticia. January 15, 2014. [¡Ahora es la 800!](#); Trinchera de la Noticia. October 1, 2013. [El Pensamiento lanza plan “B” para evitar el cierre](#); Centro de Investigaciones de la Comunicación (CINCO). [Estado de la Libertad de Expresión en Nicaragua 2013 – 2014](#). September 6, 2014.

#### D. Other Relevant Situations

827. The Office of the Special Rapporteur received information about approval of reforms of the Political Constitution of the Republic, which were published in the Official Gazette [*Gaceta Oficial*] on February 18. As reported, the proposed reforms to article 92 relating to Defense, National and Citizen Security, were approved in some cases with modifications made to the initial proposal. In this manner, the obligation that “the points of state communication shall be the property of the State of Nicaragua” was replaced by “the points of communication for the purposes of national defense in the national territory shall be the property of the State.” The prohibition against establishing “systems that alter or affect national communications systems” was maintained. Whereas the obligation that “databases and computer records shall remain in the country” was eliminated from the final version.<sup>1367</sup>

828. The Office of the Special Rapporteur had stated that these reforms would allow the government to require all Internet intermediary companies that store data to maintain their servers in Nicaragua. This system, known as “forced location”, could have repercussions on the freedom of users to choose whatever intermediaries they consider provide the greatest security along with the prohibition against providing service if the company does not have its equipment in Nicaraguan territory to store the information. It also prevents companies from locating in those states that offer greater guarantees for adequate functioning and facilitates the establishment of oversight programs.<sup>1368</sup>

829. The President of the Republic presented draft legislation that would govern the National Police [*Policía Nacional*]. Article 2 of the bill establishes that “all persons, whether natural or legal, are prohibited from exercising the functions that according to the Constitution and this law correspond exclusively to the National Police [*Policía Nacional*], and they shall therefore not carry out private investigation activities or any other act that violates people’s constitutional rights, intimacy and privacy.” The initiative generated debate because of the ambiguity of the prohibition against investigation due to its implications in exercising the right of freedom of expression, particularly in relation to investigative journalism.<sup>1369</sup> The approved law, published in the Official Gazette [*La Gaceta Oficial*] on July 7, modified that article and stipulated that “[t]he natural or legal persons shall be able to carry out non-police investigative activities, investigative journalism and academic research or for study, that does not violate people’s constitutional rights, intimacy and privacy.”<sup>1370</sup>

830. The Office of the Special Rapporteur received information about an alleged trend towards media concentration on the part of the State in recent years. As reported, the different written, televised and broadcast media are being acquired by members of the presidential family and/or groups aligned with the government. Thus for example, of the nine open television channels, four are in the hands of the presidential family and another four are in the hands of a private individual supposedly linked to the presidential family.<sup>1371</sup> This information was also made public during the hearing on the “General Situation of Human Rights in Nicaragua” [“Situación general de derechos humanos en Nicaragua”] held during the 152<sup>nd</sup> Extraordinary Period of Sessions of the Inter-American Commission for Human Rights in Mexico City in which the petitioners stated that 80% of the media are under state control. This situation is of particular concern

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<sup>1367</sup> Asamblea Nacional de Nicaragua. [La Gaceta. Diario Oficial](#). February 18, 2014; IACHR. [Annual Report 2013. 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.149. Doc. 50. December 31, 2013. Footnote 1,289.

<sup>1368</sup> IACHR. [Annual Report 2013. 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.149. Doc. 50. December 31, 2013. Para. 667.

<sup>1369</sup> Centro de Investigaciones de la Comunicación (CINCO). [Estado de la Libertad de Expresión en Nicaragua 2013 – 2014](#). September 6, 2014; Confidencial. June 6, 2014. [Nueva Ley PN prohíbe investigar](#);

<sup>1370</sup> Asamblea Nacional de Nicaragua. La Gaceta. Diario Oficial. [LEY DE ORGANIZACIÓN, FUNCIONES, CARRERA Y RÉGIMEN ESPECIAL DE SEGURIDAD SOCIAL DE LA POLICÍA NACIONAL](#). July 7, 2014.

<sup>1371</sup> Inter American Press Association (IAPA). [Nicaragua](#). General Assembly 2014 – Santiago, Chile. October, 2014; Centro de Investigaciones de la Comunicación (CINCO). [Estado de la Libertad de Expresión en Nicaragua 2013 – 2014](#). September 6, 2014; Confidencial. September 22, 2014. [¿Hay libertad de prensa en Nicaragua?](#); Centro Nicaragüense de Derechos Humanos (CENIDH). October 30, 2014. Communication sent to the Special Rapporteur for Freedom of Expression. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.



due to the de-legitimization of those who presumably would be victims as journalists and human rights defenders through these media.<sup>1372</sup>

831. In this regard, the Office of the Special Rapporteur was also informed of the debate that is occurring in the country with respect to licenses awarded by the Nicaraguan Telecommunications and Postal Institute [*Instituto Nicaragüense de Telecomunicaciones y Correos (Telcor)*] to the Chinese company Xinwei, which had received six additional concessions to provide basic local telephone services, data transmission, Internet, public telephony, mobile telephony and television by subscription services.<sup>1373</sup>

832. Principle 12 of the IACHR's Declaration of Principles on Freedom of Expression 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."

## **23. Panama**

### **A. Progress**

833. On April 11, the Supreme Court of Justice [*Corte Suprema de Justicia*] upheld the constitutionality of a norm that prohibits senior public servants from filing criminal lawsuits for crimes against honor. The ruling establishes that when the offended individual is a public servant, prison sentences shall not be applied to the defendant pursuant to article 196 of the Criminal Code [*Código Penal*]. Organizations for the defense of freedom of expression indicated that the ruling would reduce the possibility of self-censorship among people in general and journalists in particular due to the risk of being jailed for denouncing or criticizing the work of public servants.<sup>1374</sup>

### **B. Subsequent liabilities**

834. The Thirteenth Civil Court [*Juzgado Decimotercero Civil*] sentenced five journalists, from the daily newspapers *La Estrella de Panamá* and *El Siglo*, two private individuals and a private company to pay \$US 725,000 as compensation for material and moral damages and losses to Lourdes Castillo, a member of the Board of Directors of the Panama Canal. The decision stems from a civil lawsuit filed by Castillo in 2011 following the publishing of news about direct contracting between the Ministry of Health and the Naves Supply company, of which Castillo was then the general manager. The journalists were Carlos Atencio, Alexis Charris, Jean Marcel Chéry, Magaly Montilla and Gerardo Berroa. The journalists were also tried.<sup>1375</sup>

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<sup>1372</sup> IACHR. 152nd Special Session. Hearing on the general human rights situation in Nicaragua. August 14, 2014. Available for consultation at: <http://www.oas.org/es/cidh/multimedia/sesiones/152/default.asp>; IACHR. August 15, 2014. [Press Release 86/14. IACHR Wraps Up its 152nd Special Session.](#)

<sup>1373</sup> La Prensa. October 27, 2014. [Xinwei "gana" seis licencias](#); El Nuevo Diario. September 6, 2014. [Más licencias a Xinwei](#); Mediatelecom. September 9, 2014. [Nicaragua otorga licencias para servicios a Xinwei](#); Centro de Investigaciones de la Comunicación (CINCO). [Estado de la Libertad de Expresión en Nicaragua 2013 – 2014](#). September 6, 2014.

<sup>1374</sup> Órgano Judicial de la República de Panamá. ADVERTENCIA DE INCONSTITUCIONALIDAD PRESENTADA POR EL LICENCIADO TEOFANES LÓPEZ ÁVILA, EN NOMBRE Y REPRESENTACIÓN DEL DR. CALIXTO MALCOM, CONTRA EL ARTÍCULO 192 DEL CÓDIGO PENAL, DENTRO DEL PROCESO PENAL POR DELITO CONTRA EL HONOR PROMOVIDO POR CALIXTO MALCOM, CONTRA JUAN DAVID MORGAN GONZÁLEZ. PONENTE: JOSÉ E. AYÚ PRADO CANALS PANAMA, ONCE (11) DE ABRIL DE DOS MIL CATORCE (2014). April 11, 2014. Available for consultation at: <http://www.organojudicial.gob.pa/wp-content/uploads/2014/05/rj2014-04.pdf>; La Prensa. May 21, 2014. [Respaldo a libertad de expresión](#); La Estrella de Panamá. May 22, 2014. [Funcionarios no podrán demandar penalmente.](#)

<sup>1375</sup> La Prensa. June 23, 2014. [Condenan a cinco periodistas y a los diarios 'La Estrella' y 'El Siglo'](#); Inter American Press Association (IAPA). June 25, 2014. [IAPA concerned at court ruling against Panama newspapers, journalists](#); La Vanguardia.com/EFE. June 23, 2014. [Diarios panameños apelarán fallo que los condena a pagar 725.000 dólares](#); IACHR. [Annual Report 2013. 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.149. Doc. 50. December 31, 2013. Para. 683.

835. In April, the Electoral Prosecutor [*Fiscal Electoral*] denounced the newspapers *La Prensa* and *Mi Diario* before the Office of the General Public Prosecutor [*Procuraduría de la Nación*] for the crimes of inviolability of secrecy [*inviolabilidad del secreto*] and the right to privacy [*derecho a la intimidad*] after the publication in February of different articles, one of which reported that her children worked with the government and article that questioned her productivity compared to her salary. According to the official, the publications had violated her privacy and that of her children, placing her children at risk.<sup>1376</sup> On June, the Electoral Prosecutor withdrew the complaint<sup>1377</sup>.

836. On August 21, the Fifteenth Criminal Court [*Juzgado Decimoquinto Penal*] overturned the resolution by the Seventh Prosecutor's Office of the Circuit [*Fiscalía Séptima de Circuito*] which had ordered Lorenzo Ábrego and Jorge Ríos, director and journalist of *Mi Diario* respectively, to testify, having been accused of slander and defamation [*calumnia e injuria*] by a sub-commissioner of the National Police. The complaint was filed in January following publication of news reporting on an alleged disciplinary process against the official. The judge determined that there was no proof that the journalist had falsely attributed the commission of a crime by the official.<sup>1378</sup> The official appealed the decision, which was admitted on September 22 and sent to the Second High Court [*Segundo Tribunal Superior*].<sup>1379</sup>

837. 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 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."

### C. Threats against media outlets and journalists

838. On May 22, journalist Álvaro Alvarado, anchorman for the afternoon news program 'Telemetro Reporta', denounced having received threats against his life and his family. The journalist pointed to threats and attacks that he had received through the Twitter social network after exchanging tweets with the president of the Republic, Ricardo Martinelli, and with the Minister of Security [*Ministro de Seguridad*], José Raúl Mulino, who denied the information reported by the journalists. Alvarado made known a tweet in which user @lavozpanama had written that hopefully the president "would hire someone to kill him." In the same denunciation, the reporter declared that the previous week he had received a sealed envelope containing a threat against him and his family in which they said that they were "watching" him. The threat was signed by the zetas. The Office of the General Public Prosecutor [*Ministerio Público*] opened an investigation into this threat.<sup>1380</sup> In April, Alvarado denounced that his parents were being followed, an incident that the Journalists Union of Panama [*Sindicato de Periodistas de Panamá*] considered an act of intimidation.<sup>1381</sup> On November 27, threats were again made against the journalist through the Twitter social

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<sup>1376</sup> La Prensa. April 4, 2014. [Fiscal dice que le violaron intimidad](#); Crítica. April 4, 2014. [Fiscal electoral denuncia a La Prensa y Mi Diario](#); Inter American Press Association (IAPA). [Panama](#). General Assembly 2014 – Santiago, Chile. October, 2014.

<sup>1377</sup> La Prensa. June 2, 2014. [Fiscal Electoral retira denuncia contra "La Prensa" y "Mi Diario"](#); La Estrella de Panamá. June 3, 2014. [Fiscal retira denuncia contra dos medios](#).

<sup>1378</sup> La Prensa. August 24, 2014. [Anulan indagatoria a periodistas de 'Mi Diario'](#).

<sup>1379</sup> La Prensa. September 29, 2014. [Oficial de la Policía Nacional y Fiscalía apelan decisión](#).

<sup>1380</sup> Telemetro.com. May 22, 2014. [Periodista Álvaro Alvarado denuncia haber recibido amenazas en su contra](#) (VIDEO); En Mayúscula. May 22, 2014. [Periodista Álvaro Alvarado denuncia amenazas de muerte contra él y su familia](#); La Prensa. May 23, 2014. [MP empieza investigación por amenaza a periodista](#); El Siglo. May 23, 2014. [Le desearon la muerte a Álvaro](#).

<sup>1381</sup> International Federation of Journalists (IFJ). April 11, 2014. [Familia de Periodista de Panamá Amenazada](#); Sindicato de Periodistas de Panamá. April 10, 2014. Comunicado de prensa. E-mail message sent to the Office of the Special Rapporteur for Freedom of Expression.

network, which were rejected by the President of the Republic, Juan Carlos Varela.<sup>1382</sup> The reporter had been threatened in 2013, presumably, by an attorney who was at that time an adviser to the National Assembly.<sup>1383</sup>

839. 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**

840. On January 7, the Supreme Court of Justice [*Corte Suprema de Justicia*] admitted an action for protection of constitutional guarantees [*acción de amparo de garantías constitucionales*] filed by the El Kolectivo group of artists against the Ministry of Public Works [*Ministerio de Obras Públicas*] and that ministry's order to erase murals painted by the members of the group. The action was filed on December 16, 2013 after two murals alluding to Martyrs' Day and painted by El Kolectivo, were painted over in gray, presumably by the Ministry of Public Works [*Ministerio de Obras Públicas (MOP)*].<sup>1384</sup> In its ruling of May 28, the Supreme Court [*Corte Suprema*] ordered the appeal shelved and decreed that it would not rule on the matter because the group had been able to paint the mural in January.<sup>1385</sup>

841. The TVN Media Television channel denounced that, since April 17, its digital page *TVN-2.com* was the target of prolonged and continued cyber attacks that denied access to users of the portal. The managers characterized the incidents as an attack against freedom of expression, taking into account that the general elections were to take place five days later, on May 4.<sup>1386</sup>

842. The Fifth Prosecutor's Office of the Circuit [*Fiscalía Quinta de Circuito*] brought charges in the crime of personal injuries [*lesiones personales*] against the former executive secretary of the National Security Council [*Consejo Nacional de Seguridad*] as part of a complaint filed by the Secretary-General of the Journalists Union of Panama [*Sindicato de Periodistas de Panamá*], Filemón Medina, in June of 2012. Medina filed the complaint after the official had allegedly assaulted him for having used his cellular telephone to record the detention of two journalists from the TVN television channel by personnel from the Institutional Protection service [*Servicio de Protección Institucional (SPI)*].<sup>1387</sup>

## **24. Paraguay**

### **A. Progress**

843. The Office of the Special Rapporteur was informed about approval of the Law "On Free Citizens' Access to Public Information and Governmental Transparency [*De libre acceso ciudadano a la*

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<sup>1382</sup> La Estrella de Panamá. November 27, 2014. [Rechazan amenaza de muerte al periodista Álvaro Alvarado](#); Panamá América. November 27, 2014. [Gremio periodístico rechaza amenazas contra periodista Alvaro Alvarado](#); El País/DPA. November 28, 2014. [Presidente panameño repudia amenazas de muerte contra periodistas](#).

<sup>1383</sup> IACHR. [Annual Report 2013. 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.149. Doc. 50. December 31, 2013. Para. 680.

<sup>1384</sup> La Prensa. January 14, 2014. [Corte admite amparo de garantías a grupo El Kolectivo](#); La Estrella de Panamá. January 10, 2014. [La batalla que ganó El Kolectivo](#); Félix Wing Solís. January 7, 2014. URGENTE-Murales de El Kolectivo (Panama). Available at the Archives of the Office of the Special Rapporteur for Freedom of Expression; Félix Wing Solís. January 10, 2014. Re: URGENTE-Murales de El Kolectivo (Panama). Available at the Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1385</sup> La Prensa. June 23, 2014. [Archivan recurso de amparo de garantías de El Kolectivo](#).

<sup>1386</sup> TVN Noticias. April 29, de 2014. [TVN recibe ataque cibernético en su portal](#); Inter American Press Association (IAPA). April 29, 2014. [Rechaza la SIP ataque cibernético contra televisora panameña](#); En Mayúscula. May 3, 2014. [Continúan los ataques al sitio web de TVN-2](#).

<sup>1387</sup> La Prensa. October 10, 2014. [Indagan a exjefe del Consejo de Seguridad](#); Inter American Press Association (IAPA). [Panama. General Assembly 2014 – Santiago, Chile. October, 2014.](#)

*información pública y transparencia gubernamental*” on August 21 by the Chamber of Senators [*Cámara de Senadores*]<sup>1388</sup>. On September 18, Law No. 5282 was promulgated by president Horacio Cartes<sup>1389</sup>. The objective of the law is to regulate Article 28 of the Constitution of the Republic [*Constitución de la República*] “establishing the modalities, time limits and sanctions to guarantee the broadest exercise to all persons of the right of access to information that is in the possession, custody or control of any public agency.” Among other things, the regulation establishes that all public institutions shall supply information in their possession, custody or control in the broadest possible form. “Reserved information” is only considered that which has been or could be classified as such by a law.<sup>1390</sup> According to information received, the draft legislation was approved by the full Senate on December 19, 2013, and was subsequently modified by the Lower Chamber on May 28, 2014. This modification was associated with article 22 of the bill, which had established information cataloged as “reserved”. The bill was returned to the Upper Chamber where it was approved with said modifications.<sup>1391</sup>

844. The Office of the Special Rapporteur notes with satisfaction this important event in terms of access to public information and Paraguay. Nonetheless, it observes that Law 5282 does not provide for the creation of an authority in charge of applying the law and controlling its fulfillment. On previous occasions, the Office of the Special Rapporteur has recognized that the creation of an autonomous and specialized supervisory body to promote implementation of legislation in terms of access to public information and reviewing negative responses by the administration in order to make a decision in that respect is of fundamental importance to achieve effective satisfaction of the right.<sup>1392</sup> Compared experience and practice have shown the importance of this kind of independent and specialized authorities in the diverse legal systems to avoid the dilution of efforts regarding compliance with laws for access to public information. Naturally, the above notwithstanding timely judicial control of decisions that refuse 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 and implementation of laws for 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 [*Ley Modelo Interamericana sobre Acceso a la Información*]”<sup>1393</sup>.

845. In effect, the model law provides for the creation of a specialized entity that it calls “Information Commission” [*Comisión de Información*]<sup>1394</sup>, which should be in charge of promoting effective implementation of the Law in each Member State along with appellate review of decisions that do not comply with the Law. Among other specifications, the Model Law stipulates that said entity must have full legal personality, operational, budgetary and decision-making autonomy and should be structured in plural form with at least three commissioners, designated through an open and transparent public process. Additionally, as a means to guarantee the effectiveness of the supervisory body’s decisions, the Model law stipulates that,

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<sup>1388</sup> [Ley 5.282. De libre acceso ciudadano a la información pública y transparencia Gubernamental.](#)

<sup>1389</sup> IFEX/Inter American Press Association (IAPA). September 25, 2014. [Paraguay enacts new law on access to information and transparency](#); ABC Color. September 18, 2014. [En histórico día, Cartes promulga Ley de AIP](#); Última Hora. September 18, 2014. [Ejecutivo promulga Ley de Libre Acceso a la Información Pública.](#)

<sup>1390</sup> Agencia de Información Paraguaya (IP). August 21, 2014. [Senado paraguayo sanciona ley de acceso a la información pública](#); Semillas para la Democracia. [PODER LEGISLATIVO. Honorable Cámara de Senadores LEY N°... DE LIBRE ACCESO CIUDADANO A LA INFORMACIÓN PÚBLICA Y TRANSPARENCIA GUBERNAMENTAL](#); ABC Color. August 21, 2014. [Sancionan ley de información](#); Noticias de Paraguay (NPY). August 21, 2014. [Senado aprueba ley de acceso a la información pública.](#)

<sup>1391</sup> 5 días. October 21, 2014. [Cámara de Senadores aprobaría Ley de Acceso a la Información Pública](#); Notimérica.com. December 19, 2013. [Paraguay aprueba la ley sobre información pública](#); Paraguay.com. December 19, 2013. [Senadores modifican ley de acceso a la información pública](#); Notimérica.com. May 29, 2014. [Congreso de Paraguay aprueba proyecto de ley de Acceso a la Información.](#)

<sup>1392</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. Along the same lines, [Commentary and Guide for Implementation for the Model Inter-American Law on Access to Information](#). [AG/RES. 2514 (XXXIX-O/09)]. Page 14.

<sup>1393</sup> OAS. General Assembly. AG/RES. 2607 (XL-O/10). [Model Inter-American Law on Access to Information](#). June 8, 2010.

<sup>1394</sup> OAS. General Assembly. AG/RES. 2607 (XL-O/10). [Model Inter-American Law on Access to Information](#). June 8, 2010.

independently of its mediating function, when resolving motions for appeal, the entity 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 a competent court to obtain compliance with its decisions.” Practice has shown that systems that have an autonomous and specialized “Information Commission,” as prescribed by the Model Law, are in a better position to guarantee adequate implementation and supervision of norms in the field of access. In this regard, it would be relevant to review aspects such as integration of the National Authority and the guarantees that it has to adequately carry out its functions.

846. On September 26, the Appeals Court of Caazapá [*Tribunal de Apelaciones de Caazapá*] confirmed the definitive dismissal of the case against Antonio Caballero, a journalist at *ABC Color* in the department of Caazapá. The journalist had been denounced in June of 2008 over an alleged case of extortion. The ruling dismissing the case was resolved during an oral hearing on May 12, 2014<sup>1395</sup>. According to information received, the reporter was the victim of an operation apparently aimed at implicating him in a case of extortion, due to his investigations into irregularities involving firms supplying the State<sup>1396</sup>.

## B. Murders

847. On May 16, journalist Fausto Gabriel Alcaraz, an announcer for *Radio Amambay 570 AM*, was murdered in the city of Pedro Juan Caballero, department of Amambay. According to information received, around 1 PM the journalist was returning home after finishing his afternoon radio program ‘De frente a la mañana’ when unknown individuals on a motorcycle shot him. Official sources reported that the victim was hit by at least 10 bullets. As reported, colleagues of the journalist stated that the crime could be related to denunciations the social communicator had made on his program about drug trafficking on the border with Brazil. In his denunciations, Alcaraz had given the names of persons allegedly linked to illicit activity.<sup>1397</sup>

848. Journalist Edgar Fernández, host of the program ‘Ciudad de la furia’ on *Radio Belén Comunicaciones*, was murdered in the city of Concepción, department of Concepción, on June 19. According to information received, Fernández had returned home after finishing his radio program, when an unknown individual entered his residence and shot him several times. The subject fled the scene on a motorcycle along with another person who had been waiting for him to leave the victim’s home. The journalist was known because he made harsh denunciations and criticisms on his program of topics associated with the judicial branch and the Office of the General Public Prosecutor of the zone.<sup>1398</sup> On June 21, the authorities announced the arrest of a man suspected of being connected with the murder.<sup>1399</sup>

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<sup>1395</sup> ABC Color. October 1, 2014. [Confirman sobreesimienta a periodista](#); ABC Color. May 1, 2014. [Absuelven a periodista por presunta extorsión](#). Inter American Press Association (IAPA). [Paraguay](#). Asamblea General de Santiago de Chile. October, 2014.

<sup>1396</sup> ABC Color. June 29, 2008. [Antonio Caballero no se vendió, por eso lo acusan](#); ABC Color. June 27, 2008. [Juez ordena libertad de corresponsal de ABC Color acusado de una estafa](#).

<sup>1397</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. May 19, 2014. [Press Release R 59/14 Office of the Special Rapporteur Condemns Murder of Journalist in Paraguay](#); Última Hora. May 16, 2014. [Matan a periodista radial en Pedro Juan Caballero](#); ABC Color. May 16, 2014. [Periodista asesinado a tiros en Pedro Juan](#); Hoy. May 16, 2014. [Sicarios acribillan a periodista en Pedro Juan](#); El Tiempo/EFE. May 16, 2014. [El periodista paraguayo Fausto Gabriel Alcaraz, conocido por sus denuncias contra el narcotráfico, murió hoy a consecuencia de los disparos efectuados por dos desconocidos](#); ABC Color. May 17, 2013. [Matan a tiros a periodista de Radio Amambay y acusan al narcotráfico](#).

<sup>1398</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. June 24, 2014. [Press Release R 70/14 Office of the Special Rapporteur Condemns Murder of Journalist in Paraguay](#); ABC Color. June 20, 2014. [Sicarios acribillan a radialista tras irrumpir en su casa en Concepción](#); La Vanguardia/EFE. June 20, 2014. [Asesinan a segundo periodista en Paraguay en poco más de un mes](#); Página 12. No date. [Van dos periodistas muertos en Paraguay](#); Paraguay.com. June 20, 2014. [Locutor asesinado criticaba a todos](#); Radio Amambay 570 AM. June 20, 2014. [SPP condena crimen de periodista concepcionero](#); Noticiero12.com. June 23, 2014. [Asunción Paraguay: investigan el asesinato del periodista Edgar Fleitas](#).

<sup>1399</sup> ABC Color. June 21, 2014. [Detienen a supuesto homicida en Concepción](#); Página 12. No date. [Van dos periodistas muertos en Paraguay](#); Paraguay.com. June 22, 2014. [Detienen a supuesto asesino de locutor](#); Radio Amambay 570 AM. June 22, 2014. [Detienen a supuesto homicida de periodista en Concepción](#).

849. Pablo Medina, a journalist at *ABC Color*, was murdered on October 16 in the zone near Villa Ygatimí, department of Canindeyú. According to information received, on the afternoon of October 16, Pablo Medina was returning in his vehicle following journalistic coverage of the Ko'ë Porã colony when he was ambushed by two unknown individuals who shot him a number of times. The journalist was accompanied by two people. One of them, Antonia Maribel Almada, was wounded in the attack and died hours later at the hospital. She was 19 years old, a journalism student and worked for Medina as an assistant.<sup>1400</sup> Medina was the correspondent for ABC Color in the zone of Curuguaty and had made denunciations about drug trafficking and irregularities allegedly committed by local authorities.<sup>1401</sup> According to the Minister of the Interior [Ministro del Interior], Francisco de Vargas, the journalist was the victim of constant threats, which was why he was receiving sporadic police protection for certain coverages.<sup>1402</sup> The President of Paraguay, Horacio Cartes, condemned the crime and declared that he would use “the full weight of the law and legitimate force of the State” to investigate and punish those responsible. The president also reiterated his appreciation for the work of men and women journalists in the country.<sup>1403</sup> Foreign Minister Eladio Loizaga also expressed his “most energetic” condemnation of the incident.<sup>1404</sup> As reported, until now four people have been arrested in connection with the murder of Pablo Medina.<sup>1405</sup> The Attorney Generals’ Office also ordered the arrest of the mayor [intendente] of the city of Ypehû, Vilmar Acosta, for alleged links to the journalist’s murder. Acosta’s brother, Wilson, had allegedly been one of the perpetrators.<sup>1406</sup>

850. On November 4, the minister of the Supreme Court of Justice of Paraguay [Corte Suprema de Justicia de Paraguay], Víctor Núñez, declared at a press conference that journalist Pablo Medina, murdered on October 16, “wrote about what he didn’t know about” and “referred to dossiers about which he was completely ignorant”. Medina had accused magistrate Núñez of interceding to free Vilmar Acosta, mayor of the locality of Ypehû, when he was jailed in 2011 for his alleged involvement in a triple homicide case. Acosta is suspected of being the mastermind of the crime against journalist Medina, and is currently a fugitive from justice.<sup>1407</sup>

851. On November 6, journalists from various press associations marched to the Palace of Justice [Palacio de Justicia] in protest over declarations by magistrate Víctor Núñez. On the esplanade of the Palace of Justice [Palacio de Justicia], they read a letter in which they demanded that the magistrate resign from his post or be subject to a political trial for said expressions. “He has made fun of our colleague and of his work. And worst of all, he does it cynically and extemporaneously, because he knows that our colleague can no longer defend himself,” they claimed in the letter. They maintained that the action by Núñez “constitutes an

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<sup>1400</sup> Committee to Protect Journalists (CPJ). October 17, 2014. [Paraguayan journalist shot dead on way back from covering story](#); ABC Color. October 16, 2014. [Fallece segunda víctima de sicarios](#); 780 AM. October 17, 2014. [URP exige esclarecimiento de crimen a periodista](#); Vanguardia. November 21, 2014. [A luz de velas piden justicia para Pablo Medina y Antonia Almada](#).

<sup>1401</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. October 17, 2014. [Press Release R 122/14 Office of the Special Rapporteur Condemns Murder of Journalist in Paraguay](#); ABC Color. October 16, 2014. [Asesinan a corresponsal de ABC Color](#); La Nación. October 16, 2014. [Asesinan a periodista en la zona de Curuguaty](#); Caracol Radio/EFE. October 16, 2014. [Asesinan a periodista en Paraguay, el tercero en lo que va de año](#).

<sup>1402</sup> Committee to Protect Journalists (CPJ). October 17, 2014. [Paraguayan journalist shot dead on way back from covering story](#); ABC Color. October 16, 2014. [Pablo Medina recibía constantes amenazas](#).

<sup>1403</sup> Presidencia de la República del Paraguay. October 16, 2014. [Mensaje del Presidente de la República](#); ABC Color. October 16, 2014. [Cartes: “Usaremos todo el peso de la ley”](#).

<sup>1404</sup> Ministerio de Relaciones Exteriores. October 17, 2014. [Loizaga reiteró condena por horrendo crimen que terminó con la vida del periodista de ABC](#); Última Hora. October 17, 2014. [Asesinato de periodista impacta al país, afirma canciller](#); ABC Color. October 17, 2014. [Muerte de periodista “daña imagen positiva del país”](#).

<sup>1405</sup> ABC Color. October 17, 2014. [“Se aseguraron de que muera”](#); Reporters Without Borders (RSF). October 20, 2014. [Reporter killed in ambush after police protection withdrawn](#).

<sup>1406</sup> Yahoo/AP. October 19, 2014. [Paraguay: ordenan detener político por periodista](#); Hoy. October 18, 2014. [Asesinato a periodista: Ordenan detención de intendente](#).

<sup>1407</sup> El Confidencial/EFE. November 4, 2014. [Miembro de la Corte Suprema paraguaya carga contra periodista asesinado](#); Paraguay. November 4, 2014. [Núñez: “Negocian sobre el cadáver de Pablo Medina para perjudicarme”](#); ABC TV/You Tube. November 4, 2014. [Núñez cuestiona labor de Medina y se aferra al cargo. \(VIDEO\)](#).

attack against freedom of expression and of the press and is a new attempt to silence critical and justified opinion by journalists throughout the country.”<sup>1408</sup>

852. On November 7, the Conduct Tribunal of the National Republican Association of the Colorado Party of Paraguay [Tribunal de Conducta de la Asociación Nacional Republicana del Partido Colorado de Paraguay] decided to expel mayor Vilmar Acosta, suspected of being the mastermind in the murder of journalist Pablo Medina<sup>1409</sup>.

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

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

854. On January 15, a group of farmers from the town of Capiibary, in the department of San Pedro, attacked journalist Alberto Núñez, a correspondent for the daily newspaper *La Nación*. The reporter was in Capiibary covering a dispute at a private ranch that had been invaded by farmers, when a group of armed workers attacked and beat him with machetes for 30 minutes. A presumed officer of the National Police [Policía Nacional] who was on the scene was also attacked. Finally, both were able to escape.<sup>1410</sup>

855. On February 28, the Journalists Union of Paraguay [Sindicato de Periodistas del Paraguay (SPP)] filed a complaint against politician Julio Colmán for threats that he had allegedly made against journalist Elías Cabral, correspondent for the daily newspaper *Última Hora* and for *Telefuturo* in Curuguaty. On February 12, after the journalist reported on a complaint filed by city council members against the politician, in which they accused him of involvement in irregularities, Colmán warned Cabral that “something” could happen to him and that he was “playing with fire.” On February 19, Cabral received threats from an unknown individual near his home.<sup>1411</sup>

856. Reporter Andrés Colmán Gutiérrez, from the daily newspaper *Última Hora*, was beaten and assaulted on March 26 during coverage of a general strike in the Plaza de Armas in the city of Asunción. During his live broadcast, an unknown individual took away his cell phone and brutally pushed him to the floor, wounding the social communicator.<sup>1412</sup>

857. On June 2, various social communicators and activists for LGTBI rights (Lesbians, Gays, Transsexuals, Bisexuals and Intersexuals) were attacked by presumed officers of the security forces during a demonstration in front of the installations of Conmebol, where the 44th Assembly of the Organization of American States (OAS) was taking place. According to information received, journalists Cristian Núñez, of *Hispan TV*, Noelia Díaz, of *Unicanal*, and Enrique Dávalos, of *Canal 13*, along with cameramen and photojournalists, were beaten by presumed police officers who were repressing the demonstration.<sup>1413</sup>

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<sup>1408</sup> Última Hora. November 6, 2014. [Periodistas exigen juicio político o renuncia de Víctor Núñez](#); Hoy. November 6, 2014. [Periodistas exigen juicio político a Núñez](#).

<sup>1409</sup> Hoy. November 7, 2014. [Partido Colorado expulsa a “narcointendente” de Ypehú](#); ABC Color. November 7, 2014. [ANR expulsa a “Neneco”](#); Última Hora. November 8, 2014. [Con un voto en disidencia, la ANR expulsó al prófugo Neneco Acosta](#).

<sup>1410</sup> La Nación. January 15, 2014. [Secuestran y torturan a periodista del Grupo Nación en San Pedro](#); Knight Center for Journalism in the Americas. January 27, 2014. [Paraguayan farm workers torture journalist covering land dispute](#).

<sup>1411</sup> EA. June 3, 2014. [Apedrean estación de radio que criticaba a diputado colorado](#); Sindicato de Periodistas del Paraguay (SPP). [Declaró periodista amenazado por Julio Colmán](#).

<sup>1412</sup> Última Hora. March 26, 2014. [Asaltan y golpean a periodista de Última Hora durante cobertura](#); Clases de Periodismo. March 27, 2014. [Paraguay: Asaltan y golpean a periodista cuando cubría una huelga](#).

<sup>1413</sup> International Federation of Journalists (IFJ)/Sindicato de Periodistas del Paraguay. June 5, 2014. [Repudio a la represión de periodistas y grupos de LGTBI en Paraguay](#); Somos Gay Paraguay. June 2, 2014. [Violenta represión a activistas LGBT y periodistas frente a la OEA en Paraguay](#); El Mundo. June 3, 2014. [Violenta represión policial ante la marcha gay en Paraguay](#).

858. On June 3, *Radio Nativa*, of Isla Ombú, was the victim of an attack. According to information received, unknown individuals tried to force open the door, broke glass panes in a window and wrote on the walls. They left a threatening message on the door of the radio station aimed at Andrés Arias, warning him to be quiet. According to information received, Radio Nativa had been investigating the administration of politician Pedro Aliana, former Governor of Ñeembucú and a deputy for that department. According to Arias, the attack could be related to those investigations.<sup>1414</sup>

859. On September 12, journalist Miguel Ángel Rodríguez, a correspondent for *ABC Color*, was threatened by an official from the Yacyretá hydroelectric company. After the reporter denounced the presence of vehicles bearing that entity's logotype at a political event of the government party, the official, Alen Saúl Espínola, telephoned him to complain about publication of the news. As reported by the daily newspaper *ABC Color*, after a few minutes of communication, the official "threatened to damage the correspondent, that he would erase the publication from the newspaper's webpage and have him fired."<sup>1415</sup>

860. Journalists from diverse communications media who traveled to Canindeyú following the October 16 murder of journalist Pablo Medina stated that they had been threatened by presumed envoys of drug traffickers who operate in the zone. The social communicators stated that in addition to receiving phone calls, they were also directly harassed while carrying out their work. Presumed drug traffickers had also taken over one of the hotels where the journalists were staying and where new threats were made.<sup>1416</sup>

861. On October 31, journalist Marcial Vásquez, of radio *Arapyzandu*, of San Ignacio, Misiones, filed a complaint at the local commissary for having received death threats. According to the journalist, on October 29, when he was covering protests against the installation of a solid waste treatment plant in Costa Pucú, a group of inhabitants had threatened him with death.<sup>1417</sup>

862. Similarly, on November 7, unknown individuals fired shots at the home of journalist Adriano Guerrero, of *Radio 89.7 San Ignacio FM*, in Costa Pucú, district of San Ignacio, Misiones. The shots aimed to intimidate the journalist because municipal authorities had participated in his radio program who want to install a waste treatment plant in the zone, which generates resistance among some of the inhabitants.<sup>1418</sup>

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

#### **D. Community radio stations**

864. The Office of the Special Rapporteur has received information that indicates that on Thursday, August 14, officials from the National Telecommunications Commission [Comisión Nacional de Telecomunicaciones (Conatel)] and the Attorney General's Office [Fiscalía] had arrived at the installations of

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<sup>1414</sup> FM Nativa. No date. [Atentado contra Radio Nativa FM - 94.9](#); EA. June 3, 2014. [Apedrean estación de radio que criticaba a diputado colorado](#); Sindicato de Periodistas del Paraguay. June 5, 2014. [Repudio a la represión de periodistas y grupos de LGTBI en Paraguay](#).

<sup>1415</sup> ABC Color. September 14, 2014. [Amenaza de un funcionario a periodista luego de publicación](#); Inter American Press Association (IAPA). [Paraguay](#). Asamblea General de Santiago de Chile. October, 2014.

<sup>1416</sup> La Nación. October 20, 2014. [La mafia amenaza ahora a periodistas enviados a Canindeyú](#); Última Hora. October 19, 2014. [Constantes amenazas a periodistas en Curuguaty](#); Clases de Periodismo. October 19, 2014. [Paraguay: amenazan a reporteros que cubren asesinato de periodista](#).

<sup>1417</sup> Última Hora. October 31, 2014. [Periodista de Misiones denuncia amenaza de muerte](#); ABC Color. November 12, 2014. [Periodistas de Misiones denuncian amenazas](#).

<sup>1418</sup> ABC Color. November 12, 2014. [Periodistas de Misiones denuncian amenazas](#); Última Hora. November 12, 2013. [Periodistas piden seguridad en Misiones](#).



*Radio Campesina Ko'ê Poty*, in the San Isidro del Pastoreo neighborhood in the department of Caaguazú, and allegedly, without prior notice, confiscated the station's equipment. This occurred despite its representatives having obtained and submitted the required documentation to the regulatory agency. The population announced community demonstrations following confiscation of the equipment. The information officer also indicates that at least three other radio stations that operated in the department of Caaguazú had been intervened. Those would be the cases of *105.9 Radio Ovación*, *104.7 FM Radio La Luz* and *103 FM Radio San Jorge Comunicaciones*. According to information received, the interventions would be related to a complaint made by the Association of Communications Media of Caaguazú [Asociación de Medios de Comunicación del Caaguazú (Amecca)] to the Attorney General's Office [Fiscalía] of the locality of Juan Eulogio Estigarribia for the alleged clandestine exploitation of a feature [*explotación clandestine de una prestación*].<sup>1419</sup>

865. According to official information, the National Telecommunications Commission [*Comisión Nacional de Telecomunicaciones (Conatel)*] closed or confiscated different community radio stations. Some of these cases were *Radio Ysry FM*, in the city of Luque, and *Real FM 102.5*, in Caacupé.<sup>1420</sup> Information was also received regarding the cases of *Radio Kure Luque FM 88.9 MHz* in the city of Luque, whose equipment was confiscated a second time; and *Radio FM San Gabriel* in the city of San Lorenzo<sup>1421</sup>.

866. The Office of the Special Rapporteur was informed that on November 2, community radio station *Chacarita FM*, in Asunción, interrupted its broadcasting by order of the Attorney General's Office [Fiscalía]. The National Telecommunications Commission [*Comisión Nacional de Telecomunicaciones (Conatel)*] had denounced the radio station to the Attorney General's Office [Fiscalía] for operating without authorization. The director of the radio station, Enrique Pereira, had argued that the application to operate had been submitted to Conatel in 2004, but 10 years later they had not yet obtained a response.<sup>1422</sup>

867. In the Joint Declaration on Broadcasting Diversity [*Declaración Conjunta sobre Diversidad en la Radiodifusión*], the Special Rapporteurs recalled that "community broadcasting must be expressly recognized in the laws as a differentiated form of communication media, must benefit from fair and simple procedures for obtaining licenses, must not have to comply with severe technological or other requirements, must benefit from licensing concession rates and must have access to advertising."<sup>1423</sup>

## **E. Access to public information and to public official**

868. On May 20, president Horacio Cartes promulgated Law 5189/14, which establishes the obligation to report on the "remunerations and other retributions" assigned to public servants. Article 1 of the Law establishes that: "All public bodies or entities, binational entities and those in which the Paraguayan State has shares, or private bodies that administer state funds, shall disseminate through electronic Internet portals all information from public sources relating to the body or entity and its administrative and human resources."<sup>1424</sup>

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<sup>1419</sup> Comisión Nacional de Telecomunicaciones (Conatel). No date. [CONATEL realiza intervenciones de 4 radios ilegales en Caaguazú](#); Proyecto Democratización de la Información. August 20, 2014. [Anuncian movilizaciones comunitarias tras el decomiso de equipos de una radio campesina](#); Aler. August 20, 2014. [Paraguay: Cierran dos radios comunitarias](#).

<sup>1420</sup> Comisión Nacional de Telecomunicaciones (Conatel). No date. [CONATEL prosigue con incautaciones de radios ilegales](#).

<sup>1421</sup> Comisión Nacional de Telecomunicaciones (Conatel). No date. [CONATEL incauta radio ilegal reincidente](#).

<sup>1422</sup> E'a. November 5, 2014. [Denuncian persecución de Radio en la Chacarita por "movilizar" a pobladores](#); Tapére. November 5, 2014. [Por represalia a la lucha de los Bañados, imputarían a Radio Chacarita FM. \(Audio\)](#).

<sup>1423</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. May 3, 2013. [Joint Declaration on the protection of Freedom of Expression and Diversity in the digital terrestrial transition](#).

<sup>1424</sup> Ley 5.189/14. May 20, 2014. [Que establece la obligatoriedad de la provisión de informaciones en el uso de los recursos públicos sobre remuneraciones y otras retribuciones asignadas al servidor público de la república del Paraguay](#).

869. In May, during a meeting in celebration of Mayday, the then head of Petropar, Fleming Raúl Duarte Ramos, told company employees that “all corresponding measures” would be taken against employees who provide information to the press.<sup>1425</sup>

870. On July 18, the Yacyretá and Itaipú binational hydroelectric dams filed an action of unconstitutionality against Law 5189/14<sup>1426</sup>, which makes mandatory the publication of salaries of public servants.<sup>1427</sup> Article 2 of the law includes binational entities among the public bodies and entities subject to that obligation. According to declarations to the press by the attorney for Yacyretá, Gabriela Lezcano, the hydroelectric dam is an international entity with its own patrimony, so that salaries earned by its employees would not be made public because they come from funds generated by the institution itself. The entity therefore considers that it should not be included under the law<sup>1428</sup>. According to information disseminated by the press, the documents submitted by the Itaipú hydroelectric dam argue that article 2 of the Law “erroneously places binational entities under the category of public institutions, subjecting them to the scope of the Law; however, binational entities are neither public bodies nor public entities, but rather legal persons under international law and therefore subject to specific norms contained in international treaties.”<sup>1429</sup>

871. Principle 4 of the IACHR Declaration of Principles states: “[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. Censure of journalistic material

872. The Office of the Special Rapporteur was informed that on August 6, a judge had admitted a motion for protection [amparo] requested by senator Juan Carlos Galaverna, and had prohibited five media outlets from disseminating a video with sexual content involving the senator. The video in question would show the senator having sexual relations with women employees of the Congress and had generated great controversy in the country’s public opinion. The decision would prohibit dissemination, propagation, publication, generation or alteration of multimedia content that “shows the senator in alleged sexual acts with persons of the feminine sex, without his consent, whether visually, in writing or digitally” to media outlets *Telefuturo*, Teledifusora Paraguaya (*Canal13*), *Canal 11*, *Diario Popular* and *Diario Crónica*.<sup>1430</sup> On August 30, the Second Chamber of the Criminal Appeals Tribunal [Segunda Sala del Tribunal de Apelación en lo Penal] unanimously upheld the ruling issued by the judge.<sup>1431</sup> On October 15, the Constitutional Chamber of the Supreme Court [*Sala Constitucional de la Corte Suprema*] rejected “in limine” the action of unconstitutionality brought by the *Telefuturo* and *La Tele* channels against the motion for protection presented by the senator.<sup>1432</sup>

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<sup>1425</sup> ABC Color. May 10, 2014. [Dicen que castigarán a quienes pasen datos](#); Inter American Press Association (IAPA). [Paraguay](#). Asamblea General de Santiago de Chile. October, 2014.

<sup>1426</sup> Ley 5.189/14. May 20, 2014. [Que establece la obligatoriedad de la provisión de informaciones en el uso de los recursos públicos sobre remuneraciones y otras retribuciones asignadas al servidor público de la república del Paraguay](#).

<sup>1427</sup> Hoy. July 18, 2014. [Secretismo en Itaipú y Yacyretá: accionan para no divulgar sueldos](#); Última Hora. July 18, 2014. [Binacionales accionan judicialmente para no divulgar salarios](#).

<sup>1428</sup> Entidad Binacional Yacyretá. July 18, 2014. [Yacyretá presentó acción de inconstitucionalidad contra la Ley N° 5.189/14](#); Última Hora. July 18, 2014. [Yacyretá acciona ante ley que obliga a divulgar salarios](#)

<sup>1429</sup> ABC Color. July 18, 2014. [Tampoco quiere mostrar lista](#).

<sup>1430</sup> ABC Color. August 6, 2014. [Calé consigue censurar video](#); La Nación. August 6, 2014. [Senador Galaverna mantiene censura de video](#).

<sup>1431</sup> ABC Color. August 30, 2014. [Cámara ratifica censura del video de Galaverna](#); Última Hora. August 30, 2014. [Un tribunal ratifica que no se puede difundir video de Calé](#).

<sup>1432</sup> ABC Color. October 15, 2014. [La Corte se lava las manos para beneficiar a Galaverna](#); Paraguay. October 14, 2014. [Corte ratifica prohibición de divulgar el video de Calé](#).

## G. Other relevant situations

873. On July 7, the president of the National Telecommunications Commission [*Comisión Nacional de Telecomunicaciones (Conatel)*], Eduardo González, announced the start of an electromagnetic spectrum auction process mainly aimed at new technologies such as Long Term Evolution (LTE) or 4G (fourth generation), so that telephony operators may develop better quality mobile services.<sup>1433</sup>

### 25. Peru

#### A. Progress

874. The Office of the Special Rapporteur was informed of the detention of nine persons linked to a criminal organization who may be connected to the murder of journalist Humberto Tasayco on October 3, 2013, in the province of Chincha, department of Ica.<sup>1434</sup> According to available information, members of a criminal organization known as “La gran familia chinchana” beat the journalist to death, who was editor of the magazine *Canta Claro*, after the social communicator had denounced crimes committed by them.<sup>1435</sup>

#### B. Murders

875. On July 10, the lifeless body of journalist Donny Buchelli Cueva, owner of radio station *Solimar* and host of the program *Más Radio*, was found. According to information received, the body was discovered at his home, with signs of torture. Prior to the crime, the journalist had criticized the lack of fitness of candidates in local elections.<sup>1436</sup>

876. October 17, journalist Gerson Abraham Fabián Cuba, host of the program “Rumba en la Noticia”, on radio *Rumba*, in the province of Chanchamayo, department of Junín, was the victim of an attack in which his wife was killed. According to information received, the reporter was at the radio station along with his wife, Gloria Esther Lima Calle, and his son, when an unknown individual entered the station supposedly to arrange for dissemination of an announcement. A second individual entered the station with a pistol and began to insult and beat the journalist. When his wife attempted to defend him, one of the individuals shot her in the chest. The woman died on the way to the hospital. The journalist declared that he did not know the reasons for the attack, but that on his program he had recently criticized certain local politicians for alleged cases of corruption and had questioned certain actions and protests by environmental activists.<sup>1437</sup>

877. The Special Rapporteur was informed of the murder of Fernando Raymondi, a journalism student at the Universidad San Martín de Porres and an employee of the magazine *Caretas*, which took place on November 9 in San Vicente de Cañete, department of Lima. As reported, on the night of the murder, Raymondi was at his father’s food store when two unknown individuals entered and shot him despite having been told where the store’s money was. Raymondi, who in addition to studying worked in the research area at the magazine *Caretas*, died on the way to the hospital. The media outlet reported that the journalist was investigating the existence of hired killers in Cañete. The director of the National Police [*Policía Nacional*]

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<sup>1433</sup> Comisión Nacional de Telecomunicaciones (Conatel). No date. [CONATEL hará subasta de LTE y lo recaudado se destinará al área social](#); La Nación. July 8, 2014. [Conatel realizará por primera vez una subasta de espectros](#).

<sup>1434</sup> La Voz de Ica. April 4, 2013. [Periodista Humberto Tasayco muere tras ser asaltado y agredido](#); La Primera. April 9, 2013. [Exigen investigar muerte de periodista](#); La República. June 20, 2014. [Mafias de construcción detrás del asesinato de periodista](#).

<sup>1435</sup> La República. July 16, 2014. [Caen 9 delincuentes que asesinaron a un periodista](#); Perú 21. July 14, 2014. [Ica: Policía desarticula a banda ‘La Gran Familia Chinchana’](#); RPP Noticias. July 14, 2014. [Chincha: policía captura a integrantes de la banda ‘La gran familia chinchana’](#); La República. July 21, 2014. [Asesinos de periodista Humberto Tasayco estaban afiliados a la CTP](#).

<sup>1436</sup> Reporters Without Borders (RSF). August 12, 2014. [Radio journalist murdered, authorities should not rule out journalism connection](#); La República. July 11, 2014. [En Pacasmayo, torturan y asesinan a periodista Donny Buchelli Cueva](#); Notimérica. August 22, 2014. [Unesco condena asesinato de periodista peruano Donny Buchelli Cueva](#).

<sup>1437</sup> Inter American Press Association (IAPA). October 22, 2014. [IAPA calls for guarantees of safety of Peruvian journalist and his family, condemns murder of his wife](#); La República. October 18, 2014. [Jóvenes sicarios matan a esposa de periodista](#); Committee to Protect Journalists (CPJ). October 20, 2014. [Peruvian radio host’s wife killed in attack on station](#).

affirmed that the working hypothesis at that time involved an attempted robbery that led to the journalist's death.<sup>1438</sup> On November 18, agents from the Directorate of Criminal Investigation and Interpol [*Dirección de Investigación Criminal e Interpol (Dirincri)*] arrested an individual suspected of being one of the perpetrators of the murder.<sup>1439</sup>

878. Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR establishes that: “[t]he murder, kidnapping, intimidation, threats against social communicators, as well as the destruction of communications media materials, violates the fundamental rights of people and severely restricts freedom of expression. The States have the duty to prevent and investigate these occurrences, punish their perpetrators and ensure adequate reparation for the victims.”

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

879. On January 24, journalists Carlos Vargas and Raúl Ruiz, of the program “En Directo” on *Canal 35*, Pedro Paredes, of the program “LVS Noticias” and an *América Televisión* correspondent, Christian Pérez, correspondent for *Panamericana Televisión*, and Jorge Carrillo, of *Radio Programas del Perú*, were attacked by a group of inhabitants who illegally occupy state land in Iquitos, Loreto. The reporters were covering the conflict stemming from occupation of the lands when they were threatened and beaten by inhabitants, who took away their telephones, documents and personal effects.<sup>1440</sup>

880. On January 30, various journalists were attacked by presumed members of the Police, while trying to interview the President of the Council of Ministers [*Concejo de Ministros*] and minister of the interior in the Lambayeque region. The presumed officers, responsible for the officials’ security, violently tried to prevent the reporters from approaching them.<sup>1441</sup>

881. On February 9, in the Lambayeque region, journalist Aleida Vásquez Vásquez, of *Canal 41 Telenor*, had denounced that two presumed police officers from the Anti-drug Division [*División Antidrogas*] tried to take away her video camera and the keys to her motorcycle while she covered a press conference at that office.<sup>1442</sup>

882. On February 26, in Lima, the editorial group that publishes the weekly magazine *Velaverde* denounced that a presumed police officer had threatened journalists from the magazine. The police officer came to the editing office on February 24 to protest against a published article that accused him of having unduly benefited from being the nephew of the former minister of the interior. As reported by media outlets, the officer had threatened the general editor, Eduardo Abusada, along with Manuel Alejos, author of the article, with death. They had also received threats on the magazine’s and the journalist’s Facebook accounts<sup>1443</sup>

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<sup>1438</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. November 14, 2014. [Press Release R 135/14 Office of the Special Rapporteur Codemns Murder of Journalist in Peru](#); Instituto Prensa y Sociedad (IPYS). November 11, 2014. [Perú: asesinan a periodista que investigaba a sicarios](#); Committee to Protect Journalists (CPJ). November 11, 2014. [Journalist gunned down in Peru](#); Caretas. November 11, 2014. [Fernando Raymondi es enterrado en Cañete](#); La Estrella de Panamá/EFE. November 11, 2014. [Periodista asesinado en Perú investigaba casos de sicariato](#); El Popular. November 11, 2014. [Fernando Raymondi, el joven periodista que fue asesinado en Cañete](#); El Comercio. November 11, 2014. [Periodista asesinado en Cañete: policía descartó sicariato](#); La República. November 11, 2014. [Fernando Raymondi: Descartan que sicarios hayan asesinado a estudiante de USMP](#).

<sup>1439</sup> El Comercio. November 20, 2014. [Cayó sospechoso de asesinato de periodista Fernando Raymondi](#); RPP Noticias. November 20, 2014. [Cae mototaxista sospechoso del asesinato de periodista Fernando Raymondi](#); La República. November 20, 2014. [Fernando Raymondi: Atrapan a primer sospechoso del asesinato de periodista](#).

<sup>1440</sup> Instituto Prensa y Sociedad (IPYS). January 24, 2014. [Perú: Invasores de terrenos agreden a periodistas](#); RPP. January 24, 2014. [Loreto: invasores de terrenos experimentales agreden a periodistas](#); Diario La Región. January 25, 2014. [Desadaptados agreden y secuestran a periodistas](#).

<sup>1441</sup> Instituto Prensa y Sociedad (IPYS). January 31, 2014. [Policías agreden a periodistas](#).

<sup>1442</sup> Instituto Prensa y Sociedad (IPYS). February 10, 2014. [Policías intentan quitar cámara a videoreportera](#).

<sup>1443</sup> Revista Velaverde. Twitter account. February 26, 2014. [Amenazan de muerte a editor y redactor de VELAVERDE](#); Revista Velaverde. February 27, 2014. [Agradecemos muestras de solidaridad con Revista Velaverde por amenazas de muerte](#); Instituto Prensa y Sociedad (IPYS). February 27, 2014. [Perú: el IPYS pide al ministro del Interior investigar amenazas de un policía contra periodistas](#).

883. On March 26, journalist Christian Sotomayor, of the program 'Punto Final' on *Frecuencia Latina Canal 2* had requested guarantees from the Ministry of Interior [*Ministerio del Interior*] and the Northeastern Police Region [*Región Policial Nororiente*] because they had received death threats after disseminating a report criticizing the situation of the provincial municipality of Chiclayo.<sup>1444</sup>

884. On March 26, journalist Karina Guillén and photographer Eduardo Barreda, from the daily newspaper *Correo de Arequipa*, were attacked and detained for more than two hours by a group of people who occupy lands of the Association of Small Industrial, Artisanal and Housing Producers [*Asociación de Pequeños Productores Industriales, Artesanales y Vivienda*], in the district of Cayma, Arequipa province. The journalists were covering the land ownership conflict when the attackers intercepted them, took away their mobile phones and equipment.<sup>1445</sup>

885. On April 12, unknown individuals stole equipment valued at more than US \$10,000 from the broadcasting installations of *Radio Noticias 24 Horas*, in Juliaca, department of Puno. According to the general manager of the station, Robert Terán, the incident could be linked to denunciations that they had made about alleged acts of corruption by the mayor of the municipality of Lampa, in that a few days before, journalists from the radio station had received threats.<sup>1446</sup>

886. On April 15, journalist Otto Yarlequé Coronado, director of the program "Hechos del Pulso de la Noticia" and "W Noticias" at *Radio W*, in the province of Paita, department of Piura, was threatened with death by an unknown individual by means of messages and telephone calls. The journalist had reported on acts of corruption and criminal organizations that operate in Paita, so that he believed that the threats could be related to his journalistic work.<sup>1447</sup>

887. On April 21, journalist Henry Pinedo, director of *Radio Ayahuasca*, in Nauta, Loreto region, denounced that his journalistic team had received death threats by means of messages sent to their cellular phones. Similarly, on April 16, journalist Denis Flores, host of the news program "Basta ya" on the same station, was attacked by a municipal employee who burst into the radio station. Pinedo linked the attacks to reports by the media outlet on problems with garbage collection service that the municipality of Nauta is in charge of.<sup>1448</sup>

888. On April 22, unknown individuals threw an explosive device at the home of journalist Yofré López Sifuentes, director of the newspaper *Barranca* and host of the program "Toque de Queda" on *Radio Santana*, in Barranca, in the Lima region. The attack damaged the front and inside of the house, and the reporter's parents were slightly injured. López has disseminated critical information about the administration of the mayor of the province of Barranca, and has reported on alleged cases of corruption involving the mayor. He has also reported on pollution caused by the sugar companies of the region. After the attack, the journalist sent a letter to the Ministry of the Interior [*Ministerio del Interior*] requesting guarantees for his and his family's safety.<sup>1449</sup> Subsequently, the Attorney General's Office [*Fiscalía*] issued a communiqué reporting that the incident was being investigated.<sup>1450</sup>

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<sup>1444</sup> Frecuencia Latina. March 23, 2014. [Nicolás Lucar pide garantías para reportero amenazado](#); Inter American Press Association (IAPA). [General Assembly, Santiago, Chile, 2014. Peru report](#); Instituto Prensa y Sociedad (IPYS). March 27, 2014. [Periodista denuncia amenazas de muerte tras investigar a alcalde](#).

<sup>1445</sup> Correo. March 27, 2014. [Periodistas de Correo fueron secuestrados](#); La República. March 27, 2014. [Invasores agreden y retienen a dos periodistas en distrito de Arequipa](#); Instituto Prensa y Sociedad (IPYS). March 31, 2014. [Invasores de terrenos secuestran a periodistas para evitar que difundan información](#).

<sup>1446</sup> Los Andes. April 14, 2014. [Roban transmisor y equipos de medio radial en Juliaca](#); La República. April 14, 2014. [Roban equipos de radioemisora en Juliaca](#).

<sup>1447</sup> Asociación Nacional de Periodistas (ANP). May 6, 2014. [Paita: Desconocido amenaza de muerte a periodista radial](#).

<sup>1448</sup> IFEX. Instituto Prensa y Sociedad. April 22, 2014. [Radio team receives death threats in Peru after reports on problems with garbage pick-up](#).

<sup>1449</sup> La República. April 23, 2014. [Dinamitan la vivienda de periodista en Barranca](#); Infobae. May 18, 2014. [Periodistas denuncian una creciente ola de ataques contra la prensa en Perú](#); Reporters Without Borders (RSF). May 9, 2014. [PERÚ | El periodista Yofré López](#)

889. On April 24, journalist Manuel Calloquispe Flores, correspondent for *Inforegión* and director of the program 'La Cara del Pueblo', on *Americana TV*, in the province of Tambopata, department of Madre de Dios, requested personal guarantees from the Office of the Governor of Madre de Dios [*Gobernación*], because he felt that his physical integrity had been threatened.<sup>1451</sup> According to information received, the journalist had been criticized by social communicators who supported the strike against a law that set a maximum quota for gasoline and petroleum. Calloquispe has reported on his television program about the ecological disruption and corruption involved in illegal mining in Madre de Dios, which made him the target of repeated attacks. Before requesting the guarantees, the social communicator had filed a complaint with the Office of the General Public Prosecutor [*Ministerio Público*] after being beaten and threatened by demonstrators while covering a protest.<sup>1452</sup>

890. On May 14, journalist Pilar Fernández Infante, producer and reporter for the programs "Controversia" and "Caiga quien Caiga", broadcast by *Canal 21* in the region of Tumbes, filed a complaint that alleged guards from the National Penitentiary Institute [*Instituto Nacional Penitenciario (INPE)*] tried to intimidate her by shooting into the air when she was waiting to enter the Puerto Pizarro penitentiary in the province of Tumbes. The journalist was reporting on environmental pollution due to wastewater dumped from the prison.<sup>1453</sup>

891. On May 28, John Vásquez, cameraman for *Panamericana Televisión*, was attacked and detained by members of the National Police [*Policía Nacional*] while covering a demonstration by physicians from a hospital in the city of Lima. According to information received, the reporter was there trying to record the demonstrators when he was detained. The social communicator said he was told to make a declaration on June 15, because the police had filed a suit against him for aggression.<sup>1454</sup>

892. On June 4, journalist Carlos Vargas and cameraman Raúl Ruiz, of the program "En Directo" on *Amazonía TV*, Canal 35, in Loreto, were attacked and had their equipment taken away by presumed officials from the Office of Citizen Participation [*Oficina de Participación Ciudadana*], while filming machinery that had supposedly been acquired with a surcharge.<sup>1455</sup>

893. On June 27, journalist Alex Veli Solano was detained as a result of a complaint filed by the mayor of Coviriali, Marco Quiñónez, for the crime of supposed defamation [*difamación*] in the province of Satipo, department of Junín. According to the social communicator, because he was detained on a Friday, he remained in detention in the commissary of Satipo, seated on a wooden chair and shackled, until the morning of June 30. The arrest warrant had been issued by the criminal court [*juzgado penal*] of Satipo even though

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[Sifuentes sufre un atentado en su domicilio](#); Committee to Protect Journalists (CPJ). April 24, 2014. [Bomb detonates outside journalist's home in Peru](#).

<sup>1450</sup> Barranca. May 17, 2014. [Fiscalía Superior emite nota de prensa sobre el caso del atentado a periodista Yofre Lopez](#).

<sup>1451</sup> Asociación Nacional de Periodistas del Perú (ANP). May 6, 2014. [Tambopata: Periodista solicita garantías personales por amenazas contra su integridad física](#); IFEX, May 16, 2014. [Periodista es amenazado por un sector de la prensa y mineros ilegales pide garantías personales](#).

<sup>1452</sup> Inforegión. April 16, 2014. [Corresponsal de INFOREGIÓN en Madre de Dios es agredido por falsos comunicadores](#); Inforegión. April 15, 2014. [Comunicadores de Madre de Dios incitan agresiones contra corresponsal de INFOREGIÓN](#).

<sup>1453</sup> Asociación Nacional de Periodistas (ANP). No date. [Tumbes: intimidan a periodista con disparos al aire](#); Inter American Press Association (IAPA). [General Assembly, Santiago, Chile, 2014. Peru report](#).

<sup>1454</sup> Panamericana. May 28, 2014. [Detienen a periodista durante protesta de médicos en el hospital San Bartolomé](#) (VIDEO); Perú 21. May 28, 2014. [Policía detiene a periodista que grababa huelga médica en Cercado de Lima](#); Perú.com. May 28, 2014. [Lima: Detienen a periodista cuando grababa huelga médica](#) (VIDEO).

<sup>1455</sup> La Región. June 5, 2014. [Agresión al periodismo](#); Pro y Contra. June 5, 2014. [Periodistas son agredidos por trabajadores del GOREL](#); Inter American Press Association (IAPA). [General Assembly, Santiago, Chile, 2014. Peru report](#). October 2014; Amazonía. June 5, 2014. [Trabajadores del Gorel agreden a periodistas](#).

the social communicator had already appeared in response to a first subpoena where he had testified about this case.<sup>1456</sup>

894. Journalist Otilio Nolberto Ríos Valdivieso, director of the program ‘El Equipo de la Noticia’, on radio *Noticias Karibeña*, in the province of Pomabamba, Ancash region, was threatened with death by the candidate for regional counselor from the political organization Movimiento Regional El Maicito. According to the journalist’s complaint, on July 11, the candidate told him that he would “blow to bits” the radio station where he works. The threat was made because the reporter had criticized the candidate’s political organization and questioned the veracity of his resume. On July 14, the journalist requested personal guarantees from the Office of the Governor [*Gobernación*] of Pomabamba.<sup>1457</sup>

895. On August 11, the president of the Ranch Irrigators’ Commission [*Comisión de Regantes de Hacendados*], María Luisa Chamorro, filed a complaint with the police of having been the victim of verbal and physical aggressions by the president of the Board of Users of Cocachacra [*Junta de Usuarios de Cocachacra*], Jesús Cornejo Reynoso, and his accountant, Augusto Paredes Torres. Chamorro on two radio programs had accused both leaders of involvement in irregularities.<sup>1458</sup>

896. On August 22, Karen Layza Mariano and Luis Azabache, reporters at *Canal 15* in the city of Trujillo, were attacked by supposed relatives and supporters of mayor Eugenio Cedano Otiniano when they tried to interview him about denunciations of supposed irregularities involving funds allocated for building a highway.<sup>1459</sup>

897. Journalist Ruth Palacios Olaya, host of the program ‘Caiga quien Caiga’, broadcast by *Canal 21* in Tumbes, denounced being the victim of acts of intimidation and threats through anonymous phone calls, text messages and from a Facebook account. The threats began on September 20, after the journalistic program broadcast a report on supposed criminal acts involving a regional presidency candidate.<sup>1460</sup>

898. Journalist Santos Porras, director of the weekly *Quién* in the city of Huancayo, Junín region, denounced an attempt to murder him, after having reported on presumed cases of corruption tied to local authorities. According to the reporter, on September 13 he was approached by two unknown individuals who forced him into an automobile and took him to a deserted area with the intention of killing him. The journalist was able to jump from the vehicle and escape, but his attackers caught up with him and threw him into the river. Similarly, on September 17, Porras was intercepted by three unknown individuals who threatened to kill him.<sup>1461</sup>

899. On September 21, journalist Ciro Severo Vargas Sánchez, host of the program “Santa Cruz en la Noticia”, on radio *Armonía*, in the province of Huari, Ancash region, was beaten by persons accompanying a

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<sup>1456</sup> Diario Correo. July 1, 2014. [Periodista denuncia que pasó dos días atado a una silla](#); Inforegión. July 2, 2014. [Periodista denuncia detención arbitraria de juez y policías de Satipo](#); Asociación Nacional de Periodistas del Perú (ANP). Facebook page. [Ofip Alerta Perú](#). June 30, 2014.

<sup>1457</sup> La República. August 2, 2014. [Ancash: Periodista fue amenazado de muerte por candidato a Consejero Regional](#); Asociación Nacional de Periodistas del Perú (ANP). August 8, 2014. [Alerta Perú \(Pomabamba\) - Candidato a consejero regional amenaza de muerte a periodista](#); América Noticias. August 2, 2014. [Periodista denuncia amenazas de muerte de candidato a Consejero Regional de Ancash](#).

<sup>1458</sup> La República. August 12, 2014. [Cobarde agresión: dos dirigentes de Tambo agreden a mujer y periodista](#); El Comercio. August 12, 2014. [Mujer fue atacada a correazos en una cabina de radio](#); Diario Correo. August 14, 2014. [Chamorro evoca agresión entre lágrimas y coraje](#).

<sup>1459</sup> Instituto Prensa y Sociedad (IPYS). August 26, 2014. [Periodistas son agredidos por allegados a alcalde y luego detenidos por la policía](#); Inter American Press Association (IAPA). [General Assembly. Santiago, Chile, 2014. Peru Report](#).

<sup>1460</sup> Instituto Prensa y Sociedad (IPYS). November 4, 2014. [Amenazan a periodistas tras emitir denuncia contra candidato regional](#); Asociación Nacional de Periodistas (ANP). No date. [Tumbes: Periodista es amenazada tras difundir reportaje que afectaría a candidato a presidencia regional](#); Diario 16. September 24, 2014. [Tumbes: agreden a periodistas por criticar a candidatos](#).

<sup>1461</sup> IFEX/Instituto Prensa y Sociedad (IPYS). October 8, 2014. [Accusations against local official result in attempt to kill Peruvian journalist](#); Diario Correo. October 1, 2014. [Desconocidos lanzan a periodista al río Mantaro](#).

candidate for the presidency of that region, while covering a final campaign event. The journalist linked the attacks to critical information broadcast on his radio program.<sup>1462</sup>

900. On September 22, journalist Alfredo Vílchez Román, host of the program “Tumbes Habla”, on *TV Norte Canal 25*, in Tumbes, was attacked and beaten by two unknown individuals after denouncing supposed irregularities committed during the administration of the provincial mayor of Tumbes, who was at that moment a candidate for reelection.<sup>1463</sup>

901. In October, journalist John Palomino, of *Radio Picchis*, in Puerto Bermudez, district of Oxapampa, was kidnapped and taken to the locality of La Merced, where he was severely beaten. The attack was perpetrated by a group of people allegedly associated with the mayor of the locality and occurred after the reporter broadcast an audio that involved that authority with an alleged blackmail.<sup>1464</sup>

902. On October 13, in the province of Chanchamayo, Junín region, journalist Eduardo Aucalla Muje, of *Radio Frecuencia 97* and *Canal 5 TV* in Pichanaki, was attacked with sticks and bottles by environmental activists, presumably members of the “Frente de Defensa Ambiental de Pichanaki.”<sup>1465</sup>

903. On October 23, journalists Paola Collazos, of *Canal N* and José Atauje, of *América Televisión* denounced having received death threats associated with their journalistic work, in the province of Huamanga, region of Ayacucho. The journalists reported on alleged criminal organizations in the region and supposed corruption cases that involved public authorities.<sup>1466</sup>

904. On October 23, journalists Alex Vásquez Requejo and Jorge Luis Muñoz Acuña, of *Radio Andina* and *RTV Canal 2 Chota* were insulted and threatened by a group of demonstrators when covering a protest by a group of workers from the municipality of Chota, in the region of Cajamarca. An employee of the Provincial Municipality of Chota who was a trusted member of the staff of the mayor of Chota took part in the attacks<sup>1467</sup>.

905. On November 12, journalist Natalie Barrera and cameraman Ronald Monsefú Rojas, from the journalistic team at *ATV+*, were attacked by supposed security and maintenance workers at the Presbítero Maestro Cemetery, in Barrios Altos, City of Lima. The reporters were trying to cover the funeral of a baby that had died in a nursery school, but the supposed workers blocked their way and attacked them. Both journalists were wounded and their equipment damaged. The manager of Lima’s Public Charity Board [*Beneficencia Pública de Lima*], Juan Rodríguez, responsible for administering the cemetery, denied that the workers were cemetery employees but said that they were instead members of a cooperative that had an agreement with the institution which, at the moment of the incident, was no longer in effect.<sup>1468</sup>

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<sup>1462</sup> Asociación Nacional de Periodistas (ANP). No date. [Huari: Periodista es agredido por seguidores de candidato a Gobierno Regional](#); La República. October 4, 2014. [Periodista es agredido por seguidores de Waldo Ríos](#).

<sup>1463</sup> Asociación Nacional de Periodistas (ANP). No date. [Tumbes: Periodista crítico a reelección de autoridad municipal es agredido por dos desconocidos](#).

<sup>1464</sup> RPP. October 26, 2014. [Pasco: periodista es agredido por denunciar a alcaldesa](#); Pasco Libre. No date. [Periodista es secuestrado y golpeado en Oxapampa](#).

<sup>1465</sup> Andina. October 14, 2014. [Denuncian ataque de presuntos ambientalistas contra periodista](#); Correo. October 14, 2014. [Agarran a palos a periodista delante de congresista](#); Asociación Nacional de Periodistas (ANP). No date. [Satipo: Turba ataca a periodista que cuestionó acciones violentas de frente de defensa ambiental](#).

<sup>1466</sup> IFEX/ Instituto Prensa y Sociedad. October 29, 2014. [Two Peruvian journalists receive death threats after reporting on corrupt public officials](#); América Noticias. October 24, 2014. [Ayacucho: amenazan de muerte a corresponsales de América Televisión y Canal N](#); Asociación Nacional de Periodistas (ANP). No date. [Huamanga: Periodistas reciben amenazas y denuncian obstrucción a su labor informativa](#).

<sup>1467</sup> Asociación Nacional de Periodistas (ANP). No date. [Chota: Funcionario de municipio provincial incita violencia contra periodistas](#).

<sup>1468</sup> El Comercio. November 12, 2014. [Guardias del Presbítero Maestro agreden a periodistas \[Video\]](#); Perú 21. November 12, 2014. [Cercado de Lima: Periodistas sufren golpiza en cementerio Presbítero Maestro](#); RPP. November 12, 2014. [Periodistas son agredidos por supuestos vigilantes del Presbítero Maestro](#).



906. Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR establishes that: “[t]he murder, kidnapping, intimidation, threats against social communicators, as well as the destruction of communications media materials, violates the fundamental rights of people and severely restricts freedom of expression. The States have the duty to prevent and investigate these occurrences, punish their perpetrators and ensure adequate reparation for the victims.”

#### **D. Attacks against journalists and social communicators in the framework of social demonstrations**

907. On March 1, journalist Rudy Huallpa Cayo, a collaborator for the webpage *Telecultura Canal 7*, was shot with a pellet in her left eye while covering a demonstration by inhabitants of Ayaviri, in the department of Puno. The shot had been fired by a presumed police officer while the reporter took photos of the protest.<sup>1469</sup> According to the medical diagnosis, the wound caused loss of vision in that eye.<sup>1470</sup>

908. The Joint Declaration on violence against journalists and media workers in the context of protests, adopted in 2013, indicates that during demonstrations and situations of social unrest, the work of journalists and media workers, as well as the free flow of information, “is essential to keeping the public informed of the events. At the same time, it plays an important role in reporting on the conduct of the State [...] preventing the disproportionate use of force and the abuse of authority.” Accordingly, the authorities must provide journalists with the maximum guarantees in order for them to perform their functions. In this respect, they must ensure that journalists are not arrested, threatened, assaulted, or limited in any manner in their rights as a result of practicing their profession in the context of a public demonstration. The State must not prohibit or criminalize live broadcasts of events, and must abstain from imposing measures that regulate or limit the free circulation of information. Journalists must not be called as witnesses before the courts, and the authorities must respect the right to the confidentiality of sources of information. In addition, their work materials and tools must not be destroyed or confiscated.<sup>1471</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>1472</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>1473</sup>

#### **E. Access to public officials**

909. According to information received by the Office of the Special Rapporteur, on February 27, journalist Liubomir Fernández, a correspondent for the daily newspaper *La República* and a collaborator for the Press and Society Institute [*Instituto Prensa y Sociedad*] organization in the Puno region, was attacked by a member of the escort for President Ollanta Humala. During the inauguration of a project, the reporter had

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<sup>1469</sup> La República. April 5, 2014. [Periodista herido por un policía pide ayuda para tratamiento médico](#); Asociación Nacional de Periodistas (ANP). No date. [31 presidentes de filiales ANP hicieron plantón en el PJ y PNP](#).

<sup>1470</sup> Correo. April 3, 2014. [Periodista herido pierde la vista en un ojo](#); International Federation of Journalists (IFJ). April 8, 2014. [Periodista peruano pierde visión de un ojo por impacto de perdigón disparado por la policía](#); Crónica Viva. April 10, 2014. [Todos unidos en busca de justicia para periodista Rudy Huallpa Cayo](#).

<sup>1471</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>1472</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>1473</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](#).

asked the president about an infrastructure project that had been postponed, when one of the bodyguards pushed him to prevent him from continuing with his questions.<sup>1474</sup>

910. On April 1, a group of journalists trying to obtain statements from president Ollanta Humala, after a session of the Council of Ministers [*Consejo de Ministros*] in the district municipality of Chongoyape, were detained by two presumed police officers from the State Security Directorate [*Dirección de Seguridad del Estado (DIRSEG)*]. The reporters had to argue and struggle with the Police in order to be able to approach the president.<sup>1475</sup>

911. According to information received, the First Lady of Peru, Nadine Heredia, sent a notarized letter to the magazine *Cosas*, to which she had granted an interview, to indicate that she did not authorize the publication of photos of her children. Heredia argued that the interview had been agreed upon in order to talk about her role as a mother, but had drifted to political topics, which was why she felt that the agreement had not been respected and that it was inappropriate to involve her children in the reporting.<sup>1476</sup> The interview was published without photos of Heredia's children. On the other hand, the director of the magazine, Isabel Miró Quesada, denounced that, in addition to the notarized letter, she had been pressured not to publish the First Lady's statements about politics.<sup>1477</sup>

912. Journalist Milagros Leiva, host of the program 'Sin Peros en la Lengua', denounced that attorney and entrepreneur Rodolfo Orellana, investigated for alleged acts of corruption and money laundering, had sent her a letter of extrajudicial conciliation [*conciliación extrajudicial*], warning her that he would sue the media outlet for 100 million US dollars if they did not stop referring to him on their program. A similar letter was received by the directors of the newspaper *El Comercio* and journalists from the program "No culpes a la noche."<sup>1478</sup> On June 24, the entrepreneur had reported through a press communiqué his decision to desist from the judicial actions brought against the media outlets.<sup>1479</sup>

913. On August 26, the program 'Claridad', broadcast by *Canal 55*, in Huamanga, Ayacucho region, and hosted by journalist Claudio Tapia, was suddenly canceled. According to the journalist, the owner of the media outlet had explained to him that the decision came from the company that holds the concession for *Canal 55*, Corporación Daxi. The concessionaire had received death threats due to the program's editorial line, which was critical of regional president's administration. Tapia was also critical of the administration of the provincial mayor of Huamanga and of the Chief Justice of the High Court [*Corte Superior*] of Ayacucho. The journalist also attributed the decision to cancel the program to pressure brought to bear on the concessionaire by the Cablevisión company, which broadcasts the channel, and which had threatened not to renew their contract if they did not cancel the program.<sup>1480</sup>

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<sup>1474</sup> Instituto Prensa y Sociedad (IPYS). March 3, 2014. [Agente de seguridad del presidente Humala agrede a periodista](#); Pachamama radio. February 27, 2014. [VIDEO: Seguridad de Ollanta Humala agrede a periodista en inauguración de carretera](#).

<sup>1475</sup> Instituto Prensa y Sociedad (IPYS). April 30, 2014. [Agentes de Seguridad del Estado retienen a periodistas](#).

<sup>1476</sup> Crónica Viva. April 29, 2014. [Solozarno niega que Heredia busque censurar entrevista](#); RPP. April 29, 2014. [Heredia pide no publicar fotos a revista por no respetar acuerdos](#).

<sup>1477</sup> La República. April 29, 2014. [Revista 'Cosas' confirma presiones para vetar entrevista a Nadine Heredia](#); La República. April 30, 2014. [Nadine Heredia en controversia con revista Cosas por polémica entrevista](#); Notimérica.com. April 30, 2014. [Acusan a Nadine Heredia de intentar vetar una entrevista](#).

<sup>1478</sup> Perú 21. June 22, 2014. [Rodolfo Orellana amenaza demandar a Milagros Leiva por US\\$ 100 millones](#); El Comercio. June 24, 2014. [Orellana pide US\\$100 mlls. a nuestros periodistas y directivos](#); Canal N. June 25, 2014. [Centro de Conciliación que pidió US\\$ 100 mlls. a periodistas sería propiedad de Orellana](#).

<sup>1479</sup> El Comercio. June 24, 2014. [Rodolfo Orellana anuncia que retirará querellas a periodistas](#).

<sup>1480</sup> IFEX/Instituto Prensa y Sociedad. September 5, 2014. [TV program in Peru cancelled after being critical of local administration](#); Committee to Protect Journalists (CPJ). September 10, 2014. [Television program critical of local government in Peru canceled](#).

## F. Subsequent liabilities

914. On March 21, the Transitional Single Judge of the Court of El Santa [*Juzgado Unipersonal Transitorio de la Corte del Santa*] sentenced journalist César Quino, director of the magazine *El Observador*, to a six month suspended sentence for the supposed crime of aggravated defamation [*difamación agravada*] against the then regional president of the department of Ancash, César Álvarez, and payment of civil reparations in the amount of 3,000 new soles (some 1,000 US dollars).<sup>1481</sup> The journalist had appealed the ruling and filed a complaint regarding the Chief Justice of the High Court of Justice of El Santa [*Corte Superior de Justicia del Santa*], Samuel Sánchez Melgarejo, with the Office of Control of the Magistracy [*Oficina de Control de la Magistratura (OCMA)*] because she had information that the magistrate and the plaintiff had a friendly relationship, which would have influenced the criminal proceedings against her.<sup>1482</sup> The Ocma began an investigation of Sánchez.<sup>1483</sup> One day before expiration of the time limit for the Criminal Appeals Chamber [*Sala Penal de Apelaciones*] to hand down its ruling, the plaintiff desisted from the suit.<sup>1484</sup>

915. On March 24, a court rejected two exceptions presented by the defense for Gina Sandoval Cervantes, editor of the economics section of the daily newspaper *Perú 21*, for a case in which she is accused of complicity in the crime of revealing state secrets.<sup>1485</sup> The case goes back to 2012, when a Criminal Court in Lima [*Juzgado Penal de Lima*] ordered the detention and began a criminal court investigation of Sandoval for publicly revealing state secrets under article 330 of the Criminal Code. The incident stemmed from the publication of a note associated with the Draft Version of the Cotton Agreement between Peru and Venezuela [*Proyecto de Convenio de Algodón entre Perú y Venezuela*], along with the discovery on an editor's computer of a digital file "Agenda Consejo de Ministros" (Agenda of the Council of Ministers), in which it appeared that one of the topics to be addressed was a legislative resolution authorizing the entry of a foreign naval unit into the territory of the State. The arrest warrant would have expired in 2012. On April 24, 2013, the Second Criminal Chamber for Proceedings with Prisoners in the Jail of the Supreme Court of Justice of Lima [*Segunda Sala Penal para Procesos con reos en Cárcel de la Corte Superior de Justicia de Lima*] revoked a decision by a lower court that ordered the definitive shelving of criminal proceedings against Sandoval. In July of 2013, the same Criminal Chamber [*Sala Penal*] requested enlargement of the imputation of the crime to incorporate the aggravating circumstance (to act "for profit").<sup>1486</sup> The defense had raised an objection [*había puesto una excepción*], but the Court held that Sandoval received monthly remuneration at *Perú 21* for her professional work as a journalist, which motivated her because of this economic advantage to publish the information in question. If this decision is upheld, the journalist could receive a prison term of as much as 15 years. The second objection regarding the nature of the action is because a perpetrator who reveals state secrets would have to have the special status of having custody of secret information. Only those who have been assigned a specific obligation to create or control it would have this status. This objection was also denied.<sup>1487</sup>

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<sup>1481</sup> El Comercio. March 25, 2014. [Áncash: fallo contra periodista amenaza libertad de expresión](#); Chimbotenlinea.com. March 23, 2014. [Gremios periodísticos rechazan sentencia en contra de César Quino por querella presentada por Álvarez](#); Chimbotenlinea.com. March 22, 2014. [Califican de ridícula e injusta sentencia a periodista César Quino](#).

<sup>1482</sup> Poder Público. April 21, 2014. [Con fotografías periodista Queja en Ocma a Presidente de Corte de Justicia del Santa](#); Diario 16. April 22, 2014. [Fotografías revelarían amistad entre Álvarez y presidente de Corte del Santa](#).

<sup>1483</sup> Diario de Chimbote. September 20, 2014. [OCMA abre investigación a presidente de Corte del Santa](#); El Comercio. September 21, 2014. [Titular de la corte del Santa estaría vinculado a Álvarez](#).

<sup>1484</sup> Chimbotenlinea.com. October 31, 2014. [César Álvarez desistió de querella contra periodista chimbotano](#); Diario de Chimbote. November 1, 2014. [César Álvarez se desiste de querella formulada contra César Quino Escudero](#); Correo. October 31, 2014. [César Álvarez desiste de querella contra periodista](#).

<sup>1485</sup> Letter sent to the Special Rapporteur for Freedom of Expression signed by Prensa Popular S.A.C. March 25, 2014. Available at: Archives of the Special Rapporteur for Freedom of Expression.

<sup>1486</sup> IACHR. [Annual Report 2013. 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.149. Doc. 50. December 31, 2013. Para. 745; Letter sent to the 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 at: Archives of the Special Rapporteur for Freedom of Expression.

<sup>1487</sup> Letter sent to the Special Rapporteur for Freedom of Expression signed by Prensa Popular S.A.C. March 25, 2014. Available at: Archives of the Special Rapporteur for Freedom of Expression.

916. As expressed by the Special Rapporteurs on their joint statement on WikiLeaks (2010) “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>1488</sup>

## G. Legal reforms

917. The Special Rapporteur was informed that on March 10, the Executive Branch had promulgated Law 30,171, which modifies law 30,096 on Computer Crimes [*Delitos Informáticos*].<sup>1489</sup> The modifications, approved by Congress on February 12, aim to rectify certain problematical aspects of Law 30,096, approved on October 22, 2013.<sup>1490</sup> The modifications establish that actions committed “deliberately and illegitimately” in crimes of illicit access to computer systems [*acceso ilícito a sistemas informáticos*] (article 2), attacks against the integrity of computer data [*atentado contra la integridad de datos informáticos*] (art. 3) and against the integrity of computer systems [*contra la integridad de sistemas informáticos*] (art. 4), interception of computer data [*interceptación de datos informáticos*] (art. 7), computer fraud [*fraude informático*] (art. 8) and abuse of computer mechanisms and devices [*abuso de mecanismos y dispositivos informáticos*] (art. 10) will be punished. It also modifies article 5, on propositions to boys, girls and adolescents for sexual purposes using technological means. Similarly, it modifies articles 158 (execution of criminal proceedings [*Ejercicio de la acción penal*]), article 162 (telephonic interference [*Interferencia telefónica*]) and article 323 (discrimination and incitement to discrimination [*Discriminación e incitación a la discriminación*]) of the Criminal Code, and incorporates articles 154-A, on illegal trafficking of personal information [*tráfico ilegal de datos personales*], and 183-B, on sexual propositions to boys, girls and adolescents [*sobre proposiciones sexuales a niños, niñas y adolescentes*].<sup>1491</sup>

918. Law 30,096 on Computer Crimes [*Delitos Informáticos*], approved with the aim of “preventing and punishing illicit conducts that affect computer systems and data and other legal properties of criminal relevance, committed through the use of information technologies [...]”, had been questioned by civil society organizations who expressed their concern over the extent and ambiguity of certain conducts and suppositions that, in practice, could lead to the application of severe punishments for carrying out activities protected by the right to freedom of expression and access to information.<sup>1492</sup>

919. In the 2013 Annual Report, the Office of the Special Rapporteur had expressed concern over the extent of the terms of some of the provisions enshrined in Law N° 30,096, which could give rise to interpretations that would lead to punishment of activities and practices that are common or inherent to use of the Internet and information and communications technologies in general. The Rapporteurship

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<sup>1488</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>1489</sup> Diario Oficial. March 10, 2014. [Ley N° 30171, que modifica la Ley 30096, de Delitos Informáticos](#).

<sup>1490</sup> IACHR. [Annual Report 2013. 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. 760-764.

<sup>1491</sup> Diario Oficial. March 10, 2014. [Ley N° 30171, que modifica la Ley 30096, de Delitos Informáticos](#).

<sup>1492</sup> IACHR. [Annual Report 2013. 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. 760-764.

recommended “when taking initiatives to punish cyber crime, the States must include explicit safeguards in the norms to ensure that legitimate conducts are not criminalized, such as the requirement that the defined acts involve damages and that they be carried out with the intention of committing a crime.”<sup>1493</sup>

920. In this sense, the Special Rapporteur notes with satisfaction the modifications made to Law N° 30,096.

#### **H. Other relevant situations**

921. At the hearing on the “Situation of the Right to Freedom of Expression and Concentration of Communications Media Ownership in Peru” [*Situación del derecho a la libertad de expresión y concentración de propiedad de medios de comunicación en Perú*],<sup>1494</sup> held on March 24, 2014, during the 150<sup>th</sup> ordinary period of sessions of the IACHR, the Office of the Special Rapporteur received information on what could be a concentration of communications media ownership. According to the petitioners, there is a concentration of printed communications media ownership in the country, stemming from the acquisition of four daily newspapers by the Grupo El Comercio from the Grupo Epena. As a result of this transaction, the acquiring group has a total of 9 daily newspapers, which translates into a concentration of 78% of the media outlets. Secondly, the petitioners referred to the topic of cross-ownership of media outlets, explaining that the Grupo El Comercio owns the country’s main television channel (*América Televisión*). They emphasized that these situations of concentration also affect radio, because certain groups have various radio stations with national coverage, which affects the access and survival of certain local media outlets. The petitioners expressed their concern over the abusive use of the right of private property that could affect freedom of expression in the country, stating that the judicial channel would be suitable for achieving acceptable levels of concentration that guarantee plurality and diversity of information. The petitioners reported on a case in which the National Human Rights Coordinator [*Coordinadora Nacional de Derechos Humanos*] was affected by inexact and damaging information disseminated through the webpage of the daily newspaper El Comercio, stating that it already exercised the right to rectification without favorable results as yet.

922. The Government of Peru stated that it fully intended to respect the judicial ruling issued regarding the concentration of the Grupo El Comercio, expressing that there are conditions in the country that ensure the issuance of an independent judicial ruling. The State clarified that it does not have any specialized body charged with evaluating the conduct of printed media outlets. He also said that in local legislation (Law 28278), there is a provision that establishes that radio and television cannot be the object of exclusivity or monopoly nor direct or indirect hoarding by the State or by private parties and that this provision sets criteria and percentages to identify when there is a situation of hoarding. It explained that the Constitutional Court [*Tribunal Constitucional*] has provided interpretive guidelines for article 61 of the Constitution, but that there is no constitutionally-developed norm regarding antimonopoly laws because until now they have not faced this problem.

923. In May, the 17<sup>th</sup> Specialized Civil Court of Lima [*17° Juzgado Especializado Civil de Lima*] partially admitted a declaratory lawsuit [*demanda declarativa*] filed by the Grupo El Comercio, asking the Court to declare the legality of the sales contracts between El Comercio and Epena. On June 4, the 17<sup>th</sup> Specialized Civil Court of Lima [*17° Juzgado Especializado Civil de Lima*] declared the civil suit brought by the eight journalists alleging media concentration to be inadmissible. According to information received, the journalists were informed of the suit filed against them once they were notified of the inadmissibility of the

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<sup>1493</sup> IACHR. [Annual Report 2013. 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. 764.

<sup>1494</sup> IACHR. 150 Periodo de Sesiones. Audiencia Situación del derecho a la libertad de expresión y concentración de propiedad de medios de comunicación en Perú. March 24, 2014. Available for consultation at: <http://www.oas.org/es/cidh/multimedia/sesiones/150/default.asp>; IACHR. April 4, 2014. [Press Release 35/14. IACHR Wraps Up its 150th Session](#); IACHR. May 13, 2014. [Press Release 35A/14. Report on the 150th Session of the IACHR](#).

suit filed by the group. The judge in charge admitted continuance of the trial against the Grupo La República filed by the Grupo El Comercio.<sup>1495</sup> As of the date of this report, the case is ongoing.

924. Journalist Paul Garay, director and host of the program 'Polémica' on the channel *Visión 47*, in Pucallpa, Ucayali region, denounced having been the victim of judicial persecution due to his journalistic work. On January 2, Garay had been criminally sued for the supposed crime of money laundering. According to Garay, the plaintiff is a close collaborator of entrepreneurs that he had denounced in his reporting. The journalist had also denounced having been the victim of threats and actions for intimidation linked to the dissemination of reports that reveal acts of corruption involving the entrepreneur Rodolfo Orellana, chief justice of the High Court of Justice [*Corte Superior de Justicia*] of Ucayali and various judges and prosecutors.<sup>1496</sup>

925. On February 27, in the Lambayeque region, the director of the weekly magazine *Expresión*, Rosa Chambergo, denounced that unknown individuals had purchased around 3500 copies of the latest edition of the magazine, in which a denunciation had been published of irregularities involving the candidate for the office of mayor of Chiclayo from the Alianza para el Progreso party.<sup>1497</sup>

926. On July 3, journalist Phillip Butters denounced that his telephone had been intercepted. According to information received, the reporter affirmed that for some time he had perceived an echo in his telephone conversations and that they were abruptly being cut off. He also declared that his informants had told him that there was a plan to follow him and that he had asked the Minister of the Interior [*Ministro del Interior*] to intervene in the matter. Following his denunciation, the minister had offered to meet with the reporter and assured him that he would investigate the matter.<sup>1498</sup>

927. On July 16, the Transitory Criminal Chamber of the Supreme Court of Justice [*Sala Penal Transitoria de la Corte Suprema de Justicia*] confirmed the sentence acquitting the former mayor of Coronel Portillo, Pucallpa, Luis Valdez Villacorta, and his former municipal manager, Solio Ramírez Garay, as alleged masterminds of the murder of journalist Alberto Rivera Fernández, which occurred on April 21, 2004.<sup>1499</sup> On May 10, 2012, the Third Criminal Chamber of Lima [*Tercera Sala Penal de Reos Libres de Lima*] had acquitted Valdez and Ramírez Garay. The case was transferred to the Supreme Court of Justice [*Corte Suprema de Justicia*], but due to a tie in the votes of the magistrates --three voted in favor of confirming the sentence of acquittal and three in favor of it being annulled -- Judge Luis Alberto Cevallos Vega, magistrate of the Permanent Criminal Chamber of the Supreme Court [*Sala Penal Permanente de la Corte Suprema*] was asked to cast the deciding vote.<sup>1500</sup> The magistrate voted not to annul the acquittal and ordered the case shelved.<sup>1501</sup> Valdez had been acquitted three times.<sup>1502</sup>

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<sup>1495</sup> La República. October 20, 2014. [El caso de concentración de medios en Perú está en manos del Poder Judicial](#); Útero. June 5, 2014. [TODO LO QUE TIENES QUE SABER SOBRE LA NUEVA BATALLA DE LA CONCENTRACIÓN DE MEDIOS](#); Clases de Periodismo. June 4, 2014. [Perú: Rechazan demanda de El Comercio contra ocho periodistas](#); El Comercio. June 4, 2014. [Juez admite demanda declarativa de Empresa Editora El Comercio](#).

<sup>1496</sup> Instituto Prensa y Sociedad (IPYS). February 12, 2014. [Periodista denuncia persecución judicial y reglaje tras emitir reportajes sobre corrupción de jueces y fiscales](#); Diario 16. April 9, 2014. [Centro Liber asume defensa de más de 20 periodistas querrelados](#); La República. April 9, 2014. [Reclaman por acoso judicial a periodistas que investigan empresas del grupo Orellana](#).

<sup>1497</sup> Instituto Prensa y Sociedad (IPYS). March 1, 2014. [Desconocidos compran miles de ejemplares de semanario que denunció a candidato](#).

<sup>1498</sup> Perú 21. July 3, 2014. [Phillip Butters denuncia que es víctima de chuponeo](#); Studio 92. July 3, 2014. [Urresti recibirá a Phillip Butters por denuncia de chuponeo](#).

<sup>1499</sup> Perú 21. July 16, 2014. [Corte Suprema confirma absolución de Luis Valdez en crimen de Alberto Rivera](#); El Comercio. July 16, 2014. [Caso Alberto Rivera: el PJ confirma absolución de Luis Valdez](#).

<sup>1500</sup> El Comercio. May 15, 2014. [Crimen de periodista Rivera: Nuevo juez escuchará informes](#).

<sup>1501</sup> Suprema Corte de Justicia de la República. Sala Penal Transitoria. July 16, 2014. [Nulidad N° 2966-2012](#).

<sup>1502</sup> La República. July 16, 2014. [Confirman sentencia que absuelve a exalcalde Luis Valdez de crimen contra periodista](#); Perú.com. July 16, 2014. [Pucallpa: Confirman sentencia que absolvió a Luis Valdez](#).

928. Days before being murdered, journalist Rivera Fernández had criticized the municipal administration and linked senior local authorities with drug trafficking activities. The Office of the Special Rapporteur for Freedom of Expression has repeatedly expressed concern over the meager progress in the case and urged the authorities to clarify the causes of the crime, identify and punish those responsible and fairly compensate the victim's family.<sup>1503</sup>

929. On August 14, Lilia Esther Valenzuela Zorrilla, director of the daily newspaper *La Calle* and journalist on the program 'Estación noticiosa', on radio *Estación Wari*, was summoned to testify by the Terrorism Investigation Department of the National Police [*Departamento de Investigación de Terrorismo de la Policía Nacional*], in the course of proceedings based on a complaint by the Chief Justice of the High Court of Justice of Ayacucho [*Presidente de la Corte Superior de Justicia de Ayacucho*], Tony Changaray Segura. On February 21, the magistrate wrote a letter to the Attorney General [*Fiscal de la Nación*] requesting that an investigation be made of the daily newspaper *La Calle* and radio *Estación Wari*, because he understood those media outlets to be undermining the prestige of the Judicial Branch, the Regional Government of Ayacucho and other state institutions. He also accused the media outlets of collaborating with the group called *Movimiento por Amnistía y Derechos Fundamentales*. Both media had covered alleged acts of corruption involving public officials and the actions of Judge Changaray Segura have been questioned.<sup>1504</sup>

930. The Office of the Special Rapporteur was informed about judicial proceedings in the murder of journalist Hugo Bustíos Saavedra, correspondent for the magazine *Caretas*, which took place on November 24, 1988. According to information received, the current Minister of the Interior, Daniel Urresti Elera, was being tried beginning in June 2013 for the journalist's murder. According to the Office of the General Public Prosecutor's [*Ministerio Público*] dossier, the official, a retired military officer and who at that time was the head of the S-2 Intelligence Section in the department of Ayacucho, had been accused of being an "alleged direct perpetrator in the commission of the crime against life, body and health, under the modality of murder [*delito contra la vida, el cuerpo y la salud, en modalidad de asesinato*]" of Bustíos Saavedra and "as the alleged perpetrator of the crime against life, body and health, in the modality of attempted murder [*asesinato en grado de tentativa*]" of Eduardo Rojas Arce, correspondent for the magazine *Actualidad*. The accusation was taken to the Criminal Chamber so that that body could decide whether or not to begin a trial of the minister or if the case is to be shelved.<sup>1505</sup> According to the dossier, journalists Hugo Bustíos Saavedra and Eduardo Rojas Arce had traveled to Quinrapa, province of Huanta, Ayacucho, to cover a crime involving two people in the framework of the conflict with the then guerrilla group Sendero Luminoso. The journalists were first required to obtain a permit to be in the area, which was verbally given by the then Military and Political Commander of Huanta [*Jefe Político Militar de Huanta*], Víctor La Vera Hernández, and had then decided to return to the area. When the social communicators, who were traveling on a motorcycle, were near the home of the victims, "by order of the Base Commander [*Jefe de Base*] Víctor Fernando La Vera Hernández" they were "ambushed and attacked by members of the Peruvian army from the Castropampa Military Base under the command of officer EP Daniel Belizario Urresti Elera." Bustíos Saavedra was badly wounded while Rojas Arce was able to run and save himself. The attackers placed an explosive charge on the wounded journalist's body, who died as

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<sup>1503</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. 429; 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. 469; 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. 390; 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. 462.

<sup>1504</sup> Asociación Nacional de Periodistas (ANP). No date. [Huamanga: Presidente de Corte de Ayacucho impulsó denuncia contra radio Estación Wari y diario La Calle](#).

<sup>1505</sup> El Comercio. July 2, 2014. [Ministro del Interior es procesado por crimen de periodista](#); Perú 21. July 2, 2014. [Ministro Urresti es procesado por asesinato de periodista en Ayacucho](#); Américanoticias.pe. July 2, 2014. [Ministro del Interior Daniel Urresti es procesado por crimen de periodista en Ayacucho](#); La República. July 2, 2014. [Ministro Urresti es procesado por asesinato de periodista](#); El Comercio. [2º Juzgado Penal. Expediente 01145-2013-0-0501-JR-PE-02. AUTO DE APERTURA DE INSTRUCCIÓN. Resolución Nro. 1](#). June 17, 2013.

a result of that attack.<sup>1506</sup> In this case, in September of 2008, the Supreme Court of Justice [*Corte Suprema de Justicia*] upheld the sentences of 17 and 15 years of imprisonment of colonel La Vera and lieutenant colonel Amador Armando Vidal, respectively.<sup>1507</sup> The IACHR in this matter maintained that the State was responsible, among other things, for violation of Article 13 of the American Convention, given that, knowing about the existence of journalists in the zone of conflict, the State had neglected to provide them with the necessary protection.<sup>1508</sup>

931. In a letter of August 22 to the Office of the Special Rapporteur, the State reported that in addition to the sentences upheld by the Supreme Court [*Corte Suprema*] in 2008, that a criminal judge had currently decided “to open a judicial inquiry against another person for the events associated with the death of journalist Hugo Bustíos, whose name does not appear in the Sentence of the National Criminal Chamber [*Sala Penal Nacional*] or in that of the Supreme Court [*Corte Suprema*].” They added that the Office of the General Public Prosecutor [*Ministerio Público*] is currently at a stage in which they must decide “whether to issue an indictment against the new person that has been linked to the facts of the case.”<sup>1509</sup>

## **26. Dominican Republic**

### **A. Murders**

932. On July 1, two unidentified individuals opened fire against the cameraman and editor of *Canal 25* Newton González, taking his life. Apparently, the killers were on a motorcycle and wore helmets so as not to be identified. According to members of the journalist’s family, the perpetrators had stolen a motorcycle from the deceased.<sup>1510</sup> As of the date of this report, there is no clear connection between the crime and exercise of the victim’s work as a journalist. Nonetheless, the Office of the Special Rapporteur considers it of fundamental importance that the authorities investigate these incidents without discarding the hypothesis of a link between journalistic activity and freedom of expression.

933. 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.”

### **B. Aggressions, Threats and Detentions against Journalists and Communications Media**

934. In early January, the correspondent for the newspaper *El Nacional* in San Francisco de Macorís, Pedro Fernández, had indicated that he had evidence that a local drug trafficker known as “Michel” had contracted two hitmen to kill him. According to the journalist, his reporting on the war between gangs of drug traffickers in this part of the country would be the cause of the threat.<sup>1511</sup> In mid January, police agents

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<sup>1506</sup> El Comercio. [2º Juzgado Penal. Expediente 01145-2013-0-0501-JR-PE-02. AUTO DE APERTURA DE INSTRUCCIÓN. Resolución Nro. 1.](#) June 17, 2013.

<sup>1507</sup> IACHR. [Annual Report 2008. 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. 211; El Comercio. July 2, 2014. [Ministro del Interior es procesado por crimen de periodista](#); Américanoticias.pe. July 2, 2014. [Ministro del Interior Daniel Urresti es procesado por crimen de periodista en Ayacucho.](#)

<sup>1508</sup> IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression.](#) Chapter III (Violence Against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 243.

<sup>1509</sup> República del Perú. Procuraduría Pública Especializada Supranacional. August 22, 2014. Available at: Archives of the Special Rapporteur for Freedom of Expression.

<sup>1510</sup> Reporters Without Borders (RSF). July 2, 2014. [Tv Cameraman Gunned Down In Dominican Republic](#); El Día. July 1, 2014. [Sicarios matan a tiros en Santiago al reportero Newton González](#); El Caribe. July 1, 2014. [Camarógrafo asesinado habría salido a cobrar dinero y fue despojado de motor](#); Acento. July 1, 2014. [Asesinan a tiros a Newton González, veterano productor de TV de Santiago](#)

<sup>1511</sup> Reporters Without Borders (RSF). January 13, 2014. [Provincial Newspaper Reporter Denounces Plot To Kill Him](#)



arrested an individual presumed of being related with the assassination plan of the journalist.<sup>1512</sup> A few months later, unknown individuals threw teargas bombs at the inside of the journalist's home. Likewise, they warned him through a letter to stop "attacking" the points of drug sales in that zone or they would kill him. A few days later, the communicator was the victim of an attack with a firearm. Apparently, while Pedro Fernández was driving his car in the Los Chiripos neighborhood of San Francisco de Macorís, he heard shots and was able to descend from his vehicle to escape and emerge unscathed from the aggression.<sup>1513</sup>

935. Journalist and writer Luis Rojas Durán, based in the United States, had been threatened after a visit to his country where he had taken part in the Book Fair, presenting his work '*A una pulgada de la muerte, las conspiraciones militares*'. On that occasion, two men approached him and after greeting him, one of them said "you are a lucky man that they have not killed you here, take care."<sup>1514</sup>

936. In March, the IACHR received information about an investigation derived from the complaint filed by the journalist from *ciudadoriental.org*, Julio Benzant, against the urban artist 'El Sujeto' for alleged aggression and attempted murder. Benzant had been attacked by 'El Sujeto' while detained at the Attorney General's Office [*Fiscalía*] while waiting for a hearing. The journalist had declared that this suit had not been filed only by him but also by the Press Workers Union [*Sindicato de trabajadores de la prensa*]. On March 10, 'El Sujeto' had apologized for aggressions committed against Benzant. In response to this situation, he desisted from continuing with the suit.<sup>1515</sup>

937. On May 29, a journalist from the medium *Listín Diario*, Pamela Gioconda, had been attacked by members of the municipal police [*policía municipal*] while using his cellular phone to record various agents who presumably were beating a Haitian citizen. Gioconda had declared that one of the agents had taken away his cell phone that he was using to record the alleged incident, taken out the memory card and smashed the cell phone against the ground.<sup>1516</sup>

938. On June 11, agents of the National Drug Control Directorate [*Dirección Nacional de Control de Drogas (DNCD)*] detained journalist Gerardo de Jesús Abréu when he was filming an anti-narcotics police operation. The authorities took away his camera and mobile phone, handcuffed him and detained him in his automobile, even though the communicator had identified himself as a journalist. A few days later, on June 14, a team from the DNCN, on orders of the prosecutor, Cindy Burgos, attacked journalist Genry Morel in front of the residence of radio announcer Ramón Sánchez. The announcer's daughters filmed the police beating Genry Morel, which was why the agents entered the radio announcer's home and detained his daughters. Apparently, the prosecutor later blackmailed them, telling them that she would free them on condition that they not file a complaint against her.<sup>1517</sup>

939. The journalist and director of the digital newspaper *universodeopinion.com*, Rafael Santana, declared that his articles bothered a sector of the National Police [*Policía Nacional*], therefore it was

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<sup>1512</sup> Fulldeto. January 19, 2014. [Capturan hombre implicado en plan de asesinato de periodista](#); Francomacorisanos. January 18, 2014. [Apresan uno implicado en la trama para asesinar al periodista Pedro Fernández](#)

<sup>1513</sup> Reporters Without Borders (RSF). July 1, 2014. [Gunmen Open Fire On El Nacional Reporter Pedro Fernandez](#); El Día. June 30, 2014. [Atacan a tiros al periodista Pedro Fernández en San Francisco de Macorís; logra salir ileso](#); Listín Diario. October 20, 2014. [Alerta amenazas a la prensa en RD](#)

<sup>1514</sup> El Jaya. May 23, 2014. [Escritor y periodista dominicano NY denuncia le hicieron advertencia de muerte en RD](#); El Nuevo Diario. May 23, 2014. [Escritor y periodista dominicano en NY denuncia le hicieron advertencia de muerte en RD](#)

<sup>1515</sup> De la Zona Oriental.net. March 9, 2014. [Periodista Julio Benzant: "Si El Sujeto no se presenta este lunes a la Fiscalía, puede ser arrestado."](#) La voz del SNTP. March 10, 2014. [El Sujeto pide disculpas por agresión a periodista Julio Benzant](#)

<sup>1516</sup> Listín Diario. May 30, 2014. [Periodista es agredida por Policía Municipal de la avenida Duarte](#). Informando 24 horas. May 30, 2014. [Policía Municipal del Distrito agrade a periodista](#)

<sup>1517</sup> Reporters Without Borders (RSF). June 24, 2014. [Two Dominican journalists arrested summarily during drug raids; Dominicano Ahora. June 17, 2014. CDP denuncia abusos de fiscales y agentes de la DNCD contra periodistas](#); Al momento. June 16, 2014. [CDP condena detención y agresión periodista Genry Morel](#)

presumed that such situation created a conspiracy against him. Santana's articles addressed and denounced situations linked to drug trafficking and hired gunmen and dealt with the social policy of President Danilo Medina<sup>1518</sup>.

940. On July 31, President Danilo Medina had stated that with the purpose of strengthening democracy, the government would guarantee absolute respect for freedom of expression and the dissemination of thought. Medina stated the above in the course of a meeting with a group of Dominican entrepreneurs and executives from newspapers from different countries of the region.<sup>1519</sup>

941. Journalists Yaniris Sánchez and José Cruz, of Telenoticias *Canal 11*, and journalist Silvino da Silva, of the National Informative Service [*Servicio Informativo Nacional*] of *Canal 9*, were injured by rocks and bottles thrown by a presumed group of Haitians who had taken part in an alleged shootout with police in the 27 de Febrero Neighborhood of the Dominican capital. Such confrontation was created because of the death caused to a Haitian by a police agent.<sup>1520</sup>

942. In a city near San Francisco de Macorís, journalist Elías Almanzar, director of an independent portal, was shot at by unknown individuals who distributed fliers that included presumed threats against his life.<sup>1521</sup>

943. In October, the *Diario Libre* denounced that an armed mob allegedly accompanied by bailiff Leyvi Ali Núñez Díaz, from the Santo Domingo Court of Appeals [*Corte de Apelación de Santo Domingo*], had taken two vehicles away from drivers of *Diario Libre* while the journalists were carrying out their duties. Likewise, it was informed that they attempted to take a third vehicle.<sup>1522</sup>

944. In October, the regional vice president for the Dominican Republic of the Committee on Freedom of the Press of the Inter-American Press Association (IAPA) and the director of *Listín Diario*, Miguel Franjul, had warned of presumed aggressions, abuses and threats that demonstrated presumed conditions of insecurity for the exercise of journalism. In this framework, the country's main newspapers agreed to reactivate the Dominican Newspapers Society [*Sociedad Dominicana de diarios*] to fight for the repeal of the laws that penalize journalism.<sup>1523</sup>

945. In the Joint Declaration of the year 2012, the Special Rapporteurs for the freedom of expression remarked that the States should ensure that effective and concrete protection is made available on an urgent basis to individuals likely to be targeted for exercising their right to freedom of expression. Specialised protection programmes, based on local needs and challenges, should be put in place where there is an ongoing and serious risk of crimes against freedom of expression. These specialised programmes should include a range of protection measures, which should be tailored to the individual circumstances of the

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<sup>1518</sup> Universo de opinión. June 18, 2014. [Artículos del periodista Rafael G. Santana irritarían sector oscuro de PN](#); Universo de opinión. 24 de agosto de 2014. [CDP denuncia intento de silenciar al periodista Rafael G. Santana responsabiliza algunos altos oficiales de la policía](#)

<sup>1519</sup> Inter American Press Association (IAPA). No date. [Dominican Republic](#). Diario Digital. July 31, 2014. [Presidente Medina va al Listín y garantiza libertad de expresión](#); Listín Diario. August 1, de Agosto, 2014. [Presidente garantiza la libertad de expresión](#); Diario de 3. No date. [Medina felicita a periodistas y garantiza libertad de expresión](#)

<sup>1520</sup> Inter American Press Association (IAPA). No date. [Dominican Republic](#); Listín Diario. 20 de octubre de 2014. [Alerta amenazas a la prensa en RD](#); Listín Diario. August 1, de Agosto, 2014. [Presidente garantiza la libertad de expresión](#); Listín Diario. September 21, 2014. [Haitianos atacan a la policía](#); Demaosoy. September 21, 2014. [Decenas de haitianos atacan a la policía y a periodistas luego de muerte compatriota](#)

<sup>1521</sup> Inter American Press Association (IAPA). No date. [Dominican Republic](#); Listín Diario. 20 de octubre de 2014. [Alerta amenazas a la prensa en RD](#)

<sup>1522</sup> Diario Libre. October 10, 2014. [Turba armada secuestra tres vehículos propiedad de Diario Libre](#); Inter American Press Association (IAPA). No date. [Dominican Republic](#); Listín Diario. 20 de octubre de 2014. [Alerta amenazas a la prensa en RD](#)

<sup>1523</sup> Inter American Press Association (IAPA). No date. [Dominican Republic](#); Listín Diario. 20 de octubre de 2014. [Alerta amenazas a la prensa en RD](#)

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>1524</sup>.

### C. Access to Information and Public Officials

946. On October 5, the newspaper *Hoy* publicly denounced the presumably limited flow of information between the press and government authorities and affirmed “that journalists assigned to the seat of the Executive Branch are subject to bureaucratic rigidities that make it difficult for them to carry out their work of interviewing the senior officials who are there.”<sup>1525</sup>

947. 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.”

### D. Other Relevant Situations

948. Journalists Marino Zapete, Alicia Ortega, Juan Taveras Hernández and Rosendo Tavarez, who take part in diverse radio and television programs, have been taken to court by presumed officials and citizens who allege that they have been presumably slandered and who have requested to open legal proceedings against such journalists in diverse courts.<sup>1526</sup>

949. On November 29, 2013, Fermín Marcelino Calderón, accused of having taken part in the homicide of journalist José Silvestre, who was kidnapped and murdered on August 2, 2011, was freed on bail.<sup>1527</sup>

950. Journalist Roberto Brito had denounced death threats that he had received from the leader of the Social Christian Reformist Party [*Partido Reformista Social Cristiano (PRSC)*], Sergio Cedeño due to the fact that the journalist recently complained to Cedeño about allegedly unfair dismissals in such political party. Brito had declared that Cedeño had tried to physically attack him and had threatened to kill him or make him disappear. The above occurred during a meeting at the headquarters of the political organization. Brito had complained to Cedeño about presumed firings at that political party that he considered unjust.<sup>1528</sup>

## 27. Trinidad and Tobago

### A. Progress

951. On January 24, the country’s House of Representatives passed the draft amendment to the

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<sup>1524</sup> United Nations (UN) Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights of the Organization of American States (OAS) and African Commission on Human and People’s Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 25, 2012. [Joint Declaration on Crimes Against Freedom Of Expression](#).

<sup>1525</sup> *Hoy*. October 5, 2014. [Mejorar el acceso para la prensa](#); Inter American Press Association (IAPA). No date. [Dominican Republic](#); Listín Diario. 20 de octubre de 2014. [Alerta amenazas a la prensa en RD](#)

<sup>1526</sup> Inter American Press Association (IAPA). No date. [Dominican Republic](#); Listín Diario. 20 de octubre de 2014. [Alerta amenazas a la prensa en RD](#)

<sup>1527</sup> Reporters Without Borders (RSF). December 5, 2013. [Impunity Wins Out As Suspect In Journalist’s Murder Is Freed On Bail](#); Diario Libre. November 30, 2013. [Liberan a un acusado de la muerte de José Silvestre](#); Acento. 30 de noviembre de 2013. [Liberan implicado en la muerte de periodista José Silvestre MP apelará](#)

<sup>1528</sup> El Nuevo Diario. June 25, 2014. [Roberto Brito denuncia amenazas de muerte de dirigente PRSC](#); Listín Diario. June 26, 2014. [Periodista Roberto Brito denuncia que es amenazado de muerte por dirigente del PRSC](#)

Libel and Defamation Act,<sup>1529</sup> which partially decriminalized defamation. The bill seeks to abolish section 9 of the Act, which establishes that the publication of defamatory information, whether intentional or not, is punishable by a fine and a term of imprisonment of one year. However, section 8, which considers intentional defamation a crime and prescribes a penalty of two years in prison, remains the same.<sup>1530</sup> On February 18, the Senate passed the bill forwarded by the House of Representatives.<sup>1531</sup>

## **B. Threats against media outlets and journalists**

952. The Office of the Special Rapporteur had knowledge of the death threats against Mark Bassant, an investigative journalist from the *Caribbean Communication Network* (CNN) TV6, which reportedly forced him to leave the country on May 11. According to reports, on May 7, the journalist stated that one of his sources had informed him that persons involved in criminal activity were furious with his reporting and that his life was at risk. The journalist apparently reported this to the authorities, including to the Minister of National Security and to the Acting Police Commissioner. The journalist also reportedly held a meeting with a national intelligence service officer who had advised him to take protection measures, but had not offered him any. Bassant reportedly stated that on the same day as that meeting, his sources informed him that some police officers were monitoring him in order to report him to people who wanted to kill him. On May 9, intelligence service officers reportedly confirmed to the journalist that his name was on a list of people to be murdered, and was therefore in imminent danger. On May 11, the journalist reportedly left the country for another place where he remained in contact with the authorities, reportedly via video.<sup>1532</sup> According to the information received, the journalist returned to the country in spite of the ongoing threats against him, and the fact that the investigation remains in progress.<sup>1533</sup> The Office of the Special Rapporteur requested information from the State regarding the journalist's situation, but did not receive a reply.

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

## **C. Other relevant situations**

954. The Secretary General of the Association of Caribbean Media Workers, Wesley Gibbings, reportedly showed concern over the alleged "anti-media" campaign that was reportedly being carried out by an anonymous group called *Citizens 4D Highway*. This group reportedly published several ads supposedly claiming "freedom from the press." One of the greatest concerns expressed by the Association of Caribbean Media Workers is the anonymous and nontransparent character of the members of this group.<sup>1534</sup>

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<sup>1529</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>1530</sup> Ministry of Legal Affairs. [Libel and Defamation Act, Chapter 11:16](#). Section 8. "If any person maliciously publishes any defamatory libel, knowing the same to be false, he is liable on conviction to imprisonment for two years and to pay such fine as the Court directs".

<sup>1531</sup> International Press Institute (IPI). February 22, 2014. [Trinidad and Tobago partially decriminalises defamation](#).

<sup>1532</sup> Committee to Protect Journalists (CPJ). May 29, 2014. [Trinidadian authorities should protect threatened journalist](#); International Press Institute (IPI). May 26, 2014. [Journalist flees Trinidad and Tobago after threats](#); Knight Center for Journalism in the Americas. May 28, 2014. [Investigative journalist flees Trinidad and Tobago after receiving death threats](#); Caribbean 360. May 22, 2014. [TV6 journalist forced to flee Trinidad following death threats](#); Trinidad Express Newspapers. May 27, 2014. [Alarm over death threat](#); Inter American Press Association (IAPA). Report on the Caribbean. General Assembly 2014 – Santiago, Chile. October, 2014. [Caribbean](#).

<sup>1533</sup> International Press Institute (IPI). July 23, 2014. [Investigative journalist returns to Trinidad despite death threats](#); Caribbean 360. July 24, 2014. [Trinidad journalist Bassant returns home despite death threats](#).

<sup>1534</sup> Guardian. November 6, 2014. [Caribbean Media Workers on highway ads: Naked Partisan politics](#). Guardian. [Citizens 4D Highway shrouded in ystery](#). CNC3. November 6, 2014. [Citizens unmasked Citizens 4D Highway](#).

955. The Office of the Special Rapporteur learned of the concerns among the country's media regarding the draft amendments to the powers of the Telecommunications Authority, the regulatory body comprised by political appointees.<sup>1535</sup>

## 28. Uruguay

### A. Progress

956. On October 20, a resolution by the Ministry of Industry, Energy and Mining [*Ministerio de Industria, Energía y Minería*] formally approved the reservation throughout Uruguayan territory of radio spectrum channels for community radio stations in the FM band established in law N° 18,232 on Community Radio Broadcasting Service [*Servicio Radiodifusión Comunitaria*].<sup>1536</sup>

957. In June, journalist Víctor Bacchetta, a member of the Movimiento Uruguay Libre de Megaminería with sponsorship from the Center for Archives and Access to Public Information [*Centro de Archivos y Acceso a la Información Pública (CAinfo)*], submitted a request for access to public information to the Ministry of Industry, Energy and Mining [*Ministerio de Industria, Energía y Minería (MIEM)*] with the aim of obtaining key environmental information on the Aratirí mining megaproject in Uruguay, such as the schedule for closure of the open pit mines, among other aspects. Given the lack of response by the Ministry, on November 10, the Judge of the Second Chamber of the Administrative Court [*Juez del Juzgado Letrado en lo Contencioso Administrativo de 2do. Turno*], Alejandro Martínez de las Heras, admitted the action for access to public information, ordering the MIEM to provide the information referring to that mining project within 15 days.<sup>1537</sup> The MIEM appealed the decision, declaring that the National Directorate of Mining and Geology [*Dirección Nacional de Minería y Geología (DINAMIGE)*], in May of 2013, had declared the required information confidential. On December 6, the Fourth Chamber of the Civil Appeals Court [*Tribunal de Apelaciones en lo Civil de 4to turno*], dismissed the appeal presented by the Ministry and upheld the first instance ruling that had ordered them to provide the environmental information within 15 days starting from the second instance ruling.<sup>1538</sup>

958. The sentence establishes that law N°19,126, which regulates large-scale mining in Uruguay, expressly enshrines access to public information as a way of promoting participation and control by society in environmental matters that involve it, recognizing that access to public information is a fundamental human right, expressly recognized by Uruguayan legislation as well as by the international human rights protection system. According to the ruling, access to information “must be the object of special protection [tutela] when its limitation for exceptional reasons is not duly justified.” At the same time, and in response to the affirmation by the Ministry that environmental information is reserved, the sentence emphasizes that “in no case shall information associated with environmental aspects of the project be considered confidential or reserved.” Finally, the sentence determines that “[a]ccess to public information [...] not only underlines the importance the principles of publicity and transparency in the work of the Administration, but in and of itself

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<sup>1535</sup> Inter American Press Association (IAPA). [Caribbean](#). General Assembly 2014 – Santiago, Chile. October, 2014.

<sup>1536</sup> Ministerio de Industria, Energía y Minería. Resolución [574/014. Reserváanse los canales del espectro radioeléctrico de la banda FM que se detallan, para la prestación del servicio de Radiodifusión Comunitaria y otros sin fines de lucro](#). October 20, 2014; Parlamento de la República Oriental del Uruguay. [Ley N° 18.232 de Servicio Radiodifusión Comunitaria](#). January 9, 2008; Coalición por una Comunicación Democrática. October 31, 2014. [Poder Ejecutivo reservó frecuencias para servicios de radiodifusión comunitaria en todo el país](#).

<sup>1537</sup> Juzgado Letrado en lo Contencioso Administrativo de 2turno. [Sentencia Tribunal de Apelaciones en lo Civil. Bacchetta-MIEM](#). November 10, 2014.

<sup>1538</sup> Centro de Archivos y Acceso a la Información Pública. November 2014. [Aratirí: justicia contempló acción patrocinada por CAinfo](#); Centro de Archivos y Acceso a la Información Pública. November 2014. [Dictamen de la UAIP reafirma que la información solicitada al MIEM sobre Aratirí debe ser entregada](#); El Observador. December 5, 2014. [Gobierno obligado a dar información de Aratirí declarada “reservada”](#); Centro de Archivos y Acceso a la Información Pública. December 8, 2014. [CAinfo y Uruguay libre valoraron importancia del fallo por caso Aratirí](#).

also constitutes an instrument that encourages and promotes the democratic participation inherent to the rule of law.”<sup>1539</sup>

## B. Audiovisual Communication Services Bill

959. On December 10, 2013 the House of Representatives [*Cámara de Representantes*] gave preliminary approval to the Audiovisual Communication Services Bill [*Ley de Servicios de Comunicación Audiovisual (LSCA)*] which, once approved, would completely modify the regulatory framework of the audiovisual communications media under the standards of Freedom of Expression, pluralism and diversity<sup>1540</sup>. The Office of the Special Rapporteur had highlighted the guarantees for freedom of expression given by the bill, although it formulated observations, including the need for the government entities and bodies in charge of regulating telecommunications policy and enforcing those regulations must be independent of both the influence of political power and the interests of economic groups<sup>1541</sup>. Furthermore, the United Nations Special Rapporteur for Freedom of Opinion and Expression had said that this law could be a “true model for the whole Latin America.”<sup>1542</sup> Nevertheless, he had added that it would be “important to increase the autonomy of the regulating organism.”<sup>1543</sup> Although approval by the House of Representatives [*Cámara de Representantes*] signified great progress, during debate on the bill consensus was not reached on approval of an Audiovisual Communication Council [*Consejo de Comunicación Audiovisual*] with standards of Autonomy and Independence from the Executive Branch.

960. On July 7, the group of senators from the Frente Amplio decided to postpone approval of the Audiovisual Communication Services Bill [*Proyecto de Ley de Servicios de Comunicación Audiovisual (LSCA)*] by the plenum of the House until after the presidential elections on October 26, so that its treatment in the parliament would not influence the electoral campaign. Based on this postponement, the National Human Rights Institution [*Institución Nacional de Derechos Humanos*] along with diverse actors of the national, regional and international civil society, expressed the need to advance during the current legislative session on a democratic law for Audiovisual Communication Services. On July 10, the Senate Industries Committee [*Comisión de Industrias del Senado*] gave preliminary approval to the bill and sent it to the plenum of the House.<sup>1544</sup>

961. On July 8, the United Nations Special Rapporteur for Freedom of Opinion and Expression affirmed the importance that the LSCA be approved before the end of the current legislative period. The Rapporteur declared that “neither the debate nor the approval [of this bill] should be delayed because the moment, energy and two years of consultation and debate could be lost” and underlined some of the changes introduced by the Senate Industries Committee [*Comisión de Industrias del Senado*] as positive, such as the establishment of an independent regulatory body “that would guarantee the application of independent norms.”<sup>1545</sup>

962. The LSCA, which excludes the written press and Internet from its realm of application, seeks to promote the exercise of freedom of expression through audiovisual services under the principles of

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<sup>1539</sup> Juzgado Letrado en lo Contencioso Administrativo de 2turno. [Sentencia Tribunal de Apelaciones en lo Civil. Bacchetta-MIEM](#). November 10, 2014.

<sup>1540</sup> Centro de Archivos y Acceso a la Información pública. December 11, 2013. [Diputados votó ley de servicios de comunicación audiovisual](#).

<sup>1541</sup> Presidencia de la República Oriental del Uruguay. October 4, 2013. [Conferencia con expertos – Ley Audiovisual](#).

<sup>1542</sup> Presidencia de la República Oriental del Uruguay. September 4, 2013. [La Rue opinó sobre el proyecto de ley de Servicios de Comunicación Audiovisual](#).

<sup>1543</sup> Presidencia de la República Oriental del Uruguay. September 2, 2013. [Relator de ONU, Frank la Rue, felicitó al Gobierno por proyecto de ley audiovisual](#).

<sup>1544</sup> Inter American Press Association (IAPA). [Uruguay](#). General Assembly – Santiago, Chile. October, 2014; El Observador. June 23, 2014. [Bancada del FA decide hoy votar ley de medios antes de elecciones](#); Espectador. July 8, 2014. [FA posterga hasta próximo lunes decisión sobre ley de medios](#); La República. July 10, 2014. [Ley de Medios se votó en Comisión del Senado](#).

<sup>1545</sup> La Diaria. July 8, 2014. [Relator de la ONU pidió pronta aprobación de Ley de Comunicación Audiovisual](#).

diversity and plurality. It also establishes, as a general principle, maximum protection for freedom of expression, recognizing the right to publishing and programming freedom, media independence, prohibiting prior censorship, interferences or prior pressures, on any expression, opinion or information that is disseminated through any audiovisual service (Art. 14, 15, 16 and 17). At the same time, it promotes protection for the rights of boys, girls and adolescents and other vulnerable groups through a reasonable balance between protection and guarantees for the exercise of freedom of expression, recognizing the right to privacy of boys, girls and adolescents, and; establishing “children’s programming” from 6:00 until 10:00, in which the showing of scenes of excessive violence, images of high sexual content as well as explicit and abusive drug use is prohibited.

963. On another level, the LSCA recognizes that frequencies are a common and public patrimony that belongs to everyone, constituting an effective platform for exercising the right to freedom of expression (Art. 10). This law also forces the State to take relevant measures to limit the formation of monopolies and oligopolies in communication. It also encourages the design and effective implementation of policies to promote national audiovisual production such as the reservation of reasonable screening quotas (Art.60 y 61) and the creation of funds to subsidize national production (Art. 13).

964. The LSCA also includes the creation of an Audiovisual Communication Council [*Consejo de Comunicación Audiovisual (CCA)*], which had been contemplated in the bill in the face of insistence and active participation by the Civil Society and the international organizations on human rights regarding that point. The CCA will be established as a decentralized body of the Executive Branch and would consist of five people, with its President directly designated by the Executive Branch, while the other four would be elected through a public process of selection with final approval by a special majority of the General Assembly [*Asamblea General*]. The powers of the CCA include studying and possibly bringing cases to the justice system, in which it is understood that infractions have been committed by media outlets in relation to freedom of expression and the rights of boys, girls and adolescents and vulnerable groups (Articles 58 and 69). Although the CCA will carry out the concession for allocating licenses, the Executive Branch will maintain the power to designate or revoke licenses.

965. On December 22, after finishing this report, Uruguayan Congress passed the LSCA. On December 29 the Executive Branch enacted the law.<sup>1546</sup>

### **C. Confidentiality of information sources**

966. The Uruguayan Press Association [*Asociación de la Prensa Uruguaya (APU)*] expressed its concern to the Supreme Court of Justice [*Suprema Corte de Justicia*] regarding subpoenas of journalists who are investigating human rights violations during the last civil-military dictatorship, to make them reveal their sources. In March, the journalist from the weekly Brecha, Samuel Blixen, had been subpoenaed to testify, in addition to the subpoenas of journalists Roger Rodriguez and Gabriel Mazzarovich, which had occurred in previous years.<sup>1547</sup>

967. 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”.

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

968. On December 19, 2013, the Uruguayan parliament approved the reform of articles 9 and 21 of Law 18,381 on Access to Public Information. This reform added a new ground for reserve in which

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<sup>1546</sup> Parlamento de la República Oriental del Uruguay. Ley N° 19.307. Servicios de Comunicación Audiovisual (parts 1 and 2). December 22, 2014.

<sup>1547</sup> Asociación de la Prensa Uruguaya. March 28, 2014. [APU planteó a Suprema Corte de Justicia su preocupación por citación de periodistas para que revelen sus fuentes](#); Espectador. March 28, 2014. [Blixen comparecerá ante la justicia por investigación periodística](#).

agencies could classify information (at the time of the creation of the information) when its dissemination could “affect the free and frank provision of consultations, opinions or recommendations that are part of the deliberative process of those bound by obligations, until the respective decision has been adopted, which shall be documented.” At the same time, public agencies shall have the power to exceptionally reserve the requested information, but the Public Information Access Unit [*Unidad de Acceso a la Información Pública (UAIP)*] shall be able to request that the information be declassified when it understands that its classification is not in accordance with the law.<sup>1548</sup>

969. 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. Subsequent liabilities**

970. In October 2013, journalist Washington Fernández, from the weekly *El Eco* of Colonia, and its co-director Daniel Roselli, were sued by the Chief of Inspectors of the Intendancy of Colonia [*Jefe de Inspectores de la Intendencia de Colonia*], Daniel Sánchez Torterolo, for defamation and slander [*difamación e injurias*]. This lawsuit had been filed after the weekly *El Eco* had denounced alleged irregularities in the Directorate of Transit of the Department of Colonia [*Dirección de Tránsito del Departamento de Colonia*].<sup>1549</sup> The case was filed by the Justice in late 2014, over a year after the suit started, although a legal reform passed in 2009 in Uruguay exempts from punishment those who report information of public interest, unless it was done with real malice.<sup>1550</sup>

971. The IACHR has argued that subjecting journalists or communicators to criminal proceedings as a result of the legitimate exercise of their right to freedom of expression violates that right and affects the free exercise of the job<sup>1551</sup>. For a journalist, a criminal proceeding against him can generate a situation of uncertainty, insecurity or intimidation and it can inhibit him in his daily work, according to the Inter-American Court of Human Rights<sup>1552</sup>.

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

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<sup>1548</sup> Parlamento de la República Oriental del Uruguay. [Ley 19.178. Derecho de Acceso a la Información Pública. Modificación de los artículos 9° y 21° de la Ley N° 18.381](#). January 8, 2014; IFEX. December 13, 2013. [Senado dio media sanción a reforma de Ley de Acceso en Uruguay](#); Centro de Archivos y Acceso a la Información Pública. No date. [Se aprobó en parlamento reforma a ley de acceso](#); Subrayado. December 12, 2013. [Senado aprobó restricción al acceso a la información pública](#).

<sup>1549</sup> *El Eco* digital. May 13, 2014. [La OEA rechaza agresión y presión contra El Eco y otros medios](#); Asociación de la Prensa Uruguaya. July 31, 2013. [APU denuncia nueva agresión contra colega en el interior del país](#).

<sup>1550</sup> *El Eco* digital. December 20, 2014. [Se terminó el juicio que Sánchez le realizó a EL ECO](#).

<sup>1551</sup> Inter-American Commission on Human Rights. October 22, 2010. [Informe del caso Uzcátegui vs. Venezuela](#).

<sup>1552</sup> Inter-American Court of Human Rights. Case Uzcátegui and others vs. Venezuela. [Judgment of September 3, 2012](#).



## F. Other relevant situations

973. On August 21, Judge Blanca Barreiro and prosecutor Gustavo Zubía had again taken up the case that had been opened into an alleged violent protest [*asonada*] against the Supreme Court of Justice [*Suprema Corte de Justicia*] in February of 2013, which had occurred in the context of a demonstration rejecting the transfer of Judge Mariana Mota, who was investigating alleged human rights violations during the dictatorship, from the criminal sphere. After this demonstration, seven individuals had been accused of violent protest [*asonada*]. In response to an appeal filed by the defense of the accused, Prosecutor Jorge Díaz had expressed the opinion that the criminal category is unconstitutional insofar as Prosecutor Gustavo Zubía had appealed the proceedings, alleging that the correct legal category to be applied would be that of an attack [*atentado*] and not violent protests [*asonada*]. On September 20, Judge Gabriela Merialdo had determined a period of 45 days to issue a resolution on the situation of the seven individuals accused of violent protest against the Supreme Court of Justice [*Suprema Corte de Justicia*].<sup>1553</sup> On November 4, Judge Gabriela Merialdo had decided to try without imprisonment the seven accused individuals who had participated in the demonstration and in the alleged incidents at the Supreme Court of Justice [*Suprema Corte de Justicia*] on February 15, 2013.<sup>1554</sup> The sentence would have been appealed by the seven individuals accused alleging the crime is against Constitution [*recurso de inconstitucionalidad*].<sup>1555</sup>

974. On November 3, the Chief of the surgical block at the Hospital of the Department of Canelones, Gerardo López Secchi, was suspended for 30 days for having publicly denounced the deaths of two patients who had expired due to lack of beds at that Hospital. According to information received, the suspension was applied in the framework of Article 528 of the Organized Text of Norms on Public Servants [*Texto Ordenado de Normas sobre Funcionarios Públicos (Tofup)*], which establishes that “[t]he exercise of freedom of expression of thought by public servants shall give rise to the application of disciplinary sanctions provided for in the laws, in the following cases: [...] 3. Publication of opinions that cause harm to the fundamental interests of the public service.”<sup>1556</sup>

975. However, two days later –and due to medical association’s claims– the State Health Services Administration [*Administración de Servicios de Salud del Estado (ASSE)*] called off the sanction until it could get documentation that proved that López Secchi was a union leader, something that would give him exemptions.<sup>1557</sup>

976. In July 2013 news reported that the government, in an allegedly secret operation, purchased technology from the Federative Republic of Brazil, called ‘El Guardián’, which would enable it to monitor telephone calls, e-mails and social networks.<sup>1558</sup> On October 15, the Center for Archives and Access to Public Information [*Centro de Archivos y Acceso a la Información Pública (CAinfo)*] submitted a request for access to public information to know the extent of the new surveillance system over individuals’ privacy. The request would have not been answered yet<sup>1559</sup>.

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<sup>1553</sup> El País. August 21, 2014. [Retoman caso de asonada a la SCJ](#); El Telégrafo. September 20, 2014. [Dentro de 45 días se conocerá resolución referente a acusaciones a los ocupantes de la Suprema Corte](#); El País. November 5, 2013. [Fiscal Zubía apelará resolución de Merialdo de la asonada a la SCJ](#); El País. September 20, 2014. [Radicales entre la espada y la pared](#).

<sup>1554</sup> La República. November 5, 2014. [Activistas procesados sin prisión](#); Poder Judicial. November 5, 2014. [Jueza Merialdo procesó sin prisión a 7 manifestantes implicados en la asonada contra la SCJ](#); Poder Judicial. November 4, 2014. [Auto de procesamiento por el delito de asonada](#).

<sup>1555</sup> El País. November 11, 2013. [Procesados por asonada presentan recurso de inconstitucionalidad](#).

<sup>1556</sup> El Observador. July 3, 2012. [Dos pacientes murieron porque no se les consiguió camas en CTI](#); El País. November 4, 2014. [ASSE sancionó a un médico que denunció mala atención](#); Oficina Nacional del Servicio Civil. [Texto ordenado de normas sobre funcionarios públicos](#); Subrayado. November 5, 2014. [ASSE dejó en suspenso la sanción al doctor López Secchi](#).

<sup>1557</sup> El País. November 5, 2014. [La comunidad médica choca con ASSE por Libertad de expresión](#); El País. November 6, 2014. [ASSE levantó la suspensión al médico que denunció muertes en Canelones](#); El País. November 8, 2014. [Límite a la libertad de expresión en el estado desata debate jurídico](#); Subrayado. November 5, 2014. [ASSE dejó en suspenso la sanción al doctor López Secchi](#).

<sup>1558</sup> El País. July 26, 2013. [Gobierno compró “El Guardián” para espiar llamadas y correos](#); El Espectador. October 13, 2013. [Uruguay compró a Brasil sistema para espiar llamadas y mails](#).

<sup>1559</sup> Centro de Archivos y Acceso a la Información Pública. December 2014. [Día Internacional de los Derechos Humanos – Declaración conjunta: Vigilancia, seguridad y privacidad: llamamiento para que Uruguay adopte estándares de derechos humanos](#).

977. On September 25, the Communication Services Regulatory Unit [*Unidad Reguladora de Servicios de Comunicaciones*] decided to extend the time limit to begin broadcasting by new digital television channels until January 31, 2015, for commercial channels. On October 28, the Unit gave an extension for the trade union federation community channel to start its broadcast before October 31, 2015, and on November 13 it gave an extension until October 31, 2015 to new public television channels outside Montevideo to present their final technical projects.<sup>1560</sup>

## 29. Venezuela<sup>1561</sup>

978. In 2014, the Commission and the Office of its Special Rapporteur for Freedom of Expression expressed concern at the deterioration in conditions for exercising freedom of expression in Venezuela, particularly in the context of the social protests and unrest seen in the country during the period covered by this report, including an increase in physical assaults, intimidation, and the arrests of journalists as they went about their work of reporting on the protests; the ongoing stigmatization by senior government officials of media outlets and journalists critical of them; institution of punitive proceedings and dismissals of broadcasters for coverage of news connected with complaints or comments on the situation in the country; the ongoing problem of the newsprint paper shortage; as well as the untimely closure CHECK of a television station and alleged blocking of access to on-line media outlets. The IACHR has noted with particular concern that in this climate opportunities for public debate have dwindled to the detriment of the right to free and independent expression in keeping with guarantees enshrined in international instruments to which Venezuela is a party.

### A. Progress

979. The Office of the Special Rapporteur received information about the Ordinance on Transparency and Access to Public Information adopted by Arismendi Municipal Council in Nueva Esparta State on May 29. According to the information, the purpose of the ordinance is to facilitate applications for public information, encourage the proactive publication of information on public institutions' websites, and promote a culture of information. The text was presented by a non-governmental organization, the *Organización para la Prevención Nacional de la Corrupción* (Orpanac) and complements that municipality's Ordinance on Access to Public Archives.<sup>1562</sup>

### B. Freedom of Expression in the Context of the Protests

980. On February 4 students from Táchira state protested about the level of insecurity that existed at some educational institutions, in particular, in the aftermath of an attempted rape of a female student at the University of Los Andes. This demonstration resulted in the detention of at least two students<sup>1563</sup>. In the days that followed, demonstrations demanding greater security, as well as the release of detained students, proliferated in other cities in the country<sup>1564</sup>. For example, on February 6 a group of

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<sup>1560</sup> 180. November 7, 2014. [Prórroga a TV digital por "falta de madurez" en proyectos](#); Unidad Reguladora de Servicios de Comunicaciones (Ursec). September 25, 2014. [Resolución 219/2014. Otorgar a todos los permisionarios del serv. telev. digital comercial una prórroga del plazo para la instalación y puesta en funcionamiento del servicio hasta el 31-01-15](#); Ursec. October 28, 2014. [Resolución 247/2014. Otorgar a Instituto Gerardo Cuesta - León Duarte perm. serv. telev. digital. terres. comunit. Montevideo inst. y puesta funcionami. servicio hasta 31-10-15](#); Ursec. November 13, 2014. [Resolución 279/2014. Otorgar a todos los permisionarios servicio tv. digital terrestre pública interior del país, una prórroga del plazo para presentación ante Ursec de proyectos técnicos definitivos](#).

<sup>1561</sup> This section corresponds to the section on freedom of expression in Venezuela in Chapter IV, Volume I, of the IACHR 2014 Annual Report. This section was assigned to the Office of the Special Rapporteur for Freedom of Expression.

<sup>1562</sup> Espacio Público. June 3, 2014. [Aprueban ordenanza de Acceso a la Información en el municipio Arismendi de Nueva Esparta](#); Comuna Activa. October 8, 2014. [Revisarán ordenanza sobre transparencia para consejos comunales neoespartanos](#).

<sup>1563</sup> La Nación. February 8, 2014. [Semana de protestas en Táchira](#); El Nacional. February 5, 2014. [Suspenden clases en ULA-Táchira por segundo día de protestas](#); El Universal. February 4, 2014. [Protestas en ULA Táchira dejan estudiantes detenidos y 6 policías heridos](#).

<sup>1564</sup> BBC Mundo. February 19, 2014. [Seis preguntas para entender las protestas en Venezuela](#); Infobae. February 16, 2014. [Las 10 claves para entender lo que sucede en Venezuela](#); El Espectador. February 20, 2014. [Táchira, donde todo comenzó](#).

demonstrators in San Cristóbal in Táchira state attacked the residence of Governor José Vielma Mora;<sup>1565</sup> five young people were detained. On February 8-9 there were marches in other states demanding the release of those detained.<sup>1566</sup>

981. On February 10, President Nicolás Maduro pointed the finger at regional television outlets, accusing them of being linked to violent plans to overthrow the government, which is why he had ordered the Ministry of People's Power for Communication and Information of the Republic and the telecommunications regulatory agency (Conatel) "to keep a close watch" on these media outlets. According to reports, the President stated that, "I ordered the Minister (Delcy Rodríguez) and Conatel to keep a close watch on regional television stations, TRT in Táchira specially, because it's linked to plans to overthrow the government. [...] I ordered the review of all their programming because they are behind a coup d'état." These warnings were motivated by the news coverage of protests and demands of students and citizens from Táchira regarding alleged government repression of demonstrations, deprivation of liberty, and the trial of students detained days before.<sup>1567</sup>

982. On February 11, the Board of Social Responsibility in Radio and Television issued a statement highlighting that the media coverage of the violent incidents that had occurred in days prior might constitute a violation of the provisions of Article 27 of the Social Responsibility in Radio, Television, and Electronic Media Law, (known in Spanish as *Ley Resorte-Me*) which prohibits the dissemination of messages that "incite or promote hate and intolerance [...] cause unease amongst citizens, alter public order [...] [or] disregard legitimately established authorities."<sup>1568</sup> The statement went on to say that "the Board views as extremely serious that once again, under the guise of freedom of expression, fully guaranteed in our legal system, some actors from the radio electric spectrum are providing media coverage that could or might favor, as regards airtime, treatment, and language, the promotion of violence, and calls to wreak chaos on public life, as compared to the calls for dialogue, respect for the law, and peaceful conflict resolution."<sup>1569</sup> The agency urged all service providers to comply with the provisions of the *Ley Resorte-Me*, and added that violation or disregard of this law "was subject to clearly established penalties and punishments of which everyone was aware."<sup>1570</sup>

983. On Wednesday, February 12, the student movement organized a protest to support the students who had been arrested. At the same time, opposition figures organized a march to celebrate Victory Day, known as Youth Day, a patriotic Venezuelan holiday that commemorates a battle of the War of

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<sup>1565</sup> Globovisión Noticias/Daily Motion. February 6, 2014. . [Primera dama del estado Táchira denuncia ataques contra la residencia del gobernador](#); La Patilla. February 6, 2014. [Vielma Mora acusa a Leopoldo López de estar detrás de los ataques vandálicos hacia su residencia](#); La Verdad. February 6, 2014. [Encapuchados atacan casa del gobernador del Táchira](#).

<sup>1566</sup> Espacio Público. March 13, 2014. [Informe: Los trances de la libertad de expresión, del 12F al 12M](#); BBC Mundo. February 19, 2014. [Seis preguntas para entender las protestas en Venezuela](#); Infobae. February 16, 2014. [Las 10 claves para entender lo que sucede en Venezuela](#).

<sup>1567</sup> IPYS/+Sociedad Civil. Sin Fecha. [Represión y Silencio](#). Panorama. February 11, 2014. [Maduro: Aquí habrá mano de hierro para conspiradores y destabilizadores](#); Últimas Noticias. February 10, 2014. [Maduro reactiva Plan AntigoIpe](#); Venezolana de Televisión (VTV/You Tube). Program 'Con el Mazo Dando'. Broadcast on February 10, 2014. Published February 11, 2014 by: sucreranda Hugo Chávez Venezuela. [Diosdado Cabello "Con el Mazo Dando" en VTV, en primer programa, y con el presidente Nicolás Maduro](#). [1:41:00 - 01:41:35]

<sup>1568</sup> Ministry of People's Power for Communication and Information. Venezuelan National Telecommunications Commission (Conatel). Ley de Responsabilidad Social en radio, televisión y medios electrónicos. [Gaceta Oficial No. 39.610](#) of February 2011.

<sup>1569</sup> Venezuelan National Telecommunications Commission (Conatel). February 11, 2014. [Cobertura mediática de hechos de violencia podría violar artículo 27 de la Ley de Responsabilidad Social](#); Correo del Orinoco. February 11, 2014. [Cobertura mediática de hechos de violencia podría violar artículo 27 de la ley de responsabilidad social](#); 2001. February 11, 2014. [Conatel indicó que cobertura mediática de violencia en el país podría violar la Ley Resorte](#); Instituto Prensa y Sociedad (IPYS). February 12, 2014. [Caracas: CONATEL amenazó a medios que divulguen información sobre hechos de violencia en protestas](#).

<sup>1570</sup> Venezuelan National Telecommunications Commission (Conatel). February 11, 2014. [Cobertura mediática de hechos de violencia podría violar artículo 27 de la Ley de Responsabilidad Social](#); Correo del Orinoco. February 11, 2014. [Cobertura mediática de hechos de violencia podría violar artículo 27 de la ley de responsabilidad social](#); 2001. February 11, 2014. [Conatel indicó que cobertura mediática de violencia en el país podría violar la Ley Resorte](#); Instituto Prensa y Sociedad (IPYS). February 12, 2014. [Caracas: CONATEL amenazó a medios que divulguen información sobre hechos de violencia en protestas](#).

Independence. Marches took place in several cities in the country, but the one in Caracas took on special significance when at the end of a day that had unfolded peacefully, armed civilians and law enforcement surrounded the demonstrators; violence erupted, leaving three people dead, many injured, and dozens of individuals detained<sup>1571</sup>.

984. The incident received limited coverage from television media outlets, possibly in response to the Board of Social Responsibility's statement, which had highlighted that coverage provided by radio-electric and electronic media of the demonstrations and violent acts that had taken place in days prior might constitute a violation of the law<sup>1572</sup>

985. From that day forth demonstrations were organized in different cities of the country. According to the Office of the Prosecutor General of the Republic, as of May 8, 41 people had died, 813 had been injured, and 19 military and police personnel had been deprived of their liberty for alleged violations of demonstrators' human rights during the course of these protests.<sup>1573</sup> According to this Office, 121 individuals, among them students, were still detained as of March 20. The total number of individuals arrested up that point was 1854, of which 1529 had been released in keeping with alternative measures to imprisonment.<sup>1574</sup> According to information that the IACHR has been given, a significant number of these attacks and arrests have targeted demonstrators who were documenting acts of violence or police repression.<sup>1575</sup> These acts are said to have occurred in a context in which Venezuelan officials made public remarks stigmatizing and discrediting different civil society groups identified as belonging to the opposition<sup>1576</sup>.

986. In this sense, the IACHR was concerned to learn the news of José Alejandro Márquez's death of on February 23. According to the information received, Márquez had died after being attacked in retaliation for having recorded images of the February 19<sup>th</sup> demonstrations in Caracas and for the purpose of taking away his cell phone, and thus preventing this material from being reproduced. According to reports, in the midst of the protests, Márquez had recorded on his cell phone the reaction of law enforcement opposite one of the barricades in the city. For this reason, and to prevent him from disseminating these images, an alleged Bolivarian National Guard (GNB) agent detained him and demanded he surrender his phone. To avoid doing so, Márquez had tried to flee, but fell and received a blow from one of the alleged GNB agents. These agents took the phone from him to prevent the images from being reproduced. Márquez was taken to the hospital where he remained in coma and was then declared to be brain dead until he died on February 23.<sup>1577</sup>

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<sup>1571</sup> Espacio Público. March 13, 2014. [Informe: Los trances de la libertad de expresión, del 12F al 12M](#); BBC Mundo. February 19, 2014. [Seis preguntas para entender las protestas en Venezuela](#); Infobae. February 16, 2014. [Las 10 claves para entender lo que sucede en Venezuela](#); El País. February 13, 2014. [Una protesta contra el Gobierno deja tres muertos a tiros en Venezuela](#); Últimas Noticias. February 13, 2014. [Protesta del 12 de febrero en 12 sucesos claves](#).

<sup>1572</sup> El País. February 13, 2014. [Una protesta contra el Gobierno deja tres muertos a tiros en Venezuela](#); Infobae. February 16, 2014. [Las 10 claves para entender lo que sucede en Venezuela](#); El Universo. March 2, 2014. [Censura en Venezuela se agrava con protestas](#); Instituto Prensa y Sociedad (IPYS) Venezuela. February 16, 2014. [Venezuela: entre el 11 y el 15 de febrero sucedieron 25 casos de violaciones a las libertades informativas](#); IACHR. 150 Period of Sessions. Hearing regarding the situation of freedom of expression and information in Venezuela. March 28, 2014. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/150/default.asp>; IACHR. February 21, 2014. [IACHR expresses deep concern over the situation with respect to the right to peaceful protest, freedom of association and freedom of expression in Venezuela](#).

<sup>1573</sup> Noticias 24. May 8, 2014. [19 funcionarios están detenidos por su presunta responsabilidad en la violación de DD HH](#); Globovisión. May 8, 2014. [Suben a 19 los funcionarios detenidos por presuntas violaciones a DDHH](#); Notimérica/Europa Press. May 8, 2014. [Venezuela.- La Fiscalía confirma 19 militares y policías detenidos por violaciones de los DDHH](#).

<sup>1574</sup> IACHR. 150th regular session. Hearing on the Situation of the Right to Freedom of Expression and Information in Venezuela. March 28, 2014. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/150/default.asp>; Voz de América. March 20, 2014. [Ascienden a 31 los muertos en Venezuela](#); La Tercera/EFE. March 20, 2014. [Fiscalía venezolana cifra en 31 los muertos en las protestas](#).

<sup>1575</sup> IACHR. 150th regular session, Hearing on the Situation of the Right to Freedom of Expression and Information in Venezuela. March 28, 2014. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/150/default.asp>.

<sup>1576</sup> IACHR. 150th regular session, March 28, 2014. Hearing on the Situation of the Right to Freedom of Expression and Information in Venezuela. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/150/default.asp>.

<sup>1577</sup> El Universal. February 23, 2014. [Falleció José Alejandro Márquez tras varios días en coma](#); El Comercio. February 23, 2014. [Venezuela: Murió hombre baleado por grabar represión policial](#); Infobae. February 24, 2014. [Venezuela: lo mataron por grabar la represión de militares](#); El Nacional. February 23, 2014. [Falleció hombre golpeado por la GNB en la Candelaria](#); La Verdad. February 24, 2014. [Fallece](#)

The night of February 24, the President of the National Assembly, Diosdado Cabello, identified Márquez as a hired assassin who had been murdered “by his own colleagues [...] because he had not carried out the job they had tasked him with,” which, according to Cabello, was to assassinate President Nicolás Maduro. During his speech, Cabello showed Facebook photos of Márquez which were purportedly proof that the young engineer had received paramilitary training abroad.<sup>1578</sup> In statements to *CNN en Español* Márquez’s family denied Diosdado Cabello’s assertion and clarified that the photos in which he was seen with weapons were from when Márquez was practicing a military simulation sport known as airsoft. The Venezuelan Airsoft Federation issued a statement denying the accusations against Márquez, specifying that although he was not registered with the Federation, “he was a hardworking Venezuelan youth who practiced a sporting activity which in no way has militaristic tendencies or vocation.”<sup>1579</sup> According to information received, seven GNB members are linked to Márquez’s death. Officials of the Scientific, Criminal and Criminalistics’ Investigations Corps (CICPC) have in their possession audiovisual footage of the attack, which has allowed for the perpetrators to be identified.<sup>1580</sup>

987. The IACHR received information about assaults, intimidation, and arrests of journalists as they did their reporting work amid the protests. In this sense, the IACHR learned of the alleged detention of several press workers in relation to the February 12<sup>th</sup> demonstrations in the city of Caracas, who were taken to different facilities. These cases included that of Ángel Matute, radio producer and student of Social Communication at the Santa María University; Domingo Díaz, professor of that same University; and Arianna Bueno Avellaneda,<sup>1581</sup> press worker. They were released on Friday, February 14, and all three of them were prohibited from attending new demonstrations.<sup>1582</sup>

988. Inti Rodríguez, media coordinator for *Programa Venezolano de Educación-Acción en Derechos Humanos* [Venezuelan Program for Education—Action for Human Rights] (Provea), was kidnapped, beaten, and retained for approximately an hour by individuals who identified themselves as officials of the Bolivarian National Intelligence Service (Sebin) on February 12 in Caracas. The IACHR was informed that Rodríguez was intercepted at night when he was heading home, was forced to get on a motorcycle, and was taken to a place where he was beaten all over his body by a large group of men. These men also threatened to attack his family if he reported the incident.<sup>1583</sup>

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[ingeniero perseguido por grabar a militares](#); El Diario de Caracas. February 23, 2014. [Murió José Alejandro Márquez tras haber sido presuntamente agredido por la GNB](#).

<sup>1578</sup> Venezolana de Televisión (VTV). Program ‘Con el Mazo Dando’. Broadcast on February 24, 2014. Published February 25, 2014 by: Luigino Bracci Roa / YouTube. [Con el Mazo Dando, Diosdado Cabello y Jose Vielma Mora este 24 de febrero](#) [00:34:30 – 00:40:30]; Venezuela Al Día/Diario de Caracas. February 25, 2014. [Cabello denunció que manifestante asesinado Alejandro Márquez era un sicario](#); Panorama. February 25, 2014. [Cabello denunció que joven asesinado estaba “contratado como sicario del presidente”](#).

<sup>1579</sup> CNN en Español. February 28, 2014. [En Conclusiones investigan la muerte de José Alejandro Márquez en Venezuela](#); El Universal. February 26, 2014. [Desmienten a Cabello y dicen que Márquez practicaba airsoft](#); Últimas Noticias. February 26, 2014. [“Queremos limpiar el nombre de Alejandro”, dicen sus familiares](#).

<sup>1580</sup> El Universal. February 25, 2014. [Vinculan a siete GNB con la muerte del ingeniero Márquez](#); Caracol Radio. February 25, 2014. [Miembros de Guardia Nacional Bolivariana vinculados en muerte de opositor](#).

<sup>1581</sup> Instituto Prensa y Sociedad (IPYS) Venezuela. February 16, 2014. [Venezuela: entre el 11 y el 15 de febrero sucedieron 25 casos de violaciones a las libertades informativas](#); Espacio Público. February 13, 2014. [Periodistas detenidos durante manifestaciones en Caracas](#); Globovisión Noticias/Daily Motion. February 13, 2014. [CNP denuncia periodistas detenidos tras hechos violentos en manifestación](#); La Verdad. February 13, 2014. [Revelan nombres de detenidos por hechos del 12E](#); Espacio Público. March 13, 2014. [Informe: Los trances de la libertad de expresión, del 12F al 12M](#).

<sup>1582</sup> Instituto Prensa y Sociedad (IPYS) Venezuela. February 15, 2014. [Caracas: Tribunal prohíbe a tres periodistas concurrir a manifestaciones](#); “@ramirez\_leo @lmjat no podemos participar en ningún tipo de manifestaciones” [we can’t participate in any kind of demonstration”]. Twitter Account of Arianna Bueno @AriannaBueno. [February 16, 2014 – 10:42 AM](#); La Patilla. February 14, 2014. [Luz acuerda libertad de detenidos políticos y les prohíbe concurrir a manifestaciones públicas](#); El Universal. February 14, 2014. [Liberan a 28 estudiantes y a tres periodistas detenidos el 12E](#); ABC. February 15, 2014. [Liberan a 28 estudiantes y a tres periodistas detenidos durante las protestas contra Maduro en Caracas](#).

<sup>1583</sup> Instituto Prensa y Sociedad (IPYS) Venezuela. February 16, 2014. [Venezuela: entre el 11 y el 15 de febrero sucedieron 25 casos de violaciones a las libertades informativas](#); El Nacional. February 13, 2014. [Provea denuncia que coordinador de medios fue “secuestrado y golpeado”](#); Provea. February 13, 2014. [Secuestrado y agredido Coordinador de Medios de Provea](#).

989. Mariana Cadenas, correspondent for *Agence France-Presse (AFP)* was attacked by a person who was purportedly a government supporter, who wrenched her work equipment from her while the reporter covered the violent incidents that took place during the February 12<sup>th</sup> demonstrations in Caracas. After being assaulted the journalist asked for help from an officer who told her that “you must have known what you were risking when you came here.” Cadenas indicated that during this incident she lost recordings of the confrontation and detention of six demonstrators by GNB agents, as well as the testimonies of a group of individuals.<sup>1584</sup>

990. The independent photojournalists Juan Camacho and Lewis Díaz were assaulted and detained by CICPC officials while they covered demonstrations in Caracas on February 12. According to information available, Camacho and Díaz were filming images with their cameras in the center of the city when they were detained together with a group of demonstrators by officers of this police corps. Díaz was taken to the CICPC headquarters in the city where he was detained for almost 12 hours and was released around four in the morning without his photography equipment or cell phone. Camacho was separated from the group and after several hours recovered his camera without the memory chip.<sup>1585</sup>

991. On February 12, Alejandro Hernández, a member of the internet editorial team of *El Nacional*, and the reporter Fernando Prieto from the same media outlet, were detained by GNB agents after the reporter took photographs of the GNB detaining a group of demonstrators and agents tried to take their news material from them. Hernández and Prieto refused to give them their cameras, identified themselves as members of the press corps, and took the memory devices out of their equipment, which is what led to their detention. They were taken to the Parque Carabobo headquarters of the CICPC. According to reports, when they tried to identify themselves again, one of the officers hit Prieto in his ribs in an attempt to make him get on a motorcycle as a passenger. Hernández demanded that the officer stop hitting him and showed his press card, which had been confiscated by one of the commanders of the group. Hernández stated that they were held in a room apart from a group of demonstrators detained later. The officers released the reporters.<sup>1586</sup>

992. A cameraman from the Office of Institutional Communication of the Office of Internal Security of Mérida state, Jilfredo Alejandro Barradas, was shot during the marches of University of Los Andes student and youth supporting the government party. According to information provided, masked men allegedly shot the cameraman in the leg while he was covering the protest in the city of Mérida, the state capital.<sup>1587</sup>

993. Around 9 p.m. on February 12, a group of individuals on motorcycles threw rocks at the headquarters of the National Telecommunications Commission (Conatel), the agency charged with regulating telecommunications in the country, causing damage to the facade and main entrance. According to the press release “in the aftermath of the bloody incidents of violence protagonized the night before by extremist members of the opposition in Caracas—which plunged three Venezuelan households into mourning and caused dozens of injuries, with both official and individual vehicles set on fire and considerable damage to

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<sup>1584</sup> Instituto Prensa y Sociedad (IPYS) Venezuela. February 15, 2014. [Caracas: Corresponsales internacionales fueron agredidas y despojadas de cámara de video](#); El Mundo/Agence France-Presse. February 13, 2014. [AFP: Roban cámaras de agencias, sacan de cableras tv extranjera y detienen periodistas](#); Espacio Público. March 13, 2014. [Informe: Los trances de la libertad de expresión, del 12F al 12M](#); El Espectador/Agence France-Presse. February 12, 2014. [Oficialistas venezolanos agreden a periodistas de AFP](#).

<sup>1585</sup> Instituto Prensa y Sociedad (IPYS) Venezuela. February 13, 2014. [Caracas: Funcionarios policiales detuvieron a dos fotoreporteros independientes](#); Globovisión Noticias/Daily Motion. February 13, 2014. [CNP denuncia periodistas detenidos tras hechos violentos en manifestación](#); La Verdad. February 13, 2014. [Revelan nombres de detenidos por hechos del 12F](#).

<sup>1586</sup> Espacio Público. March 13, 2014. [Informe: Los trances de la libertad de expresión, del 12F al 12M](#); Instituto Prensa y Sociedad (IPYS) Venezuela. February 16, 2014. [Venezuela: entre el 11 y el 15 de febrero sucedieron 25 casos de violaciones a las libertades informativas](#); Committee to Protect Journalists (CPJ). February 20, 2014. [Periodistas que informan sobre las protestas en Venezuela son blanco de agresiones](#); El Nacional. February 16, 2014. [El tiempo de la censura](#).

<sup>1587</sup> Bolivarian Office of Internal Security of Mérida state. February 12, 2014. [Herido con arma de fuego camarógrafo de la OCI cuando cumplía con su trabajo](#); Instituto Prensa y Sociedad (IPYS) Venezuela. February 16, 2014. [Venezuela: entre el 11 y el 15 de febrero sucedieron 25 casos de violaciones a las libertades informativas](#); El Nacional. February 13, 2014. [Motorizados de colectivo hirieron a camarógrafo en Mérida](#); Comunicación Continua. February 12, 2014. [Fuertes enfrentamientos entre manifestantes y Polimérida](#); Espacio Público. February 13, 2014. [Fotógrafo merideño herido de bala mientras cubría manifestaciones](#).

parks and other public areas—a horde of motorcyclists stoned the ‘Current Headquarters’ of Conatel, destroying its main entrance, and hurling insults at the security guards around 9 p.m. yesterday, Wednesday, February 12.”<sup>1588</sup>

994. The headquarters of the state television channel *Venezolana de Televisión (VTV)* in the city of Caracas was attacked by a group of demonstrators on the night of February 12. Mayra Cienfuegos, who works at the channel, suffered a gunshot wound and was operated on after the incident. Yuri Pimentel, the President of VTV, reported that individuals had thrown objects and bottles at the street from adjacent buildings and had injured a police officer who was trying to stop demonstrators who were seeking to enter the media outlet’s headquarters.<sup>1589</sup> On the evening of February 13, VTV headquarters was attacked again.<sup>1590</sup>

995. Rafael Hernández, photojournalist for the magazine *Exceso*, was detained by CICPC agents on the afternoon of February 12.<sup>1591</sup> According to reports, Hernández was covering the disturbances unfolding in Parque Carabobo in the city of Caracas. The detention took place when Hernández, after taking photos of the CICPC’s burning patrol cars, began to shoot photos of an alleged assault on a woman by agents. At that point, the journalist was held down by a CICPC agent who wrested away from him his press card and photo equipment. According to Hernández’s statement, after being beaten repeatedly by a group of between 10 to 15 agents, the agents applied pepper spray around his eyes and took him to CICPC headquarters, where he was held and mistreated. His personal possessions, such as his cell phone and a backpack with another camera, were taken from him. The cell phone was not returned. Hernández further stated that at around 10 p.m. the handcuffs were taken off, they took statements from him about the disturbances as if he were a witness, and he was finally released at midnight.<sup>1592</sup>

996. The journalist Lorena Arráiz, from the daily newspaper *El Universal* and correspondent for the Press and Society Institute (Instituto Prensa y Sociedad) in the state of Táchira had been threatened through her Twitter account, @loearraiz, by unidentified persons who used the account @siemprechavez21. According to the report, on February 12, Arráiz had received a message that said “we’re coming after you and yours! No one will be spared here.” The journalist had also received four messages with her identity card number and date of birth, and had received comments about her husband and daughter: “we have all your information. Greetings to Danielita...!:-).” As the journalist indicated, she had put this and other users in her spam box, so that these accounts had been suspended. However, the journalist had not been able to take note of the user’s private IP address and therefore was unable to identify the assailant.<sup>1593</sup>

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<sup>1588</sup> Venezuelan National Telecommunications Commission (Conatel). February 13, 2014. [Horda de opositores motorizados atacó sede nacional de CONATEL](#); El Universal. February 13, 2014. [Denuncian ataques a VTV y Conatel](#); Instituto Prensa y Sociedad (IPYS) Venezuela. February 16, 2014. [Venezuela: entre el 11 y el 15 de febrero sucedieron 25 casos de violaciones a las libertades informativas](#).

<sup>1589</sup> Instituto Prensa y Sociedad (IPYS) Venezuela. February 16, 2014. [Venezuela: entre el 11 y el 15 de febrero sucedieron 25 casos de violaciones a las libertades informativas](#); Venezolana de Televisión (VTV). February 13, 2014. [Presidente de Venezolana de Televisión denunció ataque de hordas fascistas al canal estatal \(+VIDEO\)](#); El Universal. February 13, 2014. [Denuncian ataques a VTV y Conatel](#).

<sup>1590</sup> Venezolana de Televisión. February 13, 2014. [Presidente de Venezolana de Televisión denunció ataque de hordas fascistas al canal estatal \(+VIDEO\)](#); Espacio Público. February 14, 2014. [Sede de VTV atacada por encapuchados](#).

<sup>1591</sup> El Universal. February 12, 2014. [Detienen a dos periodistas durante cobertura de marcha estudiantil](#); El Siglo. February 12, 2014. [Un profesor y dos fotógrafos detenidos en manifestaciones](#); Venezuela Al Día. February 12, 2014. [Detienen a dos periodistas durante cobertura de marcha estudiantil](#); Espacio Público. February 13, 2014. [Periodistas detenidos durante manifestaciones en Caracas](#); Globovisión Noticias/Daily Motion. February 13, 2014. [CNP denuncia periodistas detenidos tras hechos violentos en manifestación](#)

<sup>1592</sup> Instituto Prensa y Sociedad (IPYS) Venezuela. February 16, 2014. [Venezuela: entre el 11 y el 15 de febrero sucedieron 25 casos de violaciones a las libertades informativas](#); Espacio Público. March 13, 2014. [Informe: Los trances de la libertad de expresión, del 12F al 12M](#); El Nacional. February 12, 2014. [Un profesor y dos fotógrafos detenidos en manifestaciones](#); La Patilla. February 13, 2014. [Liberado fotógrafo de la revista Exceso... Cicpc le quitó todo el material](#); “Gracias por el apoyo y la preocupación de todos, desde esta madrugada fui liberado de la sede del CICPC.” [“Thanks to everyone’s for their support and concern, I was released from CICPC headquarters in the early morning.”] Rafael Hernández’s Twitter account @sincepto. [February 13, 2014 – 12:57 PM](#); “En este momento en discusión con el CICPC para la recuperación de los equipos y el material registrado ayer”. [“Currently in discussions with CICPC to recover equipment and material recorded yesterday.”] Rafael Hernández’s Twitter account @sincepto. [February 13, 2014 – 12:58 PM](#).

<sup>1593</sup> Instituto Prensa y Sociedad (IPYS). February 16, 2014. [Venezuela: entre el 11 y el 15 de febrero sucedieron 25 casos de violaciones a las libertades informativas](#); Espacio Público. February 13, 2014. [Periodista Lorena Arráiz amenazada: “vamos por ti y los tuyos”](#); El Universal. February 13, 2014. [CNP denuncia amenaza a periodista del Táchira y a su familia](#); “Aparecieron héroes anónimos a

997. The Colombian journalist Juan Pablo Bieri and a colleague from the channel *Red Más Noticias* were attacked and detained by GNB agents on February 15. According to reports, Bieri and his colleague were covering demonstrations that took place in Caracas that Saturday. During the evening, the reporters found themselves in the midst of confrontations between demonstrators and the GNB. At that point, the GNB agents attacked, insulted, and held them down, despite the fact that they identified themselves as part of the international press corps. As the IACHR learned, the journalists were forced to get in an armored personnel carrier together with a group of demonstrators who had been detained. They took their cell phones and made photocopies of their passports. The operational commander told him, “Juan Pablo, we have already identified you and [if necessary] for any reason we can find you in Bogotá.” The journalists were released when a reporter from a Venezuelan station recognized them in the armored personnel carrier and informed the operational commander. Neither the cell phones (where all the information was found) nor the Colombian money was returned. According to reports, the journalists returned to Colombia after their embassy told them it could not ensure their safety.<sup>1594</sup>

998. During the February 15<sup>th</sup> demonstrations of in the Plaza Altamira of Caracas, the *Globovisión* journalist María Iginia Silva and her reporting team were attacked by demonstrators who hit them with stones and other objects, while others insulted them. The reporter had been covering the event since 2 in the afternoon until the evening when they were assaulted. As she recounted, she managed to leave there with the help of other demonstrators.<sup>1595</sup> The *Globovisión* journalist Carlos Arturo Albino was targeted by GNB agents while he covered the February 15<sup>th</sup> demonstrations in Caracas. Agents shot at him and his reporting team with bbs to frighten them.<sup>1596</sup>

999. The Inter-American Commission was informed of the attack on Gabriel Osorio, photographer for *Orinoquiaphoto*, by alleged GNB agents on the night of February 15 while he was covering demonstrations in Caracas. As recounted by Osorio, while he was shooting photos, a group of armed agents came up to him, with which he showed his press credential. Agents began firing on him with bbs so the photographer started running. After reaching him, the agents surrounded him, beat him on the head with their weapons, and when he fell to the ground, they kicked him. He added that they had tried to steal his camera, but were unsuccessful. As a result the reporter had several broken ribs, two deep wounds in the head, burns from a bb to the leg, and injuries to his lumbar region.<sup>1597</sup>

1000. On February 16, officers of the National Bolivarian Guard (GNB) had aimed their firearms at the journalist Maisdulín Younis, from the daily newspaper *Correo del Caroní* in the state of Bolívar, while she was covering the demonstrations in Ciudad Guayana.<sup>1598</sup> In the morning on that day, the tires of the car of this

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amenazarme hasta de muerte. Cuentas creadas hoy. Prueben todas las tochas de las cuales me acusan [Anonymous heroes appeared to threaten me even with death. Accounts created today. Prove all the silly things you’re accusing me of]”. Lorena Evelyn Arráiz’s Twitter account @lorearraiz. [February 12, 2014 – 3:08 PM](#).

<sup>1594</sup> El Tiempo. February 27, 2014. [La pesadilla de Juan Pablo Bieri en Venezuela](#); Infobae. February 27, 2014. [El dramático relato de un periodista detenido en Venezuela](#); El Colombiano. February 16, 2014. [Periodistas colombianos fueron agredidos en Venezuela por la Guardia Nacional](#); Knight Center for Journalism in the Americas. February 28, 2014. [Venezuelan soldiers beat and detain Colombian journalists during protests](#).

<sup>1595</sup> Espacio Público. February 16, 2014. [Agresión contra periodista de Globovisión](#); Globovisión Noticias. February 16, 2014. [Agredieron a periodista de Globovisión durante protesta en Altamira](#); Su Noticiero. February 15, 2014. [Habla periodista de Globovisión agredida en Altamira. Vea detalles](#); El Nacional. February 17, 2014. [SNTP registra 20 periodistas agredidos en protestas](#).

<sup>1596</sup> Espacio Público. March 13, 2014. [Informe: Los trances de la libertad de expresión, del 12F al 12M](#); Instituto Prensa y Sociedad (IPYS) Venezuela. February 20, 2014. [Caracas: Funcionarios de la Guardia Nacional Bolivariana amedrentaron a equipo reporteril del canal de noticias Globovisión](#); El Nacional. February 16, 2014. [“Mostré mi credencial de fotógrafo y la Guardia Nacional me reprimió peor”](#).

<sup>1597</sup> El Nacional. February 16, 2014. [“Mostré mi credencial de fotógrafo y la Guardia Nacional me reprimió peor”](#); La República. February 17, 2014. [Venezuela: Fotógrafo denuncia agresiones físicas por la Guardia Nacional](#); Espacio Público. February 17, 2014. [Guardia Nacional Bolivariana agredió a fotógrafo](#); Clases de Periodismo/El Universal. February 17, 2014. [Venezuela: fotógrafo muestra agresiones que sufrió por parte de la Guardia Nacional](#).

<sup>1598</sup> Espacio Público. March 13, 2014. [Informe: Los trances de la libertad de expresión, del 12F al 12M](#); Instituto Prensa y Sociedad (IPYS). February 21, 2014. [Bolívar: Periodista del Correo del Caroní amenazada con arma larga](#).



daily newspaper, which was being used by the journalist Clave Rangel to cover the demonstrations in this city, had been slashed.<sup>1599</sup>

1001. During the demonstrations that took place in different cities on February 18, the Commission was informed that there had been attacks, threats, intimidation and/or theft, confiscation or destruction of news material by demonstrators or individuals who were allegedly public servants. This was the case in Bolívar state of the journalist Diogelis Pocaterra and the photographer Wilmer González;<sup>1600</sup> Jesús Hernández, independent journalist;<sup>1601</sup> journalist Carlos Suniaga, together with cameraman José Medina and camera assistant Pedro Caña;<sup>1602</sup> and Carla Ochoa from the daily newspaper *Primicia*.<sup>1603</sup> In Táchira state, This was the case of journalists Jesús Manuel Avendaño and Maikol Labrador of the community channel *Jaureguina TV*;<sup>1604</sup> in Apure state, Eduardo Galindo, reporter for *Radio Fe y Alegría*;<sup>1605</sup> Miguel Cardoza of the daily newspaper *Visión Apureña* and correspondent for *El Universal*;<sup>1606</sup> in Caracas, Karl Penhaul and his reporting team from *CNN Internacional*.<sup>1607</sup>

1002. The IACHR was informed that during the demonstrations on February 19 there had also been attacks, threats, and intimidation of journalists, and/or theft, confiscation, or destruction of their work material. In some cases they were unable to even do their reporting work. This was the case in Caracas of Oliver Fernández, journalist for the channel *Televen*;<sup>1608</sup> Jesús Olarte, cameraman for *Univisión*;<sup>1609</sup> and the citizen journalist Adrián Salas;<sup>1610</sup> in Zulia state, of José Manuel Luengo and Jesús Contreras of the daily newspaper *Panorama*;<sup>1611</sup> and in Bolívar state, of Elita Barroso from the daily newspaper *Primicia*;<sup>1612</sup> and Clave Rangel, Oriana Faoro, and María Ramírez Cabello from the daily newspaper *Correo del Caroní*.<sup>1613</sup>

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<sup>1599</sup> Espacio Público. March 13, 2014. [Informe: Los trances de la libertad de expresión, del 12F al 12M](#); Instituto Prensa y Sociedad (IPYS). February 21, 2014. [Bolívar: Periodista del Correo del Caroní amenazada con arma larga](#); El Nacional. February 16, 2014. ["Mostré mi credencial de fotógrafo y la Guardia Nacional me reprimió peor"](#).

<sup>1600</sup> Espacio Público. February 20, 2014. [Reporteros del Correo del Caroní amenazados con armas de fuego](#); Instituto Prensa y Sociedad (IPYS) Venezuela. February 19, 2014. [Bolívar: Golpean a periodista del Correo del Caroní](#).

<sup>1601</sup> Espacio Público. February 19, 2014. ["Si me tomas fotos y me grabas, te doy un tiro"](#).

<sup>1602</sup> Espacio Público. February 19, 2014. ["Si me tomas fotos y me grabas, te doy un tiro"](#); Instituto Prensa y Sociedad (IPYS). February 19, 2014. [Bolívar: Corresponsal de Globovisión Carlos Suniaga y su equipo fueron agredidos "por oficialistas" en manifestación estudiantil](#).

<sup>1603</sup> Espacio Público. February 22, 2014. [Cuatro días de agresiones a periodistas del Diario Primicia](#); Colegio Nacional de Periodistas. March 11, 2014. [CNP Ciudad Guayana y CRGV-Guayana exigen un alto a la agresiones](#).

<sup>1604</sup> Espacio Público. February 19, 2014. [Agreden y roban a reporteros de TV comunitaria en Táchira](#).

<sup>1605</sup> Espacio Público. February 18, 2014. [Agreden a periodistas en San Fernando de Apure](#); Instituto Prensa y Sociedad (IPYS) Venezuela. February 19, 2014. [Apure: Periodista de Radio Fe y Alegría 104.7 FM fue agredido en presencia de funcionario policial durante protesta estudiantil](#); El Nacional. February 19, 2014. [Dos periodistas agredidos en Apure](#).

<sup>1606</sup> Espacio Público. February 18, 2014. [Agreden a periodistas en San Fernando de Apure](#); El Nacional. February 19, 2014. [Dos periodistas agredidos en Apure](#); Instituto Prensa y Sociedad (IPYS) Venezuela. February 21, 2014. [Apure: Corresponsal de El Universal fue agredido por manifestantes oficialistas mientras cubría protesta](#).

<sup>1607</sup> El Diario. February 19, 2014. [Asaltan reportero de CNN en medio de protestas en Venezuela](#); Espacio Público. February 19, 2014. [Roban cámaras a equipo de CNN](#); Noticias 24. February 21, 2014. [Maduro lamenta el robo al equipo de CNN en el país y dice que será repuesto el daño \(+video\)](#); El Clarín. February 18, 2014. [Roban equipo de CNN Internacional en El Valle](#).

<sup>1608</sup> Espacio Público. February 21, 2014. [Agredido periodista de Televen](#).

<sup>1609</sup> Espacio Público. February 20, 2014. [Herido con perdigones camarógrafo de Univisión](#); El Diario de Caracas. February 21, 2014. [Fotógrafo de Univisión es herido en protesta en Caracas](#).

<sup>1610</sup> Espacio Público. March 13, 2014. [Informe: Los trances de la libertad de expresión, del 12F al 12M](#).

<sup>1611</sup> Espacio Público. February 19, 2014. [Reporteros de Panorama agredidos por policías zulianos](#); La Verdad. February 20, 2014. [Policías atacan a periodistas](#); Colegio Nacional de Periodistas. February 19, 2014. [Periodistas zulianos reiteran su compromiso de informar](#).

<sup>1612</sup> Espacio Público. February 22, 2014. [Cuatro días de agresiones a periodistas del Diario Primicia](#); Colegio Nacional de Periodistas. March 11, 2014. [CNP Ciudad Guayana y CRGV-Guayana exigen un alto a la agresiones](#); Instituto Prensa y Sociedad (IPYS) Venezuela. February 19, 2014. [Bolívar: 5 periodistas y 1 reportero amenazados en manifestación mientras cubrían protestas](#).

<sup>1613</sup> Espacio Público. February 20, 2014. [Robadas y amenazadas periodistas en Ciudad Guayana](#); Instituto Prensa y Sociedad (IPYS) Venezuela. February 19, 2014. [Bolívar: 5 periodistas y 1 reportero amenazados en manifestación mientras cubrían protestas](#).

1003. On February 19, a group of photojournalists from the daily newspaper *Sol de Margarita* in the state of Nueva Esparta had been threatened by a group of demonstrators while they were covering the protests. According to the information that had been received, one of them had threatened to set fire to the newspaper if photographs were published showing their faces and another demonstrator had threatened to kill one of the reporters.<sup>1614</sup>

1004. The IACHR learned that during the demonstrations on February 20 there were cases in which journalists were arrested or assaulted. This was the case of María Alejandra Salas, and two Chilean correspondents;<sup>1615</sup> as well as the journalists Leonervis Hernández, Rebeca Maricuto, and the photographer César Flores.<sup>1616</sup>

1005. On February 20 the headquarters of the daily newspaper *El Universal* was besieged by armed groups in the midst of a march by government supporters. The marchers stopped in front of the newspaper's facilities and yelled slogans, painted the façade, and launched rockets<sup>1617</sup> (devices filled with gunpowder fired into the air where they explode).

1006. On February 20, the journalist Eduardo Galindo had filed a complaint with the Superior Prosecution Service of San Fernando de Apure for threats and harassment he had received on Facebook by a user known as "El Maquiavelo" (Machiavelli). According to the information that was received, the user had identified Galindo and his colleague Miguel Cardoza as being responsible for paying students to protest.<sup>1618</sup>

1007. On February 21 the *CNN en Español* journalist and newscaster Patricia Janiot reported that she had been the victim of "harassment" in the airport of Caracas when she was about to return to the United States after the Venezuelan government had cancelled her permit to work as a journalist in the country. As Janiot recounted, when she had gone through the X-rays of the security check area, agents twice asked her to put her shoe back through on the belt. The journalist was held in the anti-narcotics office by security agents who deemed it necessary to review her shoe to look for drugs or explosives.<sup>1619</sup>

1008. According to the information that was received, on February 21, security forces had prevented the German journalist Marc Koch, correspondent for *Deutsche Welle DW*, a radio broadcasting service from Germany, to carry out his work as a reporter in Caracas. According to what was reported, these security forces had prevented him from entering a university center, had held him for an hour and then had forced him to delete the material he had recorded.<sup>1620</sup>

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<sup>1614</sup> Sol de Margarita. February 19, 2014. [Amenazan a reporteros gráficos que cubren manifestaciones](#); Espacio Público. March 13, 2014. [Informe: Los trances de la libertad de expresión, del 12F al 12M](#).

<sup>1615</sup> Espacio Público. March 13, 2014. [Informe: Los trances de la libertad de expresión, del 12F al 12M](#); "2:34 pm, GNB retiene a periodista María Alejandra Salas y 2 corresponsales chilenos en la AN (Pajaritos). Pedimos apoyo, ["2:34 pm, GNB holds journalist María Alejandra Salas and 2 Chilean correspondents in the AN (Pajaritos). We ask for support,"] @BiagioPilieri." Sindicato Nacional de Trabajadores de la Prensa [National Press Workers' Union] (SNTTP) Twitter Account. [February 20, 2014 – 11:06 AM](#).

<sup>1616</sup> Espacio Público. March 13, 2014. [Informe: Los trances de la libertad de expresión, del 12F al 12M](#); Colegio Nacional de Periodistas. March 11, 2014. [CNP Ciudad Guayana y CRGV-Guayana exigen un alto a la agresiones](#).

<sup>1617</sup> Espacio Público. March 13, 2014. [Informe: Los trances de la libertad de expresión, del 12F al 12M](#); El Universal. February 20, 2014. [Marcha de colectivos recorre la avenida Urdaneta](#).

<sup>1618</sup> Espacio Público. March 13, 2014. [Informe: Los trances de la libertad de expresión, del 12F al 12M](#); La Patilla. February 24, 2014. [Periodistas apureños recibieron amenazas por redes sociales](#).

<sup>1619</sup> El Universal. February 21, 2014. [Janiot denunció "hostigamiento" por parte de las autoridades venezolanas](#); Clases de Periodismo. February 21, 2014. [Patricia Janiot revela que fue requisada "por drogas" en Venezuela](#); CNN en Español. February 21, 2014. [Gobierno de Venezuela revoca las credenciales a periodistas de CNN en Español](#); El Comercio. February 21, 2014. [Patricia Janiot sufrió "hostigamiento" al salir de Venezuela](#);

<sup>1620</sup> Instituto Prensa y Sociedad(IPYS). February 22, 2014. [Caracas: Cuerpos de seguridad del Estado venezolano impidieron a corresponsal de nacionalidad alemana cumplir con su labor informativa](#); Espacio Público. March 13, 2014. [Informe: Los trances de la libertad de expresión, del 12F al 12M](#).

1009. The journalist Francisco León Martínez, from *Radio Fe y Alegría*, had been threatened by officers of the National Bolivarian Guard (GNB) while he was covering a demonstration in Ciudad Guayana on February 22. According to what was reported, the officers had aimed a firearm at him and told him to get out of the place otherwise he would be arrested.<sup>1621</sup>

1010. The IACHR was informed that, on February 22, Tim Pool, a producer and journalist of the international portal *Vice.com*, had left Venezuela after receiving “thousands of threats.” According to what was reported, the reporter had entered the country on February 20 and had been identified as a “media mercenary.”<sup>1622</sup>

1011. On February 23, the Colombian journalist Luis Carlos Vélez, working for *Noticias Caracol* and the daily newspaper *El Espectador*, had reported that he and his team had been “mistreated” by alleged officers of the National Bolivarian Guard (GNB), who had aimed at them with a rifle and had asked them on what side they were. The journalist added that an immigration officer had asked him what he had put in his newspaper reports, as a condition for letting him leave the country.<sup>1623</sup>

1012. According to information received by the Commission during coverage of demonstrations in the country on February 24, press workers and citizen reporters were detained, attacked, and/or their new material was confiscated. In some cases the material gathered and the equipment were reviewed and/or eliminated. This was the case of Andrea Jiménez,<sup>1624</sup> audiovisual producer and journalist, and the student Pier Di Silvestri<sup>1625</sup> in Miranda state; Wilfredo Farías,<sup>1626</sup> photographer of the daily newspaper *El Siglo*, and María Fernanda García,<sup>1627</sup> social communicator and photographer, in the city of Maracay; Manuel Cardozo<sup>1628</sup> of the *Radial González Lovera* in Táchira state; and Gianfranco Di Giacomantonio,<sup>1629</sup> journalist for the Italian media outlet *Abruzzo 24*, in Aragua state.

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<sup>1621</sup> Espacio Público. February 22, 2014. [Francisco León: “me apuntaron para darme un perdigonazo”](#); Instituto Prensa y Sociedad (IPYS). February 22, 2014. [Bolívar: Funcionario de la GN amenazó con detener a reportero para Radio Fe y Alegría 103.1 FM y lo apunto con un arma larga](#).

<sup>1622</sup> Espacio Público. February 24, 2014. [Periodista extranjero sale de Venezuela tras amenazas](#); La Patilla. February 23, 2014. [Periodista extranjero abandona Caracas tras recibir amenazas de muerte](#); “I’ve left Venezuela after receiving thousands of death threats. My friends are now being targeted as well.” Tim Pool’s official Twitter account @timcast. [February 22, 2014 – 5:26 PM](#); “Tenemos aquí a un mercenario mediático => @Timcast viene de USA a apoyar las guarimbas y la desestabilización ya paso por Ucrania. Alerta! [We have a media mercenary here => @Timcast comes from the USA to support the street clashes and destabilization he’s already been to the Ukraine. Watch out!].” Mario Silva García’s Twitter account @LaHojillaenTV. [February 20, 2014 – 5:58 PM](#).

<sup>1623</sup> Espacio Público. March 13, 2014. [Informe: Los trances de la libertad de expresión, del 12F al 12M](#); Clases de Periodismo. February 24, 2014. [Venezuela: Guardia Nacional ataca de nuevo a la prensa](#); “En #Caracas también fuimos maltratados por GN. 6 hombres nos bajaron del auto a punta de fusil y preguntaron sobre de qué lado estábamos [In #Caracas we were also mistreated by GN. 6 men had us get out of the car at gunpoint and asked on what side we were]”. Luis Carlos Vélez’s official Twitter account @lcvelez. [February 23, 2014 – 8:40 AM](#); “Primera vez que un agente de migración me pregunta que dije en mis reportajes como condición para salir del país. Que lástima. #venezuela [First time an immigration officer asks me what I said in my news stories as a condition for leaving the country. What a shame. #venezuela]”. Luis Carlos Vélez’s official Twitter account @lcvelez. [February 23, 2014 – 2:34 PM](#).

<sup>1624</sup> Espacio Público. March 13, 2014. [Informe: Los trances de la libertad de expresión, del 12F al 12M](#); Últimas Noticias. February 24, 2014. [Fotos| Detienen a periodista Andrea Jiménez en San Antonio de los Altos](#); Informe 21. February 28, 2014. [La periodista Andrea Jiménez denunció que fue retenida, robada y amenazada por la GNB](#).

<sup>1625</sup> Espacio Público. March 13, 2014. [Informe: Los trances de la libertad de expresión, del 12F al 12M](#); La Patilla. February 25, 2014. [Al menos 16 detenidos por la GNB durante protestas en Los Salias](#); El Universal. February 24, 2014. [Hay 18 detenidos en el Sebin por protestas](#).

<sup>1626</sup> Espacio Público. March 13, 2014. [Informe: Los trances de la libertad de expresión, del 12F al 12M](#); El Siglo. February 25, 2014. [Tensión, vandalismo y saqueo nocturno se vivió el lunes en Maracay](#).

<sup>1627</sup> Espacio Público. March 13, 2014. [Informe: Los trances de la libertad de expresión, del 12F al 12M](#); Instituto Prensa y Sociedad (IPYS) Venezuela. February 25, 2014. [Aragua: Locutora de radio fue detenida y liberada 12 horas después](#).

<sup>1628</sup> Espacio Público. March 13, 2014. [Informe: Los trances de la libertad de expresión, del 12F al 12M](#); El Propio. February 24, 2014. [EFFECTIVOS MILITARES AGREDEN Y DESTRUYEN EQUIPO DE PERIODISTA EN TÁCHIRA](#).

<sup>1629</sup> Espacio Público. March 13, 2014. [Informe: Los trances de la libertad de expresión, del 12F al 12M](#); Instituto Prensa y Sociedad (IPYS) Venezuela. March 1, 2014. [Aragua: Corresponsal de nacionalidad italiana fue detenido por más de 12 horas por funcionarios policiales mientras cubría protesta](#); Infobae. March 6, 2014. [El IPI le pidió a Maduro que frene sus amenazas a los medios](#); La Prensa. Undated. [Informar, un oficio difícil en Venezuela](#).

1013. On February 25, Oliver Fernández, journalist for *Televen*, was verbally attacked by the Foreign Minister of the Republic, Elías Jaua, when the reporter asked him if he had evidence to prove his statements against the former Colombian President, Álvaro Uribe Vélez. The Foreign Minister confronted him and aggressively responded “Are you Venezuelan or Colombian?”.<sup>1630</sup>

1014. Ronald Muñoz, journalist for *Venezolana de Televisión (VTV)*, was assaulted by demonstrators while he was covering demonstrations in San Cristóbal, Táchira state. The journalist’s vehicle was intercepted by a group of demonstrators who beat him and stole his personal property and work equipment.<sup>1631</sup>

1015. On February 27, the journalist Karelys Lovera from the daily newspaper *Visión Apureña* was verbally assaulted and threatened with arrest after she interceded on behalf of a young journalism student and motorcycle taxi driver who was purportedly being assaulted. According to the information received, Lovera’s cell phone was also stolen and the regional governor rebuked her stating he would not answer questions from her newspaper.<sup>1632</sup>

1016. The Commission learned that during the demonstration of February 28, the GNB attacked, detained, and confiscated new material from the Italian photographer Francesca Commissari, collaborator of the daily newspaper *El Nacional*. The journalists was beaten, detained, and taken together with group of demonstrators to Fuerte Tiuna, a military facility in the center of Caracas. The detention took place when Commissari, who was taking photos of the demonstration, tried to flee after alleged GNB agents had pushed her and had asked for her bag with her camera and personal effects. According to reports, her belongings, equipment, and material that she was carrying were confiscated. Commissari was released on March 2 without charge.<sup>1633</sup>

1017. During the February 28<sup>th</sup> demonstrations in the Plaza Altamira, Caracas, the journalist Andrew Rosati, collaborator for the daily newspaper *The Miami Herald* and other media outlets, was also assaulted by GNB agents. According to reports, Rosati was beaten in the abdomen and the face and was detained for half an hour. The journalist filed a report with the pertinent government agencies.<sup>1634</sup>

1018. On March 4 several photographers and journalists were assaulted by demonstrators while covering the protests that took place near the Plaza Altamira in the city of Caracas. According to reports, the photographer Cristian Hernández was attacked with a metal pipe, while Dagne Cobo and other journalists were attacked for defending their colleague. The reporters denounced this on Twitter. Cobo asserted on his

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<sup>1630</sup> Espacio Público. March 13, 2014. [Informe: Los trances de la libertad de expresión, del 12F al 12M](#); Instituto Prensa y Sociedad (IPYS) Venezuela. February 26, 2014. [Caracas: Canciller Elías Jaua agrede verbalmente a periodista de canal privado](#); Clases de Periodismo. February 25, 2014. [Periodista fue agredido verbalmente por canciller venezolano](#); YouTube. February 25, 2014. Published by Oliver Fernández. [ELIAS JAUA](#).

<sup>1631</sup> Ministry of People’s Power for Communication and Information. Bolivarian Government of Venezuela. February 25, 2014. [Grupos violentos agredieron al periodista Ronald Muñoz en Táchira](#); Venezolana de Televisión (VTV). February 25, 2014. [Grupos vandálicos agredieron al periodista Ronald Muñoz en Táchira](#); Espacio Público. March 13, 2014. [Informe: Los trances de la libertad de expresión, del 12F al 12M](#).

<sup>1632</sup> Espacio Público. March 13, 2014. [Informe: Los trances de la libertad de expresión, del 12F al 12M](#); Últimas Noticias. February 27, 2014. [Protesta contra la inseguridad acabó desfile de Carnaval en Apure](#).

<sup>1633</sup> Infobae. March 1, 2014. [Venezuela: la Guardia Nacional golpeó y arrestó a periodistas](#); El Nacional. March 2, 2014. [Dieron libertad plena a fotoperiodista italiana Francesca Commissari](#); Centro Knight para el Periodismo en las Américas. March 3, 2014. [Guardia Nacional agrede y detiene a 2 periodistas extranjeros durante protestas en Venezuela](#); El Heraldó. March 2, 2014. [Liberan a fotógrafa italiana detenida en protesta](#); Espacio Público. March 13, 2014. [Informe: Los trances de la libertad de expresión, del 12F al 12M](#).

<sup>1634</sup> Espacio Público. March 13, 2014. [Informe: Los trances de la libertad de expresión, del 12F al 12M](#); Instituto Prensa y Sociedad (IPYS) Venezuela. March 2, 2014. [Caracas: Corresponsal de prensa estadounidense fue agredido por funcionarios de la Guardia Nacional Bolivariana](#); Al Jazeera. March 1, 2014. [Venezuelan activists urge more protests](#); Inquirer/AFP. March 1, 2014. [Foreigners detained as Venezuela protesters, security clash](#).

Twitter profile that “AFP, EFE, Reuters, Cadena Capriles, Bloque Dearmas, ALL attacked by those who we have photographed during 3 weeks of protests.”<sup>1635</sup> [sic]

1019. The chief of photography of the daily newspaper *Avance*, Jesús Tovar, was detained by GNB agents while covering the March 5<sup>th</sup> demonstrations in the municipality of Carrizal, in Miranda state. According to information received, the journalist was detained for two hours without any explanation. A journalist from Cadena Capriles was detained with him.<sup>1636</sup>

1020. Journalists and photojournalists were attacked on March 5 opposite the Edificio Nacional [National Building] in Barquisimeto during a confrontation between opposition groups and groups of government supporters. The journalist Aura Marina Rodríguez and the photographer Juan Brito from *El Impulso* were identified by some individuals who beat Brito and destroyed their work material. National Police agents had rescued the reporters.<sup>1637</sup> The reporters filed a report with the Office of the Senior Prosecutor of Lara state.<sup>1638</sup> Additionally, individuals who were allegedly government supporters tried to take the camera of the *El Informador* photojournalist Alexander Sánchez. When he resisted they kicked him and took his glasses. GNB agents had protected him in the building, but took his camera, which they returned to him hours later.<sup>1639</sup> At this same place, the journalist Amny Pérez Matos and the photojournalist Hugo Pachano from *La Prensa de Lara* were attacked by a group of alleged government supporters while they covered the judge’s ruling on some students who had been detained. They destroyed Pachano’s camera and physically assaulted Pérez.<sup>1640</sup>

1021. On March 7, officers of the National Bolivarian Guard (GNB) had prevented Julio Materano, journalist for *El Universal*, to carry out his work as a reporter in Caracas. According to what was reported, Materano had reached the place to cover violent incidents that had occurred on March 6, where a National Guardsman and a motorcyclist died. When he arrived, one of the officers of the GNB had informed him that he could not interview anybody because the area was under military control. The journalist had managed to interview certain residents, but when he left that place about 20 officers had penned him in, had taken away his notebook and temporarily withheld his National Journalists Association identification card. According to the information that was received, the journalist had been identified as “inciting violence” and “breaking the law.”<sup>1641</sup>

1022. The journalist Adriana Núñez reported on her Twitter account that during coverage of a demonstration against the Ministry of Food on March 8 the reporter team working for *Telegen* had to

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<sup>1635</sup> Dagne Cobo’s Twitter account @kayoyando. [march 4, 2014 – 3:05 PM](#); 2001. March 4, 2014. [Agreden a fotoperiodistas durante manifestación en Altamira](#); Espacio Público. March 4, 2014. [Periodistas agredidos en Altamira](#).

<sup>1636</sup> Espacio Público. March 5, 2014. [Jefe de fotografía de Diario Avance detenido por GNB](#); Instituto Prensa y Sociedad (IPYS) Venezuela. March 5, 2014. [Miranda: Funcionarios de la GNB detuvieron a dos reporteros gráficos mientras cubrían protesta](#).

<sup>1637</sup> Espacio Público. March 6, 2014. [Cinco trabajadores de la prensa golpeados en Barquisimeto](#); El Mundo. March 5, 2014. [Cinco periodistas larenses fueron agredidos cuando cubrían protesta](#); El Impulso. March 5, 2014. [Lara: Grupos oficialistas agreden a reporteros de EL IMPULSO y otros medios impresos \(Fotos\)](#); Colegio Nacional de Periodistas. March 9, 2014. [SIP rechaza agresiones a trabajadores de la prensa en Venezuela](#).

<sup>1638</sup> El Impulso. March 8, 2014. [Equipo de EL IMPULSO formaliza denuncia de agresión](#); Noticias Venezuela. March 8, 2014. [Equipo de EL IMPULSO formaliza denuncia de agresión](#).

<sup>1639</sup> Contexto TMT/El Informador. March 6, 2014. [Agredidos reporteros gráficos y periodistas en Barquisimeto por afectos al oficialismo](#); Espacio Público. March 6, 2014. [Cinco trabajadores de la prensa golpeados en Barquisimeto](#); El Mundo. March 5, 2014. [Cinco periodistas larenses fueron agredidos cuando cubrían protesta](#); Noticias Diarias. March 6, 2014. [\(Lara\) Cinco periodistas denunciaron agresiones durante protesta](#).

<sup>1640</sup> La Prensa. March 5, 2014. [Agredido equipo reporteril de LA PRENSA en el Edificio Nacional](#); Espacio Público. March 6, 2014. [Cinco trabajadores de la prensa golpeados en Barquisimeto](#); El Mundo. March 5, 2014. [Cinco periodistas larenses fueron agredidos cuando cubrían protesta](#); Contexto TMT/El Informador. March 6, 2014. [Agredidos reporteros gráficos y periodistas en Barquisimeto por afectos al oficialismo](#).

<sup>1641</sup> El Universal. March 7, 2014. [Guardia Nacional impide realizar trabajo al periodista Julio Materano](#); Instituto Prensa y Sociedad(IPYS). March 13, 2014. [Caracas: Funcionarios de la Guardia Nacional Bolivariana impidieron a reportero de periódico privado cumplir sus funciones informativas](#); Espacio Público. March 11, 2014. [GNB impide que periodista de El Universal realice su trabajo](#).

withdraw their microwave equipment because of a siege by “a large group of pro-government people”. She added that the GNB had guaranteed the “peaceful” departure of the journalists.<sup>1642</sup>

1023. As learned by the IACHR, the reporting team of the daily newspaper *Nueva Prensa de Oriente* was assaulted during the demonstrations that took place on March 10 opposite the University Santa María in Barcelona, Anzoátegui state. According to reports, the journalist Amberlys Hernández and the photojournalist Ana Lucía García were threatened by a group of individuals on motorcycles who stole García’s belongings and broke the window of the newspaper’s car with a rock.<sup>1643</sup>

1024. On the night of March 10, a group of individuals set the facilities of *ULA FM 106.5*, on fire. *ULA FM 106*, the radio station for the University of Los Andes, is in the city of San Cristóbal, Táchira state. According to reports, unknown individuals threw incendiary devices at the radio station’s facilities, which fanned a fire whose flames spread to the station’s booth where the recording equipment was located. The incident did not cause any injuries as no personnel were there at the time. The Chancellor of the University, Mario Bonucci, requested a “serious investigation” into the situation.<sup>1644</sup>

1025. During the protests of March 10 in the state of Carabobo, the team of reporters of the daily newspaper *El Carabobeño* had been threatened and then verbally assaulted by a member of the National Bolivarian Guard (GNB).<sup>1645</sup>

1026. During the demonstrations of March 12 around the headquarters of the University Volunteer Fire Department of the Central University of Venezuela (UCV), a team of reporters from *Televen* had withdrawn from the place in the afternoon, when a group of men in black uniforms and a civilian had aimed at the journalist Carlos Eduardo Martínez and his assistant. The men had asked them to identify themselves and what they were doing there.<sup>1646</sup>

1027. The IACHR learned that during the demonstrations on March 12 there were physical and/or verbal assaults on journalists, as well as destruction and/or confiscation of work material in some cities of the country. In Caracas, this was the case of David Rondón, correspondent of the daily newspaper *El Carabobeño*;<sup>1647</sup> Raíza Vargas and the reporting team of the channel *D Televisión*;<sup>1648</sup> Javier Castillo,

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<sup>1642</sup> Espacio Público. March 13, 2014. [Informe: Los trances de la libertad de expresión, del 12F al 12M](#); “Por petición de un grupo de oficialistas, la microondas de Televen tuvo que retirarse de la avenida Andrés Bello [At the request of a group of government supporters, Televen’s microwave equipment had to be withdrawn from the Andrés Bello avenue]”. Adriana Núñez’s Twitter account @Adrita1983. [March 8, 2014 – 8:29 AM](#); “Afortunadamente solo fueron gritos. La GNB garantizó nuestra salida “en paz” y uno de los oficialistas dijo “Déjenlos. No queremos show [Fortunately they were only screams. The GNB guaranteed we would leave “peacefully” and one of the government supporters said “Let them go. We don’t want any show.]”. Adriana Núñez’s Twitter account @Adrita1983. [March 8, 2014 – 8:52 AM](#).

<sup>1643</sup> Espacio Público. March 11, 2014. [Motorizados agreden a periodistas y atacan vehículo de Nueva Prensa de Oriente](#); El Tiempo. March 11, 2014. [Suspendieron clases por dos días tras agresión a uemistas](#).

<sup>1644</sup> Instituto Prensa y Sociedad (IPYS) Venezuela. March 13, 2014. [Táchira: Queman estación radial ULA FM 106.5 FM](#); Prensa ULA. March 11, 2014. [Rector Bonucci exige “investigación seria” sobre quema de ULA FM en Táchira](#); El Informe. March 11, 2014. [Grupos violentos queman emisora de radio ULA FM 106.5](#); Prensa ULA. March 11, 2014; [Así quedó la emisora 106.5 ULA FM en Táchira \(imágenes\)](#).

<sup>1645</sup> Espacio Público. March 13, 2014. [Informe: Los trances de la libertad de expresión, del 12F al 12M](#); Notitarde. March 10, 2014. [CNP Carabobo denunciará ante Fiscalía agresiones de la GNB contra periodistas](#); Diario Contraste. March 10, 2014. [Agreden a equipo reporteril del Diario El Carabobeño](#); El Propio. March 10, 2014. [CORONEL DE LA GNB ATACA A PERIODISTAS DE EL CARABOBEÑO DURANTE PROTESTAS](#).

<sup>1646</sup> Instituto Prensa y Sociedad (IPYS). March 14, 2014. [Caracas: Presuntos funcionarios de seguridad del Estado apuntaron con armas de fuego a equipo reporteril de televisora privada](#); Espacio Público. March 24, 2014. Venezuela: January-March 2014. Difficult times for freedom of expression. Available at: Archive of the Special Rapporteurship for Freedom of Expression; “Un grupo uniformado portando armas largas nos abordó dentro de la sede de los bomberos de la UCV, salimos del sitio! [A group wearing uniforms and bearing rifles came up to us inside the headquarters of the UCV firemen, we left the place!]”. Carlos Eduardo Martínez’s Twitter account @cemartinezl. [March 12, 2014 – 1:05 PM](#); “Primero apuntaron a mi asistente preguntando quien era, luego a mi. Solo nos preguntaron quienes éramos y qué hacíamos en el lugar [First they aimed at my assistant asking him who he was, then at me. All they asked was who we were and what we were doing there]”. Carlos Eduardo Martínez’s Twitter account @cemartinezl. [March 12, 2014 – 1:08 PM](#).

<sup>1647</sup> Instituto Prensa y Sociedad (IPYS) Venezuela. March 14, 2014. [Caracas: Corresponsal de periódico regional fue herido de un botellazo en la cabeza mientras cubría protesta en la Universidad Central de Venezuela](#); “#12M Tras un mes cubriendo protestas en

correspondent of *MiamiDiario*;<sup>1649</sup> and Esteninf Olivarez of *Globovisión*.<sup>1650</sup> Madelyn Palmar, correspondent of *Globovisión*, was also assaulted in Zulia.<sup>1651</sup>

1028. On the night of March 14, during coverage of the protests in Plaza Altamira, Caracas, the Chilean journalist Cristian Dubó from *Canal 13* had been assaulted and threatened with becoming a missing person by the officers of the National Bolivarian Guard (Guardia Nacional Bolivariana—GNB). As reported, Dubó was filming the alleged arrest of some of the protesters when officers of the GNB wanted to stop his coverage and shoved, punched and kicked him, covered over the lens of his camera and damaged part of his equipment. The journalist added that, at one moment, after he had shown his identity card, an officer kept it and threatened to arrest him for lack of identification. Afterwards, the officer had given it back by throwing it on the ground.<sup>1652</sup>

1029. On March 15, the team of reporters from the opposition political party Voluntad Popular (People's Will) had received a death threat from individuals who had identified themselves as members of the National Liberation Movement – Tupamaros when the journalists were about to cover a peaceful demonstration organized by that party. As reported, the reporters had been accused of being far rightwing killers and employees and had forced them to leave the place. The journalists pointed out that, with them, there was a Portuguese reporter and the journalist Ingrid Bravo, from *FM Center*, who had been verbally attacked because they used bullet-proof vests and gas masks.<sup>1653</sup>

1030. Carlos Suniaga, correspondent for *Globovisión*, had been assault by alleged members of the municipal fire department of Puerto Ordaz, state of Bolívar, while he was shooting a video of the clashes between protesters and residents of a municipal residential complex on March 17. Suniaga had been filming when a group of protesters threw objects against the buildings of the residential complex in front of officers of the National Bolivarian Police (Policía Nacional Bolivariana—PNB), but when they realized that they were being filmed they had aggressively come up to the journalist and demanded that he film in other direction. Afterwards, a group of men had shoved and hit the journalist and had tried to take his cell phone away from him. When the journalist was leaving the place, a man had pinned him by the back, thrown him to the ground and hit him. According to what was reported, this incident had been witnessed by officers of the PNB, the

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Caracas, en la UCV me llegó el primer botellazo en la cabeza... Esto sigue” [“#12M After a month covering protests in Caracas, in the UCV the first bottle hit me in the head... This continues”]. David A. Rondón’s Twitter account @davidrd87. [March 12, 2014 – 2:21 PM](#) [March 12, 2014 – 2:21 PM].

<sup>1648</sup> Espacio Público. March 24, 2014. Venezuela: Enero – Marzo 2014. Los trances de la libertad de expresión. Available at: Archive of the Special Rapporteurship for Freedom of Expression; Instituto Prensa y Sociedad (IPYS) Venezuela. March 12, 2014. [Caracas: Corresponsal de prensa extranjera fue despojado de su equipo de trabajo y agredido por simpatizantes oficialistas](#).

<sup>1649</sup> Instituto Prensa y Sociedad (IPYS) Venezuela. March 12, 2014. [Caracas: Corresponsal de prensa extranjera fue despojado de su equipo de trabajo y agredido por simpatizantes oficialistas](#); MiamiDiario. March 12, 2014. [Reportero de MiamiDiario fue agredido por simpatizantes del régimen de Maduro](#); Espacio Público. March 24, 2014. Venezuela: Enero – Marzo 2014. Los trances de la libertad de expresión. Available at: Archive of the Special Rapporteurship for Freedom of Expression.

<sup>1650</sup> Instituto Prensa y Sociedad (IPYS) Venezuela. March 14, 2014. [Caracas: Simpatizantes oficialistas acusaron de asesinos a reporteros de televisora privada mientras cubrían manifestación](#); Espacio Público. March 24, 2014. Venezuela: Enero – Marzo 2014. Los trances de la libertad de expresión. Available at: Archive of the Special Rapporteurship for Freedom of Expression.

<sup>1651</sup> “La Policía Regional dispara a todo lo que se mueve...fuimos apuntados y nos lanzaron piedras durante cobertura #Torresdelsaladillo” [“The regional police shoot at anything that moves...we were aimed at and they threw rock at us during coverage #Torresdelsaladillo”]. Madelyn Palmar’s Twitter account @Madepalmar. [March 12, 2014 – 12:01 PM](#). Espacio Público. March 24, 2014. Venezuela: Enero – Marzo 2014. Los trances de la libertad de expresión. Available at: Archive of the Special Rapporteurship for Freedom of Expression.

<sup>1652</sup> Espacio Público. March 18, 2014. [Camarógrafo chileno “me iban a desaparecer”](#); La Patilla. March 15, 2014. [GNB amenaza con “desaparecer” a periodista chileno \(Video\)](#); Emol. March 14, 2014. [Camarógrafo agredido en Venezuela: Policías dijeron que si no me iba “me harían desaparecer”](#); Colegio Nacional de Periodistas. March 18, 2014. [Camarógrafo chileno fue agredido en Altamira](#); Teletrece/YouTube. March 15, 2014. Publicado por Sindicato Nacional de Trabajadores de la Prensa. [GNB agrade a camarógrafo de Canal 13 de Chile \(14/03/2014\)](#).

<sup>1653</sup> Instituto Prensa y Sociedad(IPYS). March 18, 2014. [Caracas: Simpatizantes oficialistas amenazaron de muerte a equipo reporteril de Voluntad Popular](#); Espacio Público. March 24, 2014. Venezuela: January-March 2014. Difficult times for freedom of expression. Available at: Archive of the Special Rapporteurship for Freedom of Expression.

National Bolivarian Guard (GNB), the Municipal Police, and staff of the mayor's office. Suniaga had reported the incident to the Prosecution Services of the Ministry of Justice so that it would carry out an investigation against the commander of the firemen who had been responsible for the assault.<sup>1654</sup>

1031. Carlos Eduardo Ramírez, photojournalist for the daily newspaper *La Nación*, had been injured during coverage of clashes between protesters and officers of the National Bolivarian Guard (GNB) in the state of Táchira on March 18. Ramírez had been hit in the face by a rock presumably thrown by a group of hooded individuals. The photojournalist had been helped by officers of the GNB who took him to a hospital.<sup>1655</sup>

1032. The media student and trainee at the daily newspaper *Notitarde*, Dayana Méndez, had been arrested and assaulted by officers of the National Bolivarian Guard (GNB) who had allegedly fired pellets "at point blank" on March 20 in Valencia in the state of Carabobo. As reported to the Inter-American Commission, the reporter had been providing coverage of the protests with a bullet-proof vest from the newspaper, a gas mask, and her notebook, when she noticed that a group of guards were shooting pellets. She and Luis Rodríguez, a fellow reporter in charge of web pages, had to run to find shelter in a house where they were found by the officers who started hitting them although she had identified herself as a reporter of the newspaper. The officers had proceeded to arrest her and had taken away her working tools such as cell phone, bullet-proof vest and gas mask. The journalist had been released before dawn with injuries from the pellet shots.<sup>1656</sup> As for Rodríguez, he had also been arrested, also injured and had his belongings such as his camera and identification papers taken away from him.<sup>1657</sup>

1033. On March 20, Gabriela García, a multimedia reporter for the daily newspaper *El Nacional*, had been injured by a teargas canister that hit her head during coverage of the protests in Bello Monte, Caracas. According to the information that was received, the journalist had been covering the clashes between the forces of law and order and students, when an officer had shot the device toward the area where the journalists were located. García had been taken to an assistance center where she was given stitches.<sup>1658</sup>

1034. The Commission learned that, on March 22, members of the Bolivarian National Guard (GNB) had searched the apartment of Mildred Manrique, journalist for the daily newspaper *2001*, and then she had been arrested after they had found in the apartment articles such as a helmet, a gas mask, and a bullet-proof vest, which had been identified by one of the officers as "terrorism." As reported by Manrique, when she reached her apartment, she found that the door had been forced open and that the officers of the

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<sup>1654</sup> Espacio Público. March 17, 2014. [Periodista Carlos Suniaga agredido por comandante de bomberos](#); Colegio Nacional de Periodistas. March 19, 2014. [Nuevamente el CNP Seccional Ciudad Guayana exige que cesen las agresiones contra los periodistas](#); El Diario de Caracas. March 17, 2014. [Presunto bombero agrede a corresponsal de Globovisión \(Fotos\)](#); La Patilla. March 17, 2014. [La agresión a periodista de Globovisión, resguardados por la Policía, que Globovisión no pasará](#); Informe 21/Correo del Caroní. March 18, 2014. [Jefe de Bomberos agrede a periodista de Globovisión Carlos Suniaga](#); YouTube. March 17, 2014. Publicado por reporterodc. [Salvaje agresión a periodista de Globovisión en Puerto Ordaz 17-03-14](#).

<sup>1655</sup> Instituto Prensa y Sociedad (IPYS) Venezuela. March 19, 2014. [Táchira: Reportero gráfico fue herido mientras cubría manifestación](#); La Nación. March 19, 2014. [Herido reportero de Diario La Nación](#); Agencia Andina de Noticias. March 19, 2014. ["Rechazamos ataque a fotógrafo de diario La Nación"](#).

<sup>1656</sup> Espacio Público. March 21, 2014. [Reportera de Notitarde fue herida y detenida por la GNB](#); Notitarde. March 21, 2014. [Periodista pasante de Notitarde fue liberada a las 3:30 a.m. de ayer](#); El Venezolano. March 21, 2014. [Con heridas de perdigones liberaron a periodista Dayana Méndez en Carabobo](#); El Nacional. March 21, 2014. [Vecinos denunciaron que grupos de motorizados saquearon en San Diego el jueves](#).

<sup>1657</sup> Notitarde. March 21, 2014. [Periodista pasante de Notitarde fue liberada a las 3:30 a.m. de ayer](#); El Nacional. March 21, 2014. [Vecinos denunciaron que grupos de motorizados saquearon en San Diego el jueves](#); Espacio Público. March 24, 2014. Venezuela: January-March 2014. Difficult times for freedom of expression Available at: Archive of the Special Rapporteurship for Freedom of Expression.

<sup>1658</sup> Instituto Prensa y Sociedad (IPYS). March 20, 2014. [Caracas: Reportera multimedia de El Nacional recibió impacto de bomba lacrimógena en la cabeza mientras cubría manifestación](#); Colegio Nacional de Periodistas. March 20, 2014. [Periodista de El Nacional fue agredida en Ciudad Banasco](#); Espacio Público. March 24, 2014. Venezuela: January-March 2014. Difficult times for freedom of expression. Available at: Archive of the Special Rapporteurship for Freedom of Expression; El Propio. March 20, 2014. [HERIDA PERIODISTA DE EL NACIONAL EN CONCENTRACIÓN ESTUDIANTIL](#).



GNB were on the verge of entering to look for persons allegedly being hidden there, but the apartment was empty. Once inside, the officers found the articles that they pointed out constituted “terrorism” and had taken them along with other electronic devices belonging the journalist such as her computer, tablets, and some photographs. They had also asked her to come with them to the police station as a witness. After two and half hours there, the journalist had been released. Manrique had also pointed out that she not only used the articles found in her apartment to cover protests but also because of the proximity of her residence to Plaza Altamira, which is the place with the highest number of demonstrations, and as she lives with a person with disabilities, she needed to use these articles constantly.<sup>1659</sup> The Committee to Protect Journalists (CPJ), in a blog about the safety of journalists, pointed out that journalists in Venezuela should consider using a bullet-proof vest when providing news coverage.<sup>1660</sup> According to what was reported, the journalist Mildred Manrique had already been threatened, assaulted and harassed on previous occasions by the National Bolivarian Guard (GNB) and the National Bolivarian Police when she was providing coverage of the protests in Plaza Altamira, Caracas, although she had identified herself as a journalist.<sup>1661</sup>

1035. On March 22, in the state of Miranda, the journalist Israel Ruiz had been arrested by the National Bolivarian Guard (GNB) during protests in Los Altos Mirandinos. According to the information that was received, the officers of GNB had entered the parking space of his residence where he was with some friends and they had taken him away. Ruiz had been released on March 23, after a meeting of media employees with commanding officers of the GNB, where they spoke of violence against journalists. At this meeting, General Justo Noguera had declared that Ruiz would be released without any charges.<sup>1662</sup>

1036. According to the information that was received, on March 23, a group of journalists, photographers, cameramen and communication staff had demonstrated in front of the General Command Headquarters of the National Bolivarian Guard (GNB) of Caracas to protest the aggression that journalists had sustained during their coverage of the demonstrations that had taken place in the country since February. The journalists had then come together, after the arrest of the journalists Mildred Manrique and Israel Ruiz. The group had met with General Manuel Quevedo and Commander Justo Noguera, who received from the National Press Workers Union (Sindicato Nacional de los Trabajadores de la Prensa—SNTP) information that, to date, 74 cases of journalists assaulted by the GNB had been filed. In addition, the officers recognized that there may have been excessive reactions and pledged to minimize violence against journalists and had assured them that there is a nationwide ban on arresting journalists.<sup>1663</sup>

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<sup>1659</sup> El Universal. March 22, 2014. [Detenida periodista del diario 2001 en allanamiento en Altamira](#); Instituto Prensa y Sociedad(IPYS). March 22, 2014. [Caracas: Funcionarios de la GNB detuvieron a periodista, allanaron su residencia y presuntamente la acusaron por tener equipo de protección para cobertura de protestas](#); CNN en Español. March 23, 2014. [La detención de Mildred Manrique](#); Clases de Periodismo. March 22, 2014. [Alerta: Denuncian detención de periodista en Venezuela](#); Últimas Noticias. March 22, 2014. [Fotos / Así quedó la casa de la periodista Mildred Manrique tras allanamiento de la GNB](#); Venezuela Al Día. March 22, 2014. [Así arremetieron contra vivienda de la periodista Mildred Manrique en Altamira \(+Fotos\)](#); CNN en Español. March 23, 2014. [Mildred Manrique: “Estoy tranquila porque voy a seguir informando”](#); “Estoy libre y bien gracias a Dios. Gracias a todas las personas que estuvieron pendiente de mí y por el apoyo brindado [I am free and well, thank God. Thank you to all the persons who were concerned about me and for their support]. #23 12:33am”. Mildred Manrique’s Twitter account @milmanrique. [March 22, 2014 – 10:03 PM](#).

<sup>1660</sup> Committee to Protect Journalists (CPJ). February 21, 2014. [Body armor must match threat in Venezuela and Ukraine](#); Knight Center for Journalism in the Americas. March 5, 2014. [Journalists covering Venezuelan protests should consider using body armor: CPJ](#).

<sup>1661</sup> CNN en Español. March 23, 2014. [La detención de Mildred Manrique](#); Espacio Público. February 20, 2014. [GN amenaza y agrede a reportera de 2001](#); Instituto Prensa y Sociedad(IPYS). February 19, 2014. [Caracas: Cuerpos de seguridad del Estado amenazaron a reportera de diario de circulación nacional](#).

<sup>1662</sup> Últimas Noticias. March 22, 2014. [GNB detiene a comunicador social en San Antonio de los Altos](#); El Universal. March 23, 2014. [General Noguera: periodista Israel Ruiz será liberado sin cargos en contra](#); El Nacional. March 23, 2014. [Periodista Israel Ruiz recibió libertad plena](#); Últimas Noticias. March 23, 2014. [En libertad periodista Israel Ruiz, detenido en San Antonio de los Altos](#); El Universal. March 23, 2014. [En libertad el periodista Israel Ruiz](#); Correo del Caroní. March 23, 2014. [Jefe de la GNB se compromete a respetar el trabajo de los periodistas](#).

<sup>1663</sup> Colegio Nacional de Periodistas. March 24, 2014. [Periodistas protestan contra agresiones militares al gremio](#); El Nacional. March 23, 2014. [SNTP denuncia 74 agresiones de la GNB a periodistas](#); Infobae. March 23, 2014. [Venezuela: 74 periodistas fueron agredidos durante las protestas](#); CNP Zulia. March 24, 2014. [Guardia Nacional prohibirá detención a periodistas que cubran manifestaciones](#); La Tercera. March 24, 2014. [Militares venezolanos admiten excesos contra periodistas en protestas](#).

1037. The journalist Jeanfreddy Gutiérrez and the photojournalist César Bracamonte, from the daily newspaper *El Periodiquito*, had been threatened by members of the police force of the state of Aragua on March 27 during coverage of public events when unidentified persons had attacked the headquarters of the Mayor's Office of Girardot. According to the information that was received, although the reporters had identified themselves as journalists, the head of the security corps had ordered those persons taking photographs to leave and had threatened to arrest them if they did not. They took away the photojournalist's camera, which had been returned but without the memory chip, where he had recorded everything that had happened.<sup>1664</sup>

1038. On March 27, the journalist Vicelyz Fadul in the state of Carabobo had received a leaflet threatening her and her family for the complaints she had posted on Twitter. As reported by the journalist, she had found a pamphlet in her car in which the "Operation Defending the Socialist, Anti-Imperialist, Chavez and Maduro Revolution" had identified her "as one of those 'journalists' who has engaged in complaining on Twitter and other media about the activities of our defense bodies" as a result of which they had given her an ultimatum to immediately put an end to her "communicational attack," otherwise she would have "to suffer the consequences."<sup>1665</sup> On May 15, the journalist had once again received a death threat, this time threatening the life of her mother. As reported by the journalist, in the afternoon she received a call in which an unidentified person told her to stop posting information about the government on her Twitter account, otherwise they would kill her mother. Fadul added that, on May 13, her brother, a political leader in the state of Barinas, had also been threatened.<sup>1666</sup> On June 15, the journalist reported on Twitter that rocks had been thrown at her home. According to her report, one of the rocks was wrapped in a piece of paper that said "this time there were rocks but the next time there will be bullets, so be careful Fadul if you don't want you and your relatives to suffer, you've now been warned, if you continue reporting lies against the revolution, there won't be anybody to help you."<sup>1667</sup> According to available information, on June 17 the journalist went to the Prosecution Service of the state of Carabobo where she had registered the evidence and formally filed complaints about the threats and attacks of which she had been the victim. The journalist had also requested a protection measure.<sup>1668</sup>

1039. On March 29, the headquarters of the state television station *Venezolana de Televisión (VTV)* had been attacked for the third time in the state of Táchira very early in the morning. According to information received, unidentified persons had tried to set fire to the station's headquarters and had used firearms to shoot the station's facilities.<sup>1669</sup> Venezuela's Minister of Communication, Delcy Rodríguez, reported on her Twitter account that "violent people from the opposition" were responsible for the attack.<sup>1670</sup>

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<sup>1664</sup> El Periodiquito. March 28, 2014. [CNP repudió amenazas contra periodistas de Aragua](#); Espacio Público. March 31, 2014. [Amenazan a reportero y fotógrafo del Periodiquito de Aragua](#).

<sup>1665</sup> Espacio Público. April 2, 2014. [Le dan ultimátum a periodista por opinar en Twitter](#); Clases de Periodismo. April 2, 2014. [Venezuela: Periodista recibe "ultimátum" por críticas en Twitter](#); Venezuela Al Día. April 2, 2014. [Periodista recibe "ultimátum" en el estado Carabobo \(+Tuit +Foto\)](#); "DENUNCIO Este panfleto lo dejaron en mi vehículo. Es una amenaza en mi contra. Y yo respondo: Nunca seré complaciente [I REPORT: This leaflet was put in my car. It is a threat against me. And I reply: I will never compromise]". Vicelyz Fadul's Twitter account @Vicelyz. [2 de abril de 2014 - 1:38 PM](#).

<sup>1666</sup> Instituto Prensa y Sociedad(IPYS). May 16, 2014. [Carabobo: Amenazan de muerte a madre y hermano de periodista venezolana](#); Espacio Público. May 16, 2014. [Amenazan de muerte a la mamá de una periodista en Carabobo](#).

<sup>1667</sup> Espacio Público. June 17, 2014. [Hacen destrozos en la casa de una periodista en Carabobo](#); Clases de Periodismo. June 16, 2014. [Venezuela: Tiran piedras a vivienda de periodista](#); "#DENUNCIO #15] El ataque en mi contra xser Periodista NO complaciente. En el mensaje me aclaran q próxima serán BALAS [#I REPORT #15] The attack against me for being a journalist who will NOT compromise. In the message it explains that the next time it will be BULLETS]". Vicelyz Fadul's Twitter account @Vicelyz. [15 de junio de 2014 - 2:08 PM](#).

<sup>1668</sup> Instituto Prensa y Sociedad(IPYS). June 20, 2014. [Carabobo: periodista independiente recibe amenazas de muerte](#); Periodista Vicelyz Fadul acudió a Fiscalía y formalizó denuncia de amenaza de muerte". Twitter account of Global Noticia @GlobalNoticiaVe. [June 17 2014 - 3:40 PM](#); Expresión libre. June 17, 2014. [Periodista formalizó denuncia de amenaza de muerte](#).

<sup>1669</sup> El Universal. March 29, 2014. [Atacaron sede de VTV en Táchira](#); Espacio Público. April 1, 2014. [Por tercera vez atacan sede de VTV en Táchira](#); El Diario de Caracas. March 29, 2014. [Denunciaron ataque contra sede de VTV en el estado Táchira \(Fotos\)](#); Telesur. March 29, 2014. [Cámaras de vídeo captaron el ataque a sede de televisora estatal venezolana](#).

<sup>1670</sup> <sup>1670</sup> Ministerio del Poder Popular para la Comunicación y la Información. March 29, 2014. [Delcy Rodríguez denuncia ataque contra sede de VTV en San Cristóbal](#); Telesur. March 29, 2014. [Cámaras de vídeo captaron el ataque a sede de televisora estatal venezolana](#). "Opositores violentos atacan sede de VTV en San Cristóbal en la madrugada!Tendrá algo qué decir CNP?[Violent persons from the

1040. The Office of the Special Rapporteur was informed about the pre-trial detention of five persons allegedly for having filmed military personnel arriving at the airport in the city of San Cristóbal, in the state of Táchira, on March 31. According to what was reported, these persons had been travelling through the Santo Domingo airport, which shares a landing field with the Buenaventura Viva Guerrero Air Force Base, and had been filming military transport aircraft landing with uniformed personnel. The military personnel were allegedly part of the contingent that had arrived to help in the operations of removing the barricades and reestablishing law and order in the state. Along with them, another 15 persons who had presumably been checking on the protests and barricades had also been arrested.<sup>1671</sup>

1041. On April 6, the chief of correspondents for the channel *Globovisión*, Nairobi Pinto, was kidnapped by masked, armed individuals who had come to her door in the afternoon. According to reports received, the journalist was at the door of her home in Caracas with some relatives, when armed men had forced her to get in a car. From the start authorities took charge of investigating the case.<sup>1672</sup> Eight days after being kidnapped, the journalist was released by her captors on April 14 in the town of Cúa, in Miranda state. Pinto reached the office of Civil Protection of a hospital in this town by her own means. In a press conference, the journalist stated that she had not been mistreated or abused during her kidnapping but had remained blindfolded and thus was unable to identify the perpetrators. She stated that the crime was linked to insecurity.<sup>1673</sup> After Pinto's release, the student leader Gabriela Arellano stated that the kidnapping had been in retaliation for the friendship the two women had. In her Twitter account, Arellano blamed the "Cuban Intelligence Agency G2, which sought to intimidate, crush, and frighten."<sup>1674</sup> For its part, the Venezuelan government had pointed to those erecting barricades as the potential perpetrators of the incident.<sup>1675</sup> In keeping with the information provided, the Office of the Public Prosecutor had summoned Gabriela Arellano as a witness in the case of Pinto's kidnapping. Arellano stated she had not received the summons.<sup>1676</sup> In May it was announced that the journalist was planning to leave the country.<sup>1677</sup>

1042. On April 25, Ludmila Vinogradoff, the Venezuelan correspondent of *ABC*, a Spanish newspaper, and David Maris, a photographer, were detained at Ramo Verde military jail in Miranda state for three hours; Maris' camera was confiscated and never returned. These events occurred as the reporters were interviewing Lilian Tintori, the wife of the political leader Leopoldo Lopez, in a car in which he was being

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opposition assault VTV headquarters in San Cristóbal before dawn! Does CNP have anything to say about that?]. Delcy Rodríguez Twitter account @DrodriguezVen [11:34 AM - 29 Mar 2014](#)

<sup>1671</sup> El Nacional. April 1, 2014. [Cinco detenidos en Táchira por grabar a militares](#); Espacio Público. April 1, 2014. [Detienen a cinco personas en Táchira por grabar a militares](#); NTN24. April 1, 2014. [Cinco personas fueron detenidas de manera preventiva en Táchira por grabar a militares](#).

<sup>1672</sup> Globovisión. April 6, 2014. [Secuestran a jefa de Corresponsalías de Globovisión en su residencia](#); El Universal. April 7, 2014. [Secuestran a jefe de Corresponsalías de Globovisión](#); Semana. April 7, 2014. [Esta es la periodista secuestrada en Venezuela](#); Clases de Periodismo. April 6, 2014. [Venezuela: Secuestran a jefa de corresponsales de Globovisión](#); El Universo/EFE. April 7, 2014. [Denuncian en Venezuela el secuestro de una periodista de Globovisión](#); Venezuela Al Día. April 6, 2014. [Encapuchados secuestraron a Nairobi Pinto, jefa de corresponsalía de Globovisión \(+Tuits\)](#).

<sup>1673</sup> El Universal. April 14, 2014. [Fue liberada Nairobi Pinto](#); Semana/EFE. April 14, 2014. [Periodista liberada en Venezuela no fue maltratada](#); Voz de América. April 14, 2014. [Liberan a periodista de Globovisión secuestrada](#).

<sup>1674</sup> El Nacional. April 15, 2014. [Gaby Arellano: Desaparición de Nairobi fue una jugada miserable del G2 cubano](#); Infobae. April 15, 2014. [Opositora venezolana acusó a Cuba por el secuestro de Nairobi Pinto](#); El Universal. April 15, 2014. [Arellano insiste en acusar a inteligencia cubana de secuestro a Pinto](#); "Convencida que su desaparición fue una jugada miserables del G2 cubano, para doblegar, intimidar, y amedrentar." ["Convinced that her disappearance was a miserable play by the Cuban G2, to intimidate, crush, and frighten."] Gabriela Arellano's Twitter Account @GabyarellanoM13. [15 de abril de 2014 - 7:57 AM](#).

<sup>1675</sup> Perú 21/Agencias. April 8, 2014. [Venezuela: Gobierno culpa a oposición por secuestro de Nairobi Pinto](#); TN Corrientes. April 8, 2014. [El gobierno culpa a la oposición por el secuestro de la periodista Nairobi Pinto](#); Infobae. April 15, 2014. [Opositora venezolana acusó a Cuba por el secuestro de Nairobi Pinto](#).

<sup>1676</sup> Últimas Noticias. April 23, 2014. [Citada Gaby Arellano por secuestro de Nairobi Pinto](#); El Diario de Caracas/El Tiempo. April 23, 2014. [MP citó a Gaby Arellano por secuestro de Nairobi Pinto](#); 2001. April 23, 2014. [Gaby Arellano asegura que no ha recibido ninguna citación de la Fiscalía](#).

<sup>1677</sup> El Nacional. May 6, 2014. [Nairobi Pinto saldrá del país](#); Infobae. May 6, 2014. [Después del secuestro, la periodista Nairobi Pinto saldrá de Venezuela](#); Venezuela Al Día. May 3, 2014. [Aseguran que Nairobi Pinto saldrá de Venezuela y será corresponsal de Globovisión en Canadá](#).

driven from Caracas to the jail where a husband was located. The reporters were getting ready to leave after Tintori and her children had gone into the building, when soldiers intercepted them and detained them in the jail, apparently without cause. Inside, a record of confiscation of Maris' camera was drawn up. The reporters asked them to keep the memory card and return the camera but the soldiers refused. On April 29, the photojournalist returned to the prison to request the return of his camera. However, he was told that it was no longer there but at the Department of Military Intelligence (DIM).<sup>1678</sup> On May 29, Maris went to the Victim Assistance Unit of the Office of the Attorney General where he lodged a complaint about this incident against members of the Bolivarian National Guard.<sup>1679</sup>

1043. The IACHR was informed that an officer of the Bolivarian National Guard (GNB) had deliberately shot at three journalists who had been identified as such during coverage of the student demonstration in the district of Palos Grandes, in the city of Caracas, on May 14. According to the information it received, Mildred Manrique, of *Diario 2001*; Gabriela González, free-lance journalist; and Johana Álvarez, correspondent of the Mexican TV station *Cadena 3*, had been insulted and afterwards an officer of the GNB had shot at them. Álvarez had received a pellet shot in her leg, which had hit her cell phone, thereby protecting her. The three journalists had filed their complaint with the Prosecution Service.<sup>1680</sup> During coverage of the protests on May 14 in Caracas, hooded persons had tried to assault Jonathan Manzano, photojournalist for the daily newspaper *Correo del Caroní*. The alleged assailants believed that he was part of the team of reporters working for a government station.<sup>1681</sup>

1044. On May 26, a member of the National Bolivarian Guard (GNB) had threatened to shoot the journalist Pableysa Ostos, from *Notidiario* and the Venezuelan Information Agency (Agencia Venezolana de Información—AVI), while she was covering protests in Puerto Ordaz, in the state of Bolívar. As reported by the journalist on her Twitter account, an alleged security guard had told her with insults that she should leave the place or else "I will shoot you." The guards had also ordered other journalists to leave, among which German Dam, from *Correo del Caroní*, and Tatiana Santos, from *Primicia*.<sup>1682</sup>

1045. On May 28, correspondents from the station *NTN24* had been assaulted by members of the police force of the state of Táchira. According to available information, Gonzalo Ruiz, reporter and cameraman working as a correspondent in this state, had been covering the alleged police repression of a student demonstration when one of the policemen had shouted "grab the guy who has the camera, it looks like he's media." Ruiz indicated that, after the policemen had surrounded him and tried to take his camera away from him, they had punched and kicked him in various parts of his body. He reported that a policeman had taken away his press identification card and had not given it back to him for the alleged purpose of claiming that he was without identity papers. At that time, the journalist Ana Vanessa Herrero and the photojournalist Jesús Medina, correspondent for this station in Caracas, had just finished an interview with the governor of the state of Táchira, when they observed the alleged aggression against a person and had started taking photographs. Once they realized that it was a correspondent, they had tried to intervene with the authorities

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<sup>1678</sup> El Venezolano/La Patilla. April 28, 2014. [Periodista del diario ABC fue retenida en la cárcel de Ramo Verde](#); Venezuela Al Día. April 30, 2014. [Conozca el caso del fotógrafo David Maris del diario ABC de España](#); ABC Blogs. May 3, 2014. [La ilegal confiscación de una cámara](#); Instituto Prensa y Sociedad (IPYS) Venezuela. June 2, 2014. [Caracas: Agentes de seguridad decomisaron cámara fotográfica a reportero de medio internacional](#).

<sup>1679</sup> Espacio Público. May 29, 2014. [David Maris formaliza denuncia por retención de su cámara](#).

<sup>1680</sup> Instituto Prensa y Sociedad (IPYS). May 15, 2014. [Caracas: Funcionario de la GNB agredió a reporteras durante protesta](#); Espacio Público. May 15, 2014. [Periodistas denuncian las agresiones de la GNB](#); Reporteros Sin Fronteras (RSF). May 16, 2014. [EL EJÉRCITO VENEZOLANO DISPARA A TRES PERIODISTAS DURANTE UNA MANIFESTACIÓN](#); Notitarde May 16, 2014. [Denuncian disparos de militar contra periodistas en Caracas](#).

<sup>1681</sup> Instituto Prensa y Sociedad (IPYS). May 15, 2014. [Caracas: Funcionario de la GNB agredió a reporteras durante protesta](#); Venezuela Al Día. May 14, 2014. [Periodistas fueron agredidos durante manifestaciones este 14 de mayo en Los Palos Grandes \(+Fotos\)](#).

<sup>1682</sup> Espacio Público. May 27, 2014. [GNB amenaza con meterle "un tiro" a una periodista en Bolívar](#); Instituto Prensa y Sociedad (IPYS). June 2, 2014. [Bolívar: Funcionarios de la Guardia Nacional Bolivariana amenazaron a reporteros](#); La Patilla. May 26, 2014. [GNB agrede y amenaza de muerte a periodista \(Foto del agresor\)](#); "#Guayana #26M Efectivo de la GNB se dirigió a mi persona y me dijo: "Quítate maldita perra o te metó un tiro" (Palabras textuales) [#Guayana #26M GNB trooper came up to me and said: "Get out of here you damn bitch or I'll shoot you. (Word for word)]". Pableysa Ostos's Twitter account @PableOstos. [26 de mayo de 2014 - 2:22 PM](#).

and tried to prevent them from taking Ruiz's camera away from him. In these proceedings, the policemen holding riot control objects had assaulted the journalist, insulted and threatened them.<sup>1683</sup> As for the Deputy Director of the State Police, Miguel Ángel Arias, he claimed that the journalist did not have sound arguments for filing charges for physical and verbal abuse. He pointed out that this police force has always provided security and protection during demonstrations and had claimed that the photographs where the assault on the journalist Gonzalo Ruiz is allegedly seen involves a moment when the policemen were helping and protecting him when teargas canisters were been thrown. He had invited the journalist to file the corresponding complaint with the Office of the Human Rights Ombudsman and the State Prosecution Service "if he had any other version of the facts."<sup>1684</sup>

1046. At the demonstrations of May 28 in the state of Táchira, the state police force had attacked the photojournalists Antonio Posteraro, from the daily newspaper *La Patilla.com*, and Andrés Rodríguez, from *Diario de Los Andes*. Posteraro had received an arm injury, whereas Rodríguez had sustained a leg injury.<sup>1685</sup>

1047. The photojournalists Pascuale Giorgio and Félix Santamaría had been injured by the impact of pellets shorts allegedly fired by officers of the National Bolivarian Guard (GNB) during coverage of a demonstration in Barquisimeto on June 4. Although these journalists had been identified as belonging to the press and were found far away from where the demonstrators were, officers of the GNB had shot at them from an armored vehicle. The photographers had reported the attack to Lieutenant Colonel Rafael Quero Silva, commander of the GNB's action, who had allegedly not believed the journalists' version.<sup>1686</sup>

1048. During the demonstrations of June 10 in Maturín, in the state of Monagas, the information director of the daily newspaper *El Oriental*, Anne Córdova [or Córdoba], had been intimidated. The journalist had been waiting for the statements of the President of the Students Center of the University Technology Institute of Caripito (IUTC), when another young man arrived. The reporter tried to interview this other person, who pushed her on two occasions although she had been identified as a reporter and he told her that he would not make any statements because the media "are all liars."<sup>1687</sup>

1049. During the demonstrations that took place on June 12 in the city of Valencia, in the state of Carabobo, two photojournalists had been injured, while one of them and four other journalists had been arrested. According to available information, Víctor Almarza and Kevin Barrios, from the daily newspaper *El Carabobeño*, had been injured by pellet shots in various parts of the body after an officer of the National Bolivarian Guard (GNB) had allegedly climbed down from an armored vehicle and shot at them although they had been identified as belonging to the press. That same day, the state police force had called five photojournalists to come close to where the contingent was and then had taken away their credentials and proceeded to arrest them. The arrested photographers were Kevin Barrios, from *El Carabobeño*; Ángel Sánchez, from *Mundo Noticias*; Víctor Delgado, from *Reporte Valencia*; José Alejandro Ces, from *Global*

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<sup>1683</sup> NTN24/You Tube May 28, 2014. [Reportera de NTN24 describe ataque sufrido por parte de la Policía del Táchira](#); Venezuela Al Día. May 28, 2014. [Polítáchira agredió a equipo de NTN24 durante protestas este 28M \(+Fotos\) \(+Video\)](#); Espacio Público. May 28, 2014. [Golpean al equipo de prensa de NTN24 en Táchira](#).

<sup>1684</sup> La Nación. May 30, 2014. ["Siempre hemos garantizado la seguridad de medios de comunicación en las protestas"](#).

<sup>1685</sup> La Nación. May 29, 2014. [Agredidos periodistas de varios medios por funcionarios de Polítáchira](#); El Nacional. May 28, 2014. [Agreden a grupo de periodistas en San Cristóbal](#); 2001. May 29, 2014. [Periodistas denuncian agresión durante protesta en Táchira](#).

<sup>1686</sup> Sindicato Nacional de Trabajadores de la Prensa (SNTTP). June 5, 2014. [GNB hiere con más de 20 perdigones a dos reporteros gráficos en Lara](#); El Universal. June 5, 2014. [Reportan dos periodistas gráficos heridos con perdigones en Lara](#); El Nacional. June 5, 2014. [Denuncian que GNB hiere con perdigones a dos reporteros gráficos en Lara](#).

<sup>1687</sup> Espacio Público. June 12, 2014. [Intimidan a periodista del diario El Oriental](#); Instituto Prensa y Sociedad(IPYS). June 12, 2014. [Monagas: Estudiante agrede a jefa de información del diario El Oriental](#); Noticias Oriente 20. June 10, 2014. [Agreden a periodista de El Oriental en protesta](#); E7radio.com. June 12, 2014. [CNP Monagas rechaza agresión contra periodista de El Oriental durante protesta estudiantil](#).

*Noticias*; and Javier García, a free-lance journalist. Three had been released on the spot whereas two were taken to another facility where they released hours later.<sup>1688</sup>

1050. The car of the daily newspaper *Primicia* had been hit by a mortar during coverage of a clash between protesters and the National Bolivarian Guard (GNB) in Puerto Ordaz, in the state of Bolívar. This incident, which allegedly took place on June 12, had not led to any injuries for either the journalist or the photojournalist who were in the car.<sup>1689</sup>

1051. On June 20 in Caracas, the National Bolivarian Guard (GNB) had prevented coverage of a protest by the People's Will party (Voluntad Popular) in front of the offices of the Prosecution Service when they were calling for the release of their comrade Rosmit Mantilla. While the leaders were making a statement for the media, the officers had pushed and removed the journalists, cameramen and photographers from the place with their shields.<sup>1690</sup>

1052. On July 3, the National Bolivarian Police (PNB) of the state of Táchira had assaulted and arrested the local correspondent for the international station *NTN24* in this state, Gonzalo Ruiz, while he was covering the student demonstrations. According to the journalist, he was in the vicinity of the Catholic University of Táchira, when troops threw a teargas canister in his direction, then they had asked him with what authorization he was filming although the journalist had been using the vest, helmet and identification that authorized him to be a reporter. Afterwards, Ruiz was hit, his camera, bullet-proof vest, and identification were taken from him and he was arrested and taken to the quarters of the governor's office. The reporter was released hours later and his belongings returned to him.<sup>1691</sup>

1053. Celina Carquez, a journalist with the media outlet *Contrapunto*, reported that she had been the victim of intimidation, harassment, and insults via Twitter for months after expressing her opposition to the student protests. The journalist apparently decided to go public about the intimidation after several photographs of her taken at a public event on August 20 were re-tweeted on several accounts.<sup>1692</sup>

1054. The National Press Workers Union (SNTP) expressed its repudiation of the questioning of at least four journalists by the criminal investigation police (CICPC) with the apparent aim of getting the reporters to reveal their information sources. The journalists were reportedly questioned about information published by the media outlets where they work and on their personal Twitter accounts. The SNTP denounced the case of the journalist Deivis Ramírez, who was allegedly questioned on March 11 in connection with acts of violence that occurred in Los Ruices, Sucre Municipality. Other cases included those of the reporters of the newspaper *La Región de Los Teques*, Daniel Murolo and Ronald Gil, who were sought newspaper's offices and taken away as witnesses. They were reportedly questioned for four hours apparently with the purpose of obtaining the sources that supplied information about the murder of Adriana Urquiola, a

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<sup>1688</sup> Sindicato Nacional de Trabajadores de la Prensa (SNTP). June 13, 2014. [Cinco reporteros gráficos detenidos y dos heridos tras acción de GNB y PoliCarabobo](#); El Carabobeño. June 13, 2014. [Arremetida violenta en Palma Real: Al menos 18 heridos](#); Notitarde. June 12, 2014. [19 personas heridas durante enfrentamiento en Palma Real \(Fotos\)](#).

<sup>1689</sup> *Primicia*. June 12, 2014. [Mortero alcanza vehículo de PRIMICIA](#); Espacio Público. June 13, 2014. [Atacan a la prensa en Bolívar](#).

<sup>1690</sup> Espacio Público. June 20, 2014. [GNB intimida a periodistas durante protestas en el MP](#); La Patilla. June 20, 2014. [GNB agredió a periodistas en la Fiscalía #201 \(Fotos\)](#); El Propio. June 20, 2014. [CON EMPUJONES GNB IMPIDE EL PASO DE PERIODISTAS A CUBRIR PROTESTA EN LA FISCALÍA](#).

<sup>1691</sup> Venezuela Al Día/NTN24. July 3, 2014. [Policía Nacional golpea y detiene a corresponsal de NTN24 en Táchira](#); La Patilla. July 3, 2014. [Periodista de NTN24 relata agresión recibida por parte de la PNB](#); Informe21.com. July 3, 2014. [Detienen corresponsal de NTN24 en Táchira](#); "PNB golpeó y detuvo a corresponsal de .@NTN24ve mientras cubría protestas en Táchira". Twitter Account of NTN24. [July 3 2014 - 12:37 PM](#).

<sup>1692</sup> Instituto Prensa y Sociedad (IPYS). November 5, 2014. [Caracas: Periodista recibió amenazas a través de la red social Twitter](#); Espacio Público. November 4, 2014. [Periodista Celina Carquéz es amenazada vía Twitter](#).

sign language interpreter at *Venevisión*, a television channel. Journalist Altagracia Anzola was reportedly questioned twice in connection with the same matter on April 1.<sup>1693</sup>

1055. The IACHR received information that the speaker of legislature of Carabobo State (CLBEC), Flor García, asked the Office of the Attorney General to issue a summons for the journalist Charito Rojas about information published on the Twitter account on March 12. According to information provided to the Commission, the journalist had tweeted information about a minor who had supposedly been killed by a group of motorcycle riders shooting in an urbanization in Valencia Municipality. The journalist had cited as her source a woman doctor, who had preferred to remain anonymous for reasons of safety. According to García, the journalist should provide statements to the competent agencies about the source of her information.<sup>1694</sup>

1056. The IACHR was made aware of the constant use of stigmatizing rhetoric against any media outlet whose journalistic coverage might be at odds with the government's interests during the protests. In some cases, such discourse was followed up by administrative measures designed to restrict the coverage of the protests by these media organizations. According to reports, the most frequent allegations were that these outlets were supposedly in league with alleged coup plotters or smear campaigns against the Venezuelan Government.<sup>1695</sup>

1057. In this regard, according to information received by the IACHR, on February 12, the signal of the international news station *NTN24*, headquartered in Colombia, was removed from the companies that provide pay cable television services throughout the country. According to a press release issued by the executives and information directors of the news station, the signal had been removed when information was transmitted about incidents of violence recorded in the country during a protest march organized by students from various universities in the framework of the celebration of Youth Day. The press release had been issued after learning that the Directorate for Social Responsibility in Radio and Television, a body attached to the National Telecommunication Commission (CONATEL), had issued a resolution that ordered removing the Colombian station's signal from television programmers while they were reporting on incidents of violence taking place on Wednesday, February 12.<sup>1696</sup>

1058. On February 13, the country's President, Nicolás Maduro, stated on a national broadcast that removing the signal of *NTN24* from companies providing pay cable radio and television services had been "a decision taken by the State," arguing that it was inciting unrest. "I am going to defend the right to tranquility of Venezuela and no one is going to come from abroad to try to disrupt Venezuela's psychological climate," said the Head of State.<sup>1697</sup> The Director General of CONATEL, William Castillo, in an interview with the station *Telesur*, had said that "the grounds for this decision was to prevent a situation like the one that occurred here in April 2002, when a unprecedented coup d'état was organized in Venezuela, orchestrated by the media,

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<sup>1693</sup> El Universal. April 1, 2014. [Aseguran que Cicpc pretende obtener fuentes informativas de periodistas](#); El Nacional. April 1, 2014. [SNTP rechaza interrogatorios del Cicpc a periodistas](#); Espacio Público. April 1, 2014. [SNTP aboga por el resguardo de las fuentes informativas](#).

<sup>1694</sup> Noticias 24. March 14, 2014. [Flor García exhortó al Ministerio Público citar a periodista Charito Rojas](#); Espacio Público. March 21, 2014. [Periodista Charito Rojas denuncia persecución en su contra](#); Espacio Público. March 24, 2014 Venezuela: Enero - Marzo 2014. Los trances de la libertad de expresión. Available at: Archive of the Office of the Special Rapporteur.

<sup>1695</sup> CNN México. February 22, 2014. [En busca de la verdad en Venezuela](#); El Universal. April 13, 2014. [La verdadera amenaza contra la democracia venezolana](#); El Venezolano. February 14, 2014. [Ministra acusa a medios internacionales de "vender falsa realidad" sobre Venezuela](#).

<sup>1696</sup> NTN24. Press Release. February 12, 2014. [NTN24, Canal Internacional de Noticias en Español, censurado en Venezuela](#); Instituto Prensa y Sociedad (IPYS). February 16, 2014. [Venezuela: entre el 11 y el 15 de febrero sucedieron 25 casos de violaciones a las libertades informativas](#); El Universal. February 13, 2014. [Señal del canal NTN24 fue sacada de la parrilla de cable](#); El Tiempo. February 13, 2014. [Sacan del aire al canal colombiano NTN24 en Venezuela](#); Diario de Caracas. February 12, 2014. [Sacan del aire al canal internacional NTN24 en Venezuela](#); El Espectador. February 12, 2014. [NTN24 denuncia censura en Venezuela](#).

<sup>1697</sup> ABC/ EFE. February 14, 2014. [Maduro confirma salida de NTN24 del aire por una decisión de Estado](#); El Universal. February 13, 2014. [Maduro: Sacar del aire a NTN24 fue una decisión de Estado](#); NTN24. July 1, 2014. [Maduro arremete contra medios internacionales y asegura que cierre de NTN24 fue una "decisión de Estado"](#);

where images were assembled and coverage was provided in time and language was used to promote intolerance, hate, terror and an emotional climate that was destructive of peaceful coexistence.”<sup>1698</sup> Afterwards, on February 17, Castillo had assured that the decision to suspend station’s signal was aimed at protecting the country’s sovereignty: “no country in the world would accept having an international station, claiming to defend the freedom of expression of its owners, developing a political viewpoint from its editorial perspective—especially if it is evident it has the intention of doing harm to Venezuela and not respecting the Venezuelan people—attack our country from another country. That is not something we will accept.”<sup>1699</sup>

1059. On February 13, the country’s president, Nicolás Maduro, accused *Agence France Presse* (AFP), an international news agency, of “leading the manipulation” against the Venezuelan people. According to reports, president Maduro urged the Minister for Communication and Information, Delcy Rodríguez, to take “steps and make things quite clear to the AFP correspondents in Venezuela and to the management and owners of that international news agency.”<sup>1700</sup>

1060. The channel *CNN en Español* was the butt of several accusations and criticism from president Nicolás Maduro and other government officials for its coverage of the demonstrations. On February 14, the Venezuelan Minister of Foreign Affairs, Elías Jaua, said that “the Venezuelan people are again facing a fascist assault” led by the international news media. “The whole world’s propaganda machine has united as a single force to attack Venezuela, led by the main international news channels, such as CNN and others,” said foreign minister Jaua, who also accused the international media of distorting information.<sup>1701</sup>

1061. On February 20, in a nationwide broadcast, President Nicolás Maduro had announced the possible expulsion of the team of the station *CNN en Español*. “CNN will leave Venezuela, enough war propaganda! [...] if they do not change their course, then out of Venezuela!” said the Head of State, while accusing them of inciting incidents of violence that were recorded in demonstrations over the past few days.<sup>1702</sup> According to what was reported, after these statements, state television media had motivated government supporters to join the Twitter tag #FueraCNNdeVenezuela, which allegedly had been supported by government leaders and the Bolivarian Information and Communication System (Sistema Bolivariano de Información y Comunicación—SIBICI).<sup>1703</sup> According to the information that was received, on February 20, Francisco Pérez, Deputy Minister of the People’s Power Ministry for Information and Communication (Ministerio del Poder Popular para la Información y Comunicación—MINCI) had notified the reporters of *CNN en Español* Patricia Janiot, journalist and news anchor; Magdalena Cabral, producer; Rafael Romo, correspondent for *CNN International*; and Osmar Hernández, correspondent, that their work permit in the

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<sup>1698</sup> National Telecommunication Commission of Venezuela (Conatel). February 14, 2014. [William Castillo: “No permitiremos que se use el espectro radioeléctrico para otro golpe de Estado”](#).

<sup>1699</sup> National Telecommunication Commission of Venezuela (Conatel). February 17, 2014. [William Castillo: El espectro radioeléctrico no es propiedad privada](#); IPYS/+Sociedad Civil. Undated. [Represión y Silencio](#).

<sup>1700</sup> National Address by President Nicolás Maduro. Aired on February 13, 2014. Published February 14, 2014 by: sucreranda Hugo Chávez Venezuela/YouTube. [Presidente Nicolás Maduro. Cadena Nacional, 13 de febrero, 2014, Venezuela](#) [00:21:00 – 00:22:00]; Instituto Prensa y Sociedad (IPYS) Venezuela. February 16, 2014. [Venezuela: entre el 11 y el 15 de febrero sucedieron 25 casos de violaciones a las libertades informativas](#); El Universal. February 13, 2014. [Maduro: Sacar del aire a NTN24 fue una decisión de Estado](#); Infobae. February 13, 2014. [Nicolás Maduro arremetió contra los medios de comunicación](#); El País/AFP-ANSA-EFE. 15 February 2014. [Maduro habla de intento de golpe](#).

<sup>1701</sup> Correo del Orinoco. February 14, 2014. [Aparato propagandístico del imperio y del fascismo también será derrotado](#); DW/DPA-EFE. February 14, 2014. [Acusa Jaua a medios de “atacar a Venezuela”](#); El Colombiano/EFE. February 14, 2014. [Gobierno venezolano acusa a medios internacionales de tergiversar la realidad](#); El Comercio/AFP-EFE-DPA. February 15, 2014. [Caracas sigue en conmoción y el Régimen acusa a los medios](#).

<sup>1702</sup> National Address by President Nicolás Maduro. Aired on February 20, 2014. Published February 21, 2014 by: sucreranda Hugo Chávez Venezuela/YouTube. [Presidente Nicolás Maduro. Cadena Nacional con los trabajadores del Metro de Caracas. Venezuela](#) [00:07:30 – 00:08:50]; Perú 21. February 20, 2014. [Venezuela: Nicolás Maduro amenaza con sacar del aire a CNN en su país](#); La Prensa. February 20, 2014. [Nicolás Maduro amenaza con expulsar de Venezuela a la cadena CNN](#); Infobae. February 20, 2014. [Maduro contra CNN: “Vamos a sacarlos de Venezuela”](#).

<sup>1703</sup> Bolivarian Communication and Informatoin System. Venezolana de Televisión (VTV). February 21, 2014. [Venezolanos posicionan la etiqueta #FueraCNNdeVenezuela en rechazo a la manipulación mediática](#); El País. February 21, 2014. [Aumenta la persecución política en Venezuela tras las protestas](#); IPYS/+Sociedad Civil. [Represión y Silencio](#).



country had been cancelled.<sup>1704</sup> On February 22, correspondents Osmar Hernández and a cameragrapher obtained permits to work again in the country.<sup>1705</sup> On October 16, while on another visit to the country, Janiot revealed that MINCI had denied her application for a work permit to report on the situation in the country.<sup>1706</sup>

1062. In this context, on February 21, the ombudsperson, Gabriela Ramirez, said that “CNN could be guilty of war propaganda.”<sup>1707</sup> The pro-government mayor of Caracas, Jorge Rodríguez, reportedly said that “CNN is doing exactly what Hutu radio did when they called the Tutsis cockroaches in Rwanda.”<sup>1708</sup> On February 23, president Nicolás Maduro again made accusations against *CNN en Español* and criticized its broadcasting of images of the violence in the country. “What [CNN] wants is for Venezuela to be set on fire and destroyed [...] to destroy the motherland to take our oil,” said the premier.<sup>1709</sup>

1063. On February 25, President Nicolás Maduro, in a nationwide broadcast, had proposed the possibility of replacing the signal of the station *CNN en Español* by a new state station *Zum TV*, which the Head of State had identified as “the television of Venezuelan youth.” According to the information that was received, the Head of State had said: “It occurs to me, I was thinking, I don’t know, Delcy (Rodríguez, People’s Power Minister for Information and Communication), since there are proceedings against *CNN* for illegal practices of sponsoring violence and terrorism, it occurs to me that we can replace *CNN* by the station *TV Zum*, which is a true station of peace.” He had added that, with this change “you will replace a station of terrorist violence that wishes to bring civil war to Venezuela and justify foreign intervention by lying about Venezuela and rather we provide the world with a peace-loving television station like *TV Zum*.”<sup>1710</sup>

1064. In an address to the Organization of American States (OAS), Venezuela’s ambassador to that entity Roy Chaderton accused a number of international media organizations of involvement in smear campaigns. In his speech the ambassador said that these slurs were made “through a coordinated media dictatorship, with CNN at its head.” He also named other media outlets, including *Clarín* (Argentina), *El Universo* (Ecuador), the Washington Post (United States) and *El País* (Spain). He also mentioned the Colombian international channel *NTN24*, whose journalists he branded “warmongers, arsonists, and in

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<sup>1704</sup> CNN en Español. February 21, 2014. [Gobierno de Venezuela revoca las credenciales a periodistas de CNN en Español](#); El Universal. February 21, 2014. [CNP afirma que Gobierno despojó de credenciales a reportera de CNN](#); BBC Mundo. February 21, 2014. [Venezuela: retiran permiso de trabajo a Patricia Janiot y equipo de CNN](#); Instituto Prensa y Sociedad(IPYS). February 22, 2014. [Caracas: Gobierno venezolano revocó credenciales a reporteros de CNN en Español](#).

<sup>1705</sup> La Verdad. Undated. [Gobierno devuelve credenciales a periodistas de CNN en Venezuela](#); La Tercera/EFE. February 23, 2014. [Gobierno reactivó credenciales a periodistas de CNN en Venezuela](#); Los Andes. February 22, 2014. [Venezuela reactivó las credenciales de los periodistas de CNN](#); Infobae. February 23, 2014. [Maduro dio marcha atrás y reactivó las credenciales de CNN](#).

<sup>1706</sup> Últimas Noticias. October 16, 2014. [Patricia Janiot dice que le negaron credenciales de trabajo](#); Runrun.es. October 16, 2014. [Por tercera vez el Gobierno niega credenciales a periodistas de CNN](#); Instituto Prensa y Sociedad (IPYS). October 21, 2014. [Caracas: Por tercera vez en 2014 niegan credenciales a reporteros de CNN en Español](#); El Nacional. October 16, 2014. [Patricia Janiot: “Aquí hay muchas cosas para contar”](#).

<sup>1707</sup> El País. February 21, 2014. [El Gobierno de Maduro redobla el acoso a los medios de comunicación](#); La Razón. February 22, 2014. [Maduro expulsa a 4 periodistas de CNN](#); Periodista Digital. February 22, 2014. [Maduro expulsa a la CNN e investiga si sectores de su Gobierno conspiran contra él](#).

<sup>1708</sup> El País. February 21, 2014. [El Gobierno de Maduro redobla el acoso a los medios de comunicación](#); Periodista Digital. February 22, 2014. [Maduro expulsa a la CNN e investiga si sectores de su Gobierno conspiran contra él](#).

<sup>1709</sup> Ministry of People’s Power for Communication and Information, Bolivarian Government of Venezuela. February 23, 2014. [Se están acabando y extinguiendo los grupos violentos](#); Vanguardia/DPA. February 24, 2014. [Protestas estimulan el odio para mi asesinato: Maduro](#).

<sup>1710</sup> Instituto Prensa y Sociedad(IPYS). February 26, 2014. [Caracas: Presidente de la República anunció que señal del canal Zum TV posiblemente sustituya el canal CNN en Español](#); El Universal. February 25, 2014. [Maduro: Se me ocurre sacar a CNN y poner en su lugar a ZUM TV](#); Miami Diario. February 25, 2014. [Maduro vuelve a amenazar a CNN: Vamos a sustituirlo por Zum TV](#); Panorama. February 26, 2014. [Maduro plantea la posibilidad de sustituir CNN por el nuevo canal ZUM TV](#); Bolivarian Communication and Information System. National Broadcast Telecommunicators for Peace and Life. Broadcast on February 25, 2014. Posted on February 26, 2014 by: sucreranda Hugo Chávez Venezuela/YouTube. [Nicolás Maduro. Marcha de Telecomunicadores y CANTV Venezuela, 25 de febrero, 2014](#). [02:07:10 forward]

cahoots with ex-president Álvaro Uribe.”<sup>1711</sup> Speaking at the United Nations, the Venezuelan Minister of Foreign Affairs, Elías Jaua, denounced international and domestic media outlets for waging a “psychological war” against the country with the aim of “toppling” the government of president Nicolás Maduro.<sup>1712</sup>

1065. The People’s Power Minister for Communication and Information, Delcy Rodríguez, had requested on March 27 that the daily newspaper of the state of Aragua, *El Aragüeño*, be investigated for alleged calls to conspiracy using encrypted messages. According to what was reported, the official had posted the claim on her Twitter account, writing: “Daily newspaper El Aragüeño sends encrypted messages involving conspiracy and violence in its crossword puzzles! We have requested an investigation.”<sup>1713</sup> In its own Twitter account, the daily newspaper had posted a series of tweets pointing out, among other issues, that it felt it was not advisable to respond to the claim made by the Minister using social networks and had added that “[t]he doors of this media company are open for any investigation that the Government might wish to conduct...”<sup>1714</sup>

1066. On March 8, after an interview for CNN with journalist Christiane Amanpour aired on the previous day, president Maduro again attacked *CNN en Español*, saying that it was part of “the nest of vipers in Miami” and that they have it in for Venezuela.<sup>1715</sup>

1067. On March 8, president Maduro made accusations against Deivis Ramírez, a journalist of *El Universal* newspaper and contributor to *Caracol Radio*, based on information published by the journalists on his Twitter account. Ramírez reportedly published an account of the death of a motorcyclist during a protest that differed from the official version. According to the journalist, he was murdered by a national guardsman. President Maduro publicly stated that this was a criminal falsehood. “The first to leak the false—I would say criminal—version was Deivis Ramírez, a journalist with El Universal newspaper. We are verifying if he is the owner of the Twitter account that put out a version that is criminal, criminal!” said the premier. The journalist reportedly expressed concerns about the reaction of government supporters who might endanger his life.<sup>1716</sup> According to information received, days later Ramírez was called to testify as a witness to the violent events on which he had reported.<sup>1717</sup>

1068. At a press conference on March 14, president Maduro said that Fernando del Rincón, a

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<sup>1711</sup> Alba TV. February 20, 2014. [Roy Chaderton en la OEA: “Estamos hablando de una patología de Estado: la adicción a la guerra”](#); Notitarde. February 19, 2014. [Roy Chaderton denuncia ante la OEA campaña de medios internacionales contra Venezuela](#); Miami Diario. February 19, 2014. [Chaderton: En Venezuela hay una dictadura mediática encabezada por CNN](#); Infonews. February 19, 2014. [Venezuela denunció intromisión de EE.UU. ante la CELAC y la OEA](#); Venezolana de Televisión/YouTube. February 19, 2014. Published by Luigino Bracci Roa. [FULL VIDEO: Roy Chaderton en la OEA repudia ataques del fascismo contra Venezuela](#). [13:42 / 16:26 / 18:34].

<sup>1712</sup> Sistema Bolivariano de Comunicación e Información. March 4, 2014. [Jaua: Venezuela es víctima de una campaña internacional mediática](#); Caracol Radio/EFE. March 3, 2014. [Jaua acusa a los medios de imponer una “guerra psicológica” contra su país](#); Noticias 24. March 3, 2014. [Venezuela denuncia ante la ONU “laboratorios mediáticos” y acciones para “derrocar” el Gobierno](#); Notimérica/Europa Press. March 3, 2014. [Jaua denuncia ante la ONU manipulaciones de los medios](#); PSUV. March 3, 2014. [Jaua denuncia ante la ONU guerra psicológica de medios internacionales contra Venezuela](#).

<sup>1713</sup> Venezolana de Televisión (VTV). March 27, 2014. [Ministra de Comunicación solicita investigar a diario El Aragüeño por enviar mensajes vinculados a conspiración \(+Tuit\)](#); El Universal. March 28, 2014. [Investigarán al diario El Aragüeño por “mensajes cifrados”](#); Correo del Orinoco. March 27, 2014. [Ministra Rodríguez solicita investigar diario El Aragüeño por enviar mensajes violentos cifrados en crucigramas](#); Cuenta de Twitter de Delcy Rodríguez @Drodriguez. [March 27, 2014 – 12:03 PM](#).

<sup>1714</sup> “Las puertas de este medio comunicación están abiertas para cualquier investigación que tenga a bien iniciar el Gobierno Nacional...”. [“the doors of the media outlet are open for any investigation that national authorities may want to initiate”] Twitter account of El Aragüeño @ElAragueno. [March 27 2014 - 12:05 PM](#); Últimas Noticias. March 28, 2014. [“El Araqueño” respondió por los “mensajes cifrados en crucigramas”](#); Instituto Prensa y Sociedad(IPYS). March 27, 2014. [Caracas: Ministra de Comunicación e Información pide que se investigue a diario regional por la publicación de mensajes cifrados en crucigramas](#).

<sup>1715</sup> Noticias al día y a la hora. March 9, 2014. [Maduro declaró que la entrevistadora de CNN le montó una trampa](#); La Estrella de Panamá. March 9, 2014. [Maduro dice que CNN le montó una trampa en entrevista con Amanpour](#).

<sup>1716</sup> Caracol Radio. March 8, 2014. [Presidente Nicolás Maduro arremete contra colaborador de Caracol Radio](#); Espacio Público. March 13, 2014 [Informe: Los trances de la libertad de expresión, del 12F al 12M](#); Venezolana de Televisión/YouTube. March 8, 2014. Published by the National Press Workers Union (SNTP). [Nicolás Maduro agrade a periodista Deivis Ramírez \(7/03/2014\)](#).

<sup>1717</sup> Venezuela Al Día. March 10, 2014. [Periodista Deivis Ramírez es citado en calidad de testigo por caso Los Ruices 6M](#); El País. March 11, 2014. [El periódico progresista “TalCual”, en el punto del mira del chavismo](#).

journalist with *CNN en Español*, was inciting violent protests in the country. The premier reportedly said that the journalist "was encouraging" the "*guarimbas*" (a slang term for demonstrators who block roads using rubble and other objects). The president also said that the journalist was practicing "war journalism" and said that he had sent him a message saying that "if he crosses the line by breaking international rules, he will have to leave the country. I am about to go over what he has done today." The premier also said that Del Rincón was a "violent," "psychotic" man hired to do "any dirty work," alluding to an alleged domestic-violence complaint against the journalist.<sup>1718</sup> In the wake of those remarks, the Minister for Communication and Information, Delcy Rodríguez, accused the journalist of being a "woman beater" (*golpeador de mujeres*) on her Twitter account.<sup>1719</sup> The journalist arrived in the country on May 22 to cover the municipal elections in San Cristobal but the Ministry for Communication and Information (Minci) denied him a work permit. No reasons were offered for the decision.<sup>1720</sup>

1069. As reported to the IACHR, on March 17, the station *Globovisión* had put an end to its more than decade-long partnership with RCN Televisión, the group owning the station *NTN24*. According to what was reported, the journalists and teams had been given one week to evacuate the headquarters of *Globovisión*.<sup>1721</sup> In a press release, the station *NTN24* stated that it would continue its news activities from Venezuela.<sup>1722</sup> At the date of the present report, the station continues to be blocked from the companies that provide pay cable television services throughout the country.

1070. The National Telecommunication Commission (CONATEL) had ordered the suspension of the radio program 'Plomo parejo' directed by the independent producer Iván Ballesteros as of May 8, "for alleged violations of the Law on Social Responsibility on radio, television and electronic media." As reported to the IACHR, the Board of Social Responsibility had requested CONATEL to file punitive administrative proceedings after it had received a petition from various user organizations to investigate the program and its director for allegedly breaching some of the articles of the aforementioned law because they considered that the messages that were transmitted in this forum were aimed at "fueling collective anger and manipulating users receiving said messages." The Board also requested CONATEL to extend the punitive administrative proceedings against the station *RCR 750 AM* in charge of broadcasting the program.<sup>1723</sup> Article 27, one of those mentioned, forbids "the broadcasting of messages that incite or promote hate and intolerance [...] foster unrest among the citizenry and disrupt public law and order [...] that fail to recognize legitimately established authorities."<sup>1724</sup>

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<sup>1718</sup> Agencia Venezolana de Noticias (AVN). March 14, 2014. [Maduro denuncia que periodistas de medios internacionales alientan y promueven guarimbas](#); Últimas Noticias. March 14, 2014. [Maduro acusa a Fernando del Rincón de alentar las guarimbas](#); Alba Ciudad. March 14, 2014. [Maduro: El periodista Fernando del Rincón alienta y promueve protestas violentas \(+Video y fotos\)](#).

<sup>1719</sup> Venezuela Al Día. March 15, 2014. [Ministra de Comunicación acusa a Fernando del Rincón de "golpeador de mujeres"](#); "Golpeador de mujeres, Fernando del Rincón, tiene la única virtud de hacer de la estulticia el guión de un programa!". Delcy Rodríguez's Twitter account @Drodriguez. [March 14, 2014 – 8:09 p.m.](#)

<sup>1720</sup> Últimas Noticias. May 23, 2014. [Minci negó permiso de trabajo a Fernando del Rincón](#); Espacio Público. May 23, 2014. [Minci niega permiso para cobertura periodística a Fernando del Rincón](#); Panorama. May 23, 2014. [Niegan permiso al periodista Fernando del Rincón para cubrir elecciones en San Cristóbal](#).

<sup>1721</sup> "Directiva de Globovisión da por terminada alianza con @NTN24 y RCN TV. Dan 7 días para retirar equipos y personal de su sede en Caracas [Board of Directors of Globovisión terminates partnership with @NTN24 and RCN TV. Gives 7 days to withdraw equipment and staff from its headquarters in Caracas.]. Cuenta de Twitter de Carlos E. Sánchez's Twitter account @CESANCHEZM. [March 17, 2014 – 1:18 PM](#); La Patilla. March 17, 2014. [Globovisión rompe alianza con NTN24 y RCN](#); El Nacional. March 19, 2014. [NTN24 continuará informando desde Venezuela](#); Knight Center for Journalism in the Americas. March 20, 2014. [Venezuelan media group Globovisión breaks off alliance of more than a decade with Colombian network](#); Martí Noticias. March 19, 2014. [Globovisión rompe alianza con cadenas colombianas RCN y NTN24](#).

<sup>1722</sup> NTN24. March 18, 2014. [Comunicado de prensa de NTN24 sobre suspensión de alianza entre Globovisión y RCN Televisión](#).

<sup>1723</sup> National Telecommunication Commission (CONATEL). May 7, 2014. [Conatel inicia investigación y dicta medida cautelar de suspensión del programa radial "Plomo parejo"](#); Venezolana de Televisión (VTV). May 7, 2014. [Conatel inició investigación por propaganda de guerra y dictó medida cautelar de suspensión del programa radial de RCR \(+Video\)](#); Espacio Público. May 8, 2014. [Conatel suspende programa radial Plomo parejo](#); Instituto Prensa y Sociedad (IPYS). May 8, 2014. [Caracas: CONATEL inicio procedimiento administrativo contra Productor Nacional Independiente y ordenó suspensión de programa radial](#).

<sup>1724</sup> People's Power Ministry for Communication and Information. National Telecommunication Commission of Venezuela (CONATEL). *Ley de Responsabilidad Social en radio, televisión y medios electrónicos*. [Gaceta Oficial No. 39.610](#). February 7, 2011.

1071. At a meeting with community based and private media on June 1, the governor of the State of Mérida, Alexis Ramírez, admitted that in 2013 he had used “his power as governor” to get the National Telecommunications Commission (CONATEL) to remove the journalist Horacio Contreras from his position as director of the radio station *Studio 102.7 FM*. The matter apparently originated in April 2013, when during a wave of protests in different parts of the country, including that state, the journalist had called upon the public official a number of times, reminding him of his duty to ensure public safety. The office of the governor had threatened to open an administrative proceeding before Conatel, so the radio station decided to relieve the journalist of his duties and reassign him to the production of its news program. The journalist was also sued by the public official for defamation—the case is still open—and received threats in the wake of the incident.<sup>1725</sup>

1072. On July 9, the National Telecommunication Commission (CONATEL) shut down the radio station *Omega 104.9 FM* which operated in Socopó, in the state of Barinas. Officials of the Commission had arrived at the station with members of the National Bolivarian Guard (GNB) and had proceeded to shut it down, arguing that the station did not have the “operating license” granted by the Commission. According to what was reported, in the municipality there are 10 radio stations that do not hold the “operating license” but they are nevertheless running. The radio station is owned by Nikzal Azkoul, leader of the opposition party Voluntad Popular<sup>1726</sup>.

1073. On August 16, the National Telecommunication Commission (CONATEL) announced that it had filed punitive administrative proceedings against the radio operator Radio Caracas Radio C.A. (750 AM) and had ordered that the program ‘Entre tú y yo con Nitu’ (Between you and me and with Nitu), directed by the journalist Nitu Pérez, be taken off the air. The proceedings had been filed for alleged violations of provisions in articles 27 and 29 of the Law on Social Responsibility in Radio, Television and Electronic Media, the RESORTE Law, which forbids, by any broadcasting media, transmitting any messages that might incite or foster hate and intolerance for political reasons, foster unrest among the citizenry or disrupt public law and order and fail to recognize legitimately established authorities. In the review of the radio program conducted between February and August, there were statements made calling President Nicolás Maduro a “killer, criminal, dictator and drug dealer.” The order to shut down the program would begin on August 16 and for the time required to conduct the administrative proceedings.<sup>1727</sup>

1074. On August 19, the National Telecommunication Commission (CONATEL) had suspended the signal of the radio station *Sensacional 94.7 FM* of the state of Barinas presumably because its concession had expired. CONATEL’s officials had arrived with public law and order forces. The owner assured that she had requested renewal of the concession, but that CONATEL had presumably not responded, and therefore she felt that the decision to suspend the radio was a “political decision” as a result of her editorial perspective. A new radio station, called *Radio Popular*, had started operating immediately thereafter.<sup>1728</sup>

1075. The IACHR received information about alleged blocking of access to and live transmission by On-line media. Indeed, the IACHR was informed that the website of the international news station *NTN24* had been blocked on February 12. According to what was reported, it was not possible to have access to its

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<sup>1725</sup> Espacio Público. June 2, 2014. [Gobernador de Mérida admite que ordenó destituir al periodista Horacio Contreras](#); Actualidad y Gente. June 1, 2014. [Gobernador de Mérida reconoció que solicitó la destitución del periodista Horacio Contreras](#); CIDH. [Annual Report 2013. 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.149. Doc. 50. December 31, 2013. Par. 886.

<sup>1726</sup> El Universal. July 10, 2014. [Conatel cerró emisora de dirigente opositor en Socopó](#); Espacio Público. July 10, 2014. [Conatel cierra estación de radio en Barinas](#); Instituto Prensa y Sociedad(IPYS). July 9, 2014. [Barinas: Conatel cierra emisora Omega 104.9 FM](#).

<sup>1727</sup> National Telecommunication Commission (CONATEL). August 16, 2014. [Conatel inicia investigación a RCR y suspende temporalmente programa “Entre tú y yo con Nitu”](#); Committee to Protect Journalists (CPJ). August 19, 2014. [Gobierno venezolano suspende a programa de radio crítico](#); Infobae/AP. August 16, 2014. [El chavismo censuró el programa de una periodista opositora](#).

<sup>1728</sup> El Universal. August 19, 2014. [Conatel sacó del aire a radio Sensacional 94.7 FM en Barinas](#); Comité para la Protección de los Periodistas (CPJ). August 20, 2014. [Autoridades venezolanas suspenden señal de radioemisora](#); 2001. August 19, 2014. [Conatel cierra dos emisoras en Barinas](#).

website in Venezuelan territory.<sup>1729</sup> On February 17, the Director General of CONATEL, William Castillo, had assured that the website of NTN24 was blocked and that, until this station stops its attempts to actively support destabilization, the situation will continue as until now.<sup>1730</sup> On September 18, the station had released a press release informing that, on September 16, its website portal had been blocked again in the country. This time the blocking had a wider reach and included all media's domains. Access from Venezuela to the station's entire network of portals, its applications and its live streaming signal would be disabled. NTN24 had also said that the blocking had come from within the network of Venezuela's state communication enterprise CANTV [*Compañía Anónima Nacional de Teléfonos de Venezuela*] and that it had been extended to other operators.<sup>1731</sup> In a press release, Colombia's Ministry of Foreign Affairs had pointed out that it hoped that the problems with the station's signal "were due to technical failures and not, as presented by the executives of this media group, because of censorship blocking the technology." Also, the Ministry requested the Venezuelan Government "to reexamine the decision taken the past month of February to suspend the station's signal transmitted by cable operators."<sup>1732</sup> On that same day, RCN Radio had announced that its engineers were able to determine that CANTV "had blocked IP addresses, domain names and DNS records of all the portals of the RCN Radio news system."<sup>1733</sup> On the afternoon of October 21, the website was unlocked<sup>1734</sup>.

1076. On March 15, *almomento360.com*, a news website announced that its live webcast of the protests in Plaza Francia de Altamira in Caracas for a month had been taken down for "reasons beyond its control." The webcast was reportedly taken off the Lifestyle & Business section after alleged cyber attacks, blockages of the website's URL, and a partial blockage that had prevented it from uploading news normally since March 13. The website also said that its users reported that they were unable to see the webcast at their homes or only received it intermittently. The website announced that it would make a complaint to the appropriate entities and that it had provided its users with another link to the webcast.<sup>1735</sup>

1077. Also, the Inter-American Commission learned that the Twitter social network had been partially blocked in Venezuela on February 13, preventing images from being seen, after many users posted messages about student protests in various cities of the country. On February 14, Nu Wexler, spokesperson for the company Twitter Inc., had confirmed to international media that the blocking affecting the images on the social network could have been carried out by the Venezuelan government.<sup>1736</sup> According to its report, it

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<sup>1729</sup> La República. February 12, 2014. [Venezuela saca del aire a NTN24 y lo bloquea en Internet](#); Semana. February 12, 2014. [NTN24 bloqueado en Venezuela](#); TN. February 19, 2014. [NTN24 denunció censura de su página web](#); Espacio Público. March 24, 2014. Internet in Venezuela: Freedom of Expression and its Threats. Available at: Archive of the Special Rapporteurship for Freedom of Expression.

<sup>1730</sup> National Telecommunication Commission of Venezuela (CONATEL). February 17, 2014. [William Castillo: El espectro radioeléctrico no es propiedad privada](#); IPYS/+Sociedad Civil. Undated. [Represión y Silencio](#); Últimas Noticias. February 18, 2014. [Conatel: Web de NTN24 seguirá bloqueada hasta que deje de desestabilizar](#); El Mundo. February 17, 2014. [Conatel: Web de NTN24 seguirá bloqueada hasta que deje de desestabilizar](#).

<sup>1731</sup> IACHR. Special Rapporteurship for Freedom of Expression. September 22, 2014. [Comunicado de Prensa R 107/14. Relatoría Especial manifiesta su preocupación por la situación de la libertad de expresión en Venezuela](#); NTN24. September 18, 2014. [COMUNICADO: NTN24 censurado en Venezuela, ahora en Internet](#).

<sup>1732</sup> Ministry of Foreign Affairs of the Republic of Colombia. September 18, 2014. [Comunicado de prensa del Ministerio de Relaciones Exteriores sobre los problemas de señal que ha tenido el portal web del canal NTN 24](#).

<sup>1733</sup> IACHR. Special Rapporteurship for Freedom of Expression. September 22, 2014. [Comunicado de Prensa R 107/14. Relatoría Especial manifiesta su preocupación por la situación de la libertad de expresión en Venezuela](#); RCN Radio. September 19, 2014. [Siguen quejas de lectores por bloqueo de portales de RCN en Venezuela](#); Noticias RCN. September 18, 2014. [Problemas en Venezuela para acceder a portales de RCN](#).

<sup>1734</sup> Espacio Público. October 22, 2014. [Portal de NTN24 fue desbloqueado](#); Noticiero Digital. October 21, 2014. [Desbloqueado el portal de NTN24](#); Informe21.com/Colegio Nacional de Periodistas. October 23, 2014. [CNP: El portal web de NTN24 fue desbloqueado](#).

<sup>1735</sup> La Patilla/Almomento360. March 15, 2014. [Por transmitir en vivo protestas en Altamira el portal @almomento360 sufre bloqueo parcial](#); Espacio Público. March 24, 2014 Venezuela: Enero – Marzo 2014. Los trances de la libertad de expresión. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1736</sup> BBC Mundo. February 15, 2014. [Twitter confirma bloqueo de imágenes en Venezuela](#); Bloomberg. February 15, 2014. [Venezuelans Blocked on Twitter as Opposition Protests Mount./AppData/Local/AppData/Local/Microsoft/AppData/Local/Microsoft/Windows/Temporary](#)

did not know if the blocking had affected other Internet providers apart from the state enterprise National Telephone Company of Venezuela (Compañía Anónima Nacional de Teléfonos de Venezuela—CANTV), which has most of the country’s stationary Internet subscribers.<sup>1737</sup> CANTV had issued a press release on February 14, where it denied any responsibility for the breakdown that occurred on Twitter.<sup>1738</sup> According to what was reported, that day the Director of the National Telecommunication Commission (CONATEL), William Castillo, had complained on his Twitter account that some of Venezuela’s government websites were being attacked from various countries and he pointed out that various links “from which public sites are attacked were blocked.”<sup>1739</sup>

1078. In this context, from February 19 to 21, residents of Táchira state reported generalized blackouts in CANTV’s online service. There was reportedly no official response regarding the downed platform.<sup>1740</sup> On February 24, the state governor, José Gregorio Vielma Mora, reportedly denied any restriction of Internet access for the entity.<sup>1741</sup> For its part, on February 21, Conatel denied any violation of communications rights in the country and dismissed information posted on Twitter as false. “It is worth remembering that as a space for the free circulation of information and opinions, these networks have been awash in recent days with disinformation, doctored photographs, altered videos and a series of events that amount to a communications attack.”<sup>1742</sup>

1079. On December 2, 2014, the Political Administrative Chamber of the Supreme Court of Justice (TSJ) declared inadmissible an action filed by the nongovernmental organization Espacio Público against the Ministry of People’s Power for University Education, Science and Technology “for the lack of a timely and adequate response to the request for information made on March 13, 2014, and reiterated on June 26 and August 1, 2014, related to the existence of embargos and restrictions on communication purportedly issued by that Ministerial Office to certain Internet service providers” during the protests that took place in Venezuela.<sup>1743</sup> In this respect, the Chamber considered that the plaintiff did not explain “where the control sought to be exercised was directed, nor which actions taken by the Administration, according to it, would entail a possible infraction or irregularity affecting the individual or collective interests of the citizens.” It also affirmed that in the request one notes that the plaintiff did not specify “the use it would make of the information requested [and for these] reasons it is not considered that said requirement has been satisfied.” In the view of the Chamber, “petitions such as those in the instant matter, where an effort is made to collect information on the activity that the State will carry out ... in respect of the development of the

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[Internet Files/AppData/Documents and Settings/Patrick/Configuración local/Archivos temporales de Internet/AppData/Downloads/Venezuelans Blocked on Twitter as Opposition Protests Mount](#); El Universal. February 14, 2014. [Bloomberg confirma que Gobierno venezolano bloqueó imágenes de Twitter](#); Knight Center for Journalism in the Americas. February 26, 2014. [Twitter confirma que imágenes de protestas en Venezuela están siendo bloqueadas](#).

<sup>1737</sup> El Universal. February 14, 2014. [Bloomberg confirma que Gobierno venezolano bloqueó imágenes de Twitter](#); Bloomberg. February 15, 2014. [Venezuelans Blocked on Twitter as Opposition Protests Mount](#)

<sup>1738</sup> El Universal. February 14, 2014. [Bloomberg confirma que Gobierno venezolano bloqueó imágenes de Twitter](#); El Mundo. February 14. [Cantv asegura no estar involucrada en bloqueo de imágenes en Twitter](#); El Siglo. February 14. [Cantv desmiente que esté involucrada en fallas de Twitter](#); Bloomberg. February 15, 2014. [Venezuelans Blocked on Twitter as Opposition Protests Mount](#); Knight Center for Journalism in the Americas. February 26, 2014. [Twitter confirma que imágenes de protestas en Venezuela están siendo bloqueadas](#).

<sup>1739</sup> El Universal. February 14, 2014. [Bloomberg confirma que Gobierno venezolano bloqueó imágenes de Twitter](#); El Mundo. February 14, 2014. [Castillo: Bloqueo de enlaces se debe a ataque de páginas oficiales](#).

<sup>1740</sup> IPYS/+Sociedad Civil. Undated. [Represión y Silencio](#); El Nacional. February 21, 2014. [Táchira amanece sin Internet por segundo día](#); El Comercio. February 20, 2014. [Venezuela: Táchira ya está militarizada y sin Internet](#); Espacio Público. March 24, 2014 Internet en Venezuela: la libertad de expresión y sus amenazas. Available at: Archive of the Office of the Special Rapporteur.

<sup>1741</sup> IPYS/+Sociedad Civil. Undated. [Represión y Silencio](#); El Universal. February 24, 2014. [Vielma Mora califica como "un exceso inaceptable" militarización en Táchira](#).

<sup>1742</sup> National Telecommunications Commission of Venezuela (Conatel). February 21, 2014. ["En Venezuela no hay violación de derechos comunicacionales"](#).

<sup>1743</sup> Supreme Court of Justice. Political-Administrative Chamber. Judgment of December 2, 2014. EXP. No. 2014-1142. Available at: <http://www.tsj.gov.ve/decisiones/spa/diciembre/172301-01636-31214-2014-2014-1142.HTML>

telecommunications and information technology sector, which are tied to the national security of the State, constitute an attack on the effectiveness and efficiency that should prevail in the exercise of the public administration and governmental authority in general, since while every person has the right to direct petitions to any public agency and to receive a response in timely fashion, in response to such generic requests the Administration would have to devote time and human resources to give explanations concerning the wide array of activities that must be carried out in benefit of the community at large, a situation that would hinder and unnecessarily overburden the system for the administration of justice in response to the suggestions of such failures to act.”

1080. During the hearing on the ‘Situation of the Right to Freedom of Expression and Access to Information in Venezuela’, held in the course of the 150th regular session of the IACHR on March 28, 2014,<sup>1744</sup> the Commission was concerned by information that it received regarding an alleged pattern of stigmatization, arrests, intimidation, harassment, and theft of items belonging to journalists and other media workers as they attempted to cover the protests that took place in several of the country's states from February 2014 onward. According to information from civil society organizations involved, 116 journalists were “brutally assaulted” and 23 press workers “unlawfully detained” in February and March in Venezuela by officials and members of the security forces in Venezuela while they were covering the protests. The organizations also reported harsh repression of “citizen journalists” or so-called “info-activism” during protests. According to interviews conducted by participating organizations, during the protests “the objects most withheld, destroyed, and sometimes stolen were cellular telephones with a camera,” in order to censor any images of police brutality. They reported that this kind of violence resulted in the death of at least one individual and that these attacks remained unpunished. They also said that in the context of the demonstrations, civil society organizations documented around 500 websites that were blocked to prevent Venezuelan web users from accessing them, such as the case of NTN24.com. They also informed that during the demonstrations there was reported blocking of images on Twitter as well as reduced Internet connectivity and capacity, undermining net neutrality guarantees in Venezuela. These measures were reportedly taken “without any kind of formal proceeding” and there are apparently no mechanisms to obtain information about what is happening. Finally, they said that these acts occurred amid self-censorship by the broadcast media, which were unable to report openly on the demonstrations for fear of reprisals by the regulator Conatel.

1081. For its part, the State explained that they were not peaceful demonstrations but rioting that affected 18 of 335 municipalities in the Republic of Venezuela. It said that “a peaceful demonstration does not seek to destroy buildings such as that of the Office of the Attorney General, does not torch vehicles or set fire to and destroy 16 universities; please! those are neither peaceful nor student demonstrations, but the actions of hired killers. These demonstrations consist of a group of hooded criminals cutting off access to neighborhoods belonging to the middle class, thereby capturing the entire urbanized zone; they do not allow them to leave, receive medical assistance, or take their children to school.” According to the State, of the people detained in the demonstrations, “barely 30 percent were students, almost 90 percent of the demonstrators detained for acts of violence were released after a few hours, with a number who were found to be illegally in possession of weapons –prohibited in Venezuela – destroying property, or repeat offenders remaining in detention.” It reported that in this context, websites of ministries and government agencies were hacked. It also said that lines of communication in the country were blocked as a result of “an act of sabotage a few days earlier [in which] a power station was set on fire.”

1082. In the Joint declaration on violence against journalists and media workers in the context of protests, adopted on 2013, it is appointed 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 “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>1745</sup> For this

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<sup>1744</sup> IACHR. 150th regular session, March 28, 2014. Hearing on the Situation of the Right to Freedom of Expression and Information in Venezuela. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/150/default.asp>; CIDH. April 4, 2014. [Press Release 35/14. IACHR Wraps Up its 150th Session](#); IACHR. May 13, 2014. [Report on the 150th Session of the IACHR](#).

<sup>1745</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<sup>th</sup>,

reason, authorities must afford them the highest degree of protection in order for them to perform their duties. Accordingly, authorities have 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. 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>1746</sup> Journalist shall not be called as witnesses by the courts and authorities must respect the right to keep their sources. Likewise, their work materials and tools must not be destroyed or confiscated.<sup>1747</sup> Authorities must adopt a public statement that enhances the prevention of violence against journalist, condemning energetically aggressions, investigating such occurrences and punishing the perpetrators, as foreseen in the principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR.<sup>1748</sup> Commission reiterates that authority's intolerant political expressions do not only contravene human rights full enjoyment, but also may put a society sector in a more vulnerable and risk position due to potential attacks of diverse nature. It is also especially relevant in these contexts that authorities have special protocols to protect media in social conflict circumstances and instruct security agencies about the role of media in a democratic society.<sup>1749</sup>

1083. Also, in the context of demonstrations and situations of social unrest, the strictest international standards on freedom of expression must be observed by the States so that the full enjoyment to freedom of expression is guaranteed without unlawful interventions to journalist, media and society as a whole, accordingly to the 2<sup>nd</sup> Principle of the Declaration of Principles on Freedom of Expression.<sup>1750</sup> This is particularly important when there are complaints about blocking websites and applications that transmit data over the Internet. According to the net neutrality principle 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." This is a necessary condition for exercising freedom of expression on the Internet pursuant to the terms of Article 13 of the American Convention.<sup>1751</sup>

1084. In a press release dated February 21, the Inter-American Commission on Human Rights (IACHR) expressed its concern about the right to peaceful protest, freedom of association, and freedom of expression in Venezuela. On that occasion, the IACHR noted that criminal proceedings had been filed against Leopoldo López, the leader of the opposition party *Voluntad Popular*, noting that he had been deprived of his liberty after high-level government spokespersons publically blamed him for the events that occurred during

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2013. [Joint declaration on violence against journalists and media workers in the context of protests.](#)

<sup>1746</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<sup>th</sup>, 2013. [Joint declaration on violence against journalists and media workers in the context of protests.](#)

<sup>1747</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<sup>th</sup>, 2013. [Joint declaration on violence against journalists and media workers in the context of protests.](#)

<sup>1748</sup> [Principle 9 of the Declaration of principles of the IACHR](#): "[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>1749</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<sup>th</sup>, 2013. [Joint declaration on violence against journalists and media workers in the context of protests.](#)

<sup>1750</sup> [Principle 2 of the Declaration of Principles on Freedom of Expression](#): "[e]very 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."

<sup>1751</sup> IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Freedom of Expression and the Internet) OEA/Ser.L/V/II.149 Doc.50. December 31, 2013. Para. 25. 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<sup>st</sup>, 2011. [Joint Declaration on Freedom of Expression and the Internet](#). Point 5 (a).



the demonstrations on Wednesday, February 12. The Commission reiterated that the alleged use of the State's punitive power to criminalize human rights defenders and peaceful social protest and to criminally prosecute critics or political dissidents was deeply disturbing.<sup>1752</sup>

1085. According to reports received, on April 4, 2014, the Office of the Public Prosecutor presented an indictment against Leopoldo López to the Sixteenth First Instance Court with duties for supervising rights in Caracas, which charged the opposition leader of committing the crimes of “abetting the crime of arson,” “abetting the crime of damages [to public property],” and “perpetrating the crime of public intimidation [*sic*],” all of which are provided for in the Venezuelan Criminal Code, and for the crime of “conspiracy,” punishable under Article 37 of the organized crime and terrorist financing act.<sup>1753</sup>

1086. According to the Office of the Public Prosecutor, the indictment seeks to demonstrate how Leopoldo López through the media “made calls for violence, disregard for legitimate authorities, and disobedience to the law,” which resulted in an attack on the headquarters of the Office of the Public Prosecutor and seven cars by a group of people, as well as the destruction of the Plaza de Parque Carabobo. The indictment indicates that these people “acted individually, but incited by the speeches” of the opposition leader. The Office of the Public Prosecutor states that these incidents “were carried out as a result of the persuasion and inducement” of Leopoldo López, who “exercised a strong influence, not only in the mindset, but also in the potential actions of his audience.”<sup>1754</sup>

1087. In the indictment, the Office of the Public Prosecutor alleges that Leopoldo López had a “clear strategy” to “use conventional and alternative social media” to lend vehemence to his speech’s “violent content,” specifically mentioning: (i) the press conference of January 23, 2014, in which “he intensified his rhetoric and launched an aggressive public campaign against the President of the Republic and government institutions,” making accusations about corruption and stating that “it was necessary to take to the streets to conquer democracy”; (ii) calls through social networks for people to demonstrate, especially from his official Twitter account, which, according to the Office of the Public Prosecutor, constitute “subliminal messages” to incite people “to remain in the street”; (iii) an interview conducted on the news channel *CNN en Español* on February 11, 2014, in which he repeated his call to “conquer democracy” with the aim of “spreading the idea amongst his followers that only the street could bring about change”; and (iv) the speech given near the Plaza Venezuela in Caracas on February 12, which the Office of the Public Prosecutor deems in its brief to be violent, given that his slogan was “*la salida*” [“a way out”] in order to “bring about a complete and in-depth change of those who lead the national government.”<sup>1755</sup>

1088. Furthermore, the Office of the Public Prosecutor submitted as evidence a “Report on Discourse Analysis,” written by an expert in linguistics, and prepared specifically based on four videos taken from the YouTube website, consisting of statements, interviews, and speeches by Leopoldo López on January 23, 2014, February 10, 2014, February 12, 2014, and February 13, 2014. In the report, the expert underscores “the rhetorical strength” of Leopoldo López as a political leader, which leads to “his audience feeling encouraged to follow up with actions, based on what he has told them they should do, although he does not clearly explain it to them.” In this regard, the expert indicates that the Leopoldo López’s speeches prior to February 12, 2014, “were able to prepare his followers so that they would activate what he called #LaSalida.” [“#A way out”] This resulted in his followers acting “to activate *una salida*, which in the context of the constitution, sought to have the people rise up to take to the streets to reject the constitutional government of

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<sup>1752</sup> Inter-American Commission on Human Rights (IACHR). February 21, 2014. Press Release No. 17/14 [IACHR expresses deep concern over the situation with respect to the right to peaceful protest, freedom of association and freedom of expression in Venezuela](#)

<sup>1753</sup> Office of the Public Prosecutor. Indictment against Leopoldo López. Case N°C-16-17936-2014. Available at: [http://cdn.eluniversal.com//2014/06/02/ACUSACION\\_LEOPOLDO.pdf](http://cdn.eluniversal.com//2014/06/02/ACUSACION_LEOPOLDO.pdf)

<sup>1754</sup> Office of the Public Prosecutor. Indictment against Leopoldo López. Case N°C-16-17936-2014. Págs. 2, 3 and 5. Available at: [http://cdn.eluniversal.com//2014/06/02/ACUSACION\\_LEOPOLDO.pdf](http://cdn.eluniversal.com//2014/06/02/ACUSACION_LEOPOLDO.pdf)

<sup>1755</sup> Office of the Public Prosecutor. Indictment against Leopoldo López. Case N°C-16-17936-2014. Págs. 3, 4 and 31. Available at: [http://cdn.eluniversal.com//2014/06/02/ACUSACION\\_LEOPOLDO.pdf](http://cdn.eluniversal.com//2014/06/02/ACUSACION_LEOPOLDO.pdf)

Nicolás Maduro and bring it to an end in an other than peaceful manner.”<sup>1756</sup> In this regard, concludes the expert:

In the speeches analyzed, the citizen Leopoldo López, as a political leader of a sector of the Venezuelan population, did not establish exact guidelines on the characteristics of the protests that would take place. This was, without a doubt, a trigger that contributed to angering his followers due to the current political polarization that exists in Venezuela. For me, what occurred on the afternoon of February 12, 2014 opposite the Office of the Prosecutor of the Bolivarian Republic of Venezuela, shows that incitement by a political leader to fight in the streets to put an end to a constitutional government, can cause erratic, desperate, and in all likelihood, violent acts.<sup>1757</sup>

1089. Based on this discourse analysis report, the Office of the Public Prosecutor concluded that, although Leopoldo López had not directly participated in the crimes of arson and [property] damage, he had incited and induced “demonstrators to carry out an attack on the headquarters of the Office of the Public Prosecutor, and against the property of the Venezuelan State,” inasmuch as he had given public speeches in which he had called for “disregarding the legitimately established authority and going against the leaders of government, which undoubtedly exercised a significant psychological influence on a group of individuals who had acted, incited by [his] speeches<sup>1758</sup>.”

1090. With regard to the crime of public incitement, the Office of the Public Prosecutor concluded that, through his speeches and statements on social networks, Leopoldo López had engaged in “generic incitement,” which “prompted his follower to take to the streets to disregard laws, the government, and State institutions.” It added that this assertion was made “with reference to his presentation of an anti-democratic, inefficient, corrupt government, [that was] extremely repressive, and allied with drug traffickers,” and that, moreover, it constituted a call “for hate among Venezuelans<sup>1759</sup>.”

1091. Finally, with regard to the crime of conspiracy, the Office of the Public Prosecutor concluded that it is “impossible to think that a sole individual organized and planned these events.” In this regard, it highlighted that the indictment shows that Leopoldo López “has an organizational structure for mobilization and logistics,” which includes the political party known as *Voluntad Popular*, activists and social communication advisors, social networks, specialists in discourse, “whose main goal is to put an end to the power of the President of the Republic.”<sup>1760</sup>

1092. Pursuant to a decision dated June 5, 2014, the Court admitted the indictment of Mr. Leopoldo López Mendoza and ordered that proceedings go forward for trial. Furthermore, the court upheld the measure depriving him of his liberty.<sup>1761</sup>

1093. According to the information available, on March 25, the President of the National Assembly agreed to strip opposition legislator María Corina Machado of her seat in that Assembly after she attempted to appear before the Permanent Council of the Organization of American States (OAS), with the alternate

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<sup>1756</sup> Office of the Public Prosecutor. Indictment against Leopoldo López. Case N°C-16-17936-2014. Págs. 108-135. Available at: [http://cdn.eluniversal.com//2014/06/02/ACUSACION\\_LEOPOLDO.pdf](http://cdn.eluniversal.com//2014/06/02/ACUSACION_LEOPOLDO.pdf)

<sup>1757</sup> Office of the Public Prosecutor. Indictment against Leopoldo López. Case N°C-16-17936-2014. Págs. 133-135. Available at: [http://cdn.eluniversal.com//2014/06/02/ACUSACION\\_LEOPOLDO.pdf](http://cdn.eluniversal.com//2014/06/02/ACUSACION_LEOPOLDO.pdf)

<sup>1758</sup> Office of the Public Prosecutor. Indictment against Leopoldo López. Case N°C-16-17936-2014. Pág. 181. Available at: [http://cdn.eluniversal.com//2014/06/02/ACUSACION\\_LEOPOLDO.pdf](http://cdn.eluniversal.com//2014/06/02/ACUSACION_LEOPOLDO.pdf)

<sup>1759</sup> Office of the Public Prosecutor. Indictment against Leopoldo López. Case N°C-16-17936-2014. Pág. 181. Available at: [http://cdn.eluniversal.com//2014/06/02/ACUSACION\\_LEOPOLDO.pdf](http://cdn.eluniversal.com//2014/06/02/ACUSACION_LEOPOLDO.pdf)

<sup>1760</sup> Office of the Public Prosecutor. Indictment against Leopoldo López. Case N°C-16-17936-2014. Pág. 190. Available at: [http://cdn.eluniversal.com//2014/06/02/ACUSACION\\_LEOPOLDO.pdf](http://cdn.eluniversal.com//2014/06/02/ACUSACION_LEOPOLDO.pdf)

<sup>1761</sup> VTV. June 5, 2014. [Leopoldo López y otros violentos irán a juicio por sucesos del 12 de febrero](#); TelesurTV. June 5, 2014. [Opositor venezolano irá a juicio por violencia golpista](#); El Mundo. June 5, 2014. [Venezuela: Leopoldo López queda preso e irá a juicio](#).

accreditation of the Republic of Panama<sup>1762</sup> for the purpose of providing information about “the reality of what is happening in Venezuela ... the brutal repression that [took] place during those moments in the streets of Venezuela.”<sup>1763</sup> On April 21, Machado filed an *amparo* motion against this decision. On May 9, the Constitutional Chamber of the Supreme Court of Justice declared the action “inadmissible *in limine litis*” and considered that “on accepting the alternate representation of another country ... without requesting authorization from the President of the National Assembly and without it having granted it to her, she lost, by operation of law or *ipso iure*, the legislative office she had held. One infers from that circumstance that the conduct of the former legislator does not require any subsequent legal act with respect to her other than the action of the Venezuelan State in defense of the Constitution and implementation of the provisions contained therein.”<sup>1764</sup> Later, on December 3, the Public Ministry accused María Corina Machado of the crime of conspiracy, established at Article 132 of the Criminal Code, according to which “anyone who, within or outside the national territory, conspires to destroy the republican political form that the national has given itself shall be punished by eight to 16 years in prison. The same penalty shall apply to a Venezuelan who requests foreign intervention in the internal politics of Venezuela, or who requests foreign assistance to disturb the peace of the Republic or who, before a foreign country’s officials, or for publications made in the foreign press, incites civil war in the Republic or defames its President or commits an outrage against the diplomatic representative or consular officials of Venezuela, because of the official duties, in the country where such conduct occurred.”<sup>1765</sup> As of the conclusion of this report, the Public Ministry’s indictment of Machado stood and she had not been reinstated in her position.

1094. The IACHR notes that Inter-American case law and doctrine on this matter<sup>1766</sup> provides that the imposition of penalties for abusing freedom of expression in keeping with the charge of inciting violence (understood as inciting commission of crimes, breach of public order or national security) is to be based on current, reliable, objective and strong evidence that the person was not simply expressing an opinion (no matter how harsh, unjust, or disturbing it may be), rather that the person had the clear intention of committing a crime and there was a current, real, and effective likelihood that he could achieve these objectives. Were this not to be the case, this would mean opening up the possibility of punishing opinions, and any States would be empowered to suppress any critical thought or statement about authorities which, as would be the case with anarchism or opinions that are radically opposed to the established order, questions even the very existence of the established institutions.

1095. Furthermore, Inter-American case law and doctrine opinion has stipulated that laws establishing limitations on freedom of expression are to be drawn up in the clearest and most exact terms possible, inasmuch as the legal framework must provide legal certainty to citizens.<sup>1767</sup> This requirement takes on even greater importance when it is a question of limitations imposed on freedom of expression by criminal law. In this regard, the Inter-American Court of Human Rights has indicated that these kinds of limitations must also meet the strict requirements of the principle of legality, in keeping with Article 9 of the American Convention on Human Rights: “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>1768</sup> The foregoing reveals itself in the need “use strict and unequivocal terms, clearly restricting any

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<sup>1762</sup> Panorama. March 24, 2014. [Cabello: "Por violar la Constitución, María Corina Machado dejó de ser diputada"](#); Panorama. March 24, 2014. [Psuv sobre María Corina Machado: "Nadie la está destituyendo, ella sola se salió" de la AN](#);

<sup>1763</sup> YouTube. March 21, 2014. [Press Conference of María Corina Machado from the OAS](#).

<sup>1764</sup> Constitutional Chamber of the Supreme Court of Justice. Decision of May 9, 2014. [Case No. 14-0383](#).

<sup>1765</sup> Office of the Prosecutor. December 3, 2014. [Ministerio Público imputó por conspiración a María Corina Machado. La investigación preliminar arroja que se pretendía alterar la paz de la Nación](#).

<sup>1766</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteurship 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. Paragraph 59.

<sup>1767</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteurship 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. Paragraph 70.

<sup>1768</sup> I/A Court HR., *Case of Usón Ramírez v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207, paragraph 55.

punishable behaviors,”<sup>1769</sup> which implies “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>1770</sup>

1096. The IACHR learned of the judgment of April 24 of the Constitutional Chamber of the Supreme Court of Justice which prohibited the right to demonstrate without authorization and ruled that those who fail to obtain this authorization would be committing a crime. The Court’s judgment reaffirmed the right to peaceful demonstration provided for in Article 68 of the Constitution, but stated that “it is not an absolute right” and therefore “allows for restrictions on its exercise.” For the Supreme Court “it is mandatory that when political parties and/or organizations, as well as all citizens, decide to hold public meetings or demonstrations, they must exhaust the administrative authorization procedure provided for by the highest civil authority of the corresponding jurisdiction, in order to fully exercise their constitutional right to peacefully demonstrate.” This authorization, which is to be provided by the highest civil authority of the jurisdiction, “constitutes a legal requirement, whose violation absolutely limits the right to peaceful demonstration, thus hindering meetings or demonstrations from being convened. Therefore, any public assembly, demonstration, or meeting that does not have prior authorization from the respective competent authority, may lead police and law enforcement, who are charged with controlling public order for purposes of ensuring the right to free circulation and other constitutional rights (for example, the right to access a health facility, the right to life and humane treatment), to act by dispersing said assemblies by using the mechanisms that are most appropriate to this end, pursuant to the provisions set forth in the Constitution and the legal system” The Supreme Court issued this opinion as part of its ruling on the request for interpretation filed by the mayor of Guacara, Carabobo state, Gerardo Sánchez, on March 25, regarding the scope of Article 68 of the Constitution, and Articles 41, 43, 44, 46, and 50 of the Law on Political Parties, Public Meetings, and Demonstrations.<sup>1771</sup>

1097. The Inter-American Commission has maintained that the right to demonstrate publicly or to engage in social protest as a means to mobilize society to take active part in public discourse and assert rights, is an essential element of the exercise of democracy and, as such, is protected by both the right of assembly protected under Article 15 of the American Convention, and the right to freedom of expression, protected by Article 13 of that instrument.<sup>1772</sup> As other international bodies for the protection of human rights have held, <sup>1773</sup> the expression of opinions is one of the purposes of the right of assembly; hence, exercise of the right of assembly is premised upon the effective enjoyment of the right to freedom of expression. Of course, the most impoverished sectors frequently do not have access to the traditional channels to make their complaints known, such as the press; the institutional complaint mechanisms may be either lacking or not very effective; so for them, protest becomes a vital vehicle for effective and inclusive citizen participation in public affairs.<sup>1774</sup>

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<sup>1769</sup> Inter-American Court of HR., *Case of Usón Ramírez v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207, paragraph 55.

<sup>1770</sup> Inter-American Court of HR., *Case of Usón Ramírez v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207, paragraph 55.

<sup>1771</sup> Supreme Court of Justice (TSJ).. [Case No 14-0277](#). April 24, 2014; El Universal. April 24, 2014. [El TSJ proscriba las manifestaciones pacíficas espontáneas](#); Notitarde. April 24, 2014. [TSJ prohíbe protestas pacíficas sin permisos](#); Espacio Público. April 25, 2014. [TSJ sentencia en contra del derecho a manifestar](#).

<sup>1772</sup> IACHR. [Annual Report 2005. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter V (Public Demonstrations as an Exercise of Freedom of Expression and Freedom of Assembly). OEA/Ser.L/V/II.124. Doc. 7. February 27, 2006. Para. 90 – 102.

<sup>1773</sup> See, for example, ECHR, *Case of Vogt v. Germany*, Judgment of September 26, 1995, Series A, No. 323, paragraph 64; ECHR, *Case of Rekvényi v. Hungary*, Judgment of May 20, 1999, Report on Judgements and Decisions 1999-III, paragraph 58; ECHR, *Case of Young, James and Webster v. the United Kingdom*, Judgment of August 13, 1981, Series A, No. 44, para. 57; ECHR, *Case of Refah Partisi (The Welfare Party) and others v. Turkey*, Judgment of July 31, 2001, para. 44; ECHR, *Case of United Communist Party of Turkey and others v. Turkey*, Judgment of January 30, 1998, Report 1998-I, para. 42. IACHR. [Annual Report 2005. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter V (Public Demonstrations as an Exercise of Freedom of Expression and Freedom of Assembly). OEA/Ser.L/V/II.124. Doc. 7. February 27, 2006.

<sup>1774</sup> IACHR. [Annual Report 2005. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter V (Public Demonstrations as an Exercise of Freedom of Expression and Freedom of Assembly). OEA/Ser.L/V/II.124. Doc. 7. February 27, 2006.

1098. This becomes even more relevant when there are prodigious obstacles to criticism and public discourse. As the Commission observed, “[w]eak public institutions, government corruption and other problems often prevent human rights violations from being brought to light and punished. In countries affected by such problems, the exercise of freedom of expression has become the main means by which illegal or abusive acts previously unnoticed, ignored or perpetrated by authorities are exposed.”<sup>1775</sup> The IACHR has observed that “social protest and mobilization have become tools to petition the public authorities, as well as channels for public complaints regarding abuses or human rights violations.”<sup>1776</sup>

1099. Consequently, demonstration and social protest as the exercise of freedom of expression and right of assembly are a social imperative, leaving the State even less grounds to justify a restriction of these rights. The practical effect of the regulation of this right cannot be to prohibit assembly or peaceful demonstration. Thus, in language similar to Article 13 of the Convention, Article 15 of that instrument provides that exercise of that right “shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others”<sup>1777</sup>.

### C. Access to public information, officials and public places

1100. On May 2, the Constitutional Division of the Supreme Court of Justice (TSJ) refused a petition for constitutional relief (amparo) filed on May 31, 2013, by the journalist Marieugenia “Maru” Morales Pinto of El Nacional newspaper against the Speaker of the National Assembly, Diosdado Cabello, and the then-Director of Communication and Information of that entity, Ricardo Durán, in order that she be permitted to enter the National Assembly. The journalist lodged the petition for amparo after alleging a violation of her constitutional rights to equality before the law, freedom of expression and communication, and work, as she was prohibited entry from May 21 to May 28, 2013. According to the judgment of the TSJ, Morales said that the prohibition could have to do with an article published on May 7, titled “*Nuevas Restricciones a la prensa*” (New Press Restrictions) in which the journalist denounced alleged restrictions on the circulation of journalists in the National Assembly, in response to which Durán evidently called her a “political operator of the right to hinder the communication work of the National Assembly.” The Supreme Court ruled the petition inadmissible arguing “improper joinder of claims,” specifying that the respondent government officials held different positions, inasmuch as Diosdado Cabello was considered a senior state official of constitutional rank, while Ricardo Durán did not hold such a rank nor was he in the senior state official category. “[I]t would be for this Division to take cognizance at single instance of the petition for amparo filed against citizen Diosdado Cabello, but not against citizen Ricardo Durán for whom the petition, according to Article 7 of the Organic Law on Protection of Constitutional Rights and Guarantees, bearing in mind that the alleged wrongdoing is imputed to a government official who is not in the senior category, should be heard by a Superior Court for Contentious Administrative Matters in and for the Capital Region.”<sup>1778</sup>

1101. On August 5, the Political and Administrative Division of the Supreme Court of Justice ruled “inadmissible an action in respect of failure to act [*recurso de abstencion*] brought against the Minister of

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<sup>1775</sup> IACHR. [Report on Terrorism and Human Rights](#). OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr. October 22, 2001. Paragraph 267. See also, IACHR, [Second Report on the situation of human rights in Peru](#), OEA/Ser.L/V/II.106 Doc. 59 rev. June 2, 2000. Chapter V. Paragraph 20.

<sup>1776</sup> IACHR. [Annual Report 2005. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter V (Public Demonstrations as an Exercise of Freedom of Expression and Freedom of Assembly). OEA/Ser.L/V/II.124. Doc. 7. February 27, 2006. Para. 1.

<sup>1777</sup> IACHR. [Annual Report 2005. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter V (Public Demonstrations as an Exercise of Freedom of Expression and Freedom of Assembly). OEA/Ser.L/V/II.124. Doc. 7. February 27, 2006. Para. 83.

<sup>1778</sup> Supreme Court of Justice. May 2, 2014. [Case No. 13-0508](#); El Nacional. May 8, 2014. [TSJ niega protección a periodistas de fuente parlamentaria](#); Instituto Prensa y Sociedad (IPYS) Venezuela. May 9, 2014. [Caracas: Sala Constitucional declaró inadmisibile acción de amparo interpuesto por periodista contra Diosdado Cabello y ex director de Comunicación e Información de la Asamblea Nacional por limitación de acceso a la AN en 2013](#); Noticiero Digital. May 9, 2014. [TSJ declara inadmisibile acción contra Diosdado Cabello por “inepta acumulación de pretensiones”](#); Monitoreo Ciudadano/YouTube. July 18, 2013. [Periodista Maru Morales realata como limitan acceso a la Asamblea Nacional](#).

Popular Power for Health for failure to respond in a timely and adequate manner to a request for information made on October 22, 2012, and reiterated on December 26, 2012, and February 6, 2013.” Civil society organizations such as *Espacio Público*, *Transparencia Venezuela*, *Acción Solidaria*, *Programa Venezolana de Educación-Acción en Derechos Humanos* (Provea) brought the action on May 21, 2013, after they failed to receive a response regarding recommendations made by the Office of the Comptroller General of the Republic concerning alleged irregularities in the distribution, warehousing, and storage of certain medicines from Cuba. In his decision, the Supreme Court of justice found that petitions such as this one, “intended to obtain information about the activity or proposed activity of the State in order to achieve one of its objectives [...] undermine the effectiveness and efficiency that must prevail in the public administration and the government as a whole, since, although everyone is entitled to present petitions to any government agency and receive a timely response, nevertheless, that right may not be abused or exercised in such a way as to prevent the administration’s activities from functioning normally, as it would then have to devote time and human resources to such general requests in order to provide an explanation about the broad range of activities it has to perform for the benefit of the community at large, and moreover the presentation of actions in respect of failure to act would needlessly burden the justice administration system. The Supreme Court also said that information of the kind requested “may be found in the annual reports presented by ministers to the National Assembly.” The decision also determined that, in the absence of a law on access to information, “the petitioner must expressly state the reasons for requesting the information and show that what they are requesting is commensurate with the use for which it is intended.”<sup>1779</sup>

1102. Principle 4 of the 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”.

#### **D. Stigmatizing statements**

1103. In a press release from the Ministry of People's Power for Communication and Information (Minci) dated May 25, the head of that entity, Delcy Rodríguez, attacked the Spanish newspaper *ABC* and its Caracas correspondent, Ludmila Vinogradoff. The matter had to do with the publication of an article explaining the reticence about divulging the death certificate of former President Hugo Chavez. The official said that “*ABC* has a history of over 100 years in the service of fascism, attacking any revolutionary deed ... The new generations must be warned about this lackey of the far right and *ABC* must be publicly repudiated today and whenever it again attacks Venezuela.” In reference to the journalist, the press release said that “she has a reputation for soap-opera journalism and saying blatant lies about the Bolivarian Revolution.”<sup>1780</sup>

1104. On June 11, the governor of the State of Carabobo and national coordinator of political and electoral strategy of the United Socialist Party of Venezuela (PSUV), Francisco Ameliach, speaking on his radio show, denounced that the director of the newspaper *Notitarde*, Laurentzi Odriozola, was a possible suspect in an alleged murder plot. During the show, the official broadcast an audio recording of Odriozola purportedly saying that a person should be killed. The official said that he would present the evidence to the Office of the Attorney General. The newspaper's employees issued a release rejecting the accusations and saying that what had happened to the director “looks like yet more pressure from the government clearly designed to intimidate and muzzle the free and independent media, typical of totalitarian regimes.”<sup>1781</sup> On June 16, the

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<sup>1779</sup> Supreme Court of Justice. [Case No. No 2013-0869](#). August 5, 2014; *Espacio Público*. August 7, 2014. [TSJ: preguntar entorpece la labor del Ministerio para la Salud](#); Provea. August 8, 2014. [Caso Medicinas Vencidas: Para el TSJ lo primero son los intereses del gobierno, luego los derechos de la gente](#); El Universal. August 16, 2014. [TSJ elimina Contraloría Social](#).

<sup>1780</sup> Ministry of People's Power for Communication and Information. May 25, 2014. [Minci repudia nuevo ataque del diario español ABC](#); *Espacio Público*. May 29, 2014. [Delcy Rodríguez hostiga verbalmente a periodista de ABC](#); *ABC*. May 29, 2014. [Maduro rechaza la información de ABC sobre el día en que murió Chávez](#).

<sup>1781</sup> El Universal. June 12, 2014. [Ameliach denuncia a director de Notitarde de intentar homicidio](#); RunRun.es. June 12, 2014. [Ameliach denunció a director de Notitarde de intento de homicidio](#); *Espacio Público*. June 13, 2014. [Ameliach amenaza con hostigar judicialmente al director de Notitarde](#); *Notitarde*. June 11, 2014. [Ameliach intenta censurar y amedrentar acusando al Director de Notitarde](#).

newspaper's workers marched through the streets of Valencia in support of their director and freedom of expression.<sup>1782</sup>

1105. On July 27, President Nicolás Maduro attacked the owners of the newspapers *El Nacional* and *2001* after they published information concerning the case of retired Major General Hugo Carvajal, who had been investigated, arrested, and then released in Aruba. The premier said that *El Nacional*, a “fascist newspaper of the far right, printed barefaced lies” and that its chairman uses and destroys “that legacy of all Venezuelans [the newspaper *El Nacional*] that Miguel Otero Silva bequeathed us and that he is bent on destroying his work because he does not represent it or have even one iota of the moral, intellectual, and ethical values” of its founder. The president also referred to the “media oligarchy” and added “where will the owner of Bloque de Armas put today’s Sunday edition of *2001* after publishing a brazen lie about a Venezuelan.”<sup>1783</sup>

1106. On August 3, the Minister of Popular Power for Tourism, Andrés Izarra, made disparaging remarks on Twitter about the news editor of *El Universal* newspaper, Elides Rojas. In various tweets he wrote that the journalist “is a tremendous bootlicker. He wags his tail at each new master,” “He does not quit because he’s too busy taking bribes to censor himself,” and “he only does anything if it’s for money.” The journalists replied, “I am not going to resign because others want me to. Much less at the request of one of the band of thieves. Ask the owners to fire me.”<sup>1784</sup>

1107. In a housing inauguration ceremony and in a national address broadcast on radio and television on September 18, president Nicolás Maduro accused the media outlets who reported on the deaths that occurred at Maracay Central Hospital, including *CNN en Español*, *El Nuevo Herald*, *NTN24*, and others, of “psychological terrorism” and “media terrorism,” among other expressions. The premier referred to *CNN En Español* as “a hive of untruths and psychological warfare and nonsense about the country”; he called *NTN24* “a trash television station” and *El Nuevo Herald* the “repository of all the lies about Venezuela.” President Maduro called on the organs of justice to take new and bigger national and international steps against those media outlets and to act firmly and severely in “punishing” everyone responsible and “prosecuting terrorism.”<sup>1785</sup>

1108. On October 22, president Nicolás Maduro accused the news agency Reuters of having “declared a campaign to destroy Venezuela” because of its coverage of different issues in the country, among them the deaths at Maracay Central Hospital. “I denounce the Reuters news agency because it is does harm

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<sup>1782</sup> Notitarde. June 16, 2014. [Trabajadores de Notitarde marcharon en apoyo a su Director](#); Diario Contraste. June 16, 2014. [Trabajadores de Notitarde marchan en defensa de la libertad de expresión \(Fotos\)](#); Espacio Público. June 17, 2014. [Trabajadores del diario Notitarde se movilizaron en apoyo a su Director](#).

<sup>1783</sup> La Patilla. July 27, 2014. [Maduro arremete contra los diarios El Nacional y 2001 \(Video\)](#); Clases de Periodismo. July 31, 2014. [Venezuela: Maduro arremete contra El Nacional](#); Noticiero Digital. July 28, 2014. [Maduro: El Nacional “quedó en ridículo” tras liberación de Carvajal](#); Instituto Prensa y Sociedad (IPYS) Venezuela. August 4, 2014. [Caracas: Autoridades venezolanas criticaron cobertura informativa por caso de corrupción](#).

<sup>1784</sup> National Press Workers Union (SNTP). August 3, 2014. [Ministro Izarra arremete contra periodista Elides Rojas](#); La Patilla. August 3, 2014. [Elides Rojas y Andrés Izarra encienden el Twitter](#); Últimas Noticias. August 3, 2014. [Director de El Universal a Izarra: “Pídele a los dueños que me boten”](#); “Reportan que @ejrl no renuncia porque tiene tremendo bozal de arepa”. Andrés Izarra’s official Twitter account @IzarraDeVerdad. [August 3, 2014 – 9:39 a.m.](#); “Reportan que @ejrl es tremendo arrastrado. Le mueve la colita a cada nuevo amo”. Andrés Izarra’s official Twitter account @IzarraDeVerdad. [August 3, 2014 – 9:40 a.m.](#); “@IzarraDeVerdad / Si el chavismo compró El Universal la tienes más fácil. Habla con los compinches y me botas”. Elides J Rojas L’s Twitter account @ejrl. [August 3, 2014 – 10:47 a.m.](#)

<sup>1785</sup> Ministry of People’s Power of the Office of the Presidency and Oversight on the Governmental Administration. Undated. [VENEZUELA RESPONDERÁ JUDICIALMENTE A CAMPAÑA MEDIÁTICA CONTRA EL SISTEMA DE SALUD](#); CIDH. Office of the Special Rapporteur for Freedom of Expression. September 22, 2014. [Press release R 107/14. Office of the Special Rapporteur Expresses Concern over the Situation of the Freedom of Expression in Venezuela](#); Panorama. September 18, 2014. [Maduro: CNN, Uribe, NTN24 y el Miami Herald están al frente de campaña contra Venezuela](#); Semana. September 18, 2014. [Maduro la emprende contra NTN24, CNN y Miami Herald](#); El Universal. September 18, 2014. [Maduro pidió investigar a quienes alertaron sobre virus en Aragua](#); El Tiempo. September 19, 2014. [Nicolás Maduro relanza ofensiva contra medios de comunicación](#); TeleSur. September 18, 2014. [Venezuela tomará acciones judiciales contra promotores de guerra psicológica](#); Diario Panorama/ YouTube. September 18, 2014. [Maduro denuncia a CNN, NTN24 y el Nuevo Herald de campaña sucia](#).

with all its international wires, which go out, reach the hands of experts, create alarm.” The president made a call to unite “the country's forces” against these campaigns.<sup>1786</sup>

1109. On October 30, president Nicolás Maduro says that the Bolivarian National Armed Forces (FANB) were victims of attacks by the press following the publication of two cartoons alluding to a 45-percent pay rise for members of the armed forces that had been agreed upon days earlier. The president referred to the newspaper *El Carabobeño*, which he described as “a newspaper of the decadent oligarchy of Valencia” and said that “[its owners] I repudiate, I reject them as bandits” and he demanded that they “learn to respect the dignity of the” FANB. He also mentioned a cartoon by Roberto Weil that showed an obese military officer with his pockets stuffed with banknotes, contrasted with small, poor people. About him, he said “that he does the bidding of the worst, darkest groups and factions that hate our country,” adding that “he is being investigated by the Office of the Attorney General” for allegedly having “announced that there were going to be funerals in the National Assembly two weeks before the murder” of assemblyman Robert Serra. The cartoon depicted a funeral of rats and had been associated with the murder of deputy Serra, for which he had been dismissed from the newspaper *Últimas Noticias*.<sup>1787</sup>

1110. According to information received by the IACHR, the speaker of the National Assembly, Diosdado Cabello, makes comments discrediting press workers, members of civil society organizations, and supporters of the opposition on his program *Con El Mazo Dando*, which is broadcast by the *Venezolana de Televisión* channel. Thus, for example, in June he mentioned the last names of a number of journalists who he claims benefited from publicity in return for saying positive things about a mayor.<sup>1788</sup> On July 31, he said that he would support possible legal action against Sofía Neder and Hernán Lugo Galicia, journalists with *El Nacional* newspaper, following the publication of an article to do with the case of Hugo Carvajal, a retired Major General of the Bolivarian National Armed Forces, who was investigated, arrested, and subsequently released in Aruba. The newspaper described him as “irresponsible as usual.”<sup>1789</sup> He again referred to Lugo Galicia on September 25, when he referred to the apparent dismissals from *El Nacional*, saying “Oh dear, Hernán Lugo, so much adulation and now you are going to get the boot [...] they say that Hernán Lugo is one of those who will be leaving. You’re out!”<sup>1790</sup> On October 30, he read a text in which he mentioned members of different Venezuelan NGOs and the journalist Laura Weffer as attending a meeting at Columbia University Institute of Human Rights in the United States to plan “the human rights actions that the NGOs would take

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<sup>1786</sup> Agencia Venezolana de Noticias (AVN). October 22, 2014. [Presidente Maduro denuncia campaña de agencia Reuters contra Venezuela](#) y [Maduro denuncia campaña de agencia Reuters contra Venezuela](#) (VIDEO); Espacio Público. October 23, 2014. [Maduro arremete contra Reuters y medios internacionales](#); El Estímulo. October 22, 2014. [Maduro enfila sus baterías contra agencia Reuters](#).

<sup>1787</sup> Radio Nacional de Venezuela (RNV). October 30, 2014. [Presidente Maduro insta a diario El Carabobeño a respetar dignidad de la FANB \(AUDIO\)](#); Diario de las Américas/EFE. November 2, 2014. [Las últimas caricaturas que enfurecieron a Nicolás Maduro](#); Instituto Prensa y Sociedad (IPYS) Venezuela. November 3, 2014. [Caracas: Presidente de la República señaló de bandidos a directivos de impreo regional](#); La Patilla. October 30, 2014. [Maduro repudia caricaturas contra la Fanb: Están descompuestos](#).

<sup>1788</sup> National Press Workers Union (SNTP). October 28, 2014. *Venezuela: Funcionarios hostigan a periodistas, generando censura e inhibiendo el debate público* [Venezuela: Government officials found journalists causing censorship and inhibiting public debate]. Document presented in the framework of the 153rd regular session of the IACHR. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression; Venezolana de Televisión/YouTube. Published on October 20 by the National Press Workers Union (SNTP). [Diosdado Cabello contra periodistas](#).

<sup>1789</sup> Instituto Prensa y Sociedad (IPYS) Venezuela. August 4, 2014. [Caracas: Autoridades venezolanas criticaron cobertura informativa por caso de corrupción](#); Espacio Público. August 1, 2014. [Cabello amenaza a periodistas del diario El Nacional](#); Últimas Noticias. August 1, 2014. [Sntp rechaza amenazas de Cabello contra periodistas](#); El Diario de Caracas. August 5, 2014. [CNP rechazó amenazas de Diosdado Cabello contra periodistas](#); Diario Contraste. August 1, 2014. [Diosdado Cabello amenaza a periodistas de El Nacional por caso Carvajal \(Video\)](#).

<sup>1790</sup> Venezolana de Televisión/YouTube. September 26, 2014. Published by the National Press Workers Union. [Diosdado Cabello contra periodista Hernán Lugo Galicia: ¡Estás botado!](#); Colegio Nacional de Periodistas (CNP). September 29, 2014. [Diosdado Cabello ataca nuevamente al periodista Hernán Lugo Galicia](#). The IACHR was also made aware that the speaker of the National Assembly, Diosdado Cabello, made references to Carla Angola and Patricia Poleo on August 14; to Nelson Bocaranda on September 4; to Jurate Rosales on September 11; to Carmen Sofía Alonso on September 25; to David Pérez Hansen on October 9; and to the journalists Daniel Palacios, Rubén Machaén, Hercilia Garnica and Ibéyise Pacheco on October 20. National Press Workers Union (SNTP). October 28, 2014. *Venezuela: Funcionarios hostigan a periodistas, generando censura e inhibiendo el debate público* [Venezuela: Government officials found journalists causing censorship and inhibiting public debate]. Document presented in the framework of the 153rd regular session of the IACHR. Available at: Archive of the Office of the Special Rapporteur.



against the Bolivarian government in 2015. That is to say, the plans are more unfounded accusations, more lies in the press, more lobbying to pressure other organizations and right-wing governments, more travel, more expense, more money from the imperialists for the NGOs, among the measures to get the conspirator Leopoldo López released.” Cabello called one of the members of these organizations a “gangster of the first order.” The journalist said that she did not belong to any NGOs and that she had not been invited to any event but that if she was, “that is no crime, even if they want to make it look like one.”<sup>1791</sup> On November 9, Cabello read out information supplied by a “helpful patriot” which alleged that the NGO Espacio Público was denouncing the human rights situation in the country with “hidden interests” and identified its director as “a friend of the fugitives of Venezuelan justice.” Cabello also read other texts sent in by people that criticized the work of persons belonging to other organizations, such as the journalist Mariengracia Chirinos.<sup>1792</sup> The following week, Cabello read out new information in which he said that “the NGO Espacio Público is holding meetings with the Twitter users detained by the *guarimbas* (demonstrators) and representatives of Human Rights Watch. They are advised by someone called Luis de León, who in reality is the fugitive Diego Arria, who is a good friend and cohort of the executive director of Espacio Público, Carlos Correa.”<sup>1793</sup>

1111. On November 20, the director of the National Telecommunications Commission, (CONATEL) William Castillo, accused *El Nacional* on Twitter of waging “psychological warfare” following publications by the paper concerning measures adopted by the government against the “economic war.” The official apparently said that the work of the paper “is to breed anxiety among the citizenry, spreading fear and panic.”<sup>1794</sup>

1112. 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>1795</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>1796</sup>

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<sup>1791</sup> Instituto Prensa y Sociedad (IPYS) Venezuela. November 3, 2014. [Caracas: Presidente del parlamento acusa a periodista y activistas de gestar planes contra el gobierno](#); Politikomreal.com. November 2, 2014. [Diosdado Cabello arremetió contra la periodista Laura Weffer](#); Venezolana de Televisión/YouTube. October 30, 2014. Published by Noticias Venezuela. [Mazazos de Cabello parte 2](#). [00:01:50 – 00:03:10]

<sup>1792</sup> Espacio Público. November 7, 2014. [Diosdado Cabello hostiga a ONG Espacio Público](#); Instituto Prensa y Sociedad (IPYS) Venezuela. November 11, 2014. [Caracas: Presidente del Parlamento intimidó a periodista, ONG y activistas de DD HH](#); Venezolana de Televisión/YouTube. November 6, 2014. Published by Noticias Venezuela. [Mazazos Cabello 06 11 14 parte 2](#).

<sup>1793</sup> Espacio Público. November 13, 2014. [Diosdado Cabello hostiga a Espacio Público por segunda vez](#); Noticias 24. November 12, 2014. [En videos: los Mazazos de Diosdado Cabello](#). VIDEO 2 [00:08:02]

<sup>1794</sup> Ministry of Popular Power for Communication and Information, November 20, 2014. [William Castillo denuncia guerra psicológica del diario El Nacional \(+Tuits\)](#); Correo del Orinoco. November 20, 2014. [William Castillo denuncia guerra psicológica del diario El Nacional](#); “El Nacional titula q consumidores corren desesperads [sic] a comprar curda ante medidas tributarias y profetiza #EfectoDaka”. William Castillo B’s Twitter account @planwac. [November 20, 2014 – 4:54 a.m.](#); “La pobre clase media, enloquecida x los medios, no sabe si debe correr a comprar comida, gasolina, electrodomésticos o caña #LaMediática”. William Castillo B’s Twitter account @planwac. [November 20, 2014 – 5:00 a.m.](#)

<sup>1795</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>1796</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.

1113. 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>1797</sup>

### **E. Subsequent liabilities**

1114. On March 6, the Judge of the 29th Supervising Court in and for Caracas, Bárbara César Siero, admitted a criminal lawsuit brought by the Speaker of the National Assembly, Diosdado Cabello, against the director, board of directors, and a columnist of the newspaper *TalCual*, in which he claimed to be a victim of “aggravated defamation” on the part of the newspaper and one of its columnists. The suit was brought against the newspaper’s directors Teodoro Petkoff, Manuel Puyana, Francisco Layrisse and Juan Antonio Golía, as well as the columnist Carlos Genatios. The judge also issued precautionary measures against the accused, prohibiting them from leaving the country and ordering them to report in person to the court once a week. The suit reportedly originated from an article by Genatios in which he attributed to Diosdado Cabello the words “if you don’t like insecurity, leave,” which the parliamentarian denies. If the court rules against the newspaper and the columnist, the accused could face up to four years in prison and millions in fines.<sup>1798</sup> At the date of this writing, the proceedings were ongoing.

1115. On October 15, the Civil Cassation Division of the Supreme Court of Justice ordered *El Nacional* and the journalists Herculía Garnica and Ibeyise Pacheco to pay a total of 4.5 million bolívares (approximately US\$714,000) in moral damages to a medical doctor. The Supreme Court refused the cassation appeals lodged by the accused against a judgment returned on May 15, 2013, by the First Superior Court for Civil, Mercantile, and Traffic-Related Matters of the Judicial District of Metropolitan Caracas. The case originated from articles published in 1991 claiming malpractice on the part of the doctor, which he regarded as a campaign to sully his good name and honor. The Supreme Court also ordered the paper’s owner, C.A. Editora El Nacional, to enable the doctor to exercise his right of reply by publishing five comunicués of the doctor’s choosing on the front page of one of the publishing company’s media outlets, at no cost.<sup>1799</sup>

1116. Principle 10 of the IACHR’s Declaration of Principles establishes that, “[p]rivacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.” Also, principle 11 of the Declaration establishes that, “[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as ‘desacato laws,’ restrict freedom of expression and the right to information”.

1117. Between August 22 and October 15, at least seven people were arrested after expressing their opinions on Twitter and taken to the offices of the Bolivarian National Intelligence Service (Sebin). Inés

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<sup>1797</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>1798</sup> *TalCual*. March 6, 2014. [La censura, bien gracias](#); El País. March 11, 2014. [El periódico progresista 'TalCual', en el punto del mira del chavismo](#); El Tiempo. March 10, 2014. [Director de diario venezolano TalCual denuncia presesión de gobierno](#).

<sup>1799</sup> Supreme Court of Justice. [Case No. No. AA20-C-2013-000639](#). October 15, 2014; Venezolana de Televisión (VTV). October 16, 2014. [TSJ: Diario El Nacional y dos de sus periodistas deberán pagar indemnización de Bs.4.500.000 a médico por daño moral](#); Instituto Prensa y Sociedad (IPYS) Venezuela. October 23, 2014. [Caracas: Sentencia del TSJ obliga a dos periodistas y diario de circulación nacional pagar indemnización](#).

Margarita González received a summons from the Office of the Attorney General after posting a tweet about the death of the governing party deputy Robert Serra. In her presentation, the 13th Court prosecutor charged her with the offenses of public incitement, violent affront, and insulting a government official, for which she has been in detention since October 8. Six other individuals were arrested after the Speaker of the National Assembly, Diosdado Cabello, accused them on his show *Con El Mazo Dando* of sending “threatening and mocking messages in connection with the murders of Robert Serra and María Herrera.” The criminal authorities said that the Twitter users were being detained for alleged messages of “public incitement.” According to reports, Ginette Hernández, a humanities student was arrested and charged with computer fraud and spreading public panic and fear for allegedly posting a tweet in which she predicted the death of deputy Serra. Lessy Marcano, Hernández’s putative uncle, is accused of the same crimes and using the same account. Leonel Sánchez Camero is under investigation for allegedly hacking the Twitter accounts of Jacqueline Faría, Minister of Communications; Gabriela del Mar Ramírez, the Ombudsperson; and deputy Eduardo Lima. Víctor Ugas was detained for circulating images of deputy Serra’s corpse. Abrahan [sic] David Muñoz, an engineering student, was detained for making comments about the death of deputy Serra. Muñoz has since been released. Daniely Benítez, a humanities student, was arrested for alleged association with the account in which the death of deputy Serra was predicted; however, she has been released because of no proof of any connection to the account.<sup>1800</sup>

1118. The IACHR notes that Inter-American case law and doctrine on this matter<sup>1801</sup> provides that the imposition of penalties for abusing freedom of expression in keeping with the charge of inciting violence (understood as inciting commission of crimes, breach of public order or national security) is to be based on current, reliable, objective and strong evidence that the person was not simply expressing an opinion (no matter how harsh, unjust, or disturbing it may be), rather that the person had the clear intention of committing a crime and there was a current, real, and effective likelihood that he could achieve these objectives. Were this not to be the case, this would mean opening up the possibility of punishing opinions, and any States would be empowered to suppress any critical thought or statement about authorities which, as would be the case with anarchism or opinions that are radically opposed to the established order, questions even the very existence of the established institutions.

1119. Furthermore, Inter-American case law and scholarly legal opinion has stipulated that laws establishing limitations on freedom of expression are to be drawn up in the clearest and most exact terms possible, inasmuch as the legal framework must provide legal certainty to citizens.<sup>1802</sup> This requirement takes on even greater importance when it is a question of limitations imposed on freedom of expression by criminal law. In this regard, the Inter-American Court of Human Rights has indicated that these kinds of limitations must also meet the strict requirements of the principle of legality, in keeping with Article 9 of the American Convention on Human Rights: “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>1803</sup> The foregoing reveals itself in the need “use strict and unequivocal terms, clearly restricting any punishable behaviors,”<sup>1804</sup> which implies “a clear definition of the incriminatory behavior, setting its

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<sup>1800</sup> Instituto Prensa y Sociedad (IPYS) Venezuela. October 28, 2014. [Venezuela: 7 twitteros fueron detenidos por agentes de seguridad del Estado](#); RunRun.es. October 17, 2014. [Presos por tuitear: ¿Quiénes son en realidad los tuiteros detenidos en el Sebin?](#); TalCual. October 22, 2014. [Detenidos por un tuit](#); El Venezolano Houston. October 18, 2014. [En Venezuela detienen a seis "tuiteros" por mensajes "ofensivos" contra el Gobierno](#); Espacio Público. October 17, 2014. [Detienen a administradora de la cuenta @Hiipolita](#).

<sup>1801</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteurship 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. Paragraph 59.

<sup>1802</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteurship 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. Paragraph 70.

<sup>1803</sup> I/A Court HR., *Case of Usón Ramírez v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207. Paragraph 55.

<sup>1804</sup> Inter-American Court of HR., *Case of Usón Ramírez v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207. Paragraph 55.

elements, and defining the behaviors that are not punishable or the illicit behaviors that can be punishable with non-criminal measures.”<sup>1805</sup>

## F. Newsprint shortage

1120. The Commission was informed that as a result of the newsprint shortage apparently caused by the procedure necessary to request foreign exchange for importing it, at least 10 regional newspapers had ceased circulation and another 31 media outlets had had to publish editions with fewer pages.<sup>1806</sup>

1121. Since August 2013, the following newspapers have temporarily or permanently stopped circulating: *Caribe and La Hora* (Nueva Esparta State), *Versión Final* (Zulia State), *Los Llanos* (Barinas State), *Diario de Sucre* (Sucre State), *Antorcha* (Anzoátegui State), *El Sol de Maturín* (Monagas State), *El Guayanés* and *El Expreso* (Bolívar State), and *Primera Hora* in Caracas.<sup>1807</sup>

1122. On January 15, 2014, Carlos Carmona, the chairman of C.A. El Impulso, which owns the regional newspaper *El Impulso*, announced that he had been authorized to purchase foreign exchange to buy newsprint paper. However, the newspaper had been compelled to submit another order for paper because the authorization had arrived too late and the ship had sailed before the newspaper could make the order.<sup>1808</sup>

1123. On January 29, the Central Bank of Venezuela issued Notice Of Convocation No. 16-2014 Special Foreign Exchange Auction for Legal Persons, which was intended, among others, for the paper industry.<sup>1809</sup> On February 4, the Central Bank suspended the auction, saying that "this decision is due to a series of anomalies and rules violations found in the comprehensive review of the purchase orders submitted."<sup>1810</sup>

1124. The last edition of the daily *Notidario* in the State of Delta Amacuro (East) was released on February 10. The paper had already reduced the number of pages per edition and its print run.<sup>1811</sup>

1125. On February 11, journalists, media workers, representatives of the National Press Workers Union (SNP), members of the National Association of Journalists (CNP), and civil society organizations marched on the headquarters of the National Center for Foreign Trade (Cencoex) in Caracas to demand the

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<sup>1805</sup> Inter-American Court of HR, *Case of Usón Ramírez v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207. Paragraph 55.

<sup>1806</sup> IACHR. 150th regular session. Hearing on the Situation of the Right to Freedom of Expression and Information in Venezuela. March 28, 2014. Available for consultation at: <http://www.oas.org/en/iachr/sessions/docs/Calendario-150-audiencias-en.pdf>; Espacio Público. March 24, 2014. *Periódicos sin materia prima*. Available at: Archive of the Office of the Special Rapporteur.

<sup>1807</sup> Espacio Público. March 24, 2014. *Periódicos sin materia prima*. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression; Infobae. February 12, 2014. [La falta de papel lleva al cierre a cinco diarios en Venezuela](#); Colegio Nacional de Periodistas, April 2, 2014. [Crisis de diarios venezolanos continúa empeorando](#); Emol. May 8, 2014. [La prensa venezolana en cuenta regresiva](#); El Impulso. March 6, 2014. [Diario Primera Hora deja de circular por falta de papel #SinPapelNOhayperiodico](#).

<sup>1808</sup> El Nacional. January 15, 2014. [Pese a la aprobación de divisas El Impulso aún no podrá adquirir papel](#); El Impulso. January 16, 2014. [Carlos Carmona: Aprobación de Cadivi es un gran alivio](#); Instituto Prensa y Sociedad (IPYS) Venezuela. January 17, 2014. [Escasez de papel periódico pone en riesgo derecho a la libertad de expresión e información en Venezuela](#); Últimas Noticias. January 15, 2014. [Cadivi le aprobó divisas al diario El Impulso](#).

<sup>1809</sup> Central Bank of Venezuela. [NOTICE OF CONVOCATION N° 16-2014. SPECIAL FOREIGN EXCHANGE AUCTION FOR LEGAL PERSONS SICAD](#). January 29, 2014.

<sup>1810</sup> Central Bank of Venezuela. 04/02/2014: Aviso sobre la convocatoria SICAD N°16-2014. Subasta Especial de divisas Personas Jurídicas. February 4, 2014. Available at: <http://www.bcv.org.ve/c5/sicad/c9/tme01.asp>; El Nacional, February 5, 2014. [Suspendieron subasta Sicad por anomalías en órdenes](#); 2001. February 4, 2014. [BCV suspende décima sexta subasta del Sicad por "falta de cumplimiento de normas exigidas"](#); El Tiempo. February 5, 2014. [Banco Central suspendió última subasta del Sicad](#); La Verdad/AVN. February 4, 2014. [BCV suspende subasta para el sector papel](#).

<sup>1811</sup> Infobae. February 12, 2014. [La falta de papel lleva al cierre a cinco diarios en Venezuela](#); El Universal. February 9, 2014. [Notidario en Delta Amacuro deja de circular por falta de papel](#); Diario Informe. February 10, 2014. [Este lunes deja de circular Notidario de Delta Amacuro](#).

allocation of foreign exchange to buy newsprint paper in order to avert the closure of more media outlets. The journalists shouted slogans such as “No Paper, No Jobs.”<sup>1812</sup>

1126. On March 7, the free daily *Primera Hora* went out of circulation after nine years of existence due to a lack of paper. The newspaper, belonging to C.A. Editora Nacional, which also publishes the daily *El Nacional*, ceased circulation in order to save paper for *El Nacional*.<sup>1813</sup> On March 20, the magazine *EME de mujer*, also owned by C.A. Editora Nacional, stopped distribution because of the delay in the approval of foreign exchange for buying printing paper. The magazine announced the decision on social media such as Facebook and Twitter with the message, “Don’t cry girls. We’ll be back!” (*¡No lloren chicas, volveremos!*).<sup>1814</sup> *El Nacional* announced that on January 30, the Central Bank of Venezuela had turned down its application to take part in the auctions of the Supplementary Foreign Exchange Administration System (Sicad) to buy newsprint paper. The paper said it had not been offered any reasons for the denial of its application, even though the auction was open to legal persons in newsprint-related sectors.<sup>1815</sup>

1127. On March 19, Cadena Capriles, the group that publishes the newspapers *Últimas Noticias*; *El Mundo Economía y Negocias*, and *Líder* announced that it had enough paper reserves for another six months. Executives at the organization said that it had not been authorized to buy dollars since October 2013, so it had been forced to make cuts: 20% in numbers of pages and 15% in print runs.<sup>1816</sup>

1128. On March 31, Project ‘*Todos Somos Venezuela*’ (We Are All Venezuela), promoted by the Colombian Association of Newspaper Publishers and Information Media (Andiarios), announced that “52 tons of paper were shipped” for the Venezuelan newspapers *El Nacional*, *El Impulso*, and *El Nuevo País*. Three Colombian journalists, from the Colombian papers *Colprensa*, *El Colombiano* and *El Tiempo*, accompanied the shipment from Zulia to Barquisimeto, and from there to Caracas. Reporters with *El Impulso*, *El Nacional* and *Regional de Zulia*, in Venezuela, also traveled with the shipment.<sup>1817</sup> On April 2, the Bolivarian National Guard (GNB) detained the first of the trucks carrying the paper at the border for a number of hours before refusing it entry to the country. The truck spent the night at the border and on April 3 the formalities to enter Venezuela resumed.<sup>1818</sup> By the end of the day the shipment had been let in and was taken to the village of Guarero, Zulia State, where the official procedures began for the paper's nationalization.<sup>1819</sup> On April 9, Andiarios announced that the customs procedures for the nationalization of the 52 tons of paper had been completed as normal, which meant that on April 10 the paper was able to go from Guarero to Barquisimeto in

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<sup>1812</sup> CNN en Español. February 11, 2014. [Medios impresos de Venezuela exigen divisas para comprar papel periódico](#); Colegio Nacional de Periodistas. February 12, 2014. [Marcha de periodistas presentó obstrucción policial](#); La Verdad. February 11, 2014. [Periodistas marchan hasta Cadivi por falta de papel](#); Venezuela Al Día. February 11, 2014. [Periodistas protestan ante sede del Cencorex por falta de papel periódico \(+ Fotos\)](#); Excelsior. February 11, 2014. [Exigen periodistas papel periódico en Venezuela](#); Notitarde/Globovisión. March 11, 2014. [Periodistas exigen divisas para la compra de papel periódico](#); Infobae. February 11, 2014. [Venezuela: marcha de periodistas exige a Maduro que permita comprar papel periódico](#); La Patilla. February 11, 2014. [Trabajadores de la prensa exigen divisas para papel \(Fotos\)](#).

<sup>1813</sup> Espacio Público. March 7, 2014. [Primera Hora deja de circular por falta de papel prensa](#); National College of Journalists. March 6, 2014. [Diario Primera Hora deja de circular por falta de papel](#); El Impulso. March 6, 2014. [Diario Primera Hora deja de circular por falta de papel #SinPapelNOhayperiodico](#).

<sup>1814</sup> Espacio Público. March 20, 2014. [Revista EME de mujer dejó de circular](#); Clases de Periodismo. March 21, 2014. [Venezuela: Revista deja de circular por falta de papel](#).

<sup>1815</sup> El Nacional. January 31, 2014. [Rechazan solicitud de dólares para el Sicad](#); La Prensa. February 3, 2014. [Niegan divisas a 'El Nacional'](#); La Verdad. February 1, 2014. [Rechazan solicitud de El Nacional para ir a subasta del Sicad](#); La Nación. February 1, 2014. [Rechazaron solicitud de El Nacional para ir a subasta](#).

<sup>1816</sup> Espacio Público. March 20, 2014. [Cadena Capriles tiene papel para seis meses](#); Producto. March 19, 2014. [¿Cuánto papel tiene la Cadena Capriles?](#); National College of Journalists. March 21, 2014. [Para 6 meses confirma Cadena Capriles su existencia en papel](#).

<sup>1817</sup> El Nacional. April 1, 2014. [Diarios colombianos enviarán papel a El Nacional, El Impulso y El Nuevo País](#); El Universal. March 31, 2014. [De Cartagena salen 52 toneladas de papel para diarios venezolanos](#); Instituto Prensa y Sociedad (IPYS) Venezuela. April 1, 2014. [Diarios colombianos enviarán papel a El Nacional, El Impulso y El Nuevo País](#).

<sup>1818</sup> Últimas Noticias. April 2, 2014. [No permiten paso de papel periódico enviado de Colombia para diarios venezolanos](#); El Colombiano. April 2, 2014. [La entrega de papel está en manos de las autoridades venezolanas](#).

<sup>1819</sup> El País. April 7, 2014. [Tensión en la frontera por una carga de papel periódico](#).

Lara State and Caracas.<sup>1820</sup> On April 10, the rolls of paper were delivered to *El Impulso* in Barquisimeto and *El Nacional* and *El Nuevo País* in Caracas.<sup>1821</sup> On May 21, Andiaros announced a new loan of 62 tons of paper for *El Impulso* that was supposed to arrive that week.<sup>1822</sup>

1129. On May 5, *El Universal* declared itself “in an emergency” owing to a lack of newsprint paper caused by a delay in the authorization of a foreign exchange purchase by the National Center for Foreign Trade (Cencoex), which prevented a shipment of paper belonging to the newspaper from being nationalized. Faced with this situation, the paper had reduced the size of its edition, “leaving parts of its usual sections accessible only on the web and other platforms.”<sup>1823</sup> On May 9, the newspaper again announced that it was awaiting permission to nationalize 600 tons of paper that was in the port of La Guaira. It said that it only had enough stocks to publish “until between the 15th and 18th of the month.”<sup>1824</sup>

1130. On May 31, 84 newspapers in cities in the country's interior requested a “private interview” with the Speaker of the National Assembly, Diosdado Cabello, in order to obtain assistance in resolving “the stifling problems with the supply of paper, printing plates, and other essential items for these newspapers.” The request was made by a communiqué put out by the Venezuelan Chamber of Newspapers, having “exhausted the regular channels to the executive branch.” The paper said that once, “knowing all the facts,” the situation was resolved, they would be able to “work in piece, without anxiety” about future. In their communiqué, the newspapers said that these newspapers employed “more workers than all of the Caracas newspapers” and had a print run of “more than 2.5 million copies.”<sup>1825</sup>

1131. The director of *El Nacional*, Miguel Henríquez Otero, announced on June 5 that they would run out of paper at the end of July. It is.<sup>1826</sup> In July, in other statements, the businessman said that they had enough paper to see them to the end of October thanks to a donation from foreign media outlets.<sup>1827</sup>

1132. On June 13 the Constitutional Division of the Supreme Court of Justice ruled inadmissible an action for constitutional relief (*amparo*) brought by representatives of the Christian Social Party (Copei) over the foreign exchange purchase process for buying newsprint paper, alleging violation of the guarantee of the right to freedom of the press, expression, and information. The judicial remedy was presented on February 6 against the Vice President for Economic and Financial Matters of the Council of Ministers and Minister of People's Power for Oil and Mining, Rafael Ramírez; the Ministers of People's Power for Planning, Jorge Giordani; Economy, Finance and State-owned Banks, Rodolfo Marco Torres; and Trade, Dante Rafael Rivas; the President of the Central Bank of Venezuela (BCV), Nelson Merentes; and the President of the National Center for Foreign Trade and the Foreign Exchange Administration Commission (Cadivi), Alejandro Fleming.

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<sup>1820</sup> El Universal. April 9, 2014. [Papel para diarios pasa la aduana y se entregará en próximos días](#); KienyKe. April 9, 2014. [Autorizado por gobierno venezolano el papel periódico enviado desde Colombia](#).

<sup>1821</sup> El Tiempo. April 11, 2014. [‘El Impulso’ y ‘El Nacional’ ya recibieron papel de medios colombianos](#); Noticias Terra. April 11, 2014. [Periódicos venezolanos reciben papel de Colombia](#); El Colombiano. April 11, 2014. [Diario venezolano El Impulso recibe primeras toneladas de papel](#); La Prensa. April 11, 2014. [Diarios venezolanos reciben papel enviado por Andiaros](#).

<sup>1822</sup> Colombian Association of Newspaper Publishers and Information Media (Andiaros). May 21, 2014. [Nuevo préstamo de papel a El Impulso llega a Barquisimeto](#); El Colombiano/EFE. May 21, 2014. [Andiaros hace nuevo envío de papel al periódico El Impulso en Venezuela](#); El Universal/Colprensa. May 23, 2014. [Andiaros hizo nuevo préstamo de papel a un diario de Venezuela](#).

<sup>1823</sup> El Universal. May 5, 2014 [El Universal se declara en emergencia por falta de papel](#); El Universo/AP. May 5, 2014 [El Universal de Venezuela se declara en emergencia por falta de papel importado](#); ABC/EP. May 6, 2014. [El periódico ‘El Universal’ de Venezuela se declara en «emergencia» por falta de papel](#).

<sup>1824</sup> El Universal. May 9, 2014 [El Universal espera permiso para retirar papel de la aduana](#);

<sup>1825</sup> El Mundo. May 31, 2014. [84 periódicos solicitaron reunión “urgente” con Diosdado Cabello](#); Venezuela Al Día. May 31, 2014. [Dueños de periódicos piden reunión urgente con Diosdado Cabello](#); El Nuevo Herald/EFE. May 31, 2014. [Periódicos de Venezuela claman por ayuda ante falta de papel](#); La Patilla. June 2, 2014. [Cámara Venezolana de Periódicos pide reunión con Diosdado Cabello](#); Espacio Público. June 3, 2014. [Cámara Venezolana de Periódicos pide reunión con Diosdado Cabello](#); Espacio Público.

<sup>1826</sup> El Tiempo. June 5, 2014. [‘Tenemos papel hasta fin de julio’: Miguel Henríquez Otero](#); El Nacional. June 5, 2014. [Miguel H. Otero: “Tenemos papel hasta fin de julio”](#).

<sup>1827</sup> Instituto Prensa y Sociedad (IPYS) Venezuela. July 9, 2014. [Caracas: Diario El Nacional tiene papel hasta el mes de octubre](#); Su Noticiero. July 9, 2014. [El Nacional tiene papel hasta finales del año por colaboración de cinco medios extranjeros](#).

The petition states that "since we are in the presence of the threat of a direct and immediate violation of the Constitution, we request that it be declared that the control of the foreign exchange policy that impedes access to foreign exchange causes the guarantee of freedom of the press and, therefore, the Venezuelan people's right to freedom of expression, information, and the press to be suspended and creates a *de facto* state of emergency." And also, that "as a consequence of the foregoing declaration, the executive branch be ordered to review the foreign exchange system in order to to allow an alternate official control mechanism for the purchase of foreign currency." In its ruling, the Division found that "it is not clear that the economic policies on foreign exchange matters being implemented by the national executive branch through the competent agencies, in coordination with the Central Bank of Venezuela, undermine or threaten to undermine the right to freedom of expression that this division has so often protected in its various decisions on the subject."<sup>1828</sup>

1133. In September, *El Impulso* in Barquisimeto, Lara State, announced that it would temporarily cease circulation on September 15.<sup>1829</sup> On September 12, the country's oldest newspaper announced the purchase of enough rolls of newsprint to remain in circulation for another week.<sup>1830</sup> In November the newspaper was still in circulation. On September 14, the Minister of Communications and Information, Delcy Rodríguez, reported on her Twitter account that the government had "guaranteed the provision of the paper needed for publication by the newspaper"<sup>1831</sup>.

1134. On October 1, *TalCual* announced that as of October 2 it would cut its page count to a third during the week and by half at the weekends. In its editorial the paper announced that the Últimas Noticias group had told it that for technical reasons it would not continue to print and distribute the paper. According to *TalCual* the new company responsible for that task had enough paper to last until October 23.<sup>1832</sup>

1135. During the hearing on the 'Situation of the Right to Freedom of Expression and Access to Information in Venezuela', held in the course of the 150th regular session of the IACHR on March 28, 2014,<sup>1833</sup> the Commission heard with concern information on the persisting newsprint paper shortage problem and its effects on press freedom in Venezuela. According to the civil society organizations that took part in the hearing, the Venezuelan State is arbitrarily using the regular mechanisms for approval and purchase of dollars for paper imports to benefit certain media outlets according to their editorial stance. According to the information provided, as results of this practice around 10 media outlets have gone out of circulation and several others have had to reduce their page count. The paper shortage has also resulted in workers at the newspapers affected being laid off.

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<sup>1828</sup> Supreme Court of Justice. [GMGA. Case No. 14-0112](#). June 13, 2014; Venezolana de Televisión. June 17, 2014. [TSJ rechazó amparo de Copei contra el Gobierno por supuesta negativa en entrega de divisas para papel periódico](#); El Universal. June 17, 2014. [TSJ rechaza ordenarle al Gobierno dar dólares a diarios para importar papel](#); Instituto Prensa y Sociedad (IPYS) Venezuela. June 23, 2014. [Caracas: Poder judicial declaró inadmisibile amparo interpuesto por dificultades en la adquisición del papel periódico](#); El Carabobeño. June 18, 2014. [TSJ rechazó amparo para liquidar divisas a medios impresos](#).

<sup>1829</sup> *El Impulso*. September 10, 2014. [Editorial: #ELIMPULSO interrumpe su circulación](#); El Nacional. September 9, 2014. [El Impulso circulará hasta el domingo](#); Televen. September 10, 2014. [Diario El Impulso dejará de circular](#); El Tiempo. September 10, 2014. [El diario más antiguo de Venezuela anuncia que saldrá de circulación](#); Infobae. September 10, 2014. [Por la escasez de papel, cierra un diario histórico de Venezuela](#); El Nuevo Herald/AFP. September 10, 2014. [Falta de papel sacará de circulación a diario decano de la prensa venezolana](#).

<sup>1830</sup> El Nacional. September 12, 2014. [Diario El Impulso tiene papel para circular una semana más](#); El Tiempo. September 12, 2014. [Diario 'El Impulso' de Venezuela consigue papel para una semana más](#);

<sup>1831</sup> Venezolana de Televisión (VTV). September 14, 2014. [Gobierno Nacional ha garantizado suministro de papel al diario El Impulso](#); Globovisión. September 14, 2014. [El Impulso tiene "garantizado" el suministro de papel](#).

<sup>1832</sup> *TalCual*. October 1, 2014. [El asedio](#); Noticiero Digital. October 1, 2014. [La Verdad: TalCual podría dejar de circular en 22 días](#); Notihoy. October 1, 2014. [Diario Tal Cual reduce sus páginas por falta de papel y se muda de imprenta](#); Espacio Público. October 1, 2014. [Tal Cual: menos páginas y hasta el 23 de octubre](#).

<sup>1833</sup> IACHR. 150th regular session, March 28, 2014. Hearing on the Situation of the Right to Freedom of Expression and Information in Venezuela. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/150/default.asp>; CIDH. April 4, 2014. [Press Release 35/14. IACHR Wraps Up its 150th Session](#); IACHR. May 13, 2014. [Report on the 150th Session of the IACHR](#).

1136. In that regard, the State said that in Venezuela there are many newspapers that “come and go” and that there were a number of newspapers with labor problems that “want to get rid of employees by claiming that they have economic difficulties.” It added that many paper importers began to speculate with the commodity, “in order to resell it to other newspapers at genuinely usurious prices and that, in that sense, there might be a paper shortage, but what can the State do to prevent capitalism from being capitalism? What can the State do to stop paper importing companies that have taken advantage of the situation from making a great profit at the expense of the smaller media outlets?”

1137. 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.”

### **G. Censorship of journalistic material, journalist dismissals and resignations**

1138. According to information received by the IACHR, tens of journalists were left out of work following the sale of a number of media outlets. These individuals have been dismissed or forced to resign, on occasion, after government officials have made public statements criticizing their work. Other persons have resigned over alleged cases of management censorship of journalistic material. Some incidents have prompted workers at these media outlets to issue public statements or hold protests. The following are some of the reported cases.

1139. On February 13, 96 journalists of Cadena Capriles, a group that publishes the newspapers *Últimas Noticias*; *El Mundo, Economía y Negocios*; and *Líder* issued a public communiqué alleging that *Últimas Noticias* had omitted information gathered by the journalists on the acts of violence that occurred in Caracas on February 12. The newspaper had reportedly changed the front page of the February 13 edition at the last minute, replacing information on the people killed on February 12 as the main headline, with statements by president Nicolás Maduro denouncing a supposed *coup d'état* against him. The journalists who signed the communiqué wrote: “We, the undersigned journalists of Cadena Capriles, wish publicly to distance ourselves from the editorial position that has been imposed by the owners of this company, who have not even had the courage to show their faces to their employees.” According to the reporters, the front-page switch was an example of the changes that had occurred in Cadena Capriles since its sale in October 2013 to Latam Media Holding, a business group whose editorial stance would seem to coincide with the Venezuelan government's. According to the journalists, the new version “ignored the killings; turned a blind eye to the arrests and disappearances.” This was the second such communiqué by journalists of the Cadena Capriles group. The first came in November 2013, when the journalist Omar Lugo, then director of *El Mundo, Economía y Negocios*, was terminated for refusing to alter the newspaper's editorial position and limiting its coverage of economic issues.<sup>1834</sup>

1140. David De Matteis, a Globovisión journalist, was fired on February 26 after the publication of a number of tweets concerning president Nicolás Maduro. According to the journalist, the Minister of People's Power for Communication and Information, Delcy Rodríguez, had disapproved of a number of comments that he had written while covering a press conference on February 21 and, therefore, had put pressure on the channel to let him go. De Matteis said that the channel had admonished him and a few days later told him that it would be dispensing with his services.<sup>1835</sup>

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<sup>1834</sup> Instituto Prensa y Sociedad (IPYS) Venezuela. 15 February 2014. [Caracas: Periodistas de Cadena Capriles denunciaron omisión informativo en diario Últimas Noticias](#); Espacio Público. February 14, 2014. [Periodistas de Cadena Capriles “condenan línea editorial que invisibilizó a las víctimas” del 12 de febrero](#); El Diario de Caracas. February 14, 2014. [Periodistas Cadena Capriles: Nos quieren convertir en diario del Gobierno](#); Espacio Público. November 25, 2013. [Trabajadores de Cadena Capriles preocupados por despido de Omar Lugo](#).

<sup>1835</sup> Espacio Público. March 13, 2014 [Informe: Los trances de la libertad de expresión, del 12F al 12M](#); Últimas Noticias. February 26, 2014. [David De Matteis fue despedido de Globovisión](#); El Tiempo. February 27, 2014. [Despiden de Globovisión al periodista David de Matteis por tuits sobre Maduro](#).



1141. On March 17, the investigation chief of Cadena Capriles, Tamoá Calzadilla, resigned from the publishing group a day after an apparent censorship by the board of directors, which decided not to publish in one of its newspapers (*Últimas Noticias*) an investigative piece by the journalist Laura Weffer on the protests in Plaza Altamira in the Municipality of Chacao, Caracas. The report, evidently intended for publication on Sunday, March 16, included interviews with students and citizens leading the protests, as well as members of the Bolivarian National Guard (GNB). Following the resignation, the group's journalists held a meeting to decide what steps to take and began a protest in their offices by hanging signs on their desks that read "Journalism First." The supposedly censored piece was reportedly published by the National Press Workers Union (SNTP).<sup>1836</sup>

1142. The *Globovisión* correspondents for Zulia State, Jesús González and Madelyn Palmar, and for Lara State, Doricer Alvarado, resigned after the technical staff in those cities were dismissed. The correspondents also said that they had been victims of censorship after the channel was sold or that irregularities had occurred when reports on the protests were aired.<sup>1837</sup>

1143. The journalist Shirley Varnagy had resigned from the station *Globovisión* on April 30, after this media outlet had allegedly censored part of the interview that the journalist had conducted with the Peruvian winner of the Nobel Prize for Literature, Mario Vargas Llosa. As reported by the journalist, her decision to resign had been taken after noticing that, during the broadcasting of the interview, certain parts of it had been censored, especially the question on his point of view about former President Hugo Chávez. The journalist had also said that, since the interview on April 24, the station had set obstacles to broadcasting the interview. The journalist and other media had published the entire interview.<sup>1838</sup>

1144. On April 2, Reimy Chávez Perche, a presenter and journalist at Noticias Globovisión, tendered his resignation during a live broadcast, citing "reasons beyond my control and differences of opinion." During the commercial break and before the news broadcast had finished, security guards removed him from the premises and prevented him from entering the management's offices to formally tender his resignation. The journalist said that he had not been physically mistreated.<sup>1839</sup> Subsequently, Vanessa Ugueto, a journalist and producer at the station, was dismissed for allegedly posting a tweet expressing her solidarity with Chávez Perche and the correspondents who had resigned during the preceding days over alleged censorship at the station.<sup>1840</sup>

1145. On May 30, the journalist Lisseth Boon, from the daily newspaper *Últimas Noticias*, had reported on her Twitter account that, before resigning from the newspaper, she had written a story that had

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<sup>1836</sup> National College of Journalists (CNP). March 17, 2014. [Renuncia Jefa de Investigación de Últimas Noticias por censura](#); Knight Center for Journalism in the Americas. March 18, 2014. [Venezuelan news outlet's chief of investigations resigns after story gets censored](#); El Tiempo. March 17, 2014. [Periodistas de la Cadena Capriles protestaron en contra de la censura](#); Venezuela Al Día. March 17, 2014. [Renunció Jefa de Investigación de Cadena Capriles Tamoá Calzadilla \(+ Tuits\)](#).

<sup>1837</sup> Espacio Público. March 31, 2014. [Renuncian tres periodistas a Globovisión por censura](#); La Verdad. March 28, 2014. [Periodistas de Globovisión renuncian en solidaridad con técnicos despedidos](#); Últimas Noticias. March 28, 2014. [Más renuncias en Globovisión tras despidos de técnicos](#); Venezuela Al Día. March 28, 2014. [Renuncian corresponsales de Globovisión en Lara y Zulia tras despido de técnicos](#).

<sup>1838</sup> Instituto Prensa y Sociedad (IPYS). May 3, 2014. [Caracas: Periodista Shirley Varnagy renunció a Globovisión por razones informativas](#); El País. May 1, 2014. [El canal venezolano Globovisión censura una entrevista con Vargas Llosa](#); Perú 21. May 1, 2014. [Mario Vargas Llosa: La entrevista al Nobel que Globovisión censuró \[Video\]](#); La Patilla. April 30, 2014. [Esta es la entrevista a Vargas Llosa censurada por Globovisión](#); "Ayer no transmitieron la entrevista completa que hice a Vargas Llosa. No haré silencio en mi espacio, hasta hoy trabajé en @globovision. [Yesterday they did not broadcast the full interview I did with Vargas Llosa. I will not be kept silent on my forum, until today I worked in @globovision.]" Shirley Varnagy Twitter account @ShirleyVarnagy. [30 de abril de 2014 - 6:13 PM](#).

<sup>1839</sup> National Press Workers Union (SNTP). April 2, 2014. [Periodista es desalojado de Globovisión tras anunciar en vivo su renuncia](#) (VIDEO); El Nacional. April 2, 2014. [Periodista Reimy Chávez renuncia a Globovisión en vivo](#); Última Hora. April 3, 2014. [En plena transmisión periodista venezolano renuncia a Globovisión](#); El Diario de Caracas. April 2, 2014. [Extraoficial: Periodista Reimy Chávez fue desalojado de Globovisión](#).

<sup>1840</sup> National Press Workers Union (SNTP). April 6, 2014. [Despiden a periodista de Globovisión tras solidarizarse con colegas que renunciaron por censura](#); "SOLIDARIA con @ReimyChavez , lo que le hicieron es una BAJEZA". Vanessa Ugueto's Twitter account @vuguetto. [April 2, 2014 - 5:38 p.m.](#)

been censored. In her story entitled 'La canasta alimentaria se compra en más de 3 días (It takes more than three days to buy the basket to meet a family's basic food needs,' the journalist had explained how difficult it was for families to buy the basic list of foods established by the National Statistics Institute (Instituto Nacional de Estadísticas—INE). This piece of journalism had been scheduled for publication three weeks after the announcement, but to date it has not been published. This is the second story presumably censored by this daily newspaper.<sup>1841</sup>

1146. On May 8, Juan Carlos Figueroa, a political reporter for the daily Últimas Noticias, resigned his position, possibly over alleged censorship at the paper. The news was released by the journalist on his Twitter account, in which he wrote, "The censorship at @Unoticias is undeniable. My colleagues go into battle every day. Today was my last. Be strong."<sup>1842</sup>

1147. On May 26, the board of the Últimas Noticias group dismissed the journalists Erys Wilf Alvarado and Jován Pulgarín, apparently for reasons to do with news coverage. The former was managing director of the group's only newspaper, while the latter was director of *Líder*, a sports paper owned by the group. According to Pulgarín, he was informed by the board that they disapproved of the sports paper's coverage of the South American Beach Games and, therefore, were dispensing with his services. The group's photojournalism and audiovisual director, Carmen Riera, reportedly resigned in repudiation of what she regarded as an arbitrary dismissal for reasons of news coverage. Following the dismissal, the employees gathered at a meeting where they were informed of the situation.<sup>1843</sup> The previous day, president Maduro had expressed his disapproval with the media's coverage of the games on his Twitter account.<sup>1844</sup>

1148. The National Press Workers Union (SNTP) denounce the dismissal of four journalists from El Nacional newspaper According to the SNTP, using the need to restructure the newspaper as a pretext, Ronna Risquez, the chief of politics, events and regions; and the coordinators Raquel Seijas, Luis Martínez and Eliberth Edardo were offered double severances in return for signing letters of resignation. According to the SNTP the offer was also made to 40 other journalists.<sup>1845</sup>

1149. On June 9, executives of the media group Últimas Noticias had withdrawn the weekly column written by the economist and university professor José Guerra from its daily newspaper *Últimas Noticias*. As reported by the columnist, they had called to advise him that, as a result of executive orders, he would not write again, but that the decision would be transmitted to him formally in the next few days. The columnist used to critically address specific situations of Venezuela's economy and it seems that his last two columns had been especially critical.<sup>1846</sup>

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<sup>1841</sup> Espacio Público. June 2, 2014. [Últimas Noticias censura trabajo sobre escasez y canasta alimentaria](#); "Este es el reportaje que @UNoticias no ha querido publicar desde hace 3 semanas. Sobre escasez e inflación. [This is the story that UNoticias has not wanted to published for three weeks. About shortages and inflation.]" Lisseth Boon's Twitter account @boonbar. [30 de mayo de 2014 - 9:35 AM](#).

<sup>1842</sup> Espacio Público. May 9, 2014 [Censura obliga a Juan Carlos Figueroa a renunciar a Últimas Noticias](#); Noticiero Digital. May 8, 2014 [Renuncia segundo periodista de Últimas Noticias por "censura"](#); Juan Carlos Figueroa's Twitter account @JuanCFigueroa. [May 8, 2014 - 2:32 p.m.](#); "La censura en @unoticias intenta, incluso, minimizar al chavismo crítico. Eso no es periodismo." Juan Carlos Figueroa's Twitter account @JuanCFigueroa. [May 8, 2014 - 3:46 p.m.](#)

<sup>1843</sup> Instituto Prensa y Sociedad (IPYS) Venezuela. May 27, 2014. [Caracas: Dos periodistas fueron despedidos de Grupo Últimas Noticias por razones informativas](#); El Venezolano. May 26, 2014. [Despedidos dos directores de la Cadena Capriles: suman 32 personas que se han retirado tras su venta](#); SuNoticiero.com. May 26, 2014. [Despiden a periodistas de Últimas Noticias por no estar alineados a la visión de la directiva](#); La Patilla. May 26, 2014. [Periodistas de ÚN mantienen asamblea por compañeros despedidos \(Foto + tuits\)](#).

<sup>1844</sup> "La Guerra Mediática contra nuestro pueblo continúa, todos los medios silencian la Gran Victoria de nuestra Juventud en los Juegos Suramericanos". Nicolás Maduro's official Twitter account @NicolásMaduro. [May 25, 2014 - 9:36 a.m.](#); Instituto Prensa y Sociedad (IPYS) Venezuela. May 27, 2014. [Caracas: Dos periodistas fueron despedidos de Grupo Últimas Noticias por razones informativas](#); SuNoticiero.com. May 26, 2014. [Despiden a periodistas de Últimas Noticias por no estar alineados a la visión de la directiva](#); La Patilla. May 26, 2014. [Tras comentario de Maduro despiden al director del diario Líder](#).

<sup>1845</sup> Espacio Público. May 28, 2014. [Despedidos cuatro periodistas del diario El Nacional](#); Clases de Periodismo. May 29, 2014. [Venezuela: denuncian que El Nacional obliga a periodistas a renunciar](#); Sindicato Nacional de Trabajadores de la Prensa. May 28, 2014. [Diario El Nacional despide injustificadamente a 4 periodistas y obliga a renunciar a 40 más](#).

<sup>1846</sup> Espacio Público. June 6, 2014. [José Guerra fue censurado en Últimas Noticias](#); Instituto Prensa y Sociedad (IPYS). July 4, 2014. [Caracas: Retiraron columna de opinión de economista en diario Últimas Noticias](#).

1150. On June 10, executives of the private station *Televen* had ordered that Luis Chataing's political opinion and humor program, 'Chataing TV,' be taken off the air. According to the information that was received, the journalist had been preparing for that night's program when they had announced that decision, which included not broadcasting the program that day. According to the journalist, it involved "pressure" from outside the station, forcing it to take this decision, which he had heard about weeks before.<sup>1847</sup>

1151. Hecmiry Lugo, a journalist with the *Dat TV* channel, announced that she was quitting the channel on July 10 after she was forbidden to interview María Corina Machado, an opposition leader. The journalist had apparently wanted to interview Machado for the program *Dos visiones, Un país* (Two Visions, One Country) which goes out on Sunday evenings, to which the channel had thrown up a lot of obstacles. Later she learned that there were orders from the channel that the interview should not go ahead and after a meeting with representatives of the channel she was informed that she had already been replaced. "They practically told me to get out," she said.<sup>1848</sup>

1152. Articles in the *Más Vida* section of *Últimas Noticias* were allegedly censored or had information changed on at least three occasions in July. That section, which reports on problems in communities, was one of the most affected in the newspaper. According to information provided to the IACHR, the journalists that work on that section were invited to resign.<sup>1849</sup>

1153. The IACHR received information about the departure from *El Universal* newspaper of at least 26 op-ed writers after denouncing censorship by the newspaper's new management. According to the information, some of the writers had decided to stop writing for the newspaper after they refused to publish their pieces or they were prohibited from talking about a particular issue.<sup>1850</sup> On August 5, the paper reported in an editorial that over the previous days there had "been a series of problems" in that section connected with "introduction of new rules on the treatment of articles" as well as with "returning to the style manual." Therefore, it said that the paper had decided not to publish those articles which, it said, "are not in keeping with the well-established and known code of ethics."<sup>1851</sup> The sale of *El Universal* to the Spanish group Epalisticia for €90 million (approximately US\$123 million) was made official on July 4. At 105 years old, the newspaper is one of the country's oldest and among the last opposition media outlets in Venezuela. Its new president, Jesús Abreu Anselmi, allegedly announced that he would not alter the paper's editorial position, that no one would lose their job, and that the company had no links to the government.<sup>1852</sup> May 2013 saw the sale of *Globovisión*, while the *Últimas Noticias* group was sold in October.<sup>1853</sup>

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<sup>1847</sup> El Universal. June 10, 2014. [Televen sacó del aire el programa de Luis Chataing](#); *Últimas Noticias*. June 10, 2014. [Televen cancela programa de Luis Chataing](#); Espacio Público. June 11, 2014. [Censuran a Chataing en Televen](#); Instituto Prensa y Sociedad (IPYS). June 19, 2014. [Caracas: Sacan del aire programa humorístico por presiones gubernamentales](#).

<sup>1848</sup> Notitarde. July 10, 2014. [Impiden a Hecmiry Lugo realizar entrevista a María Corina Machado en Dat TV](#); *Últimas Noticias*. July 10, 2014. [Periodista de DatTV renuncia por censura](#); "ANUNCIO que hasta hoy trabajé en Dat Televisión.Me prohibieron entrevistar a @MariaCorinaYA .. 2pm asumiré posición en Unión Radio 105.3FM". Hecmiry Lugo's Twitter account @hecmyrlyugo. [July 10, 2014 - 10:58 a.m.](#)

<sup>1849</sup> Espacio Público. July 18, 2014. [Censura en la redacción de Últimas Noticias](#); Colegio Nacional de Periodistas (CNP). September 2, 2014 [Denuncian nuevo caso de censura en Últimas Noticias](#); CIDH. 153rd regular session, October 28, 2014. Situation of the Right to Freedom of Expression and Information in Venezuela. Document prepared by the NGO Espacio Público, the Catholic University's Andrés Bello Human Rights Center, National Union of Press Workers. Available at: Archive of the Office of the Special Rapporteur.

<sup>1850</sup> CNN en Español. August 4, 2014. [Columnistas de opinión de El Universal de Venezuela denuncian censura](#) (VIDEOS); Infobae. August 5, 2014. [Indignación en Venezuela por el despido de 26 periodistas críticos en el diario El Universal](#); Excelsior/AP. August 6, 2014. [Diario 'El Universal' de Venezuela veta a 26 articulistas](#).

<sup>1851</sup> El Universal. August 5, 2014. [A nuestros lectores](#).

<sup>1852</sup> Espacio Público. July 7, 2014. [Se concreta venta del diario El Universal](#); ABC. July 8, 2014. [Fantasmagórica compra del diario opositor venezolano «El Universal»](#); Instituto Prensa y Sociedad (IPYS) Venezuela. July 4, 2014. [Caracas: Se concreta la venta del tercer medio de comunicación privado en los últimos 14 meses](#); El Colombiano/EFE. July 4, 2014. [Venden el diario venezolano El Universal a una empresa española](#).

<sup>1853</sup> IACHR. [Annual Report 2013. 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.149. Doc. 50. December 31, 2013. Para. 916; Espacio Público. July 7, 2014. [Se concreta venta del diario El Universal](#); Instituto Prensa y Sociedad (IPYS) Venezuela. July 4, 2014.

1154. On August 15, Ramsés Siverio, *El Universal's* correspondent in Bolívar state, said that he had been censored by the newspaper it had apparently decided not to publish a piece on a protest staged by workers at Siderúrgica del Orinoco 'Alfredo Maneiro' (Sidor), a steel mill, on August 14. The article had apparently been removed without explanation as the edition went to press and replaced with a piece written by Agencia Venezolana de Noticias (AVN).<sup>1854</sup> In response to this incident, the newspaper's employees issued a communiqué on August 17 expressing their "concern at the changes in the guidelines set down for carrying out our work, following the much-publicized change of ownership," which "culminated" with the suppression of that article.<sup>1855</sup>

1155. On September 17, the cartoonist Rayma Suprani was dismissed by the newspaper *El Universal* allegedly for publishing a cartoon illustrating the state of the country's health sector, using the signature of the deceased ex-president, Hugo Chávez, as part of the cartoon. Suprani, who worked at the newspaper for 19 years, announced the news via her Twitter account.<sup>1856</sup> The newspaper's journalists reportedly issued a communiqué in which they stated their decision to defend "the avenues for keeping the country informed, despite the growing restrictions and censorship."<sup>1857</sup> On August 3, the cartoonist complained that she had been the victim of censorship by the newspaper *El Universal* after the cartoon that she had drawn for that day's edition was not published. One of her cartoons from the archive was published in its place. In the allegedly censored cartoon, Suprani had apparently drawn the heroes of the independence movements of Colombia and Venezuela, Francisco José de Paula Santander and Simón Bolívar, respectively, under the title "Greater Colombia" (*La Gran Colombia*), and below, two figures in Charles Chaplin garb with the faces of the current Venezuelan president, Nicolás Maduro, and his Colombian counterpart, Juan Manuel Santos, under the title "The Great Comedy" (*La Gran Comedia*). The newspaper tweeted that the journalist had been told that it would be "disrespectful to depict Santos with a pig's face. She had agreed to the change of cartoon."<sup>1858</sup> In its 2013 annual report, the Office of the Special Rapporteur recorded reports of death threats, insults, and denigrating remarks leveled at Suprani. It also took note of an announced lawsuit against the cartoonist by a government official.<sup>1859</sup>

1156. On October 1, security guards at Grupo Últimas Noticias attempted forcibly to evict journalist Odell López, a political writer at *Últimas Noticias*, after he refused to resign on September 30, despite being requested to do so by the paper's human resources department. In the journalist's view, the request was connected with support that he had expressed via Twitter for an *El Nacional* journalist, who had been harassed by the speaker of the National Assembly, Diosdado Cabello, on his television show *Con El Mazo*

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*Caracas: Se concreta la venta del tercer medio de comunicación privado en los últimos 14 meses*; Últimas Noticias. October 25, 2013. [Se concretó venta de la Cadena Capriles](#).

<sup>1854</sup> Instituto Prensa y Sociedad (IPYS) Venezuela. August 18, 2014. [Bolívar: Corresponsal denunció censura en diario de circulación nacional](#).

<sup>1855</sup> Instituto Prensa y Sociedad (IPYS) Venezuela. August 17, 2014. [Comunicado: Trabajadores de El Universal ante caso Sidor](#); La Patilla. August 17, 2014. [Trabajadores de El Universal repudian censura](#).

<sup>1856</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. September 22, 2014. [Press release R 107/14. Office of the Special Rapporteur Expresses Concern over the Situation of the Freedom of Expression in Venezuela](#); Instituto Prensa y Sociedad (IPYS) Venezuela. September 18, 2014. [Caracas: Despidieron a caricaturista por la publicación de una denuncia gráfica contra el sistema de salud](#); El Carabobeño. September 17, 2014. [El Universal despide a caricaturista Rayma](#); El Tiempo. September 18, 2014. [La caricatura por la que despidieron a Rayma de El Universal](#); El País. September 22, 2014. [Despedida una caricaturista por una viñeta que alude a Chávez](#); "Hoy se me notifica mi despido de el Universal por esta caricatura y por mi postura incómoda ante la denuncia gráfica". Rayma Suprani's Twitter account @raymacaricatura. [September 17, 2014 – 5:04 p.m.](#).

<sup>1857</sup> National Press Workers Union (SNTP). September 18, 2014. [Comunicado: La Redacción de El Universal ante el despido de la caricaturista Rayma Suprani](#); La Patilla. September 18, 2014. [Periodistas de El Universal emiten comunicado contra el despido de Rayma](#).

<sup>1858</sup> Instituto Prensa y Sociedad (IPYS) Venezuela. August 4, 2014. [Caracas: Periodista y caricaturista venezolana denuncia censura en diario privado](#); CNN En Español. August 5, 2014. [Columnistas de opinión de El Universal de Venezuela denuncian censura \(VIDEO\)](#); "Esta es la caricatura que me fue censurada hoy en el universal ... Favor RT gracias". Rayma Suprani's Twitter account @raymacaricatura. [August 3, 2014 – 12:43 a.m.](#) "Aclaratoria: A Rayma se le había dicho ayer que era irrespetuoso poner a Santos con cara de cochino. Había aceptado el cambio de caricatura". Official Twitter account of the newspaper El Universal @ElUniversal. [August 3, 2014 – 8:05 a.m.](#)

<sup>1859</sup> IACHR. [Annual Report 2013. 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.149. Doc. 50. December 31, 2013. Pars. 829 and 882.

*Dando*.<sup>1860</sup> On October 2, the journalist filed a complaint with the prosecutor's office, alleging assault the day before and harassment in the workplace.<sup>1861</sup> In August, the journalist claimed censorship on the part of the newspaper's director after a report on Venezuela's sovereignty dispute over Guayana Esequiba (the territory it claims from Guyana) was not published.<sup>1862</sup> On November 10, the reporter announced his resignation from *FM Center*, a syndicate of radio stations, after executives put pressure on him to leave following the episode at the offices of Grupo Últimas Noticias. According to the journalist, since that incident, despite continuing to report for *FM Center*, he had been kept off the air without being offered an explanation. His stories were read out by someone else.<sup>1863</sup>

1157. On October 6, the Últimas Noticias group dismissed cartoonist Roberto Weil, a contributor to *Dominical*, *Últimas Noticias*' Sunday supplement, because one of his cartoons had allegedly annoyed members of the governing party.<sup>1864</sup> The cartoon, published on social networks on October 5 after the newspaper decided to withdraw it from the publication, showed the funeral of a rat, which had been interpreted as alluding to the murder of Robert Serra on October 1. Following its publication, Weil had been verbally abused on social media by government officials and other individuals, including the governor of Aragua, state Tareck El Aissami, who called him "contemptible," "trash," and "fascist," among other insults and. Furthermore, the presidential commissioner for the revolutionary transformation of Greater Caracas, Ernesto Villegas, said that "it would be appropriate to investigate how the photographed copy got out and what 'inspired' the artist to draw this 15 days ago."<sup>1865</sup> Weil said that he had submitted the cartoon 15 days earlier, which was the normal procedure for earlier publications. The magazine issued a communiqué saying that the magazine was usually printed two weeks prior to its distribution. The magazine had not been distributed in some cities, while in others it had been circulated without the cartoon.<sup>1866</sup>

1158. An article by journalist Eligio Rojas that was supposed to be published in the October 15 edition of *Últimas Noticias* was not published without explanation. The piece reported that a suspect in the murder of deputy Robert Serra and his assistant was wounded and in intensive care.<sup>1867</sup> An interview by Fabiana Ortega with Patricia Janiot, also a journalist with *CNN en Español* was also removed. The interview was pulled from the print version but remained available on line. The incident occurred after the Ministry of

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<sup>1860</sup> National Press Workers Union (SNTP). October 1, 2014. [Grupo Últimas Noticias intenta desalojar por la fuerza al periodista Odell López](#); Instituto Prensa y Sociedad (IPYS) Venezuela. October 6, 2014. [Caracas: Intentaron desalojar a periodista de instalaciones de grupo mediático luego de que se negara a renunciar](#); El Propio. October 1, 2014. [INTENTAN DESALOJAR A LA FUERZA A PERIODISTA DEL DIARIO ÚLTIMAS NOTICIAS. ODELL LÓPEZ](#).

<sup>1861</sup> Mundo24. Undated. [Odell López denuncia al diario Últimas Noticias por acoso laboral](#); La Patilla. October 2, 2014. [Periodista Odell López denuncia a Últimas Noticias por acoso laboral](#); Caraota Digital. October 2, 2014. [FOTOS: Odell López denuncia al diario Últimas Noticias por acoso laboral](#).

<sup>1862</sup> Espacio Público. August 8, 2014. [Últimas Noticias censura trabajo del periodista Odell López](#); Instituto Prensa y Sociedad (IPYS) Venezuela. August 16, 2014. [Caracas: Director de medio impreso censuró reportaje por razones políticas](#).

<sup>1863</sup> Instituto Prensa y Sociedad (IPYS) Venezuela. November 13, 2014. [Caracas: Periodista renunció a circuito radial por presiones de la directiva](#); Espacio Público. November 11, 2014. [Odell López renunció FM Center por presiones](#).

<sup>1864</sup> Espacio Público. October 6, 2014. [Weil es despedido de la Revista Dominical](#); La Patilla. October 6, 2014. [Despiden a Weil del Grupo Últimas Noticias tras confusión con caricatura](#); El Nacional. October 6, 2014. [Aseguran que el caricaturista Roberto Weil fue despedido](#); Runrun.es. October 6, 2014. [Grupo Últimas Noticias despide a caricaturista Roberto Weil](#).

<sup>1865</sup> Instituto Prensa y Sociedad (IPYS) Venezuela. October 5, 2014. [Caracas: Voceros del gobierno acusaron a Weil de "fascista" por caricatura que no circuló](#); National Press Workers Union (SNTP). October 5, 2014. [Funcionarios del gobierno insultan al caricaturista Roberto Weil](#); Correo del Caroní. October 6, 2014. [Voceros del Gobierno insultan a Weil por caricatura](#); "Eres un miserable hijo de puta @WEIL\_caricatura: no me hago eco de comentarios malintencionados sobre una tragedia". Tareck El Aissami's official Twitter account @TareckPSUV. [October 5, 2014 - 10:07 a.m.](#); "Basura es lo que eres. FASCISTA. Respeta al pueblo @WEIL\_caricatura: no me hago eco de comentarios malintencionados sobre una tragedia.". Tareck El Aissami's official Twitter account @TareckPSUV. [October 5, 2014 - 10:08 a.m.](#); Ernesto Villegas P.'s official Twitter account @VillegasPoljakE. [October 5, 2014 - 7:08 a.m.](#)

<sup>1866</sup> Instituto Prensa y Sociedad (IPYS) Venezuela. October 5, 2014. [Caracas: Voceros del gobierno acusaron a Weil de "fascista" por caricatura que no circuló](#); National Press Workers Union (SNTP). October 5, 2014. [Funcionarios del gobierno insultan al caricaturista Roberto Weil](#); Revista Dominical. October 5, 2014. [La revista Dominical a la opinión pública](#).

<sup>1867</sup> National Press Workers Union (SNTP). October 17, 2014. [Dos nuevos casos de censura en Últimas Noticias](#); La Patilla. October 15, 2014. [Así censuró Últimas Noticias un suceso sobre el caso Serra \(fotodetalles\)](#); Informe21.com/Colegio Nacional de Periodistas. October 15, 2014. [CNP: Últimas Noticias censuró artículo sobre muerte de Robert Serra](#).

Popular Power for Communication and Information refused permission for Janiot and her team to work in the country.<sup>1868</sup>

1159. On November 11, Carmen Rosa Gómez, chief of *El Universal* newspaper's economics section, and Roberto Deniz, one of the reporters in that section, announced their resignation over alleged pressure from the newspaper's management to censor information. According to Gómez, there had been changes in the paper's coverage of these issues that would result in the alteration of headlines and information, or the non-publication of certain news without notice. Gomez had complained in writing about different incidents on three occasions, the last of them on November 10. Having not received a response, she tendered her resignation. In the case of Deniz, a title and summary of an article had been changed in October, while his last piece, in which one of his sources warned of a profound economic crisis, was removed.<sup>1869</sup>

1160. During the hearing on the 'Situation of the Right to Freedom of Expression and Access to Information in Venezuela', held in the framework of the 153rd regular session of the IACHR,<sup>1870</sup> The organizations that took part said that the sale of media outlets to new owners –whose identity remains unknown– had led to the exit of large numbers of employees, who had either been dismissed or forced to resign. They said that in the case of *Globovisión*, following the change of ownership, information and opinion columns had been done away with and at least 60 television workers had been either dismissed or forced to resign. Many of these instances occurred in the context of the demonstrations of February 12 earlier this year. In the case of *Grupo Últimas Noticias*, they said that after it was bought out, persons with ties to the government and members of the United Socialist Party of Venezuela had been appointed to key posts in the group. They said that in this context, the workers had denounced an escalation of acts that violated the practice of their profession, including censorship of their writings and mistreatment by the owners, resulting in the departure of at least 51 journalists. Meanwhile, the newspaper's investigation unit has also been disbanded. As to the purchase of the newspaper *El Universal* by a group of Spanish owners, they said that "one of the first decisions of the new management was to restructure the op-ed sections. The company let go 40 article writers who were critical of the government." The State, for its part, said that Venezuelan law does not prohibit the sale of media outlets and that the government could not block transactions of this type. It emphatically affirmed that "the State can have no part in that and it does not set these media outlets' communication policy." In that connection, the representative of the State showed critical headlines by the country's main newspapers and affirmed that "no newspaper has been closed down" in Venezuela. He explained that, on the contrary, owing to the importance of private sector advertising, in Venezuela media content continues to be favorable to the business sector opposed to the socialist project.

1161. 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."

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<sup>1868</sup> National Press Workers Union (SNTP). October 17, 2014. [Dos nuevos casos de censura en Últimas Noticias](#); La Patilla. October 16, 2014. [Últimas Noticias censura entrevista de periodista Patricia Janiot](#).

<sup>1869</sup> Instituto Prensa y Sociedad (IPYS) Venezuela. November 13, 2014. [Caracas: Periodistas renuncian a diario de circulación nacional por razones informativas](#); Espacio Público. November 12, 2014. [Periodistas de El Universal renuncian por censura](#); La Patilla. November 12, 2014. [Nuevo caso de censura: Renuncian dos periodistas más a El Universal](#); Informe21.com. November 12, 2014. [Renuncian dos periodistas del área económica de El Universal](#); "Hasta hoy dirigí la sección de Economía de El Universal, orgullosa de haber contado con excelentes profesionales haciendo periodismo". Carmen Rosa Gómez's Twitter account @crgomezp. [November 11, 2014 – 4:50 p.m.](#); "Hasta hoy trabajé en El Universal. Gracias por sus mensajes. Ojalá vengan tiempos mejores para los que allí quedan y para el periodismo". Roberto Deniz's Twitter account @robertodeniz. [November 11, 2014 – 5:18 p.m.](#)

<sup>1870</sup> IACHR. 153rd regular session, October 28, 2014. Hearing on the Situation of the Right to Freedom of Expression and Access to Information in Venezuela. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/153/default.asp>; IACHR. December 29, 2014. [Report on the 153rd Session of the IACHR](#).

## H. Presidential broadcasts

1162. The IACHR learned that during 2014, the Government of Venezuela maintained the practice of using radio and television broadcasts to issue official messages. According to information provided to the Commission since the start of the protests the Venezuelan government has broadcast tens of obligatory programs on radio and television. According to the *Cadenómetro* project, which is implemented by Monitoreo Ciudadano, an NGO, and keeps statistics on those programs, 25 national addresses were broadcast between February 12 and March 16, 2014, taking up more than 42 hours of airtime, at an average of one hour, 20 minutes a day.<sup>1871</sup> According to the *Cadenómetro* project, which is implemented by *Monitoreo Ciudadano*, an NGO, and keeps statistics on those programs, 31 national addresses were broadcast between February 12 and March 24, 2014, taking up more than 45 hours of airtime, at an average of one hour, 20 minutes a day. According to this organization, from January to April 2014 it was not possible to monitor the airtime of at least 50 national addresses.<sup>1872</sup>

1163. Instituto Prensa y Sociedad (IPYS) mentioned that, based on its monitoring from January 1 to September 30, the government had made 319 national addresses. This amounted to a total of 8,460 minutes of programming, equivalent to six days of unbroken broadcasting.<sup>1873</sup> The purpose of many of these national addresses was to censor specific news items. It cited as an example of the national address of the night of February 12, when president Nicolás Maduro celebrated the civic-military parade to commemorate the bicentenary of the battle of victory and Youth Day. Meanwhile protests were being held in different cities that resulted in three people killed. Those events were not broadcast by the private, state, or community media. According to the study, during national addresses it is usual to hear references to business groups, trade unions, and business owners waging an “economic war.” The study also said that they are used to discredit and attack those considered critical of the government, including political leaders, dissidents, foreign government officials and embassies, representatives of opposition parties, and the media. Expressions such as “psychological warfare,” “sowing fear and anxiety,” and “economic war” have been recurring themes. According to the IPYS study, journalists and editorial opinions in the media have been discredited, attacked, and threatened with legal action during national addresses. They are constantly accused of manipulating information, of being behind conspiracies against the State, and, in particular, of censoring information; hence the need for the national addresses.<sup>1874</sup>

1164. The report said that the frequency of national addresses peaked in February and March, when the unrest and protests were at their worst. During those months, 45 national addresses were broadcast on radio and television in which language was used that discredited the right to peaceful protest.<sup>1875</sup> Thus, for example, on March 5, president Maduro apparently egged on supporters of the government party against the demonstrators, saying that they should carry out the orders of former president Hugo Chávez that “any flame lit, we snuff out.”<sup>1876</sup> Days later, the president clarified that he had been speaking to a “people of peace,” that he meant “any flame lit, we snuff out with heart and mind, with reasons, with empathy, with the truth, as is only proper.”<sup>1877</sup>

1165. 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

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<sup>1871</sup> Monitoreo Ciudadano. Proyecto Cadenómetro. [Contador de horas de Nicolás Maduro en Cadena Nacional de Radio y Televisión.](#)

<sup>1872</sup> Espacio Público. March 24, 2014 Periódicos sin materia prima. Available at: Archive of the Office of the Special Rapporteur.

<sup>1873</sup> Instituto Prensa y Sociedad (IPYS). November 2014. [Venezuela, un país en cadena.](#)

<sup>1874</sup> Instituto Prensa y Sociedad (IPYS). November 2014. [Venezuela, un país en cadena.](#)

<sup>1875</sup> Instituto Prensa y Sociedad (IPYS). November 2014. [Venezuela, un país en cadena.](#)

<sup>1876</sup> Diario Primicia/YouTube. March 5, 2014. [Maduro: Candelita que se prenda, candelita que apagamos \(PRIMICIA – Primero y Mejor\).](#)

<sup>1877</sup> Noticias Venezuela/YouTube. March 8, 2014. [“Candelita que se prenda, candelita que se apaga con el alma”.](#)

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>1878</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>1879</sup> Additionally, the principle 5 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”.

1166. 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>1880</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>1881</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>1882</sup>

## I. Other relevant situations

1167. On March 11, president Nicolás Maduro launched his weekly radio show *En contacto con Maduro* [In Touch with Maduro], which will air every Tuesday at 7 p.m. or “on any other day that we also wake up with a desire to communicate with each other in this way” and sometimes “it will be worthwhile doing it on television” simultaneously. The premier said that it would be an interactive program and would also be transmitted by every available means, including social media “so that the truth about Venezuela can make itself heard.”<sup>1883</sup> On his first program, the premier criticized the national and international press whose owners belonged to the “rancid media oligarchy that wages communicational terrorism against Venezuela” and he defended the need for this program in spite of having access to the media through their channels,

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<sup>1878</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>1879</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.

<sup>1880</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>1881</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>1882</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>1883</sup> Venezolana de Televisión (VTV). March 11, 2014. [En Contacto con Maduro inicia ciclo de una nueva forma de comunicación \(+Video\)](#); ABC/AFP. March 12, 2014. [‘En contacto con Maduro’ sustituye a ‘Aló presidente’](#); El Periódico/EFE. March 12, 2014. [Venezuela, del ‘Aló presidente’ de Chávez a ‘En contacto con Maduro’](#); Univisión Noticias. March 11, 2014. [El presidente de Venezuela estrenó el programa “En contacto con Maduro”](#).



because of the program's interactive nature and because it will be accessible to anyone who is not in Venezuela.<sup>1884</sup>

1168. On May 7, officials of the Bolivarian National Intelligence Service (Sebin) detained the president of the human rights NGO *Un Mundo sin Mordaza* (An Unmuzzled World), Rodrigo Diamanti, at Maiquetía Airport near Caracas. The incident was reported by members of the NGO and other individuals on social media, saying that the arrest was made without a warrant.<sup>1885</sup> The arrest was carried out following statements made by the Minister of the Interior, Miguel Rodríguez Torres, that Diamanti had allegedly financed and supported the protests against the government of president Nicolás Maduro.<sup>1886</sup> Some days before, on May 1, the offices of that NGO and of *Humano Libre* were raided by alleged Sebin officials who, after searching the premises detained a young man who was guarding the place.<sup>1887</sup> Diamanti was held until the night of May 9, when the 27th Supervising Court in and for Caracas ordered his release under precautionary measures and prohibited him to leave the country. The Office of the Attorney General charged him with offenses under the Criminal Code: obstruction of a public thoroughfare and possession of explosive devices (which had allegedly been found in the raid on the NGO's offices).<sup>1888</sup>

1169. The IACHR learned of an increase in the number of state-owned mass media outlets. On April 12, 2013, president Nicolás Maduro and executive vice president Jorge Arreaza launched the country's first digital television station: *ConCienciaTv*. The channel is devoted to specific issues and broadcasts programs on science, technology and innovation. It was created "because of the need to create new communication platforms from which to broadcast up-to-date content consistent with the ethical principles of our Bolivarian revolution."<sup>1889</sup> On December 28 the premier launched the first national Bolivarian armed forces Channel (*TV FANB*) which he described as "a military revolution, a communications revolution." The channel received an investment of 54 million bolívares (approximately US\$8,500,000).<sup>1890</sup> During a national address on February 25, president Maduro launched *Zum TV*, which he described as "the channel for Venezuelan youth."<sup>1891</sup> That same day, the premier announced the creation of 400 recording studios with the aim of "democratizing radio in Venezuela" following the official inauguration of *Radio Favela* situated in the El Valle sector in Caracas.<sup>1892</sup>

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<sup>1884</sup> Knight Center for Journalism in the Americas March 12, 2014. [Venezuelan president launches radio program "In contact with Maduro"](#). March 11, 2014. ["En contacto con Maduro", el nuevo programa de radio y TV que lanzó el presidente de Venezuela](#); Venezolana de Televisión (VTV)/ YouTube. Aired on March 11 and published on March 12 by Luigino Bracci Roa. [Nicolás Maduro realiza su primer programa de radio "En Contacto con Maduro"](#) [01:13:42 / 01:53:20]

<sup>1885</sup> El Universal. May 7, 2014. ["Un Mundo Sin Mordaza" denuncia detención de su presidente](#); 2001. May 7, 2014. [Presidente de "Un Mundo Sin Mordaza" fue detenido por el Sebin](#); La Patilla. May 7, 2014. [Sebin detiene a Rodrigo Diamanti presidente de Un Mundo Sin Mordaza \(tuits\)](#); Instituto Prensa y Sociedad (IPYS) Venezuela. May 9, 2014 [Caracas: Activista por la libertad de expresión ha permanecido detenido por 48 horas sin orden de captura](#).

<sup>1886</sup> Instituto Prensa y Sociedad (IPYS) Venezuela. May 9, 2014 [Caracas: Activista por la libertad de expresión ha permanecido detenido por 48 horas sin orden de captura](#); El Universal. May 8, 2014. [Human Rights Foundation condenó detenciones de estudiantes y activistas](#); El País. May 2, 2014. [Venezuela insiste en acusar a Estados Unidos por supuesto plan conspirativo](#).

<sup>1887</sup> Instituto Prensa y Sociedad (IPYS) Venezuela. May 9, 2014 [Caracas: Activista por la libertad de expresión ha permanecido detenido por 48 horas sin orden de captura](#); El Universal. May 1, 2014 [Sebin allanó sede de las ONG "Un Mundo Sin Mordaza" y "Humano y Libre"](#); Últimas Noticias. May 1, 2014 [Sebin allanó sede de las ONG "Un mundo sin mordaza" y "Humano y libre"](#); Informe21.com. May 1, 2014 [Sebin allanó sede de las ONG Un Mundo Sin Mordaza y Humano Libre](#).

<sup>1888</sup> El Nacional. May 9, 2014 [Liberado Rodrigo Diamanti con medidas cautelares](#); 2001. Undated. [Rodrigo Diamanti recibió libertad condicional](#); Noticias 24. May 9, 2014. [Imputan a Rodrigo Diamanti por tenencia de bombas molotov: no podrá salir del país](#).

<sup>1889</sup> Ministry of People's Power for Science, Technology, and Innovation. *ConCienciaTv, canal de ciencia, tecnología e innovación*; Venezolana de Televisión (VTV). Undated. [Vicepde. Arreaza encabezará lanzamiento de TV ConCiencia \(+Video\)](#); Venezolana de Televisión (VTV). Undated. [TV ConCiencia pone al aire el cambio de paradigmas en la televisión \(+Videos\)](#).

<sup>1890</sup> Venezolana de Televisión (VTV). December 28, 2013. [Presidente Maduro inauguró TV FANB \(+Videos\)](#); Agencia Venezolana de Noticias (AVN). December 28, 2013. [Sale al aire la señal de TV FANB](#); El Impulso. December 14, 2014. [Canal de las FAN saldrá al aire en señal abierta](#).

<sup>1891</sup> Ministry of People's Power for Communication and Information (Minci) 25 February 2014. [Al aire canal juvenil ZUM TV](#); Agencia Venezolana de Noticias (AVN). 25 February 2014. [Presidente Maduro inauguró canal de la juventud venezolana Zum TV](#); Noticias 24. February 25, 2014. [Inauguran Zum TV, el canal "de la juventud venezolana"](#).

<sup>1892</sup> Ministry of People's Power for Communication and Information (Minci) 25 February 2014. [Al aire canal juvenil ZUM TV](#); Ministry of People's Power for the Social Process of Labor. February 26, 2014. [Estudio de Audio inaugurado en "El 70" se suma a formación](#)

During this national address the premier also announced the creation of other channels, such as *TV Comunas* and *TV Obrera*. “We are launching *Zum TV*. Very soon we will be launching television for the working classes, *TV Obrera*, and very soon we will launch *TV Comunas*. This is the birth of the new television of the 21st century in Venezuela,” he said.<sup>1893</sup>

1170. On March 11, president Nicolás Maduro launched the magazine *Venezuela se respeta*, whose purpose is to tell the world the truth about the ongoing *coup d'état* denounced by the government. “In here we have everything that has happened in Venezuela over the past weeks, with photographs, all the truth about the supposed protests; we are going to produce a special documentary in every language and broadcast it to the whole world and disseminate it by all the means at our disposal. They have sought to threaten democracy. In here we show you the whole truth,” said the president.<sup>1894</sup>

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[a través de Proyectos del Inces](#); Ministry of People's Power for Youth. 25 February 2014. [Este año serán inaugurados 400 estudios de grabación en todo el país](#).

<sup>1893</sup> Venezolana de Televisión. 25 February 2014. [Por la juventud y por la paz, nació ZUM TV \(+Video\)](#); Bolivarian Communication and Information System. National address: Broadcasters for Peace and Life. Transmitted on February 25, 2014. Published on February 26, 2014, by: sucreranda Hugo Chávez Venezuela/YouTube. [Nicolás Maduro. Marcha de Telecomunicadores y CANTV Venezuela, 25 de febrero, 2014](#). [02:09:19]

<sup>1894</sup> Informe21.com/Radio Mundial. March 11, 2014. [Lanzada oficialmente revista “Venezuela se respeta”](#); “Lanzada oficialmente revista “Venezuela se respeta” (+Audio) <http://goo.gl/oYdbWE> #MaduroPazYPatria”. Twitter account YVKE Mundial @YVKE\_MUNDIAL. [March 10, 2014, 1:22 PM](#).



## CHAPTER III

### FREEDOM OF EXPRESSION STANDARDS FOR THE TRANSITION TO OPEN, DIVERSE, PLURAL, AND INCLUSIVE FREE-TO-AIR DIGITAL TELEVISION

#### A. Introduction

1. Freedom of expression is a fundamental right and a basic component of any democratic society.<sup>1895</sup> In fact, in its very first ruling on the subject, the Inter-American Court of Human Rights called freedom of expression “a *conditio sine qua non* for the development of political parties, trade unions, scientific and cultural societies and, in general, those who wish to influence the public. It represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed.” Consequently, the Court concluded, “a society that is not well informed is not a society that is truly free.”<sup>1896</sup>

2. In this context, the media—and especially the audiovisual media—perform an essential function in guaranteeing the freedom of expression of individuals, as the media serve to convey individuals’ thoughts and information while at the same time allowing them access to the ideas, information, opinions, and cultural expressions of others.<sup>1897</sup> The Inter-American Court of Human Rights has been emphatic in ruling that media is a vehicle or instrument of freedom of expression and information, and therefore freedom and diversity must be guiding principles in the regulation of broadcasting, as well as that media activity must be guided and protected by the standards regarding the right to freedom of expression.<sup>1898</sup> In fact, the IACHR has indicated that regulation of the broadcast spectrum must simultaneously guarantee freedom of expression for the greatest number of people or perspectives; equality of opportunities in media access; and the right of contemporary societies to plural and diverse information.<sup>1899</sup>

3. Today, the countries in the region are transitioning from analogue to digital television, while others have just begun this process. Beyond issues concerning the technological standard each country chooses, it is important—from the standpoint of the rights to freedom of expression and access to information—to define guiding principles to ensure that the digitalization of television signals becomes an opportunity to guarantee freedom of expression, universal access to all types of information and ideas, media diversity, and pluralism of information and opinions.

4. Digital transmission is a technical process by which data, sounds, and images are converted into a series of digits in binary code (i.e., 0s or 1s) and transmitted. The digits can be compressed and then re-

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<sup>1895</sup> IACHR. [2009 Annual Report. Report 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>1896</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. 70.

<sup>1897</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 4.

<sup>1898</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. 34; IACHR. Office of the Special Rapporteur for Freedom of Expression. [Freedom of Expression Standards for Free and Inclusive Broadcasting](#). December 30, 2009, para. 7.

<sup>1899</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 8.

expanded on arrival, thus economizing on transmission capacity.<sup>1900</sup> Digitalization enables content and platforms to converge, as the original signals can be retransmitted through common means of support, converging through many types of networks, whether Hertzian waves, optic cables, or satellite broadcasts. The digitalization of broadcasting saves space on the broadcast spectrum, which makes it possible to have more television signals with less bandwidth.<sup>1901</sup> This process involves a trade-off between the number of channels and the level of quality of the desired transmission.<sup>1902</sup>

5. Nevertheless, the process does not involve only technical transformations. As has been observed, because of the function of the media in a democratic society, any decision concerning the transition to digital television must observe aspects related to guarantees for the exercise of freedom of expression and the promotion of diversity. To this effect, it is necessary to establish principles that guide the issuance and implementation of laws regulating this process, in order to regulate technical aspects but also to promote pluralism and remove cultural or linguistic barriers to access to different sources of information and prevent or reduce the concentration of media in the hands of a few operators.

6. Moreover, in the transition process, the possibility of obtaining more television signals with less bandwidth offers opportunities to increase the flow of information and diverse perspectives to the public, to ensure that current broadcasters can continue their operations, and to diversify access by new actors to the ownership and management of media outlet. Nonetheless, the transition to digital can also produce negative effects, if it is not guided by the requirements necessary to guarantee freedom of expression. This would result in less pluralism and new barriers to cultural and linguistic diversity and to the free flow of information. That would mean the loss of a rare opportunity to meet the objectives of diversity and pluralism established in the inter-American legal framework, through a transition which enables different sectors or types of media outlets to coexist, based on the type of media ownership or management, and to promote greater programming diversity.

7. In this document the Office of the Special Rapporteur offers States and civil society in the region general principles for the protection of the right to freedom of thought and expression in the context of the transition to digital broadcasting. These principles aim to serve as a guide to governments, legislative and administrative bodies, the courts, and civil society, so as to pave the way for handling this conceptually and technologically groundbreaking situation and to promote the review and adoption of legislation and practices with a view to ensuring full respect for the right to freedom of thought and expression, along with the inclusion of more participants in this process.

## **B. Establishment of an Explicit, Clear, and Precise Legal Framework**

8. The digitalization of television presents regulatory challenges that are not always addressed correctly in the legal frameworks for analogue broadcasting, and therefore it may be necessary to review current legislation. In this regard, the transition from analogue to digital television requires specific norms that take into account the adoption of new technical standards for signal transmission; establish requirements, procedures, and criteria so that current or new operators can access the new technology; and

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<sup>1900</sup> European Commission. Digital Agenda for Europe. [Glossary](#).

<sup>1901</sup> In an analogue environment, “signal” is used as a synonym of “channel,” as it occupies the entire bandwidth of that frequency. However, with digitalization these two concepts are different. In this report, then, “television signal” will be understood to mean a TV service with an identity, brand, and programming of its own which once it is digitalized should not necessarily be identified with a “television channel.” In analogue transmission involving land-based television, it is possible to send only one TV signal via a broadcast channel or frequency; therefore, a “channel” is always the same as a “signal.” In digital transmission, it is possible to broadcast either one ultra-high-definition TV signal or several high-definition or standard-definition signals. See, for example, Consejo Consultivo de Radio y Televisión (ConcorTV). [Televisión digital para todos](#). Poder Legislativo. [Ley No. 19.307](#). Article 3.

<sup>1902</sup> European Commission. Digital Agenda for Europe. [Glossary](#).

approve the plans, deadlines, and stages that should be followed until the so-called analogue switch-off,<sup>1903</sup> among other aspects.

9. The new regulatory framework should contemplate the conditions and requirements for all broadcast regulations. As the Office of the Special Rapporteur has indicated, because the regulation of broadcasting can involve a limitation to the exercise of the right to freedom of expression, it must meet the three-part test established in Article 13(2) of the American Convention. The limitation must be previously established in law that is explicit, restrictive, precise, and clear, both in a material and in a formal sense; be designed to achieve imperative objectives authorized by the American Convention; and be necessary in a democratic society to meet the objective it pursues, and strictly proportional for meeting that objective.<sup>1904</sup> This principle holds true with respect to the digital transition and the laws governing this process, as well as the decisions and administrative actions that actualize or govern this transition for the media outlets involved.

10. Along these same lines, the Council of Europe has recommended that States create adequate legal and economic conditions for the development of digital broadcasting<sup>1905</sup> and adapt “their regulatory framework to economic, technological and social developments taking into account, in particular, the convergence and the digital transition and therefore include in it all the elements of media production and distribution.”<sup>1906</sup> Meanwhile, the Representative on Freedom of the Media of the Organization for Security and Co-operation in Europe (OSCE) has also observed that “States should develop a legislative framework and strategy for digital broadcasting.”<sup>1907</sup> Based on these recommendations, many States in Europe have adopted specific laws regarding the digital transition.<sup>1908</sup>

11. In addition, the Office of the Special Rapporteur has noted that it is crucial that the legal framework provide people with legal certainty and set forth in the clearest and most precise terms possible the conditions for exercising the right and the limitations to which broadcasting is subject. Thus, for example, in regulating the integration of enforcement authorities, or procedures for accessing or revoking licenses, or the power of the public authorities, the language of the statute must avoid vagueness or ambiguities that would allow for potential arbitrary actions that discriminate against an individual, group, or sector in broadcasting. The law must establish the substantive aspects of regulation; that is, it should not delegate the definitions of policies central to broadcasting to the enforcement authority. The enforcement authority may only interpret or specify the substantive aspects defined clearly and beforehand in the law.<sup>1909</sup>

12. In several countries of the region there already exists general legislation on broadcasting already. To the extent that these meet the requirements that have been laid out, any technical regulations, decrees, or resolutions must be issued by the government or the regulatory authority assigned to regulate the transition to digital television must not go beyond such legislation. By contrast, if no legal framework exists

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<sup>1903</sup> This is defined as the moment when analogue TV signals will no longer be sent, and so those who do not have equipment that can receive digital signals will not be able to watch television services as they are able to now. See: The Representative on Freedom of the Media of the Organization for Security and Co-operation in Europe (OSCE). 2010. [Guide to the Digital Switchover](#), p. 112-114.

<sup>1904</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, paras. 15-45.

<sup>1905</sup> Council of Europe. [Recommendation Rec\(2003\)9 of the Committee of Ministers to member states on measures to promote the democratic and social contribution of digital broadcasting](#). May 28, 2003. Recommendation a.

<sup>1906</sup> Council of Europe. [Recommendation CM/Rec\(2007\)2 of the Committee of Ministers to member states on media pluralism and diversity of media content](#). January 31, 2007. Recommendation 1.3.

<sup>1907</sup> The Representative on Freedom of the Media of the Organization for Security and Co-operation in Europe (OSCE). 2010. [Guide to the Digital Switchover](#), p. 23.

<sup>1908</sup> Some of these laws are: United Kingdom ([Communications Act 2003](#)), Hungary ([Act LXXIV of 2007 on the rules of broadcasting and digital switchover](#)), Slovakia ([Digital Broadcasting Act 2006](#)), Ireland ([Broadcasting Act 2001](#)), Italy ([Broadcasting Act No. 112/2004](#)), Czech Republic ([on Radio and Television Broadcasting and on Amendment to Other Acts](#)), among others.

<sup>1909</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 18.

that is compatible with standards for broadcasting and freedom of expression, or if it does not make it possible to meet the goal of ensuring the greatest possible diversity and plurality, “the States should establish specific legal mechanisms to advance the switchover to digital broadcasting services”<sup>1910</sup> or substantially modify the existing legal framework on audiovisual services, to bring it in line with democratic requirements and with the American Convention.

13. Up until now, the adoption of mechanisms in the hemisphere to govern digital television has been established both at the legal and supra-legal level. Thus, for example, in 2005 the United States approved the Digital Television Transition and Public Safety Act<sup>1911</sup>, while in Chile, the regulation on digital television was established through a specific law approved by the National Congress in 2014.<sup>1912</sup> In the rest of the region, some countries have approved government decrees on the subject, such as Brazil in 2003<sup>1913</sup> and 2006,<sup>1914</sup> Argentina in 2009,<sup>1915</sup> Mexico in 2010,<sup>1916</sup> and Uruguay in 2012.<sup>1917</sup> In addition, some States have regulated the issue through rules issued by regulatory authorities, such as Peru in 2010,<sup>1918</sup> Mexico in 2004 and 2012,<sup>1919</sup> and Colombia in 2012.<sup>1920</sup>

14. As was indicated earlier, State regulation of broadcasting in general and of digital television in particular must have as one of its objectives “to guarantee, protect, and promote the right to freedom of information, pursuant to conditions of equality and non-discrimination, and guarantee the right of society to access all types of information and ideas.”<sup>1921</sup> Along these lines, in the Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition, adopted in 2013, the United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Representative on Freedom of the Media of the Organization for Security and Co-operation in Europe (OSCE), the Special Rapporteur on Freedom of Expression of the OAS Inter-American Commission on Human Rights, and the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples’ Rights (ACHPR) maintained that “States should ensure that respect for freedom of expression, including

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<sup>1910</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 80.

<sup>1911</sup> United States of America. [Public law 109-171](#). February 8, 2006. Title III—Digital Television Transition and Public Safety. Sec. 3005.

<sup>1912</sup> Library of the National Congress of Chile. Law No. 20.750. [Permite la introducción de la televisión digital terrestre](#). May 6, 2014.

<sup>1913</sup> Office of the President of the Republic. Decree No. 4.901 of November 26, 2003. [Instítui o Sistema Brasileiro de Televisão Digital - SBTVD, e dá outras providências](#).

<sup>1914</sup> Office of the President of the Republic. Decree No. 5.820 of June 29, 2006. [Dispõe sobre a implantação do SBTVD-T, estabelece diretrizes para a transição do sistema de transmissão analógica para o sistema de transmissão digital do serviço de radiodifusão de sons e imagens e do serviço de retransmissão de televisão, e dá outras providências](#).

<sup>1915</sup> InfoLeg. Decree No. 1148 of 2009. [Créase el Sistema Argentino de Televisión Digital Terrestre](#).

<sup>1916</sup> Official Federal Record. [Decreto por el que se establecen las acciones que deberán llevarse a cabo por la Administración Pública Federal para concretar la transición a la Televisión Digital Terrestre](#). September 2, 2010.

<sup>1917</sup> IMPO. Center for Official Information. Decree No.153/012. May 11, 2012. [Reglaméntanse los procedimientos para conceder autorización para brindar servicios de radiodifusión de televisión digital, de acceso abierto y gratuito, asociada a la asignación de espectro radioeléctrico para su prestación](#).

<sup>1918</sup> El Peruano. Supreme Decree 017-2010-MTC. [Decreto Supremo que aprueba el Plan Maestro para la implementación de la Televisión Digital Terrestre en el Perú y modifica el Reglamento de la Ley de Radio y Televisión, aprobado por Decreto Supremo N° 005-2005-MTC](#).

<sup>1919</sup> Federal Telecommunications Commission. [ACUERDO por el que se reforman, adicionan y derogan diversas disposiciones del Acuerdo por el que se adopta el estándar tecnológico de televisión digital terrestre y se establece la política para la transición a la televisión digital terrestre en México](#). May 4, 2012.

<sup>1920</sup> Board of Directors of the National Television Commission. Agreement 002, April 4, 2012. [Por medio del cual se establece y reglamenta la prestación del servicio público de televisión abierta radiodifundida digital terrestre –TDT](#).

<sup>1921</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 12.

diversity in the airwaves, is ensured in the digital terrestrial transition process.”<sup>1922</sup> This does not rule out the fact that other general objectives of interest may be included in such regulations, such as universal access to new technology, the promotion of educational and cultural content or the local audiovisual production.

15. Thus, for example, Argentina’s regulations include as an objective “to promote social inclusion, cultural diversity, [and] the country’s language through access to digital technology, as well as the democratization of information.”<sup>1923</sup> Peru’s regulations, meanwhile, include as an objective “to procure access for television viewers to a wider variety and quality of content in the areas of information, knowledge, culture, education, and entertainment, raising the quality of life for the population.”<sup>1924</sup>

16. Ultimately, broadcasting rules should aim to create a framework that allows for the most extensive, free, and independent exercise of freedom of expression, facilitating access to the most diverse number of groups or people, in order to ensure that this power will not be used as a form of indirect censorship and to guarantee diversity and pluralism in broadcasting. As the Office of the Special Rapporteur has stated, the States should evaluate the broadcasting possibilities arising from the use of the digital dividend, and consider this technological change an opportunity to increase the diversity of voices and enable new sectors of the population to access communications media.”<sup>1925</sup>

17. Rules and plans for the digital transition should be developed under public scrutiny, with public participation,<sup>1926</sup> and should be open to civil society to ensure pluralism in television services, public access to a wide variety of programs, and the protection of the interests of the population, especially those of minority and vulnerable groups. Along these lines, in their 2013 Joint Declaration, the UN Special Rapporteur, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur, and the ACHPR Special Rapporteur maintain that “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.”<sup>1927</sup>

### **C. Promotion of Diversity and Pluralism in Digital Broadcasting**

18. As indicated earlier, technological development provides a critical opportunity to guarantee access to frequencies for people or sectors that are generally marginalized or excluded.<sup>1928</sup> As was noted by the OAS, UN, OSCE, and ACHPR Special Rapporteurs, “if not carefully planned and managed, the digital transition can exacerbate the risk of undue concentration of ownership and control of the broadcast

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<sup>1922</sup> United Nations (UN) Special Rapporteur on 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 OAS Inter-American Commission on Human Rights, and the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples’ Rights (ACHPR). May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#). Principle 1.a.

<sup>1923</sup> InfoLeg. Decree No. 1148 of 2009. [Créase el Sistema Argentino de Televisión Digital Terrestre](#).

<sup>1924</sup> El Peruano. Supreme Decree 017-2010-MTC. [Decreto Supremo que aprueba el Plan Maestro para la implementación de la Televisión Digital Terrestre en el Perú y modifica el Reglamento de la Ley de Radio y Televisión, aprobado por Decreto Supremo N° 005-2005-MTC](#).

<sup>1925</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 80.

<sup>1926</sup> OSCE Representative on Freedom of the Media. 2010. [Guide to the Digital Switchover](#), p. 70.

<sup>1927</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#). Principle 1.b.

<sup>1928</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 79.



media.”<sup>1929</sup> The challenge now, and in the immediate future, is to transform the current inequality in the exercise of the right to freedom of expression into a digital opportunity for all.<sup>1930</sup> To do that, as will be shown below, in the process of converting to digital television States should observe the need to ensure: (i) an increase in the diversity of television media and promotion of new operators; (ii) plurality and diversity of content; (iii) recognition of three digital television sectors; and (iv) promotion of plurality and diversity through regulation of concentration of media control and ownership.

## 1. Increase in the Diversity of TV Media and Promotion of New Operators

19. One aim of the process of implementing digital television should be to bring about a more diverse and plural system of television media than the one that exists with analogue technologies. For this, the States should evaluate the broadcasting possibilities that result from the bandwidth savings made possible by digitalization and the use of the various digital dividends that become available when the transition is complete, considering this technological change as an opportunity to increase the diversity of voices and enable new sectors of the population to access communications media.<sup>1931</sup> Likewise, the OAS, UN, OSCE, and ACHPR Rapporteurs have established that States should ensure that the digital terrestrial transition process ensures respect for freedom of expression, “including diversity in the airwaves.”<sup>1932</sup> Along these lines, the Rapporteurs have established that “State policies and licensing processes relating to the digital terrestrial transition should promote media diversity.”<sup>1933</sup>

20. The Office of the Rapporteur has stated emphatically that freedom of expression and diversity must be guiding principles in the regulation of broadcasting: “The State’s authority to regulate broadcasting is based on, *inter alia*, the ‘duty to guarantee, protect, and promote the right to freedom of information, pursuant to conditions of equality and non-discrimination, and the right of society to access all types of information and ideas.’ In this way, the broadcasting regulation that the State can and should create would form a framework under which the broadest, freest, and most independent exercise of freedom of expression for the widest variety of groups and individuals is possible. The framework should function in such a way that it guarantees diversity and plurality while simultaneously ensuring that the State’s authority will not be used for censorship.”<sup>1934</sup>

21. These guiding principles also apply to the transition to digital television. In this process, governments and national regulators should adopt public policies to increase diversity in the media, pluralism of content and prevent concentration in broadcasting. Under these new conditions, it is possible

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<sup>1929</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#).

<sup>1930</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 79.

<sup>1931</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 80. The Declaration of Principles of the World Summit on the Information Society (WSIS, approved in Geneva in 2003), which was convened by the UN General Assembly via Resolution 56/183 of December 21, 2001, states, “We are...fully aware that the benefits of the information technology revolution are today unevenly distributed between the developed and developing countries and within societies. We are fully committed to turning this digital divide into a digital opportunity for all, particularly for those who risk being left behind and being further marginalized” (Principle 10). The resolution adds, “In building the Information Society, we shall pay particular attention to the special needs of marginalized and vulnerable groups of society, including migrants, internally displaced persons and refugees, unemployed and underprivileged people, minorities and nomadic people. We shall also recognize the special needs of older persons and persons with disabilities” (Principle 13).

<sup>1932</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#). Principle 1.a.

<sup>1933</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#). Principle 3.a.

<sup>1934</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 12.

and desirable for regulations and implementation plans for digital television to facilitate the entry of new television operators, both in the public sector as well as in the community and commercial sectors. It is desirable for these measures to be adopted without waiting for the analogue switch-off, unless it is clearly and plainly evident that the technical conditions do not exist to do so from the very start of the implementation of digital television.

22. In this regard, States should adopt measures to guarantee the exercise of freedom of expression, plurality, and diversity in the transition to digital. Such measures could include, among others, adapting to inter-American standards governing procedures to access, renew, or revoke licenses; recognizing the various sectors within the media; encouraging diverse and new operators; setting limits on media ownership concentration; promoting programming diversity among operators; decentralizing the production of content geographically; and establishing rules to provide more diversity in television for subscribers and allowing for universal coverage of public-interest television (through so-called “must-carry”<sup>1935</sup> rules).

23. Opening up the airwaves to new operators allows for a greater diversity of voices from the time digital is switched on, and at the same time provides a direct incentive for new technologies to be spread throughout the country faster and more efficiently. While new actors are interested in a fast transition so as to reach the entire population, having a larger number of operators makes it more attractive for people to buy reception devices, as they can access more signals. For the United Nations Educational, Scientific and Cultural Organization (UNESCO), one positive step the State should take to promote a media environment in which freedom of expression, independence, and media pluralism can flourish would be to “allocate digital licenses to a diverse range of commercial and non-commercial operators.”<sup>1936</sup> Along these lines, the UN, OAS, OSCE, and ACHPR Rapporteurs for Freedom of Expression maintain that “consideration should be given to providing support, based on equitable, objective criteria applied in a non-discriminatory fashion, to those wishing to establish new media outlets.”<sup>1937</sup>

24. Thus, for example, the specific rules on digital television established by the Uruguayan government in 2012 enable access by new operators at the very outset of the digital switch-on, through public, open competitions.<sup>1938</sup> In the capital, Montevideo, three commercial analogue stations and one public station are currently on the air, but once new authorizations are granted the public will have free access to five commercial stations, two public ones, and, for the first time, to a community TV channel. A channel was also made available for shared use by various community initiatives, subject first to a call going out to interested parties. Several of these channels will carry more than one television signal, so there will be broader diversity not only of operators but also of content.<sup>1939</sup>

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<sup>1935</sup> “Must-carry” rules refer to “the legal obligation of cable companies to carry the analogue or digital signals of over-the-air local and public broadcasters.” OSCE Representative on Freedom of the Media. 2010. [Guide to the Digital Switchover](#), p. 30.

<sup>1936</sup> UNESCO. [Media Development Indicators: A framework for assessing media development](#). March 2008. Indicator No. 2.2.

<sup>1937</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. December 12, 2007. [Joint Declaration on Diversity in Broadcasting](#).

<sup>1938</sup> IMPO. Center for Official Information. Decree No. 153/012. May 11, 2012. [Reglámanse los procedimientos para conceder autorización para brindar servicios de radiodifusión de televisión digital, de acceso abierto y gratuito, asociada a la asignación de espectro radioeléctrico para su prestación](#). Article 8; IMPO. Center for Official Information. Decree No. 144/013. May 22, 2012. [Reanúdase el llamado a interesados en obtener autorización para brindar el servicio de televisión digital abierta comercial con estación transmisora principal en el departamento de Montevideo, suspendido por Decreto 28/013](#).

<sup>1939</sup> Ministry of Industry, Energy, and Mining. [Resolution](#). 2013; Ministry of Industry, Energy, and Mining. [Resolution IE/981](#). October 24, 2013; Ministry of Industry, Energy, and Mining. [Resolution No. IE/984](#). October 25, 2014. IMPO. Center for Official Information. [Resolution No. 664/013](#). October 25, 2013; Televisión Digital Abierta. October 28, 2014. [TV Digital: Ejecutivo concedió nuevos canales comerciales, comunitarios y públicos en todo el país](#).

## 2. Plurality and Diversity of Content

25. The digitalization of broadcasting will make it possible to have more television channels. But more channels does not imply diversity if they simply produce more of the same.<sup>1940</sup> In this sense, “competition rules alone may not be sufficient to ensure cultural diversity and media pluralism in the area of digital television.”<sup>1941</sup> In addition to promoting a diversity of media outlets, States should also consider adopting public policies to actively promote diversity of content among and within media outlets, “where this is consistent with international guarantees of freedom of expression.”<sup>1942</sup>

26. In its recommendations on achieving greater media diversity, the Council of Europe has also considered the need to establish measures for internal diversity within the media. In this regard, it has stated, “Pluralism of information and diversity of media content will not be automatically guaranteed by the multiplication of the means of communication offered to the public.” Therefore, it goes on to say, States “should, while respecting the principle of editorial independence, encourage the media to supply the public with a diversity of media content capable of promoting a critical debate and a wider democratic participation of persons belonging to all communities and generations.”<sup>1943</sup>

27. The UN, OAS, OSCE, and ACHPR Special Rapporteurs for Freedom of Expression have indicated that States should consider “providing support, based on equitable, objective criteria applied in a non-discriminatory fashion, for the production of content which makes an important contribution to diversity,”<sup>1944</sup> and consider adopting measures to promote independent content producers, “including by requiring public service broadcasters to purchase a minimum quota of their programming from these producers.”<sup>1945</sup>

28. Countries such as Argentina,<sup>1946</sup> Brazil,<sup>1947</sup> and Canada<sup>1948</sup> have created public funds to produce and broadcast audiovisual content, and have established minimum requirements for airing national, local, or independent productions.

29. For its part, Chile has promoted the production and broadcasting of content through funds open to competition, such as the Fondo CNTV, with more than \$6 million in 2013. The funds are managed by

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<sup>1940</sup> Council of Europe. [Recommendation CM/Rec\(2007\)2 of the Committee of Ministers to member states on media pluralism and diversity of media content](#). January 31, 2007. Recommendation II.1.

<sup>1941</sup> OSCE Representative on Freedom of the Media. 2010. [Guide to the Digital Switchover](#), p. 52.

<sup>1942</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. December 12, 2007. [Joint Declaration on Diversity in Broadcasting](#).

<sup>1943</sup> Council of Europe. [Recommendation CM/Rec\(2007\)2 of the Committee of Ministers to member states on media pluralism and diversity of media content](#). January 31, 2007. Recommendation II. 2.1.

<sup>1944</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. December 12, 2007. [Joint Declaration on Diversity in Broadcasting](#).

<sup>1945</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. December 12, 2007. [Joint Declaration on Diversity in Broadcasting](#).

<sup>1946</sup> Office of the President. [Ley 26.522](#). Audiovisual Communication Services and Rules. Articles 65 and 97; [Decreto 1225/2010](#). *Reglamentase la Ley 26.522*. Annex I; Televisión Digital Abierta. [Fomento](#); Televisión Digital Abierta. [Acceda al Banco Audiovisual de Contenidos Universales Argentino](#); Televisión Digital Abierta. [Polos](#).

<sup>1947</sup> Office of the President of the Republic. Decree No. 8.281. [Dispõe sobre o Programa de Apoio ao Desenvolvimento do Audiovisual Brasileiro - PRODAV, institui o Prêmio Brasil Audiovisual e dá outras providências](#). July 1, 2014; Office of the President of the Republic. Law No. 12.85. [Dispõe sobre a comunicação audiovisual de acesso condicionado; altera a Medida Provisória nº 2.228-1, de 6 de setembro de 2001, e as Leis nºs 11.437, de 28 de dezembro de 2006, 5.070, de 7 de julho de 1966, 8.977, de 6 de janeiro de 1995, e 9.472, de 16 de julho de 1997; e dá outras providências](#). September 12, 2011. Articles 16, 17, 19, and 27.

<sup>1948</sup> See, for example: Canadian Media Fund. [FAQ](#); Canadian Radio-television and Telecommunications Commission. [Ensuring a Place for Canadian Programs](#).

an autonomous agency, established in the constitution, called the National Television Council.<sup>1949</sup> According to the legal text of the statute on digital television, this agency must give priority to the allocation of benefits for programs by regional, local, and community media outlets, though content for free-to-air national television and pay television platforms is also eligible for funding.<sup>1950</sup>

30. As mentioned earlier, Argentina has also developed an active policy along these lines, through various tools to promote audiovisual production and interactive applications for digital television. These include a competitive fund, the “Operational Plan to Develop and Encourage Digital Audiovisual Content”<sup>1951</sup>; the “Argentine Universal Audiovisual Content Bank” (BACUA), a “source of digital audiovisual content available for both new and existing free-to-air broadcast venues”<sup>1952</sup>; and “Audiovisual Technology Poles,” a program that seeks to create and strengthen capacities for national content production for digital television and to decentralize national audiovisual production through the creation of a network of centers at national universities. These centers work in tandem with different actors in the broadcasting sector and civil society organizations in their sphere of influence.<sup>1953</sup>

31. It should be noted that public service television, because of its mandate and purpose, should contribute to plurality of content. As will be seen in greater detail in this report, the mandate of public service television includes strengthening democracy, building citizenship, encouraging political pluralism and cultural pluralism, providing reliable information that is pluralistic and balanced, and providing educational, cultural, and entertainment programs for the whole of society.<sup>1954</sup> In this sense, as was indicated earlier, one measure that can help promote diversity of free content and universal access to free-to-air television is the establishment of must-carry rules<sup>1955</sup> that apply primarily to subscription television providers in the area where the signals are transmitted.

### 3. Recognition of Three Digital TV Sectors

32. One measure to promote diversity and pluralism in the media is to expressly recognize that there are at least three sectors in broadcasting—commercial, public, and community—and to reserve part of the digital television spectrum for community and other nonprofit initiatives.

33. The Office of the Special Rapporteur has indicated that the right of the public to receive the maximum variety of information and ideas possible means that “the regulation of broadcasting should include setting aside space on the spectrum for a diverse system of media outlets that can together represent a society’s diversity and plurality of ideas, opinions, and cultures.”<sup>1956</sup> Therefore, it has insisted on the “need

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<sup>1949</sup> National Television Council (CNTV). [Fondo CNTV](#).

<sup>1950</sup> Library of the National Congress of Chile. Law No. 20.750. [Permite la introducción de la televisión digital terrestre](#). May 6, 2014. Article 1.8.

<sup>1951</sup> Televisión Digital Abierta. [Fomento](#).

<sup>1952</sup> Televisión Digital Abierta. [Acceda al Banco Audiovisual de Contenidos Universales Argentino](#).

<sup>1953</sup> Televisión Digital Abierta. [Polos](#).

<sup>1954</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 83. Parliamentary Assembly of the Council of Europe. [Recommendation 1641 \(2004\)1. Public Service Broadcasting](#). January 27, 2004. Recomendación No. 2.

<sup>1955</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. December 12, 2007. [Joint Declaration on Diversity in Broadcasting](#); UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#). Principle 3.b; OSCE Representative on Freedom of the Media. 2010. [Guide to the Digital Switchover](#), p. 13.

<sup>1956</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 68.

for broadcasting regulations to establish the duty to allocate part of the spectrum to community media.”<sup>1957</sup> In this sense, “different types of broadcasters—commercial, public service and community—should be able to operate on, and have equitable access to, all available distribution platforms...including the new digital dividend.”<sup>1958</sup> Similarly, the UN, OAS, OSCE, and ACHPR Special Rapporteurs for Freedom of Expression recognized that different types of broadcasters (commercial, public service, and community) as well as broadcasters of different reach (local, national, regional, and international) contribute to diversity in freedom of expression.<sup>1959</sup>

34. Several countries in the region have legislation expressly recognizing the existence of three broadcasting sectors, though opportunity for equal access is not always actually guaranteed and discriminatory conditions of use are often established.

35. Thus, for example, the new law on digital television in Chile for the first time recognizes community local television, in addition to educational and cultural television, and general-interest regional and local television.<sup>1960</sup> In Uruguay, analogue and digital community radio and TV outlets are now recognized and promoted as a sector that complements public and commercial media, without limits on coverage, since the approval of the 2007 Law on Community Broadcasting Service.<sup>1961</sup>

36. Argentina, for its part, in 2009 approved the Law on Audiovisual Communication Services, which recognizes public, commercial, and nonprofit media, including community media.<sup>1962</sup> Bolivia’s Telecommunications Law, approved in 2011, recognizes four radio and television sectors: commercial, public, “social community,” and that of “native peasant indigenous peoples and intercultural and Afro-Bolivian communities,”<sup>1963</sup> although it applies only to analogue TV. Ecuador’s 2013 Communication Law also recognizes three media sectors,<sup>1964</sup> while Peru’s Radio and Television Law of 2004 recognizes the existence of for-profit commercial broadcasting, as well as public, educational, and community broadcasting.<sup>1965</sup> Meanwhile, Mexico’s constitutional reform recognized the existence of social media, which include community and indigenous broadcasting stations.<sup>1966</sup>

#### **4. Promotion of Plurality and Diversity through Regulation of Concentration of Media Control and Ownership**

37. Another measure States should adopt to promote plurality and diversity is to regulate the concentration of media ownership and control. The main way to encourage greater diversity of information and opinion in the broadcast media is to open up the system to new commercial and community broadcasters and to strengthen and diversify public stations. However, to guarantee a pluralistic and diverse environment,

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<sup>1957</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 109.

<sup>1958</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 107.

<sup>1959</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. December 12, 2007. [Joint Declaration on Diversity in Broadcasting](#).

<sup>1960</sup> Library of the National Congress of Chile. Law No. 20.750. [Permite la introducción de la televisión digital terrestre](#). May 6, 2014. Article 15.

<sup>1961</sup> Republic of Uruguay. Legislative Branch. Law No. 18.232. [Servicio de Radiodifusión Comunitaria](#). December 22, 2007. Article 5.

<sup>1962</sup> InfoLeg. [Servicios de Comunicación Audiovisual](#). Law No.26.522. October 10, 2009. Article 89.

<sup>1963</sup> Official Gazette of Bolivia. Law No. 164. [Ley General de Telecomunicaciones, Tecnologías de Información y Comunicación](#). Law No. 164. August 8, 2011. Article 10.

<sup>1964</sup> Official Record of the Government of Ecuador. [Ley Orgánica de Comunicación](#). June 25, 2013. Article 106.

<sup>1965</sup> Peru. Law No. 28.728. [Ley de Radio y Televisión](#). June 23, 2004.

<sup>1966</sup> Chamber of Deputies. [Constitución Política de los Estados Unidos Mexicanos](#). Provisional section III.

it will not be enough to facilitate the entry of new operators if measures are not adopted to limit and reduce the concentration of media ownership in countries where elevated levels of concentration are found.

38. The concentration of the media in a few hands has a negative impact on democracy and freedom of expression, as laid out in Principle 12 of the IACHR Declaration of Principles on Freedom of Expression: “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.” Along these lines, since its first ruling on the subject the Inter-American Court has held that any monopoly on media ownership or administration is prohibited, regardless of the form it takes, and has recognized that States must actively intervene to prevent ownership concentration in the media sector.<sup>1967</sup>

39. In this regard, the IACHR has indicated that “if [the] media are controlled by a reduced number of individuals, or by only one individual, this situation would create a society in which a reduced number of individuals, or just one, would exert control over the information and, directly or indirectly, on the opinion received by the rest of the people. This lack of plurality in sources of information is a serious obstacle for the functioning of democracy. Democracy requires the confrontation of ideas, debate and discussion. When this debate does not exist, or is weakened by the lack of sources of information, the main pillar for the functioning of democracy is harmed.”<sup>1968</sup> Moreover, as the Office of the Special Rapporteur has reiterated, one should not lose sight of the fact that the rejection of media concentration does not refer solely to private ownership concentration; it also applies—and in a particular way—to processes that concentrate media ownership or control in the hands of the State.<sup>1969</sup>

40. In fact, the Office of the Special Rapporteur has repeatedly pointed to the need to apply anti-monopoly laws to prevent concentration of media ownership and control as a priority issue for the defense of freedom of expression in the hemisphere.<sup>1970</sup> In this regard, the Office of the Rapporteur has expressed its concern “over the danger that the concentration of media ownership may pose to the formation of public opinion”<sup>1971</sup> in the countries of the region. Therefore, the Office of the Special Rapporteur has urged the States to “adopt legislative and other measures that are necessary to guarantee pluralism, including laws that prevent the existence of public or private monopolies.”<sup>1972</sup> In their 2007 Joint Declaration, the UN, OAS, OSCE, and ACHPR Rapporteurs for Freedom of Expression also expressed their concern and opposition to the formation of monopolies and oligopolies, and said that “special measures, including anti-monopoly rules, should be put in place to prevent undue concentration of media or cross-media ownership, both horizontal and vertical.”<sup>1973</sup>

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<sup>1967</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, paras. 33-34. IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 117.

<sup>1968</sup> IACHR. [Justice and Social Inclusion: The Challenges of Democracy in Guatemala](#). Chapter VII: The Situation of Freedom of Expression, para. 419.

<sup>1969</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 27.

<sup>1970</sup> IACHR. 2008 [Annual Report. 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, paras. 98-108. IACHR. [2004 Annual Report. Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2004](#). Chapter V (Indirect Violations of Freedom of Expression: The Impact of the Concentration of Media Ownership). OEA/Ser.L/V/II.122. Doc 5, rev. 1. February 23, 2005.

<sup>1971</sup> IACHR. [2004 Annual Report. Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2004](#). Chapter V (Indirect Violations of Freedom of Expression: The Impact of the Concentration of Media Ownership). OEA/Ser.L/V/II.122. Doc 5, rev. 1. February 23, 2005, para. 25.

<sup>1972</sup> IACHR. [2013 Annual Report. Annual Report of the Inter-American Commission on Human Rights 2013](#). Chapter VI (Conclusions and Recommendations). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013, para. 22.

<sup>1973</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. December 12, 2007. [Joint Declaration on Diversity in Broadcasting](#).

41. Along these same lines, UNESCO has found that “in Latin America and the Caribbean, where a commercial model has traditionally predominated, media ownership has been highly concentrated among very few owners. In much of the region, on average, almost half of the products and services of the information and communications markets of each country were controlled by one provider.”<sup>1974</sup> According to UNESCO, recent country-specific studies have indicated that “high levels of concentration in media ownership persist” in much of the Latin American and Caribbean region.<sup>1975</sup>

42. Especially in terms of the switch to digital, UNESCO has noted that “there have remained many unresolved questions related to how the television sector—historically oligopolies—will adapt to digitalization. It remains to be seen whether the switch is facilitating the entry of new communications and technology providers and consequently [promoting] pluralism, or instead resulting in consolidation and concentration.”<sup>1976</sup> This concern was also raised by the OSCE Representative on Freedom of the Media, who has indicated that existing monopoly problems “tend to increase by digitalization” and that therefore “such issues must be addressed without delay.”<sup>1977</sup>

43. Consequently, the regulation of digital television should aim “to ensure that the new digital dividend makes optimal use of the spectrum to guarantee the greatest possible plurality and diversity.”<sup>1978</sup> The goal should be to turn this into an opportunity to limit and reduce, or at least not to increase, the undue concentration of media in the hands of individuals, companies, or associated economic groups seen in the analogue environment, both in the form of ownership or operational control and the programming of new television services.

44. Along these lines, the UN, OAS, OSCE, and ACHPR Rapporteurs for Freedom of Expression have noted that “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.”<sup>1979</sup> This might include “regulatory measures regarding the way in which multiplexes<sup>1980</sup> 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.”<sup>1981</sup>

45. In this context, it is essential to have mechanisms in place to ensure transparency of media ownership at all levels,<sup>1982</sup> mechanisms that should be taken into account in designing procedures for granting new digital television licenses. Pre-existing situations involving concentration of media ownership or control should also be taken into consideration.

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<sup>1974</sup> UNESCO. [World Trends in Freedom of Expression and Media Development: Regional overview of Latin America and the Caribbean](#). 2014.

<sup>1975</sup> UNESCO. [World Trends in Freedom of Expression and Media Development: Regional overview of Latin America and the Caribbean](#). 2014.

<sup>1976</sup> UNESCO. [World Trends in Freedom of Expression and Media Development: Regional overview of Latin America and the Caribbean](#). 2014.

<sup>1977</sup> OSCE Representative on Freedom of the Media. 2010. [Guide to the Digital Switchover](#), pp. 14 and 51.

<sup>1978</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 80.

<sup>1979</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#). Principle 3.h.

<sup>1980</sup> A multiplex merges several data streams to form one unified stream, which can be separated again later. OSCE Representative on Freedom of the Media. 2010. [Guide to the Digital Switchover](#), p. 29.

<sup>1981</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#). Principle 3.h.

<sup>1982</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. December 12, 2007. [Joint Declaration on Diversity in Broadcasting](#).

46. Measures taken should “involve active monitoring, taking ownership concentration into account in the licensing process, where applicable, prior reporting of major proposed combinations, and powers to prevent such combinations from taking place.”<sup>1983</sup>

47. Legislation regulating the transition from analogue to digital television should include mechanisms and rules to ensure continuity of broadcasting for current operators, with provisions that take into account the situation at the outset. On this point, the UN, OAS, OSCE, and ACHPR Rapporteurs for Freedom of Expression have established that “as a general principle, the digital terrestrial transition should enable the continued provision of existing broadcasting services. Nevertheless, regulations on the switch to digital may include special measures to prevent further concentration of current operators of free-to-air analogue television, either directly or indirectly (relatives or other individuals or businesses that belong to the same economic group or that in one way or another enable control by the same individuals or businesses), in order to prevent undue media concentration in the new digital environment. Reasonable and proportionate must-carry and must-offer rules for multiplexes should, as necessary, be put in place to promote this goal.”<sup>1984</sup>

48. In Uruguay, for example, the law establishes that three of the channels designated for providing commercial, free-to-air digital TV service in Montevideo may be allocated to the current license holders of free-to-air television broadcasting services, “in view of their track record as broadcasters and for the purpose of facilitating continuity of their services in the digital transition,”<sup>1985</sup> as long as they comply with the law’s requirements. The law also specifies that interested parties who do not have “real independence” from current license holders of free-to-air analogue TV broadcasting services may not participate in new competitions for additional licenses for new digital dividend channels. This includes license holders, their relatives, and directors, administrators, or managers or others who belong to economic groups made up of individuals or businesses that are license holders.<sup>1986</sup>

49. For its part, Chilean law ensures that current analogue TV license holders have the right to request a new concession for digital TV broadcasting. However, the law determines that they may hold only one digital terrestrial television concession in each region of service, with their current analogue concessions coming to an end to enable the migration to digital technology. Under the law, only one operator may hold two concessions: the public National Television of Chile. However, under the second concession, this operator may only broadcast its regional signals and provide transmission services to carry signals from third parties, which will be licensed to provide free-to-air television services but without having a designated part of the spectrum.<sup>1987</sup>

50. Finally, it is important that the issue of so-called “mirror signals” be exempted, only for a specified time, from laws to prevent ownership concentration. During the gradual implementation of digital television, in the period of time known as the “digital transition” or “digital switchover,” analogue television services should coexist with the transmission of a “mirror” digital signal (that is, with identical content),

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<sup>1983</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. December 12, 2007. [Joint Declaration on Diversity in Broadcasting](#).

<sup>1984</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#). Principle 3.b.

<sup>1985</sup> IMPO. Center for Official Information. Decree No. 153/012. May 11, 2012. [Reglámentanse los procedimientos para conceder autorización para brindar servicios de radiodifusión de televisión digital, de acceso abierto y gratuito, asociada a la asignación de espectro radioeléctrico para su prestación](#). Article 10.

<sup>1986</sup> IMPO. Center for Official Information. Decree No. 153/012. May 11, 2012. [Reglámentanse los procedimientos para conceder autorización para brindar servicios de radiodifusión de televisión digital, de acceso abierto y gratuito, asociada a la asignación de espectro radioeléctrico para su prestación](#). Article 12.

<sup>1987</sup> Library of the National Congress of Chile. Law No. 20.750. [Permite la introducción de la televisión digital terrestre](#). May 6, 2014. Articles 14 and 15, and the second and third provisional articles.



located on another channel on the spectrum that is allocated by the regulatory body. In this way, people can continue to receive TV signals, both on new equipment and on analogue sets, until they acquire digital reception devices.

51. Therefore, between the time when digital is first switched on and analogue is switched off, limits to the number of concessions and use of frequencies that an individual, business, or economic group may accumulate in a particular location or nationally may be exceeded only with rare exception. For this situation to be legitimate and not circumvent the limits imposed on undue media concentration, this type of decision must be both an exception and temporary, remaining in effect only until analogue is switched off; it must have a reasonable, planned, non-arbitrary, and never indefinite time frame; and the license holder of the analogue service must be obligated to give back the frequency used originally, at least once analogue is switched off.

## **D. Awarding of Digital TV Licenses**

### **1. Licensing Procedures**

52. The IACHR and the Office of the Special Rapporteur have recognized that States have the authority to regulate broadcasting activity. This authority includes not only the possibility of defining the method of handling concessions, renewals, or revocation of licenses, but also the planning and implementation of public policy related to broadcasting.<sup>1988</sup> However, this authority must be exercised bearing in mind the international obligations the State has taken on with respect to the right to freedom of expression—particularly the prohibition established in Article 13(3) of the American Convention, prohibiting the restriction of the right of expression by indirect methods or means, such as the abuse of the authority to regulate or administer radio broadcasting frequencies.<sup>1989</sup>

53. As the Office of the Rapporteur has indicated, “the assignation of radio and television licenses must be guided by democratic criteria and procedures that are pre-established, public and transparent” and that “serve as a check on possible State arbitrariness and guarantee equal opportunities for all individuals and sectors who wish to take part.”<sup>1990</sup> On this subject, Principle 12 of the Declaration of Principles states that “the concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals.”

54. The requirements and mechanisms to obtain a concession to establish a new digital TV broadcasting station should follow the same inter-American standards required for analogue broadcasting services, as these principles are not subject to change depending on the technology used (analogue or digital). In this regard, in its report *Freedom of Expression Standards for Free and Inclusive Broadcasting*, the Office of the Special Rapporteur has indicated that in the process of allocating radio and television licenses States should, at a minimum: (i) provide for affirmative measures so that the three broadcasting sectors can access licenses under equitable conditions; (ii) include democratic standards and transparent procedures for assigning licenses; and (iii) establish conditions for use of the concessions that are reasonable and non-discriminatory.<sup>1991</sup>

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<sup>1988</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para.9; IACHR. May 25, 2007. [Press Release No. 29/07. IACHR Concerned about Freedom of Expression in Venezuela](#).

<sup>1989</sup> IACHR. Report No. 112/12. Case 12,828. Merits. Marcel Granier et al. Venezuela, para. 139.

<sup>1990</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 58; IACHR. May 25, 2007. [Press Release No. 29/07. IACHR Concerned about Freedom of Expression in Venezuela](#).

<sup>1991</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 59.

55. Under inter-American standards, the process of assigning licenses “must be strictly regulated by law, characterized by transparency, and guided by objective, clear, public, and democratic standards”<sup>1992</sup> and must include “sufficient guarantees against arbitrary actions, including the obligation to justify decisions that grant or deny requests, as well as adequate judicial review of these decisions.”<sup>1993</sup>

56. The criteria for assigning licenses must be limited to establishing only those requirements that are necessary to achieve a legitimate aim, and one of the goals must be to foster plurality and diversity of voices. Moreover, the requirements may not constitute a disproportionate barrier to achieving this goal. In this regard, the Office of the Special Rapporteur has indicated that when the economic criterion is the sole or principal reason for granting radio or television frequencies, “it jeopardizes equal access to the radio spectrum and discourages pluralism and diversity.”<sup>1994</sup> Along these lines, the IACHR has stated that “auctions that contemplate only economic criteria or that award concessions without offering equal opportunity for all sectors, are incompatible with democracy and with the right to freedom of expression and information.”<sup>1995</sup>

57. Other disproportionate barriers that should not be applied to procedures for assigning licenses include technical or administrative requirements that are unreasonable and that indirectly raise an economic barrier to access to frequencies, or geographic distance that serve as a barrier by, for example, requiring travel to the capital to file an application.<sup>1996</sup>

58. In addition to granting legal access to a license by public, private, and community media, States should also ensure that provisions establishing conditions for the use of the license are not arbitrary or discriminatory. That is, administrative, economic, and technical requirements for the use of a license must be strictly necessary for guaranteeing its proper functioning, clearly and precisely provided for in the regulations, and not subject to unwarranted modification during the term of the license.<sup>1997</sup> Thus, for example, the Office of the Special Rapporteur has maintained that:

“[E]xcessively short time limits on concessions would be arbitrary, as they make it difficult for commercial media to recoup their investment or establish a profitable business. Likewise, excessively short time limits would make it difficult for community or social radio stations to truly carry out their projects. Also, concessions that do not lead to contracts that expressly include the rules of use of the license or the conditions under which the rules can be amended can open the door to arbitrary decisions. Some examples of discriminatory limitations would include those provided for by law or established in practice that allow certain kinds of restrictions regarding content,

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<sup>1992</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 61; and UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. December 12, 2007. [Joint Declaration on Diversity in Broadcasting. Along these same lines, the Committee of Ministers of the Council of Europe indicated the following: “13. One of the essential tasks of regulatory authorities in the broadcasting sector is normally the granting of broadcasting licenses. The basic conditions and criteria governing the granting and renewal of broadcasting licenses should be clearly defined in the law.” Also: “14. The regulations governing the broadcasting licensing procedure should be clear and precise and should be applied in an open, transparent and impartial manner. The decisions made by the regulatory authorities in this context should be subject to adequate publicity.” Council of Europe. Committee of Ministers. Appendix to Recommendation No. R \(2000\) 23 of the Committee of Ministers to Member States. Rules 13-14. December 20, 2000.](#)

<sup>1993</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 61.

<sup>1994</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, paras. 60-65.

<sup>1995</sup> IACHR. [Justice and Social Inclusion: The Challenges of Democracy in Guatemala](#). Chapter VII: The Situation of Freedom of Expression, para. 414; IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 65.

<sup>1996</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, paras. 66-67.

<sup>1997</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, paras. 70-73.

broadcasting power, territorial reach or access to financing, without sufficient, objective and reasonable justification in pursuit of one of the legitimate ends provided for in the American Convention.”<sup>1998</sup>

59. Finally, in the event the regulations include the possibility of renewing or extending the terms of licenses, the process should have sufficient guarantees in place to prevent licenses from being assigned, withdrawn, or not renewed for discriminatory or arbitrary reasons. Such a procedure must therefore be carried out by body that is independent from political power and sectors linked to broadcasting, and it must be regulated by law; be transparent; be guided by objective, clear, and democratic criteria; and ensure due process. Such regulations must include set time periods, provide for prior notice sufficiently in advance, and guarantee that all interested parties may participate in the competition. In this sense, it is crucial to allow for the right of those who wish to renew their licenses to be heard and to offer evidence before any decision is made. The right to access to a well-founded decision within a reasonable period of time should be guaranteed, as should subsequent judicial review.<sup>1999</sup>

60. Lastly, as the Office of the Special Rapporteur has indicated, “the decision of whether to renew a license must be analyzed in each case according to its compatibility with the objective of fostering plurality and diversity of voices, particularly in countries or regions with media outlets concentrated in a few hands, with a prohibition on punishment for the editorial stance or reporting of a media outlet.”<sup>2000</sup>

61. In the Case of Marcel Granier et al. v. Venezuela, the Inter-American Commission found that “the granting of radio and television broadcast frequencies with the objective of putting pressure on and punishing or rewarding and providing privileges to social communicators and media outlets because of the information they provide constitutes an indirect restriction of freedom of expression as prohibited by Article 13(3) of the American Convention. It also has the effect of silencing other media outlets, which severely impacts the social dimension of freedom of expression.”<sup>2001</sup> From the IACHR’s standpoint, when a State adopts a decision regarding the allocation of a frequency, the decision should be based on a law that establishes quotas, procedures, and sufficient reasons to support this action, in order to avoid discrimination and the creation of public monopolies. In situations in which an adequate legal framework in this area exists, the State should also verify that there is no other frequency that would serve to meet the aims being pursued without affecting the possibility that the existing media outlets continue to operate normally.<sup>2002</sup>

62. The application of the principles laid out in the preceding paragraphs to the digital television transition has been noted by the UN, OAS, OSCE, and ACHPR Special Rapporteurs, who stated, “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.”<sup>2003</sup>

63. In this regard, the rules on digital broadcasting in Uruguay include open, public competitions in which the evaluation and selection criteria give priority consideration to the communication proposal the

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<sup>1998</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, paras. 71-72.

<sup>1999</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, paras. 74-78; IACHR. Report No. 112/12. Case 12,828. Merits. Marcel Granier et al. Venezuela, para. 123.

<sup>2000</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 77.

<sup>2001</sup> IACHR. Report No. 112/12. Case 12,828. Merits. Marcel Granier et al. Venezuela, para. 126.

<sup>2002</sup> IACHR. Report No. 112/12. Case 12,828. Merits. Marcel Granier et al. Venezuela, para. 150.

<sup>2003</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#). Principle 1.e.

applicants commit to provide. Applications are evaluated based on a series of prerequisites, including commitments to local and independent audiovisual production, which would include the creation of direct jobs and commitments to serve persons with hearing and visual disabilities and to provide a variety of signals.<sup>2004</sup> In the case of Chile, its legislation establishes that competitions will be held based on the “beauty contest” system.<sup>2005</sup> Thus, for example, under the law concessions for applicants with their own means to broadcast will be assigned to those “whose proposal, having met the ground rules for the respective competition and being in strict compliance with the requirements related to a financial plan and the personal conditions required by law to be a license holder...offers the best technical conditions to ensure an optimal transmission.”<sup>2006</sup>

## 2. Continuity of Over-the-Air Television as a Free Service

64. The implementation of digital television involves a technological upgrade of television services and related signals that were already being broadcast, so continuity should be ensured in the most similar conditions possible for all operators, as well as for the public. In this regard, the UN, OAS, OSCE, and ACHPR Special Rapporteurs have stated, “As a general principle, the digital terrestrial transition should enable the continued provision of existing broadcasting services.”<sup>2007</sup> This is so that families can continue to be able to receive television services until the switch-off, while they obtain new television equipment that can receive digital signals, and so that the technological change does not mean that people who had been receiving these services end up being left out because of financial, technical, or coverage factors.

65. In this regard, these services should remain free of charge, and the establishment of reasonable implementation deadlines should be considered, along with minimum requirements to not discourage access to these services, such as an obligation to maintain at least the same geographic area of service covered by the analogue operator. Along these same lines, the UN, OAS, OSCE, and ACHPR Special Rapporteurs recommend that States should, as necessary, put in place “reasonable and proportionate must-carry and must-offer rules for multiplexes” to promote the continued provision of existing broadcasting services.<sup>2008</sup> They also recommend taking steps “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.”<sup>2009</sup>

66. From the standpoint of being able to receive free-to-air television services in the digital environment, processes underway in the region have respected the principle of free access to service. Thus, for example, the rules in Argentina determine that one of the aims of the Argentine System for Digital Terrestrial Television is “to plan for the transition from analogue to digital television so as to guarantee that all users can gradually join, free of charge.”<sup>2010</sup> In Uruguay, meanwhile, the rules earmark a certain number of

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<sup>2004</sup> Library of the National Congress of Chile. Law No. 20.750. [Permite la introducción de la televisión digital terrestre](#). May 6, 2014. Article 15.

<sup>2005</sup> “Under a beauty contest, or comparative selection, applicants set out their cases for being awarded licenses on the basis of the criteria set out in the conditions for a licensing bid. In other words a beauty contest allows the allocation of licenses on the basis of detailed plans submitted by applicants. The essential feature of the other procedure, an auction, is that licenses are awarded to those that bid the highest price.” OSCE Representative on Freedom of the Media. 2010. [Guide to the Digital Switchover](#), p. 103.

<sup>2006</sup> Library of the National Congress of Chile. Law No. 20.750. [Permite la introducción de la televisión digital terrestre](#). May 6, 2014. Article 15.

<sup>2007</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#). Principle 3.b.

<sup>2008</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#). Principle 3.b.

<sup>2009</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#). Principle 4.d.

<sup>2010</sup> InfoLeg. Decree No. 1148 of 2009. [Créase el Sistema Argentino de Televisión Digital Terrestre](#). Article 1.d.

channels “to provide free-to-air, gratis, and accessible digital television broadcasting services throughout the country.”<sup>2011</sup>

67. For its part, Chile’s digital television law provides for maximum periods of two to five years for current license holders to achieve 100 percent digital coverage of all analogue concessions they had been awarded.<sup>2012</sup> Moreover, the law determines that in the case of licenses with national coverage, the technical proposal presented may “include complementary solutions to provide free-to-air services in order to achieve the required coverage in geographically isolated regions or areas where reception is difficult.” However, the law guarantees that these complementary solutions “may not affect the free and direct nature of broadcasts for users” and states that concession holders must “guarantee that the required broadcast receivers are able to receive all signals, both primary and secondary, of concession holders that have national coverage in the respective area of service and that opt to implement complementary solutions.”<sup>2013</sup>

### 3. Transition for Current Operators to Digital Television

68. As indicated earlier, the process of digitalizing television does not involve merely upgrading technology and keeping the operators who are already authorized; it can also mean significantly expanding free-to-air broadcasting services, in terms of both the number of signals and the possibility of providing services other than television broadcasts. Making better use of the new television spectrum would make it possible to multiply the number of authorized television signals for a single operator along the same bandwidth where it used to be possible to carry only one signal; expand the “screens” or platforms for receiving such services (on mobile telephones); and even provide services other than the originally authorized broadcasting services as a result of digitalization (interactivity and related services).

69. In regulating the transition for current operators, States should take into account, as mentioned earlier, that as a general principle the digital transition should enable the continued provision of all existing broadcasting services.<sup>2014</sup> However, it is important to note that the State’s obligation to provide broadcasting continuity is limited to maintaining conditions as similar as possible to analogue conditions, using as much bandwidth as is strictly necessary.

70. The fact, then, that the State must ensure that existing operators are able to continue broadcasting in the new digital environment does not necessarily mean that these operators have a vested right to have automatic access to a completely new channel or frequency for their exclusive use, without a competition and at no cost. In this regard, it is recommended that operators’ track record as broadcasters be taken into account for obtaining new licenses for use of the spectrum. But the notion of “vested rights” should not assume a right to ownership of the spectrum that is used, but rather the legal certainty that operators can continue to broadcast under equal or similar conditions as before, on another part of the spectrum designated for television services, depending on countries’ technical plans.

71. States should analyze with particular attention how decisions concerning the allocation of new licenses for exclusive use of whole channels or frequencies might affect the ownership concentration and diversity of the free-to-air television system in the new digital environment, especially in contexts in which it had previously been determined—through a process that provided all guarantees—that monopolies or oligopolies existed. In fact, this aspect must be addressed with particular attention so that the greater amount

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<sup>2011</sup> IMPO. Center for Official Information. Decree No.153/012. May 11, 2012. [Reglaméntanse los procedimientos para conceder autorización para brindar servicios de radiodifusión de televisión digital, de acceso abierto y gratuito, asociada a la asignación de espectro radioeléctrico para su prestación](#). Article 1.

<sup>2012</sup> Library of the National Congress of Chile. Law No. 20.750. [Permite la introducción de la televisión digital terrestre](#). May 6, 2014. Second provisional article.

<sup>2013</sup> Library of the National Congress of Chile. Law No. 20.750. [Permite la introducción de la televisión digital terrestre](#). May 6, 2014. Article 15.

<sup>2014</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#). Principle 3.b.

of services and frequencies held by current operators are taken into account in the design of the transition from analogue to digital free-to-air television. In this regard, the UN, OAS, OSCE, and ACHPR Special Rapporteurs for Freedom of Expression have indicated that “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.”<sup>2015</sup>

72. Indeed, regulations should take an approach that balances the existence of individuals and corporations that already have licenses to provide television services with the entry of new license holders, from the time the digitalization process and plans for its implementation begin, so as to expand diversity and pluralism in the national media system.

73. Existing operators who are interested in exclusive access to a channel or multiplex should participate in the same public competition as new applicants and present a communication plan for the new enterprise, although with different prerequisites, including special consideration of their track record. Finally, if these operators are awarded an entire channel through public competition, they should be given a new authorization with conditions of use (time frames, renewals, etc.) in line with the expansion of business and new services from which they will be able to benefit.

74. In addition, the UN, OAS, OSCE, and ACHPR Special Rapporteurs have stated that “consideration of the impact on access to the media, and on different types of broadcasters, should be taken into account in planning for a transition from analogue to digital broadcasting.”<sup>2016</sup> As the Office of the Rapporteur has indicated, “these regulations should provide for a migration program that takes into account the needs and capacities of the different actors involved in this process, as well as the level of application of the new technologies.”<sup>2017</sup>

75. In this regard, transition mechanisms and conditions for use of the new broadcast frequencies assigned to licensees of new or current digital television services should respect the principle of non-discrimination, so as not to give some operators favorable treatment to the detriment of others, for example national broadcast stations or networks as opposed to local stations. Along these lines, States should provide equality of opportunities for access to new licenses and frequencies to all operators authorized to provide analogue TV services, striving to adopt a flexible transition design that allows operators to make choices within their own possibilities, but without discriminating against them in advance. The different forms the transition process takes should stem from operators’ own voluntary decisions, based on their economic capacity or on their communication objectives and plans.

76. To do that, States should consider appropriate measures that ensure equality of opportunities to address the challenges of technological change for all actors, in such a way that not only enables but also, as much as possible, facilitates and supports the continuity of these transmissions. They should especially take measures “to prevent the cost of the transition from analog to digital technology from limiting the capacity of the communications media in terms of the financial costs,”<sup>2018</sup> for example by providing access to the necessary infrastructure so as not to be left out of the transition. In this regard, States should study the possibility of including actions such as providing subsidies and creating public funds open to competition or offering access to loans with reasonable financing terms so that community and public

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<sup>2015</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#). Principle 3.e.

<sup>2016</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. December 12, 2007. [Joint Declaration on Diversity in Broadcasting](#).

<sup>2017</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 80.

<sup>2018</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 80.

television stations, as well as local or regional commercial stations, can tackle the digital transition. Along these lines, the Council of Europe has recommended that “member states should take any financial and regulatory measures necessary to protect and promote structural pluralism of audiovisual and print media,<sup>2019</sup> including “support and encouragement aimed at facilitating the digital switchover for traditional broadcast media.”<sup>2020</sup>

77. Thus, for example, the United States gave local low-power television (LPTV) stations more time to complete the digital transition,<sup>2021</sup> and since 2009 funding has been provided to these local stations through the Low-Power Television and Translator Upgrade Program, to help them update their technology. The fund made available \$44 million, with grants of up to \$6,000 available for the modification of analogue equipment or up to \$20,000 for the purchase of digital equipment.<sup>2022</sup>

78. For its part, Chile’s program on “Development of Regional Technical Capacity for Free-to-Air Digital Television” is a mechanism used to support the transition for regional and local television stations located outside the metropolitan area, with populations of over 100,000 people. They are provided with equipment and support for six months to start broadcasting experimental or demonstration transmissions of digital signals.<sup>2023</sup>

79. Brazil facilitates the construction and acquisition of digital TV transmission equipment via tax incentives and lines of credit. To that end, Brazil’s National Economic and Social Development Bank (BNDES) created the “*Programa Apoio à Implantação do Sistema Brasileiro de TV Digital*” (PROTVD), with funds provided for low-cost financing of transmission infrastructure and digital equipment.<sup>2024</sup>

80. In Uruguay, the law set aside sufficient frequencies for current analogue operators, but authorized automatic continuation of their broadcasts at no cost and under the same conditions only for a “mirror” digital signal and not an entire channel, for which they had to apply.<sup>2025</sup>

## **E. Digital Dividends and New Uses for the Spectrum**

81. The broadcast spectrum is a public good which States are required to administer efficiently and equitably, as it is a limited resource and one that serves to support the exercise of freedom of expression and information through the audiovisual media. As has already been noted, the IACHR and the Office of the Special Rapporteur have recognized the State’s regulatory role as manager of the spectrum. This authority includes not only the possibility of defining how concessions are handled or licenses renewed or revoked, but

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<sup>2019</sup> Council of Europe. [Recommendation CM/Rec\(2007\)2 of the Committee of Ministers to member states on media pluralism and diversity of media content](#). January 31, 2007. Recommendation No. 6.1.

<sup>2020</sup> Council of Europe. [Recommendation CM/Rec\(2007\)2 of the Committee of Ministers to member states on media pluralism and diversity of media content](#). January 31, 2007. Recommendation No. 6.2.

<sup>2021</sup> Even though the United States Congress established a deadline of June 12, 2009, for the termination of analogue broadcasts, this legal deadline was not applied to local, low-power television stations. The Federal Communications Commission (FCC) established September 1, 2015, as the final deadline for ceasing analogue broadcasts in the country. Federal Communications Commission. February 24, 2014. [Low Power Television \(LPTV\) Service](#).

<sup>2022</sup> National Telecommunications & Information Administration. United States Department of Commerce. [Low-Power Television and Translator Program](#); National Telecommunications & Information Administration. United States Department of Commerce. [Low-Power Television and Translator Program: About the Upgrade Program](#).

<sup>2023</sup> Government of Chile. Sub-Secretariat for Telecommunications. Ord. No. 0214/G No. 18. [Informa sobre el Proyecto “Desarrollo de las Competencias Técnicas Regionales para Televisión Digital de Libre Recepción.”](#) January 11, 2012.

<sup>2024</sup> BNDES. [Programa BNDES de Apoio à Implantação do Sistema Brasileiro de TV Digital - BNDES PROTVD](#); BNDES. [PROTVD Radiodifusão](#).

<sup>2025</sup> IMPO. Center for Official Information. Decree No. 153/012. May 11, 2012. [Reglaméntanse los procedimientos para conceder autorización para brindar servicios de radiodifusión de televisión digital, de acceso abierto y gratuito, asociada a la asignación de espectro radioeléctrico para su prestación](#). Article 6.

also the planning and implementation of public policy related to broadcasting, as long as guidelines governing the right to freedom of expression are followed.<sup>2026</sup>

82. That is why media outlets that require the use of the spectrum “should be subject to clear, transparent, and democratic regulation that ensures the greatest enjoyment of this right by the greatest number of people, thereby also ensuring the greatest circulation of information and opinions.”<sup>2027</sup> As the Office of the Rapporteur has stated, “the regulation of the radioelectric spectrum must simultaneously guarantee freedom of expression of the greatest number of people or perspectives, equality of opportunities in media access, and the right of contemporary societies to plural and diverse information.”<sup>2028</sup>

83. Limitations in access to a resource that can at times be scarce, particularly in capital cities or densely populated areas, has been one of the obstacles identified by the Office of the Rapporteur, particularly when it comes to facilitating new players’ access to television. That is why the Rapporteur has insisted that States have an obligation to set aside spectrum for access by excluded sectors, particularly by community media and media outlets created by those who have been excluded from society or indigenous peoples.<sup>2029</sup>

84. As has been noted, with the arrival of free-to-air digital television, less of the spectrum is needed to broadcast television signals than required with analogue television. Accordingly, significant segments of the spectrum are freed up once the transition is complete, which opens up a historic opportunity to achieve the objective of greater media diversity. This is the case as long as States adopt appropriate regulatory frameworks and public policies to use the additional room available on the spectrum.

85. The “digital dividend,” in the strictest sense, is the amount of spectrum freed up by current analogue television operators once they migrate to new digital channels. But in a broader sense, the digital dividend should be understood as any freeing up or savings of the spectrum as a result of optimization of use of the spectrum produced by digitalization and the compression of terrestrial television signals.<sup>2030</sup> This savings should include the additional frequencies the State itself ends up having at its disposal once the analogue switch-off has occurred. Decisions on this greater amount of space available on the spectrum can be made once the switch-off is complete, or from the time digital is switched on, or during the transition from one system to the other.

86. State decisions on the ultimate use of these digital dividends become a key aspect of the digitalization process. As has already been noted, the Office of the Special Rapporteur considers this technological change “an opportunity to increase the diversity of voices and enable new sectors of the population to access communications media.”<sup>2031</sup> The goal should be “to ensure that the new digital dividend makes optimal use of the spectrum to guarantee the greatest possible plurality and diversity.”<sup>2032</sup> Along these

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<sup>2026</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 9; IACHR. May 25, 2007. [Press Release No. 29/07. IACHR Concerned about Freedom of Expression in Venezuela](#).

<sup>2027</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 8.

<sup>2028</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 8.

<sup>2029</sup> IACHR. 2008 [Annual Report. 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, paras. 98-108.

<sup>2030</sup> See, for example: European Commission. Digital Agenda for Europe. [Glossary](#); European Commission. [Delivering the digital dividend](#); OSCE Representative on Freedom of the Media. 2010. [Guide to the Digital Switchover](#), p. 28.

<sup>2031</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 80.

<sup>2032</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 80.



same lines, the European Parliament called for “a balanced approach to the allocation of the digital dividend to ensure equitable access for all players, thereby safeguarding media pluralism.”<sup>2033</sup>

87. The UN, OAS, OSCE, and ACHPR Special Rapporteurs for Freedom of Expression elaborated on this concept in their recent Joint Declaration on Universality and the Right to Freedom of Expression, in which they recommended that States put in place “a legal and regulatory framework that promotes the rights of different individuals and groups to access and use media and digital technologies to disseminate their own content as well as to receive relevant content produced by others.”<sup>2034</sup>

## 1. New Frequencies Available and Reservation of Spectrum

88. The various technical standards were designed so that digital television could be broadcast on frequencies located on the UHF (Ultra High Frequency) band.<sup>2035</sup> This forces States to assign new frequencies to current television operators to proceed with the digital transition. This portion of the spectrum has been assigned to analogue, free-to-air, or pay television services, to a greater or lesser degree, but in several countries in the region, to date, it has been unused or underused.<sup>2036</sup>

89. In addition, improvements in the quality and security of broadcasts with the new technology allow for greater efficiency in the use of the spectrum. For example, analogue TV broadcasting does not allow the use of two consecutive channels in the same location, due to interference problems that would arise between stations.<sup>2037</sup> With digital television, meanwhile, all available channels can be used—even consecutive ones—which doubles the capacity of the current spectrum.

90. From the standpoint of encouraging freedom of expression, the criteria adopted to distribute this new spectrum become public policy decisions (not merely technical decisions) and, as mentioned earlier, can be used as opportunities to correct injustices or imbalances in access to the spectrum or to achieve greater diversity in the television sector.<sup>2038</sup>

91. As the Office of the Special Rapporteur has observed a number of times, the right to freedom of expression demands that States adopt measures to guarantee its exercise in conditions of equality and non-discrimination. That includes the obligation to remove “obstacles preventing certain sectors of society from accessing the media [...]. At the same time, the State must actively promote the bringing of disadvantaged or currently marginalized groups into the media.”<sup>2039</sup> In addition, “the States must take positive measures to

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<sup>2033</sup> European Parliament. [Resolution of 25 September 2008 on concentration and pluralism in the media in the European Union](#) (2007/2253(INI)), para. 47.

<sup>2034</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 6, 2014. [Joint Declaration on Universality and the Right to Freedom of Expression](#). Recommendation 1.a.iv.

<sup>2035</sup> UHF or Ultra High Frequency is the portion of the radio spectrum located between 300 MHz and 3,000 MHz. International Telecommunication Union. [Definition](#). It has been allocated by the International Telecommunication Union, among others, for mobile communication and television services (between Channels 21 to 51, and even between 14 and 20 in some countries in the region).

<sup>2036</sup> See, on this point, GSMA. November 29, 2010. [Situación del dividendo digital en el mundo](#); Fucatel. June 3, 2013. [Fucatel en exclusiva da a conocer cálculo de disponibilidad de concesiones. De confirmarse, el resultado es alarmante](#); Consejo Consultivo de Radio y Televisión (ConcorTV). [Estadísticas de la radio y televisión en el Perú](#). 2014.

<sup>2037</sup> For example, if there is a station on Channel 21, there cannot be another on Channel 22—not until 23 and then 25, and so on.

<sup>2038</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 79.

<sup>2039</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 96; IACHR. [2009 Annual Report. Report 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. 230. In general, for more on States’ obligation to guarantee rights without discrimination, see: 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, paras. 103-104.

include the non-commercial sectors in the communications media,” such as “ensuring broadcast spectrum frequencies for the different types of media, and providing specifically for certain frequencies to be reserved for the use of community broadcasters, especially when they are not equitably represented in the spectrum.”<sup>2040</sup> Along these lines, the OAS, OSCE, and ACHPR Special Rapporteurs for Freedom of Expression have recommended that States create “an enabling legal framework for community media, including so it can serve the information and expressive needs of different individuals and groups.”<sup>2041</sup>

92. In this regard, it is necessary to conduct studies to determine how frequencies are actually being used throughout the country. Sometimes their use may be speculative, with concessions granted to individuals or businesses that do not use them effectively. This presents obstacles not only in terms of diversity and freedom of expression, but also in terms of economic competition, as it involves an abuse intended to impede access by other competitors and a misuse of a space that is as valuable as it is scarce. For this reason, States should make publicly available—in a way that is clear, adequate, and timely—all information related to current use and availability of frequencies assigned to free-to-air and pay television, as well as technical plans for their future use.

## **2. Spectrum Savings and New Potential Uses**

93. As this report noted earlier, as a result of digitalization, analogue broadcast transmissions are compressed and need to use less spectrum or bandwidth to transmit the same quality of audio and video as a current TV signal. This results in a significant savings of bandwidth.

94. This benefit can be used in different ways, for example by improving the signal quality of current TV stations (to broadcast in high definition, or HD<sup>2042</sup>), or by broadcasting more digital signals on the same channel or frequency on which it used to be possible to broadcast only one analogue signal—or a combination of both possibilities. That does not depend on technology alone but on the regulatory decisions the States must consider with respect to the use of each new channel or “multiplex” in the new digital television format.<sup>2043</sup>

95. States must ultimately consider what an appropriate balance would be as they define their priorities in terms of conditions for use of each of the channels or frequencies earmarked for digital television. In this regard, the UN, OAS, OSCE, and ACHPR Special Rapporteurs for Freedom of Expression have said that “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.”<sup>2044</sup>

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<sup>2040</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 109.

<sup>2041</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 6, 2014. [Joint Declaration on Universality and the Right to Freedom of Expression](#). Recommendation 1.a.ii.

<sup>2042</sup> High-definition television (HDTV) consists of digital television signals with a higher audio and video quality than traditional analogue systems. HDTV features a 16:9 aspect ratio (a wide screen, as in the movies) instead of the 4:3 format of analogue televisions. In general, based on the type of compression of audiovisual content, it is estimated that two HD signals can be included on the same channel or frequency. So-called ultra-high-definition television is the highest quality signal, which can take up all or most of the channel or frequency, not enabling it to be shared with another signal. See also: ITU. ITU Terms and Definitions. [Ultra high definition television](#) and [High definition television \(HDTV\) system](#).

<sup>2043</sup> A multiplex (MUX) is a channel or frequency that, once television broadcasts are digitalized, can be used to broadcast one or more radio and television signals, as well as related services. Its use can be awarded to a single license holder or several license holders. See also: OSCE Representative on Freedom of the Media. 2010. [Guide to the Digital Switchover](#), p. 29.

<sup>2044</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#), Principle 1.c.

96. It should be taken into account that technical decisions made by governments and regulatory bodies in these matters have an impact on freedom of expression, as they serve to limit or enable diversity in television. Moreover, such decisions should be made prior to the process of granting licenses and authorizations, using criteria of universality and fairness for all operators located in the same area. As the UN, OAS, OSCE, and ACHPR Special Rapporteurs for Freedom of Expression have stated, “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.”<sup>2045</sup>

97. In this sense, multiplexing or multiprogramming—in other words, the capacity to broadcast several television signals on the same channel or frequency—is a tool that allows for a greater number of signals, but it can be used in different ways, depending on the context of the country.

98. So for example, if a decision is made to allow for only one ultra-high-definition or UHDTV signal to be broadcast on a channel or frequency, the same structure with regard to use of the spectrum and to content will probably be maintained as with analogue, since the same number of television signals and the same license holder will remain. In that case, current operators will be the only beneficiaries of TV digitalization. This means that in countries with high levels of media concentration, allowing only current operators to broadcast several signals on their channel would result in these same operators having a greater concentration of signals, audience, and revenues. Multiplexing takes on another meaning, though, if the possibility is provided for different operators, who hold licenses to different signals, to share the same channel.

### **3. Intended Use of the Digital Dividend**

99. There has been a growing demand of the broadcast spectrum by mobile bandwidth services for the Internet and web-based services. This led the International Telecommunication Union (ITU) to recommend assigning part of the UHF band for mobile services (voice and data) in the Americas.<sup>2046</sup>

100. The countries of the region have been adopting regulatory decisions along these lines, reserving UHF Channels 52 to 69 for that purpose. Industry has done the same, producing equipment, antennas, and receivers for these frequencies. Several States have already put out bids to assign this spectrum with the goal of strengthening access to mobile bandwidth, and others are planning to do so in the near future. In fact, various countries have had to orchestrate plans to adjust the current use of this band to relocate free-to-air or pay-television operators to lower frequencies on the UHF spectrum.<sup>2047</sup>

101. This is the spectrum that telecommunications regulatory authorities, experts, and businesses in the sector typically refer to as the “digital dividend.” However, this definition is not appropriate for the Americas, since here the spectrum to be freed up following the analogue switch-off is located on the VHF band,<sup>2048</sup> the space currently held by analogue TV stations. In this sense, the migration of current analogue channels to digital will have an impact in freeing up frequencies where Channels 2 to 13 are located, which should be given back by current television operators once the transition has been completed.

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<sup>2045</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#), Principle 3.e.

<sup>2046</sup> Article 5 of the ITU Radio Regulations, establishing that the portions of the 698-806 MHz band (Channels 52-69) is allocated in Region 2 to mobile service on a primary basis. International Telecommunication Union. [Radio Regulations](#): Articles. Edition of 2012. Article 5, RR5-56. 460-890 MHz. Allocation to services.

<sup>2047</sup> See, for example, the case of Uruguay, where there were frequencies that had already been assigned to pay and free-to-air (State-run) television, respectively: Center for Official Information (IMPO). [Decree No. 73/2012](#). March 8, 2012.

<sup>2048</sup> VHF or Very High Frequency is the portion of the radio spectrum located between 30 MHz and 300 MHz. International Telecommunication Union. [Definition](#). This band is allocated by the States to services such as maritime and aeronautical services, amateur services, and also FM radio broadcasting services (from 88 to 108 MHz) and free-to-air television stations numbered from 2 to 13. International Telecommunication Union. [Radio Regulations](#). Article 5.

102. In the coming years, then, States in the region will have to adopt a regulatory decision that will have a major impact on broadcasting. They can assign these frequencies exclusively to data services or keep all or some of them for radio and television services. It is true that there is a need to ensure greater bandwidth access for data services, but broadcasters in the region—both from the commercial and community sectors—are demanding an increase in the frequencies available on the FM band.<sup>2049</sup>

103. For that reason, it is recommended that States consider the use of such frequencies for various technologies and services, maintaining sufficient availability of broadcasting and mobile bandwidth services, so as to meet goals to promote broadcasting diversity and digital inclusion, close the digital gap, and make Internet services universal.

104. In this regard, the UN, OAS, OSCE, and ACHPR Special Rapporteurs for Freedom of Expression have stated, “Where appropriate, consideration should be given to reserving part of the spectrum for analogue radio broadcasting for the medium-term. At least part of the spectrum released through the ‘digital dividend’ should be reserved for broadcasting uses.”<sup>2050</sup> Such decisions should be adopted in a way that is transparent and non-discriminatory, and should address the need to harmonize services with bordering countries in areas of coordination.

105. In addition, the UN, OAS, OSCE, and ACHPR Special Rapporteurs for Freedom of Expression have found that “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 that should be taken into account 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.”<sup>2051</sup>

#### **4. Access to Transmission Infrastructure**

106. The costs and complexity of the transition to digital, along with the implications for the diversity and pluralism of television media systems, require careful consideration of aspects related to access to infrastructure for the transmission of gratis free-to-air TV signals. Regulations concerning procedures and access to the broadcast spectrum, as well as to networks and equipment to transmit digital signals, should be adopted in such a way that they do not indirectly hamper the exercise of the right to free expression, either for current or for new operators. Along these lines, a decision to establish an environment conducive to greater media diversity should consider the possibility of adopting a model in which access and management

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<sup>2049</sup> The Inter-American Broadcasting Association (Asociación Internacional de Radiodifusión, AIR) has insisted on the need to preserve VHF Channels 5 and 6 for FM (frequency modulation) radio. *Radiodifusión Data*. January 11, 2011. [La AIR pide que tras la transición a digital la banda de VHF de la TV sea destinada a radio](#); Radio Maniacos. January 11, 2011. [La AIR pide que tras transición a TV digital, la parte de VHF que ocupaba sea destinada a Radio](#).

<sup>2050</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. December 12, 2007. [Joint Declaration on Diversity in Broadcasting](#).

<sup>2051</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#), Principle 3.g.

of the transmission infrastructure for digital television is handled solely or on a shared basis by companies other than the individuals or companies authorized to provide television services.

107. In the Americas, the management model for analogue TV transmission has been traditional; it assumes that the same license holders for television services also own and operate their own transmission infrastructure. Digital television, by contrast, makes it possible to differentiate these roles, with the appearance of the so-called “network operator,” which manages the transmission infrastructure for TV signals and is not necessarily the same operator that handles programming and airs audiovisual content.

108. The OSCE Representative on Freedom of the Media has observed that content issues should be looked at separately from transmission, and broadcasters must have access to transmission. The international agency maintains that the regulator “must balance the needs of the infrastructure owner and other users of the infrastructure, meaning the broadcasters or other service providers that get to use the infrastructure.”<sup>2052</sup>

109. Along these lines, the existence of a network operator different from the television license holder has at times been a good practice, since it has allowed for the transition to take place more quickly and more efficiently and has avoided major investments that television stations often are not able to make. There are countries in which TV broadcast licenses and spectrum use authorizations are awarded to the same license holder, which also manages the channel or multiplex assigned to the service. In other countries, however, broadcast and spectrum use licenses may not be held by the same individual or business; this is the case, for example, in the United Kingdom<sup>2053</sup> and France.<sup>2054</sup> Spain, for its part, awards television licenses and spectrum use authorizations to the same license holder, but management of the multiplex is handled by a different company, one that has a telecommunications license.<sup>2055</sup>

110. States should also consider whether it is necessary and viable to have a national transmission network for free-to-air digital television signals, in order to facilitate access by different operators to the new technologies, optimize use of the spectrum, and ensure that the public has universal access to the signals.

111. In Europe, several countries provide for a single network operator, which can be privately owned, public, or public-private; in general, these are telecommunications companies. Thus, for example, in Spain the digital TV network operator is a commercial company (Abertis),<sup>2056</sup> in Serbia it is State-owned (*Emisiona tehnika I veze*),<sup>2057</sup> while in Latvia the network operator is a public-private enterprise whose majority shareholder is the State (Lattelecom).<sup>2058</sup>

112. In addition, existing infrastructure should be used as much as possible, which would also help to keep down costs.<sup>2059</sup>

113. Regulators should establish conditions so that all categories of television operators can have access to digital technology. If operators cannot have access to infrastructure under reasonable conditions, digitalization will limit plurality and diversity instead of encouraging it. Moreover, any State assistance for the media to access the transmission infrastructure should be carefully designed so as not to give undue

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<sup>2052</sup> OSCE Representative on Freedom of the Media. 2010. [Guide to the Digital Switchover](#), p. 52.

<sup>2053</sup> Open Society Foundations. [Mapping Digital Media: United Kingdom](#). December 9, 2011.

<sup>2054</sup> Open Society Foundations. [Mapping Digital Media: France](#). February 17, 2013.

<sup>2055</sup> Open Society Foundations. [Mapping Digital Media: Spain](#). November 27, 2012.

<sup>2056</sup> Abertis. [Business areas](#).

<sup>2057</sup> Emisiona tehnika I veze. [ETB](#).

<sup>2058</sup> Lattelecom. [About Lattelecom](#).

<sup>2059</sup> OSCE Representative on Freedom of the Media. 2010. [Guide to the Digital Switchover](#), p. 15.

preference to one commercial operator over others. Governments should refrain from giving preference or facilitating the transition to digital technology only to State-run broadcasters or only to a particular group of privately owned operators.<sup>2060</sup>

114. One way to guarantee access to the infrastructure needed to provide free-to-air digital television services is by adopting “must-carry” rules for pay television services. This is a way to support and accelerate the digital TV transition process and facilitate the entry of new operators into the market, as well as to universalize access to free-to-air TV services through complementary technological platforms.

115. As noted earlier, the Special Rapporteurs for Freedom of Expression have stated that “different types of broadcasters—commercial, public service and community—should be able to operate on, and have equitable access to, all available distribution platforms.” Along these lines, the Rapporteurs have indicated that specific measures to promote diversity may include, among others, reserving adequate frequencies for different types of broadcasters and having must-carry rules.<sup>2061</sup> The Rapporteurs have also indicated that “reasonable and proportionate must-carry and must-offer rules for multiplexes should, as necessary, be put in place” to enable the continued provision of existing broadcasting services.<sup>2062</sup>

116. For its part, the European Parliament developed this principle in its 2007 directive on audiovisual communications and its 2002 directive on universal service. In this regard, the European Parliament established that “Member States may impose reasonable ‘must carry’ obligations, for the transmission of specified radio and television broadcast channels and complementary services, particularly accessibility services to enable appropriate access for disabled end-users, on undertakings under their jurisdiction providing electronic communications networks used for the distribution of radio or television broadcast channels to the public where a significant number of end-users of such networks use them as their principal means to receive radio and television broadcast channels. Such obligations shall only be imposed where they are necessary to meet general interest objectives as clearly defined by each Member State and shall be proportionate and transparent.... Member States shall review ‘must carry’ obligations on a regular basis.”<sup>2063</sup> For its part, UNESCO has also understood that “there should be some ‘must-carry’ obligations on satellite and cable carriers, at a minimum, to carry PSB [public service broadcasting] channels among the choices they offer as well as the possibility of must-carry obligations to promote diversity (e.g. in favour of minority channels).”<sup>2064</sup>

117. Must-carry obligations should also be considered for digital television network operators or license holders of free-to-air TV services, as a mechanism to reduce market dominance. This model has been tried in cases in which the major television stations had access to management of an entire channel under advantageous conditions, but with must-carry obligations to enable them to carry other signals and content for public, community, or local commercial stations, or stations with relevant social interest that lack the economic resources to have their own access to transmission equipment and networks.

118. Thus, for example, the Italian regulator Autorità per le garanzie nelle comunicazioni (AGCOM) required the two most important media groups in the country to set aside 40 percent of their

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<sup>2060</sup> OSCE Representative on Freedom of the Media. 2010. [Guide to the Digital Switchover](#), pp. 96-99.

<sup>2061</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. December 12, 2007. [Joint Declaration on Diversity in Broadcasting](#).

<sup>2062</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#), Principle 3.b.

<sup>2063</sup> Official Journal of the European Communities. [Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users’ rights relating to electronic communications networks and services \(Universal Service Directive\)](#). Article 31.1; Official Journal of the European Union. [Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities](#).

<sup>2064</sup> UNESCO. [Media Development Indicators: A framework for assessing media development](#). March 2008. Indicator No. 2.7.

channels' capacity to carry signals of independent television or "content providers."<sup>2065</sup> Guarantees of access to signals independent from the operator or transmission network can also be found in Finland, the United Kingdom, Austria, and the Netherlands.<sup>2066</sup>

119. Chile, for its part, provides that operators of subscription television services must broadcast, where technically feasible, at least four regional, local, or local community stations in their respective lineups. The specific channels will be defined by the National Television Council for a five-year period, with a mandate to "maintain a representative diversity among them and give preference to educational and cultural channels."<sup>2067</sup> The Uruguayan Audiovisual Communication Services Bill [*Ley de Servicios de Comunicación Audiovisual (LSCA)*] has included a must-carry rule.

120. It is important to note that in adopting must-carry rules, providing for shared use of channels, or approving the existence of a single network operator, States should establish specific obligations in the law to prevent those who use the transmission and distribution infrastructure from engaging in discriminatory practices in access and use through abusive management, particularly if the operators hold dominant market positions. On this point, the UN, OAS, OSCE, and ACHPR Special Rapporteurs for Freedom of Expression have indicated that special measures that could be put in place 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."<sup>2068</sup>

121. Regulations should also establish conditions for use that are fair, transparent, and non-discriminatory, such as: pricing that is appropriate, publicly accessible, and non-discriminatory, though taking into account the particular characteristics of community and public media outlets; and a prohibition on direct or indirect interference in the content broadcast over the television signals. Regulatory agencies should also have sufficient authority and resources to provide oversight and act in response to complaints regarding violations of these conditions. Along these lines, the UN, OAS, OSCE, and ACHPR Special Rapporteurs for Freedom of Expression have indicated the following: "Where 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."<sup>2069</sup>

122. Several European countries have established requirements to prevent abuse in management of the infrastructure, with caps on prices that can be charged or a direct ban on interference in the content of the TV broadcast license holder. Thus, for example, Slovenia has allowed a new commercial operator to use a digital channel, but that operator has major coverage obligations (85 percent of the population), and it must leave spectrum available for other operators' signals, with a maximum imposed on the price it can charge.<sup>2070</sup> Serbia's public network operator, *Emisiona tehnika izeze*, is expressly required to guarantee access to the public television station *RTS* and other existing operators, without interfering in their content.<sup>2071</sup>

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<sup>2065</sup> Autorità per le garanzie nelle comunicazioni (AGCOM). [Delibera AGCOM N°264/05/CONS de 2005](#).

<sup>2066</sup> Working Group on Digital Terrestrial Television in EPRA Countries. [Final Report](#). 2004. Table 5.4.

<sup>2067</sup> Library of the National Congress of Chile. Law No. 20.750. [Permite la introducción de la televisión digital terrestre](#). May 6, 2014. Article 15, paragraph 4.

<sup>2068</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#), Principle 3.h.

<sup>2069</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#), Principle 2.c.

<sup>2070</sup> Open Society Foundations. [Mapping Digital Media: Slovenia](#). August 5, 2012.

<sup>2071</sup> Republic of Serbia. [Strategy for Switchover from Analogue to Digital Broadcasting of Radio and Television Programs in the Republic of Serbia](#).

123. Uruguay explicitly establishes in its particular regulations that public network operators (the telecommunications company *Administración Nacional de Telecomunicaciones* and the public television channel *Televisión Nacional Uruguay*) should charge a “reasonable” price and “be completely neutral as to the content transmitted by the broadcast license holders that contract for infrastructure services, who are the only ones responsible for content.”<sup>2072</sup>

124. For its part, Chile’s digital television law, approved in 2014, entitles the public channel *Televisión Nacional de Chile* to a second frequency in each location where it provides services, to broadcast both its own regional signals and those of other licensees that do not have their own means of broadcasting,<sup>2073</sup> through “public and non-discriminatory offerings to any license holder of free-to-air television broadcasting.”<sup>2074</sup>

125. Finally, it is critical in the digital environment to encourage cooperation among operators and ensure interoperability,<sup>2075</sup> so that all equipment can communicate with each other and interrelate, regardless of brands or manufacturers. In this regard, the Special Rapporteurs for Freedom of Expression have recommended that States put in place “regulatory measures to ensure the interoperability and compatibility of reception, decoding and decryption devices.”<sup>2076</sup>

## **F. Recognition and Promotion of Community Digital Television**

126. The IACHR and the Office of the Special Rapporteur have stated that community broadcasting media, including community television, “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>2077</sup> In this regard, the Office of the Rapporteur has stressed that community media must be recognized legally and explicitly as a broadcasting sector and must have the right to establish analogue or digital media outlets under conditions that are appropriate and non-discriminatory, a necessary condition for all segments of society to be able to effectively exercise these rights.<sup>2078</sup> In addition, the Special Rapporteurs for Freedom of Expression have emphasized that “community broadcasting should be explicitly recognized in law as a distinct form of broadcasting” and “should be able to operate on, and have equitable access to, all available distribution platforms... including the new digital dividend.”<sup>2079</sup>

127. The Office of the Special Rapporteur has maintained that “legal provisions regulating community broadcasting must recognize the special nature of these media and contain, as a minimum, the following elements: (a) simple procedures for obtaining licenses; (b) no demand of severe technological

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<sup>2072</sup> IMPO. Center for Official Information. Decree No. 153/012. May 11, 2012. [Reglaméntanse los procedimientos para conceder autorización para brindar servicios de radiodifusión de televisión digital, de acceso abierto y gratuito, asociada a la asignación de espectro radioeléctrico para su prestación.](#) Article 12.

<sup>2073</sup> Library of the National Congress of Chile. Law No. 20.750. [Permite la introducción de la televisión digital terrestre.](#) May 6, 2014. Article 14.

<sup>2074</sup> Library of the National Congress of Chile. Law No. 20.750. [Permite la introducción de la televisión digital terrestre.](#) May 6, 2014. Article 17.

<sup>2075</sup> Council of Europe. [Recommendation Rec\(2003\)9 of the Committee of Ministers to member states on measures to promote the democratic and social contribution of digital broadcasting.](#) May 28, 2003. General principle 2.

<sup>2076</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition.](#) Principle 4.a.ii.

<sup>2077</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009.](#) Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 414.

<sup>2078</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009.](#) Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 97.

<sup>2079</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. December 12, 2007. [Joint Declaration on Diversity in Broadcasting.](#)



requirements that would prevent them, in practice, from even being able to file a request for space with the State; and (c) the possibility of using advertising to finance their operations.”<sup>2080</sup>

128. To that end, regulations on digital television should also include the community broadcasting sector and provide adequate measures to create fair access opportunities for real equality in the exercise of the right to freedom of expression.

129. Thus, for example, Colombia explicitly provided for the support and strengthening of community and nonprofit local television—a sector that had been nonexistent in the analogue environment—in its 2010-2013 development plan for television, prepared by the National Television Commission.<sup>2081</sup> This decision was reaffirmed in April 2012 with Agreement 003, which specifically regulates nonprofit local television service.<sup>2082</sup> Likewise, the strategic agenda of the new regulatory agency (National Television Authority, ANTV) stipulates the allocation of resources and the opening of specific competitions for collectives that provide community television service and local nonprofit channels.<sup>2083</sup>

130. In the case of Chile, as part of the competition process for community television, the National Television Council must hear from an advisory committee in public hearings, in which social organizations that wish to participate will be included.<sup>2084</sup> For its part, Uruguay provides for different procedures for the community sector, with public hearings held in the local area where the service will be provided. Before the State makes a decision, it must have a nonbinding report from an independent organization made up of, among others, community media associations (Honorary Advisory Council on Community Broadcasting, CHARC).<sup>2085</sup>

131. States not only have the obligation to legally recognize community television broadcasting but also to “take positive measures to include the non-commercial sectors in the communications media,”<sup>2086</sup> in order to ensure “basic conditions of dignity, security, subsistence, and development.”<sup>2087</sup>

132. Requirements and procedures for new community television operators to obtain access, or for analogue community TV stations to make the transition to digital, should be established in a way that is distinct from the public and commercial sectors, recognizing the specific characteristics and objectives of community media and creating fair conditions for access to licenses and to the spectrum.

133. One measure for regulating digital television that is compatible with the American Convention is to establish spectrum set-asides to ensure real access to one of the essential technical supports for the exercise of freedom of expression. As has already been mentioned in this regard, the Office of the Special Rapporteur has insisted on “the need for broadcasting regulations to establish the duty to allocate part of the spectrum to community media.”<sup>2088</sup>

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<sup>2080</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 101.

<sup>2081</sup> National Television Commission (CNTV). [Lineamientos del Plan de desarrollo de la Televisión 2010-2013](#). Point 5.4.4.

<sup>2082</sup> National Television Commission (CNTV). [Acuerdo 003 de 4 abril de 2012](#).

<sup>2083</sup> National Television Authority (ANTV). [Agenda Estratégica 2013](#). December 2012.

<sup>2084</sup> Library of the National Congress of Chile. Law No. 20.750. [Permite la introducción de la televisión digital terrestre](#). May 6, 2014. Article 8.

<sup>2085</sup> Republic of Uruguay. Legislative Branch. Law No. 18.232. [Servicio de Radiodifusión Comunitaria](#). December 22, 2007. Article 7.

<sup>2086</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 109.

<sup>2087</sup> IACHR. 2002 Annual Report. [Annual Report of the Special Rapporteur for Freedom of Expression 2002](#). Chapter IV (Freedom of Expression and Poverty). OEA/Ser.L/V/II.117. Doc. 1 rev. 1. March 7, 2003, para. 41.

<sup>2088</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 109.

134. Legislation in several countries in the region reserves part of the spectrum for this sector. For example, Uruguay was the first country in the region to establish a set-aside for community media outlets of “at least one third of the broadcast spectrum for each location on all analogue and digital frequency bands, both for radio and for television.”<sup>2089</sup> The country’s specific regulations on digital television also include this provision, establishing that 7 of the 20 frequencies available for these services will be reserved for the community sector.<sup>2090</sup>

135. Argentina also reserves spectrum for nonprofit media—33 percent of “planned broadcasting locations, on all audio broadcast and terrestrial television bands, in all coverage areas for nonprofit legal entities.” It also reserves one AM radio frequency, one FM radio frequency, and one free-to-air television frequency “for Native Peoples in the areas where each of the peoples is based.”<sup>2091</sup> For its part, Bolivia’s Telecommunications Law provides a spectrum set-aside for analogue television of up to 17 percent for social community broadcasting stations and up to 17 percent for “native peasant indigenous peoples and intercultural and Afro-Bolivian communities.”<sup>2092</sup> Meanwhile, in 2013 Ecuador approved a set-aside of 34 percent of broadcast frequencies for “community media operations.”<sup>2093</sup> In the case of Chile, the law sets aside 40 percent of the available spectrum capacity, once analogue operators have migrated, for regional, local, and local community free-to-air channels, “or for those national or regional channels the Council has characterized, by resolution, as cultural or educational.”<sup>2094</sup>

136. In terms of the impact of the change in technology on community television stations that broadcast before the switch to digital, the Special Rapporteurs have stated that “measures should be taken to ensure that digital transition costs do not limit the ability of community broadcasters to operate,”<sup>2095</sup> and even that States should “ensure that community and local broadcasting services are able to continue through and after the digital terrestrial transition.”<sup>2096</sup>

137. As indicated earlier, among the measures adopted toward that end, States might consider the approval of public funding to support access to the infrastructure needed to transmit digital signals; tax incentives or accessible loans; and the establishment of must-carry rules so that other digital television license holders or operators of transmission networks have to carry community broadcast signals, at accessible and non-discriminatory prices or at no cost.

138. In addition, in their Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition, the UN, OAS, OSCE, and ACHPR Special Rapporteurs for Freedom of Expression point to various measures that should be considered to ensure that community television stations can make the transition:

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<sup>2089</sup> Republic of Uruguay. Legislative Branch. Law No. 18.232. [Servicio de Radiodifusión Comunitaria](#). December 22, 2007. Article 5.

<sup>2090</sup> IMPO. Center for Official Information. Decree No. 153/012. May 11, 2012. [Reglámentanse los procedimientos para conceder autorización para brindar servicios de radiodifusión de televisión digital, de acceso abierto y gratuito, asociada a la asignación de espectro radioeléctrico para su prestación](#). Article 2.

<sup>2091</sup> Office of the President. [Ley 26.522](#). Audiovisual Communication Services and Rules. Article 89.

<sup>2092</sup> Official Gazette of Bolivia. Law No. 164. [Ley General de Telecomunicaciones, Tecnologías de Información y Comunicación](#). Law No. 164. August 8, 2011. Article 10.

<sup>2093</sup> Official Record of the Government of Ecuador. [Ley Orgánica de Comunicación](#). June 25, 2013. Article 106.

<sup>2094</sup> Library of the National Congress of Chile. Law No. 20.750. [Permite la introducción de la televisión digital terrestre](#). May 6, 2014. Article 30.

<sup>2095</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. December 12, 2007. [Joint Declaration on Diversity in Broadcasting](#).

<sup>2096</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#), Principle 3.d.

“(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.”<sup>2097</sup>

139. Both Uruguay and Argentina have approved regulations so that State-owned telecommunications companies and public television operators can share their infrastructure with community stations and even commercial broadcasters and other public broadcasting signals. The Uruguayan public telecommunications company is authorized “to provide access to transmission infrastructure to license holders of digital television broadcasting services who do not have such infrastructure available,” such as nonprofit organizations.<sup>2098</sup> Uruguayan law also provides for shared use of a channel among several community or nonprofit organizations, to facilitate access by social enterprises that lack the financial capacity to make use of a channel of their own. The transmission equipment and antenna are provided by the Ministry of Education and Culture (MEC), and access to the use of the shared frequency is implemented via public competitions that are open to proposals for community programming.<sup>2099</sup>

#### **G. Promotion and Strengthening of Public Digital Television**

140. States should ensure that public television has an essential role in the new digital environment.

141. Public service television has a different purpose than purely commercial or political television, as it operates independently of those who handle economic or political power. The role of public service television is to promote the values of democratic societies, in particular respect for human rights, cultures, and political pluralism and the protection of human dignity and minority rights.<sup>2100</sup>

142. Toward that end, as the Office of the Special Rapporteur has already reaffirmed, public television should be universally accessible.<sup>2101</sup> It should also be universal in terms of content, ensure editorial

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<sup>2097</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#), Principle 3.d.

<sup>2098</sup> IMPO. Center for Official Information. Decree No. 153/012. May 11, 2012. [Reglamentanse los procedimientos para conceder autorización para brindar servicios de radiodifusión de televisión digital, de acceso abierto y gratuito, asociada a la asignación de espectro radioeléctrico para su prestación](#). Article 20. For community television, up to 60 percent of the costs for transportation and broadcasting may be traded for advertising and up to 30 percent for assignment of content broadcasting rights or for production of audiovisual recorded announcements. Antel. [Productos y condiciones en Area Metropolitana de Montevideo](#); Antel. [Productos y Condiciones Interior](#).

<sup>2099</sup> Republic of Uruguay. Legislative Branch. Law No. 18.232. [Servicio de Radiodifusión Comunitaria](#). December 22, 2007. Article 13.

<sup>2100</sup> Council of Europe. [Recommendation CM/Rec\(2007\)3 of the Committee of Ministers to member states on the remit of public service media in the information society](#). January 31, 2007. Preamble and II.e.23.

<sup>2101</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 91. In addition, the Council of Europe, in Recommendation Rec(2003)9 proclaims universality as a fundamental principle for the development of public serve broadcasting. Council of Europe. [Recommendation Rec\(2003\)9 of the Committee of Ministers to member states on measures to promote the democratic and social contribution of digital broadcasting](#). May 28, 2003. Principle 2. The same council, in Recommendation CM/Rec(2007)3, recommends that States ensure universal access to all individuals, including minority and disadvantaged groups, through a range of technological means. Council of Europe. [Recommendation CM/Rec\(2007\)3 of the Committee of Ministers to member states on the remit of public service media in the information society](#). January 31, 2007. Recommendation II.b.

independence and impartiality, offer quality programming to all groups in society, and be responsible to the public. Public service media should offer news, information, and educational, cultural, and entertainment programs that appeal to people's different interests.<sup>2102</sup>

143. The Office of the Special Rapporteur has also observed that the mandate for public service radio and television must be established clearly by law. This law should ensure: (1) the independent or non-governmental nature of the public media system; (2) programming aspects geared toward the public interest; (3) that the public media system is free of charge; (4) coverage throughout the State's territory; and (5) the regulation of its form of financing.<sup>2103</sup>

144. The Office of the Special Rapporteur has also emphasized that for public media really to be able to perform their role, "they must be independent of the executive branch; truly pluralistic; universally accessible; with funding adequate to the mandate provided for by law; and they must provide community participation and accountability mechanisms at the different levels of content production, distribution and receipt."<sup>2104</sup>

145. The digitalization of public television signals poses a significant challenge for this sector, as it can provide both an opportunity to better meet its obligations and a risk to its continued ability to provide services, if adequate, timely measures are not taken.

146. In this regard, even though a number of statements have emphasized that public service broadcasters will continue to play an important role in promoting diversity in the new digital environment, the Special Rapporteurs for Freedom of Expression have expressed their concern "about the growth of a number of threats to the viability of public service broadcasting in different countries, which undermine its ability to fulfil its potential to contribute to media diversity."<sup>2105</sup>

147. In light of that, regulations should not simply recognize public television but also ensure that it can continue to broadcast in the new digital environment. They should foster a legal environment and active public policies with appropriate, simplified mechanisms so that public broadcasting stations can make the transition to digital television quickly and effectively, as well as take advantage of the change in technology to expand, improve, and diversify the services they provide to the public.

148. To do that, States should adopt special measures "to protect and preserve public service broadcasting in the new broadcasting environment" and "a clear plan for switchover that promotes, rather than limits, public interest broadcasting."<sup>2106</sup> They 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

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<sup>2102</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 83. Council of Europe. [Recommendation CM/Rec\(2007\)3 of the Committee of Ministers to member states on the remit of public service media in the information society](#). January 31, 2007. Recommendation II.a.

<sup>2103</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 85-87.

<sup>2104</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 83.

<sup>2105</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. December 12, 2007. [Joint Declaration on Diversity in Broadcasting](#).

<sup>2106</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. December 12, 2007. [Joint Declaration on Diversity in Broadcasting](#).

broadcasters).<sup>2107</sup> The Special Rapporteurs for Freedom of Expression recommended that States include measures to ensure that independent public service broadcasters “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.”<sup>2108</sup> UNESCO, for its part, has proposed automatically granting licenses to public service stations for digital broadcasting.<sup>2109</sup>

149. Along these lines, various organizations in Europe, such as the European Parliament, have made recommendations as to how public broadcasters can fulfill their mission and develop in the new digital environment.<sup>2110</sup> For its part, the Committee of Ministers of the Council of Europe has proposed a number of principles to be taken into account by the member countries in their national plans for implementing digital television. One of those principles indicates that Member States “should create the financial, technical and other conditions required to enable public service broadcasters to fulfil this remit in the best manner while adapting to the new digital environment.”<sup>2111</sup>

150. One interesting initiative is being studied in Brazil, where plans are reportedly underway to implement a digital network to carry Brazilian public television signals, financed by the public budget but administered by a private network operator. The project, called the National Digital Public Television Network (RNTPD), will aim to facilitate a shared infrastructure so that public broadcasting agencies can broadcast on a shared network.<sup>2112</sup>

151. For its part, Mexico’s Public Broadcasting System (SPR) has a public network of retransmission antennas “strategically located throughout the length and breadth of the country, providing the possibility for audiences to have access to more public television channels.”<sup>2113</sup> The SPR administers 16 frequencies with multiple programming; it broadcasts its own digital signal but also carries the signals of a number of public and university channels, which has enabled these stations’ coverage to expand to 56 percent of the population.<sup>2114</sup>

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<sup>2107</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#), Principle 3.c.

<sup>2108</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#), Principle 3.c.

<sup>2109</sup> UNESCO. [Media Development Indicators: A framework for assessing media development](#). March 2008. Indicator No. 2.3.

<sup>2110</sup> “[The European Parliament] considers that, in order to enable the public audiovisual media to fulfil their task in the era of digital technology, it is necessary for them to develop new information services and media over and above traditional programmes and to be able to interact with every digital network and platform.” European Parliament. [Resolution of 25 September 2008 on concentration and pluralism in the media in the European Union](#) (2007/2253(INI)), para. 40.

<sup>2111</sup> Council of Europe. [Recommendation Rec\(2003\)9 of the Committee of Ministers to member states on measures to promote the democratic and social contribution of digital broadcasting](#). May 28, 2003, para. 19.

<sup>2112</sup> This network would house, among others, four public channels with multiple programming, as provided for under Decree No. 5.820 of 2006: Education Channel: for broadcasting geared toward the development and improvement of distance education students, among others, and teacher training; Culture Channel: to broadcast scheduled cultural productions and regional programs; Citizenship Channel: for local communities to broadcast, and for information to be disseminated on public works, employment, projects, meetings, and events (under a March 2013 ordinance, space on educational channels connected to the States may also be used); and the Executive Branch Channel: to broadcast ceremonies, projects, events, and meetings of the executive branch. Office of the President of the Republic. Decree No. 5.280 of June 29, 2006. [Dispõe sobre a implantação do SBTVD-T, estabelece diretrizes para a transição do sistema de transmissão analógica para o sistema de transmissão digital do serviço de radiodifusão de sons e imagens e do serviço de retransmissão de televisão, e dá outras providências](#); Citizenship Channel. [Portaria 57, 13 de marco de 2013](#); Article 13; EBC. June 14, 2011. [TVs e entidades do Campo Público cobram definição governamental sobre Operador Único da Rede Publica Digital](#).

<sup>2113</sup> Public Broadcasting System of the State of Mexico (SPR). [Acerca De](#).

<sup>2114</sup> In 2014, the network had a presence in 14 states, covering 56 percent of the national population. Public Broadcasting System of the State of Mexico (SPR). [Cobertura](#).

152. As indicated earlier, another appropriate measure is the establishment of must-carry rules so that operators of public or private free-to-air television networks or operators of subscription television carry public signals free of charge. On this point, the Council of Europe has found that in the transition to digital television, “the must-carry rule should be applied for the benefit of public service broadcasters as far as reasonably possible in order to guarantee the accessibility of their services and programmes via these platforms.”<sup>2115</sup> The European Parliament has also expressed itself along these same lines, in welcoming “the implementation in certain Member States of provisions requiring cable television providers to include state-run channels and to allocate a section of the digital spectrum to public providers.”<sup>2116</sup>

153. In this regard, Brazil’s 2011 Conditional Access Service Law, which establishes rules for subscription television in all its forms, provides that public digital signals, both for terrestrial and satellite services, must be carried free of charge.<sup>2117</sup> In Mexico, all operators of pay television are required to retransmit the public television signals of federal institutions, including universities.<sup>2118</sup> In Hungary, as well, legislation requires network operators to carry public television signals.<sup>2119</sup>

154. The challenges of digitalization mean that public broadcasters must have adequate budgets, both for infrastructure investments—for the switch from analogue transmission and the costs of new audiovisual digital production and diversification of content—and for the eventual addition of new public broadcast signals that add diversity to non-commercial offerings.

155. Accordingly, the Office of the Special Rapporteur has said that “the State must ensure that these media have sufficient and stable public funds,” as adequate funding not only ensures that public broadcasters can fulfill their mandate but also “is a guarantee against the arbitrary interference of the public and private sectors.”<sup>2120</sup> The Special Rapporteurs for Freedom of Expression have also stated, “Innovative funding mechanisms for public service broadcasting should be explored which are sufficient to enable it to deliver its public service mandate, which are guaranteed in advance on a multi-year basis, and which are indexed against inflation.”<sup>2121</sup>

156. For its part, the European Parliament has also addressed this issue, urging the application of “a broad understanding of the remit of public service broadcasters..., in particular with regard to an unconstrained participation of public service broadcasting in technological developments and deriving forms of content production and presentation (in the form of both linear and non-linear services); whereas this

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<sup>2115</sup> Council of Europe. [Recommendation Rec\(2003\)9 of the Committee of Ministers to member states on measures to promote the democratic and social contribution of digital broadcasting](#). May 28, 2003, para. 21.

<sup>2116</sup> European Parliament. [Resolution of 25 September 2008 on concentration and pluralism in the media in the European Union](#) (2007/2253(INI)), para. 41.

<sup>2117</sup> Office of the President of the Republic. Law No. 12.485 of September 12, 2011. [Dispõe sobre a comunicação audiovisual de acesso condicionado; altera a Medida Provisória nº 2.228-1, de 6 de setembro de 2001, e as Leis nºs 11.437, de 28 de dezembro de 2006, 5.070, de 7 de julho de 1966, 8.977, de 6 de janeiro de 1995, e 9.472, de 16 de julho de 1997; e dá outras providências](#). Article 32.

<sup>2118</sup> Official Federal Record. July 14, 2014. [DECRETO por el que se expiden la Ley Federal de Telecomunicaciones y Radiodifusión, y la Ley del Sistema Público de Radiodifusión del Estado Mexicano; y se reforman, adicionan y derogan diversas disposiciones en materia de telecomunicaciones y radiodifusión](#). Articles 232 and 233; Official Federal Record. May 6, 2014. [LISTADO y características técnicas de las señales radiodifundidas de las instituciones públicas federales que se consideran disponibles para su retransmisión de conformidad con el artículo 12 de los lineamientos generales en relación con lo dispuesto por la fracción I del artículo octavo transitorio del Decreto por el que 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, publicado el 27 de febrero de 2014.](#)

<sup>2119</sup> Hungary. [Act LXXIV on the Digital Switch-Over](#). 2007. Article 25.

<sup>2120</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 93.

<sup>2121</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. December 12, 2007. [Joint Declaration on Diversity in Broadcasting](#).

should also include adequate funding for new services as part of the public service broadcasting remit.”<sup>2122</sup> The Committee of Ministers of the Council of Europe recommends that “member states should give public service broadcasters the possibility of having access to the necessary financial means to fulfil their remit.”<sup>2123</sup>

157. Thus in Colombia, for example, Law 1.507 of 2012 created the Fund for Television and Content Development (FONTV), at least 60 percent of whose resources must be earmarked for the development and strengthening of public television, both to produce content and to ensure national operations and coverage. Its budget comes from tariffs, fees, and rights that private television operators must pay for the concession and use of the spectrum, with part of its revenues generated by the new allocation of frequencies freed up after the analogue switch-off.<sup>2124</sup> FONTV is managed by the National Television Authority (ANTV) and includes support for production and transmission of public-interest content developed by nonprofit educational and cultural operators.<sup>2125</sup>

158. Support for the digital transition of the public airwaves should be accompanied by greater obligations and responsibilities than those for other television media, particularly with respect to helping to meet the objectives of universal access to gratis free-to-air television signals for the entire country. As the Office of the Special Rapporteur has already stated, “the system of public radio and television channels must strive to be free and reach the State’s entire territory in order to guarantee the rights to freedom of expression and access to information for all people under its jurisdiction, without discrimination based on social, economic or geographic conditions.”<sup>2126</sup>

159. Argentina has made significant investments to ensure national coverage of public broadcasting throughout the country. Since 2010, it has developed a public network for carrying digital television signals, called the National Platform for Digital Terrestrial Television, which is administered by the State-owned telecommunications company Empresa Argentina de Soluciones Satelitales S.A. (AR-SAT).<sup>2127</sup> Through 82 repeater antennas throughout the country, called “digital transmission stations” (Estaciones Digitales de Transmisión, EDT), 82 percent of the population is covered<sup>2128</sup> and a number of public broadcast signals are carried, along with commercial television signals being broadcast on an experimental basis.<sup>2129</sup> In order to increase coverage, “digital satellite television” (Televisión Digital Satelital, TDS) was also created, a system which broadcasts and receives television signals transmitted from an AR-SAT communications satellite.<sup>2130</sup>

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<sup>2122</sup> European Parliament. [Resolution of 25 September 2008 on concentration and pluralism in the media in the European Union](#) (2007/2253(INI)), para. 42.

<sup>2123</sup> Council of Europe. [Recommendation Rec\(2003\)9 of the Committee of Ministers to member states on measures to promote the democratic and social contribution of digital broadcasting](#). May 28, 2003, para. 22.

<sup>2124</sup> “To strengthen public television and digital and audiovisual content, the Fund for Information and Communication Technologies (FONTIC) shall allocate to the Fund for Television and Content Development at least 10% of the revenues derived from the assignment of permits for use of the frequencies freed up by the transition from analogue to digital television.” Colombia. Law No. 1.507 of January 10, 2012. [“Por la cual se establece la distribución de competencias entre las entidades del Estado en materia de televisión y se dictan otras disposiciones”](#). Article 18.

<sup>2125</sup> Colombia. Law No. 1.507 of January 10, 2012. [“Por la cual se establece la distribución de competencias entre las entidades del Estado en materia de televisión y se dictan otras disposiciones”](#). Articles 16-18.

<sup>2126</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 91.

<sup>2127</sup> The government declared the National Platform for Digital Terrestrial Television to be of public interest, and designated the Empresa Argentina de Soluciones Satelitales S.A. (AR-SAT) to be responsible for guaranteeing services for transmission of signals and their respective links for the development, implementation, and operation of the infrastructure. InfoLEG. Decree 364/2010 of March 15, 2010. [Declarase de interés público la Plataforma Nacional de Televisión Digital Terrestre](#). Articles 1 and 2.

<sup>2128</sup> Argentina. [Televisión Digital Abierta](#); Televisión Digital Abierta. [Mapa de cobertura](#).

<sup>2129</sup> Argentina. Televisión Digital Abierta. [Guía de Señales](#).

<sup>2130</sup> Argentina. [Televisión Digital Abierta](#); Televisión Digital Abierta. [Mapa de cobertura](#).

160. Colombia also approved plans to provide—for the first time, thanks to the entry of digital television—100 percent coverage in the country for public free-to-air television, via an expansion of its public broadcasting network.<sup>2131</sup>

161. In Europe, there are a number of similar cases, in which access to digital channels has been facilitated for public media, but they in turn have stringent requirements for service coverage. Slovenia public television (*RTV SLO*), for example, was granted automatic access to an entire channel, but when it was awarded its license it was required to provide coverage to 95 percent of the population with its digital signals and to allow its infrastructure to be used by other operators.<sup>2132</sup> In Spain, *Radiotelevisión Española* was automatically given the same two channels it already had in the analogue environment, and it expanded its offering to eight signals, but it was required to cover up to 98 percent of the population by the time of the analogue switch-off.<sup>2133</sup>

## H. Universal Access to Digital Television Services

162. In many countries in the region, gratis free-to-air television continues to be the main means of receiving information and entertainment. The arrival of digital television expands the quantity and quality of these services; that can lead to a significant increase in the information and opinions people receive—especially those who do not have the financial means to pay for subscription TV services.

163. However, digitalization of TV signals implies changes in usage patterns, as well as costs and investments for the families who receive these services. Being able to take full advantage of the democratizing potential of the new digital technology depends on the effective capacity of the entire population to access equipment that can receive digital TV signals; to be fully informed about how to make the technological change and what the cost of doing that is; and to acquire the appropriate knowledge and skills to use the technology effectively.

164. To that end, States should consider free-to-air television as an essential service that should be universal. Everyone—particularly families of lower economic means and from areas located far from urban centers—should be able to receive television services, at least a basic package or public TV signals. Regulations and implementation plans should include, among other things, measures such as maintaining free-to-air television services at no cost for the entire population and guaranteeing national coverage for public television signals, even supplementing terrestrial broadcasts with free-to-air satellite services.

165. Along these lines, the UN, OAS, OSCE, and ACHPR Special Rapporteurs have indicated that “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.” Such measures, they said, 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.”<sup>2134</sup>

166. Addressing the issue of subsidies for digital terrestrial television, the European Commission recognized that “the digital switchover may be delayed if left entirely to market forces and that public

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<sup>2131</sup> MINTIC. October 4, 2014. [En 2015 Colombia tendrá el 100% de cobertura de TV digital.](#)

<sup>2132</sup> DVBT Terrestrial. [Digital Terrestrial Television.](#)

<sup>2133</sup> Ministry of Industry, Tourism, and Commerce. [Real Decreto 944/2005.](#) July 29, 2005. Third additional provision and National Technical Plan for Terrestrial Television. Article 6.

<sup>2134</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition.](#) Principle 4.a.



intervention can be beneficial, through for example regulation, financial support to consumers, information campaigns or subsidies to overcome a specific market failure or to ensure social or regional cohesion.”<sup>2135</sup> It gave specific indications of acceptable forms of public support for the digital switchover within the European legal system, based on respect for the principles of transparency, necessity, proportionality, and technological neutrality. The forms of support it listed include: “funding for the roll-out of a transmission network in areas where otherwise there would be insufficient TV coverage; financial compensation to public service broadcasters for the cost of broadcasting via all transmission platforms in order to reach the entire population, provided this forms part of the public service mandate; subsidies to consumers for the purchase of digital decoders as long as they are technologically neutral, especially if they encourage the use of open standards for interactivity; financial compensation to broadcasters which are required to discontinue analogue transmission before the expiry of their licences, provided this takes account of granted digital transmission capacity.”<sup>2136</sup>

## 1. Universal Access to Digital TV Receivers

167. States should include appropriate measures such as the creation of public funds, tax incentives, and total or partial subsidies to low-income families, among other measures, to encourage access to digital television receivers.

168. As mentioned earlier, in their Joint Declaration the Special Rapporteurs for Freedom of Expression warned of the risk that less advantaged segments of the population may be affected by diminished access to broadcasting services.<sup>2137</sup> There is even a risk that in some countries of the region the analogue switch-off means that less advantaged segments will end up with no access to one of the only types of media they have available, free-to-air television. Because of that, many countries have implemented plans for total or partial subsidies, or loans for the purchase of set top boxes.

169. A number of relevant good practices stand out in the Americas. For example, the United States adopted program which provided up to two \$40 coupons to some families toward the purchase of TV converter boxes. A government fund of up to \$990 million was earmarked for the purchase of the equipment.<sup>2138</sup>

170. Meanwhile, although concrete implementation plans have yet to be carried out, all revenues collected by ANTV of Colombia for television service licenses are allocated by law “to support the technological modernization process for low-income users to receive digital terrestrial television broadcasts.”<sup>2139</sup> The State is reportedly studying plans to ensure universal access to digital television via satellite services known as “DTH Social” (the acronym stands for “direct to home”), with the aim of covering households that do not currently have analogue television service due to geographic reasons or a lack of coverage by terrestrial stations.<sup>2140</sup>

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<sup>2135</sup> European Commission. November 9, 2005. [State aid: Commission rules subsidy for digital terrestrial TV \(DVB-T\) in Berlin-Brandenburg illegal; explains how digital TV can be supported.](#)

<sup>2136</sup> European Commission. November 9, 2005. [State aid: Commission rules subsidy for digital terrestrial TV \(DVB-T\) in Berlin-Brandenburg illegal; explains how digital TV can be supported.](#)

<sup>2137</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#), Principle 4.a.

<sup>2138</sup> United States of America. [Public law 109-171](#). February 8, 2006. Title III—Digital Television Transition and Public Safety. Sec. 3005. Digital-to-Analog Converter Box Program.

<sup>2139</sup> Colombia. Law No. 1.507 of January 10, 2012. [“Por la cual se establece la distribución de competencias entre las entidades del Estado en materia de televisión y se dictan otras disposiciones.”](#) Article 18.

<sup>2140</sup> MINTIC. October 4, 2014. [En 2015 Colombia tendrá el 100% de cobertura de TV digital.](#)

171. Argentina has made a significant investment to provide more than one million set top boxes, at no charge, as part of a universal access policy called the “My Digital TV” Operational Access Plan.<sup>2141</sup> The plan specifically aims to help families and organizations from the poorest segments of society.<sup>2142</sup> Through 2013, more than 1.2 million devices to receive terrestrial TV signals had been handed out. In addition, digital satellite television antennas were installed in 12,000 rural and border-area schools and 5,000 in rural areas.<sup>2143</sup>

172. Europe also has some interesting examples of plans to facilitate access to digital receiver equipment. Serbia’s digital television strategy provided that the cost of buying receivers would be guaranteed by the State; a budget of around €120 million was estimated for total or partial subsidies needed, or €25-€50 per household.<sup>2144</sup> Italy, for its part, developed various policies to assist in the purchase of receivers, ranging from direct subsidies for senior citizens from the lowest-income households to tax deductions of up to 20 percent of the price of the equipment (converter boxes or TV sets with integrated tuners), up to a maximum €200 deduction per piece of equipment, with a budget of €40 million.<sup>2145</sup>

173. Spain also implemented active assistance policies, providing 150,000 receivers to seniors over 80 years old or over 65 with a high degree of dependence, or to people with a more than 33 percent hearing or visual impairment. It also created an assistance fund geared toward communities at risk of exclusion (Plan de Apoyo a Colectivos con Riesgo de Exclusión), to install satellite receivers in mountainous areas that lacked terrestrial TV coverage.<sup>2146</sup> Meanwhile, the United Kingdom established the Digital Switchover Help Scheme, a fund managed by the BBC to provide assistance to people aged 75 or older, those who have lived in a care home for six months or more, or people who have severe disabilities and those who are blind or partially sighted. The program provided equipment to decode digital television signals, as well as installation, for an affordable cost of £40 for the equipment and service, or free for people who participate in government-run social programs because of their economic circumstances.<sup>2147</sup>

## 2. Accessibility of Digital TV Services

174. States should include regulations and incentives to ensure that digital television is inclusive and accessible to everyone. The new digital technology facilitates the use of devices, services, and applications that make audiovisual content accessible to persons with hearing and visual disabilities.

175. In the context of promoting “low-cost technologies that are widely accessible [...] with a view to ensuring broad access to new communications platforms,”<sup>2148</sup> the Special Rapporteurs have stressed that “due priority” should be given to “the potential of digital broadcasting to improve access for people with

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<sup>2141</sup> Televisión Digital Abierta. [Mi TV Digital](#).

<sup>2142</sup> End users of the Plan Mi TV Digital are: a) Households with families who are beneficiaries of social plans or receive social benefits such as child allotments (AUH), or mothers with 7 or more children; b) Heads of household who receive old-age pensions (over 70 years of age), persons with a more than 76 percent impairment or disability and who receive retirement pay or pensions and have minimal assets; c) State establishments, social organizations, nonprofit civil associations, foundations, or cooperatives whose purpose or function is to develop social, cultural, or educational activities or to promote audiovisual content. Televisión Digital Abierta. [TV Digital](#).

<sup>2143</sup> Televisión Digital Abierta. [Mi TV Digital](#).

<sup>2144</sup> Republic of Serbia. [Strategy for Switchover from Analogue to Digital Broadcasting of Radio and Television Programs in the Republic of Serbia](#), p. 26.

<sup>2145</sup> OSCE Representative on Freedom of the Media. 2010. [Guide to the Digital Switchover](#), p. 73; Open Society Foundations. [Mapping Digital Media: Italy](#). August 10, 2011.

<sup>2146</sup> Impulsa TDT. Final Report. 2010. Available for consultation at: <http://es.scribd.com/doc/31884214/Informe-Final-TDT-2010#scribd>.

<sup>2147</sup> BBC. [Switchover Help Scheme](#); The National Archives. [Help scheme](#).

<sup>2148</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. December 12, 2007. [Joint Declaration on Diversity in Broadcasting](#).

hearing and visual disabilities,”<sup>2149</sup> by exploring and promoting appropriate technological solutions. They have also stated that “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.”<sup>2150</sup>

176. The European Commission has noted, on this point, that the switchover to digital television also has “the potential to contribute to better serve the specific needs of older people and of people with disabilities by providing assistive services such as improved subtitling, audio commentary and signing. Attention should be given to the inclusion of accessibility requirements in the user interface e.g. EPGs (electronic programming guides) and receivers.”<sup>2151</sup>

177. Legislation approved in Spain, meanwhile, provided that all necessary measures would be adopted to ensure accessibility by persons with disabilities.<sup>2152</sup> Uruguay provided that new contracts for digital TV license would require operators, in return for the use of the broadcast spectrum, to “progressively provide accessibility for persons with visual and hearing disabilities to all or part of the services offered, based on the binding communications plan.”<sup>2153</sup>

178. In addition, as has been indicated, States should ensure that all people and social groups, including minorities and disadvantaged groups, have universal access to digital public service broadcasting through various technological means. Vulnerable groups should be given support to obtain access to the necessary receiver equipment.<sup>2154</sup>

### 3. Analogue Switch-Off and Non-Exclusion

179. The transition to the analogue switch-off should respect the principle of universal coverage and free access to digital public television for all citizens. Toward this end, the date for disconnecting analogue television services should be established very carefully, so that no segment of the population is excluded from digital terrestrial television. The switch-off date should take into consideration the potential for universal access and take steps so as not to alter this goal. Rigid deadlines, therefore, should not be established, and appropriate indicators should be included on effective penetration and public access to digital television signals.<sup>2155</sup>

180. As has been observed, at least the public television system should reach the State’s entire territory in order to guarantee the rights to freedom of expression and access to information for all people under its jurisdiction, without discrimination based on social, economic, or geographic conditions.<sup>2156</sup>

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<sup>2149</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#), Principle 3.f.

<sup>2150</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#), Principle 4.e.

<sup>2151</sup> Commission of the European Communities. [Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on accelerating the transition from analogue to digital broadcasting](#). May 24, 2005.

<sup>2152</sup> State Agenda Official State Bulletin. [Ley 10/2005, de 14 de junio, de Medidas Urgentes para el Impulso de la Televisión Digital Terrestre, de Liberalización de la Televisión por Cable y de Fomento del Pluralismo](#). June 15, 2005. Second additional provision.

<sup>2153</sup> IMPO. Center for Official Information. Decree No. 153/012. May 11, 2012. [Reglámentanse los procedimientos para conceder autorización para brindar servicios de radiodifusión de televisión digital, de acceso abierto y gratuito, asociada a la asignación de espectro radioeléctrico para su prestación](#). Article 15d.

<sup>2154</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 91.

<sup>2155</sup> OSCE Representative on Freedom of the Media. 2010. [Guide to the Digital Switchover](#), p. 112.

<sup>2156</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 91.

181. Along these lines, the Special Rapporteurs for Freedom of Expression maintain that “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.”<sup>2157</sup>

#### **4. Information and Outreach for the Digital Transition**

182. Technological change also requires States to carry out active information and educational campaigns concerning the purchase and proper use of new equipment, throughout the entire process of implementing digital television. This campaign should be intensified in the final stages of analogue, so that no household is left out. An appropriate information campaign explaining how to use the new technology will significantly help to accelerate the process of implementing digital television. These obligations include the protection both of people’s right to access information and of consumers’ rights vis-à-vis the companies operating in the television market.

183. Plans for educating and informing the public should include information about how the new service will be delivered, as well as the technical features of the new receivers; the conditions in which the equipment should be produced and sold on the market, to ensure continuous signal reception; and basic guidelines to help users access the new services.

184. In this regard, the UN, OAS, OSCE, and ACHPR Special Rapporteurs have indicated that “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.” The Rapporteurs noted that such a campaign should give consideration to: “(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.”<sup>2158</sup>

##### **I. Transparency, Social Participation, and Roles of State Agencies**

###### **1. Transparency and Participation in the Process**

185. States should adopt measures and procedures to ensure that the entire process is transparent and to enable everyone involved—not just businesses from the broadcasting sector, but also civil society organizations—to participate in the process of drafting regulations and policies on digital television. Such consultations should cover everything from technical aspects to critical strategic regulatory decisions, as well as plans for implementing the new services.

186. Along these lines, the Special Rapporteurs for Freedom of Expression have indicated that 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.”<sup>2159</sup> Likewise, the OSCE Representative on Freedom of the Media has stated, “The digitalization strategy should not be drafted

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<sup>2157</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#), Principle 4.d.

<sup>2158</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#), Principle 4.c.

<sup>2159</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#), Principle 1.b.

and adopted as a result of closed-door negotiations between the businesses and the government, but be under constant scrutiny of a wide public discussion to guarantee the pluralism of broadcasting services and public access to an enlarged choice and variety of quality programmes.”<sup>2160</sup>

187. There should also be participation by society and by business in the implementation phases and in promotion and outreach activities associated with digital television.

188. In Uruguay, citizen participation with regard to digital television included public consultations in 2011, prior to the approval of the specific regulatory framework.<sup>2161</sup> The implementation plan also provides for the creation of a “Consultative Forum on Digital TV” to track the digital transition.<sup>2162</sup>

189. For its part, Colombia’s National Television Commission held 13 forums in different regions of the country in 2009, with close to 4,000 people in attendance. In 2010, it aired special TV programs on the implementation process for digital terrestrial television in Colombia.<sup>2163</sup>

190. The first draft of Hungary’s digital TV strategy was put to public consultation for one month, beginning in October 2006, before the government turned it into the National Strategy for Digital Switchover.<sup>2164</sup>

191. Several countries around the world have created specific agencies for publicizing, tracking, and supporting the digitalization process. This has happened, for example, in the United Kingdom, with the nonprofit organization Digital UK,<sup>2165</sup> and in Spain, with the association Impulsa TDT,<sup>2166</sup> where the main operators involved -though not civil society- developed the 2005 Technical Plan for Digital Terrestrial Television.<sup>2167</sup>

192. The principle of government transparency in these matters should be expressed in terms of the most comprehensive and accurate information on regulatory processes—such as the process of granting authorizations to providers of digital TV services—as well as information concerning owners or license holders. Information should also be available concerning the allocation, use, and availability of the broadcast spectrum and plans for managing it, particularly the part of the spectrum allocated for free-to-air television services. This information is extremely necessary when considering the real possibility of opening up to new television operators or establishing set-asides for different types of media outlets.<sup>2168</sup>

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<sup>2160</sup> OSCE Representative on Freedom of the Media. 2010. [Guide to the Digital Switchover](#), p. 75.

<sup>2161</sup> Ministry of Industry, Energy, and Mining. 2012. [Dividendo Digital y TV Digital en Uruguay](#); Panorama Audiovisual. October 4, 2011. [Uruguay abre consulta pública para la televisión digital](#).

<sup>2162</sup> IMPO. Center for Official Information. Decree No. 153/012. May 11, 2012. [Reglamentanse los procedimientos para conceder autorización para brindar servicios de radiodifusión de televisión digital, de acceso abierto y gratuito, asociada a la asignación de espectro radioeléctrico para su prestación](#). Article 21.

<sup>2163</sup> Observacom. [Colombia. Regulación y políticas públicas para la TV digital](#). 2014.

<sup>2164</sup> Database on legal information relevant to the audiovisual sector in Europe. 2006. [Hungary. Consultation on Strategy for Digital Switchover](#).

<sup>2165</sup> DigitalUK. [About Digital UK](#).

<sup>2166</sup> Impulsa TDT. [¿Quiénes somos?](#)

<sup>2167</sup> Formula TV. October 19, 2005. [Constituida la Asociación para la Implantación y Desarrollo de la TDT](#); Ministry of Industry, Tourism, and Commerce. [Real Decreto 944/2005](#). July 29, 2005. National Technical Plan for Terrestrial Television.

<sup>2168</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, paras. 54 and ff.; UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#), Principle 1.b; UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. December 12, 2007. [Joint Declaration on Diversity in Broadcasting](#).

## 2. Characteristics of State Agencies

193. Institutions related to the implementation of digital television should be designed to meet the standards and recommendations that apply to all broadcasting services, which have been recognized by the IACHR and the Office of the Special Rapporteur on numerous occasions. Among other things, the characteristics and roles of the various State players in the process must be clearly defined, both in terms of the preparation, approval, implementation, and oversight of regulations and public policies for the transition process and in terms of actual digital television services.<sup>2169</sup>

194. States have the legitimate authority to define policies for the sector based on the general interest, in a way that is transparent and participatory, following legitimate aims and principles, and in the context of fully respecting and promoting freedom of expression, so that their actions are compatible with the American Convention. Nevertheless, the IACHR and the Office of the Rapporteur have stressed that regulatory agencies in charge of enforcement and oversight over broadcasting legislation should be independent of both government and economic interests. In this regard, the Office of the Rapporteur has indicated that the enforcement and oversight agency “must be a deliberative body that ensures plurality in its composition. It must be subject to clear, public and transparent procedures, as well as to the imperatives of due process and strict judicial review. Its decisions must be public, in accordance with existing legal norms, and adequately justified. Finally, the body must be accountable for and give public account of its activities.”<sup>2170</sup>

195. The Special Rapporteurs for Freedom of Expression have stated, “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).”<sup>2171</sup>

196. This recommendation is particularly significant considering that several countries in the region do not have these types of agencies in terms of structure and areas of competence. There are some exceptions, such as the case of Chile and its National Television Council (CNTV)<sup>2172</sup> and Mexico, with the Federal Telecommunications Institute (IFT).<sup>2173</sup>

197. Regulatory agencies should, moreover, have the budget, resources, capabilities, and authority to provide effective oversight and enforcement, particularly to monitor and apply appropriate sanctions to prevent undue media concentration.<sup>2174</sup> In this regard, the Special Rapporteurs for Freedom of Expression have stated, in their Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition, that “regulators should have the necessary mandate and resources—in

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<sup>2169</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 46-57.

<sup>2170</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 48.

<sup>2171</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#), Principle 1.d. See also: UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. December 12, 2007. [Joint Declaration on Diversity in Broadcasting](#).

<sup>2172</sup> National Television Council. [El CNTV](#).

<sup>2173</sup> Federal Telecommunications Institute (IFT). [¿Quiénes somos?](#)

<sup>2174</sup> IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 46-57.

terms of human and technological capacity, and monitoring and enforcement powers—to implement core policy decisions.”<sup>2175</sup>

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<sup>2175</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#), Principle 2.c.

**CHAPTER IV**  
**THE RIGHT TO ACCESS TO PUBLIC INFORMATION IN THE AMERICAS:**  
**SPECIALIZED SUPERVISORY AND ENFORCEMENT BODIES**

**A. Introduction**

1. The Office of the Special Rapporteur has reiterated that the right to access to information is an autonomous right protected under Article 13 of the American Convention. It is a fundamental right for the consolidation, operation, and preservation of democratic systems, and it plays an essential role in the exercise of rights.<sup>2176</sup>

2. The scope and content of this right has been developed extensively in the Inter-American System.<sup>2177</sup> With respect to the matter, the Inter-American Court has recognized that freedom of thought and expression include “not only the right and freedom to express one’s own thoughts, but also the right and freedom to seek, receive and impart information and ideas of all kinds.” In this regard, it has also held that the right to access to information “protects the right of the individual to receive such information and the positive obligation of the State to provide it, so that the individual may have access to such information or receive an answer that includes a justification when, for any reason permitted by the [American] Convention, the State is allowed to restrict access to the information in a specific case. The information should be provided without the need to prove direct interest or personal involvement in order to obtain it, except in cases in which a legitimate restriction is applied.”<sup>2178</sup>

3. Given its significance in the consolidation, operation, and preservation of democratic systems, the right to access to information has been addressed by the OAS Member States at its General Assembly, which has given the Office of the Special Rapporteur its mandate to continue monitoring the issue, and has urged the States to “to respect and promote respect for everyone’s access to public information and to promote the adoption of any necessary legislative or other types of provisions to ensure its recognition and effective application.”<sup>2179</sup> In this context, the adoption by OAS General Assembly of the Model Inter-American

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<sup>2176</sup> IACHR. [2009 Annual Report. 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. Regarding the functions of the right to access to information, the UN, OSCE, and OAS Rapporteurs for Freedom of Expression stated in their Joint Declaration of 1999 that, “Implicit in freedom of expression is the public’s right to open access to information and to know what governments are doing on their behalf, without which truth would languish and people’s participation in government would remain fragmented.” Similarly, in their Joint Declaration of 2004, they recognized “the fundamental importance of access to information to democratic participation, to holding governments accountable and to controlling corruption, as well as to personal dignity and business efficiency.” Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights of the Organization of American States (OAS).

<sup>2177</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; 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; IACHR. [2009 Annual Report. 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; IACHR. [2011 Annual Report. 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; IACHR. Office of the Special Rapporteur for Freedom of Expression. [The Inter-American Legal Framework Regarding the Right to Access to Information, Second Edition](#). OEA/Ser.L/V/II. CIDH/RELE/INF. 9/12. March 7, 2011; IACHR. [2012 Annual Report. 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.

<sup>2178</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, paras. 76 & 77.

<sup>2179</sup> OAS General Assembly. [Resolution AG/RES. 1932 \(XXXIII-O/03\). Access to Public Information: Strengthening Democracy](#). June 10, 2003. *See also*, OAS General Assembly. [Resolution AG/RES. 2057 \(XXXIV-O/04\). Access to Public Information: Strengthening Democracy](#). June 8, 2004; OAS General Assembly. [Resolution AG/RES. 2121 \(XXXV-O/05\). Access to Public Information: Strengthening Democracy](#). June 7, 2005; OAS General Assembly. [Resolution AG/RES. 2252 \(XXXVI-O/06\). Access to Public Information: Strengthening Democracy](#). June 6, 2006; OAS General Assembly. [Resolution AG/RES. 2288 \(XXXVII-O/07\). Access to Public Information: Strengthening Democracy](#). June 5, 2007; OAS General Assembly. [Resolution AG/RES. 2418 \(XXXVIII-O/08\). Access to Public Information: Strengthening Democracy](#). June 3, 2008; OAS General Assembly. [Resolution AG/RES. 2514 \(XXXIX-O/09\). Access to Public Information: Strengthening Democracy](#). June 4, 2009; OAS General Assembly. [Resolution AG/RES. 2661 \(XLI-O/11\). Access to Public Information and Protection of Personal Data](#). June 7, 2011. The matter was also taken up at the Summit of the Americas. In the Declaration of Nuevo León, approved in 2004, the Heads of State expressed their commitment “to providing the legal and regulatory framework and the structures and



Law on Access to Public Information and its Implementation Guide,<sup>2180</sup> in accordance with the international standards attained in the field, is of particular note. The Office of the Special Rapporteur was part of the group of experts appointed to discuss, edit, and finalize these documents adopted by the General Assembly.

4. Over the last decade, a significant number of the region's countries have passed laws on access to public information or enacted reforms to the existing legal framework for the defense of this right. In following this development and the express mandate from the General Assembly on this issue, the Office of the Special Rapporteur has drafted reports setting forth the inter-American standards and systematizing the inter-American case law and doctrine on access to information.<sup>2181</sup> In addition, this office has produced comparative studies of the content of the laws of different Member States and has systematized the decisions of the courts and specialized bodies that have promoted the standards on access to public information in the domestic legal system of each State.<sup>2182</sup>

5. This chapter is a continuation of this practice, in fulfillment of the mandate of the Office of the Special Rapporteur to monitor the situation of the right to access to public information in the region and to highlight best practices in the field. As in other annual reports, this type of study aims to contribute to the positive dialogue between the OAS Member States and the bodies of the system, and to the promotion of the best legal and policy frameworks that exist.

6. In this report, the Office of the Special Rapporteur describes the regulatory framework and institutional design of some of the guarantor bodies established in the region to supervise and promote the implementation of the laws on access to public information and the adjudication of disputes related to the disclosure of information. This time, the Office of the Special Rapporteur presents a description of the most important aspects that characterize the guarantor bodies or specialized entities that handle matters

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conditions required to guarantee the right of access to information to our citizens," recognizing that "Access to information held by the State, subject to constitutional and legal norms, including those on privacy and confidentiality, is an indispensable condition for citizen participation." Special Summit of the Americas. [Declaration of Nuevo León](#). January 13, 2004. Additionally, in the Declaration of Commitment of Port of Spain, approved in 2009, the Heads of State agreed to continue "to enhance legal mechanisms for information sharing, and we will develop and implement policies that foster a culture of integrity and transparency within public and private offices and institutions," seeking to ensure that "important progress is made in providing access for our citizens to public information, particularly on government revenues, expenditures and budgets." Summit of the Americas. [Declaration of Commitment of Port of Spain](#). OEA/Ser.E. CA-V/DEC.1/09. April 19, 2009.

<sup>2180</sup> OAS General Assembly. [Resolution AG/RES. 2607 \(XL-O/10\). Model Inter-American Law on Access to Public Information](#). June 8, 2010. Arts. 51 y ss.

<sup>2181</sup> IACHR. [2009 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 51. December 30, 2009; IACHR. [2010 Annual Report. 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.

<sup>2182</sup> IACHR. [2011 Annual Report. 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; IACHR. [2012 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (The Right to Access to Information). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013; IACHR. [2013 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter V (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013.

concerning access to information in Brazil<sup>2183</sup>, Canada, Chile, Colombia, El Salvador, United States, Honduras, Jamaica, Mexico, and Uruguay.<sup>2184</sup>

## **B. The creation of specialized guarantor bodies and the proper implementation of the laws on access to information in the Inter-American System**

7. The Office of the Special Rapporteur has asserted that a fundamental aspect of the proper implementation of the OAS Member States' regulatory frameworks pertaining to access to information lies in the establishment of a specialized administrative body created to oversee the enforcement of the law and to resolve the disputes that arise between the right to access to public information and the State's interest in protecting certain information on the basis of the limitations established by law.

8. Indeed, this office has on numerous occasions underscored the right of individuals to a remedy that is simple, easy to access and that its exercise only demands the fulfillment of basic requirements, effective, quick, free or have a low cost enough so as not to discourage request for information, and that allows them to challenge the decisions of public officials that deny the right of access to specific information or simply fail to answer the request.<sup>2185</sup>

9. The Office of the Special Rapporteur has also stated that in order to fully satisfy society's needs of access to information and create a culture of transparency in the long term, the States not only must provide simple and prompt remedies free of charge in order to challenge denials of access to information, but also must properly implement the legal provisions on access to information. The Office of the Special Rapporteur has stated that this obligation entails at least the following types of actions: (a) design a plan for the implementation of access to public information and the respective budget; (b) adopt rules, policies, and practices that facilitate the proper preservation and administration of information; (c) educate and train the public servants responsible for satisfying the right to access to public information in each one of its facets; and (d) carry out systematic campaigns to disclose to the general public the existence and the means for exercising the right to access to information.<sup>2186</sup>

10. To develop these objectives and attain the effective satisfaction of this right, the Office of the Special Rapporteur has recognized that it is essential to create an autonomous and specialized supervisory body responsible for promoting the implementation of the laws on access to public information and for

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<sup>2183</sup> In the region there are other agencies or entities responsible for implementing regulatory provisions regarding access to information that were not analyzed in this report. For example, Antigua y Barbuda (Information Commissioner and Integrity Commission); Argentina (Anti-Corruption Office [*Oficina Anticorrupción*] and the National Bureau for the Protection of Personal Data [*Dirección Nacional de Protección de Datos Personales*]); Bolivia (Ombudsman [*Defensoría del Pueblo*] and the Ministry for Institutional Transparency and Corruption Combating [*Ministerio para la Transparencia Institucional y Lucha contra la Corrupción*]); Ecuador (Ombudsman [*Defensoría del Pueblo*]); Nicaragua (Offices of Access to Information [*Oficinas de Acceso a la Información Pública*]); Panamá (National Authority of Transparency and Access to Information [*Autoridad Nacional de Transparencia y Acceso a la Información*]); Paraguay (Directorate of Access to Public Information [*Dirección de Acceso a la Información Pública*]); Perú (Ombudsman [*Defensoría del Pueblo*]); República Dominicana (Office of Free Access to Public Information [*Oficina de Libre Acceso a la Información Pública*] and the General Directorate of Ethics and Government Integrity [*Dirección General de Ética e Integridad Gubernamental*]); Trinidad y Tobago (Freedom of Information Unit and the Office of the Ombudsman of Trinidad and Tobago). See also, OAS. Department of International Law. Comparative Law Database. [Agencies of Promotion and enforcement of Access to Public Information by Country.](#)

<sup>2184</sup> In drafting this report, the general regulatory frameworks on access to information were used as a reference, but the standards on other matters and the more specific regulatory provisions were not. The inter-American legal framework, the international standards on the right to access to information, and the case law of the Inter-American System and studies and relevant monitoring reports were also examined. This information allowed for the development of a questionnaire that was sent to some of the authorities at the institutions responsible for guaranteeing access to information in the countries under study, and another that was sent to civil society organizations involved in the promotion of the right to information in the region. The information submitted was systematized and analyzed for the preparation of this report.

<sup>2185</sup> IACHR. [2009 Annual Report. 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. Paras. 26; 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. 205.

<sup>2186</sup> IACHR. [2011 Annual Report. 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. 313-315.

reviewing and adjudicating government denials of requests for information.<sup>2187</sup> Comparative experience and practice have demonstrated the importance of having this type of independent and specialized authority within the different legal systems to prevent the dilution of efforts to enforce the laws on access to public information. The foregoing, of course, is without prejudice to the timely judicial oversight of decisions that deny access to information. In this respect, in order to strengthen the institutional supervisory structure for the implementation of laws on access to public information, the Office of the Special Rapporteur has urged the States to bring their laws into line with the highest standards on the matter, such as those recognized by the OAS General Assembly in Resolution AG/RES. 2607 (XL-O/ 10) adopting the “Model Inter-American Law on Access to Public Information.”<sup>2188</sup>

11. Indeed, the Model Inter-American Law on Access to Public Information and its Implementation Guide provide for the creation of an Information Commission responsible for the effective implementation of the law.<sup>2189</sup> In this respect, the Implementation Guide to the Model Law underscores the importance of having a supervisory body that is capable of creating uniform public information policies for all of the agencies subject to the law, and that also has the authority to coordinate the efforts of different departments, train human resources, raise public awareness, identify and disseminate best practices, advise public servants, and develop mechanisms to facilitate the management of requests for information.<sup>2190</sup>

12. This Information Commission, in addition to implementing the law and public policies on transparency and access to information, must have the power to “review any information held by a public authority, including through on-site inspection.”<sup>2191</sup> Similarly, the review mechanisms must be independent of political influence, accessible to requesters without the need for legal representation, without overly formalistic requisites, timely and, preferably, specialized. The Implementation Guide provides that such body will operate more effectively if it has been created by law, is specialized, and has sufficient human and financial resources to perform its duties.

13. The Inter-American System’s promotion of the right to access to public information has changed the scenario for the right to access to information in the hemisphere. Many countries have enacted laws and policies on access and transparency: a total of 22 countries in the Americas have passed public information access laws, and to different extents have either created entities to develop and enforce this right or given existing bodies the power to protect and guarantee it.<sup>2192</sup>

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<sup>2187</sup> IACHR. [2013 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter V (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 50. December 31, 2013. Para. 9 and ss; IACHR. [2011 Annual Report. 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. 206-208. See also: Permanent Council of the OAS. Committee on Political and Juridical Affairs. [Commentary and Guide for Implementation for the Model Inter-American Law on Access to Public Information](#). OEA/Ser.G. CP/CAJP-2841/10. April 23, 2010. P. 14.

<sup>2188</sup> IACHR. [2013 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter V (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 50. December 31, 2013. Para.35; OAS General Assembly. [Resolution AG/RES. 2607 \(XL-O/10\). Model Inter-American Law on Access to Public Information](#). June 8, 2010.

<sup>2189</sup> OAS General Assembly. [Resolution AG/RES. 2607 \(XL-O/10\). Model Inter-American Law on Access to Public Information](#). June 8, 2010. Art 52 and ss.

<sup>2190</sup> Permanent Council of the OAS. Committee on Political and Juridical Affairs. [Commentary and Guide for Implementation for the Model Inter-American Law on Access to Public Information](#). OEA/Ser.G. CP/CAJP-2841/10. April 23, 2010. P. 14.

<sup>2191</sup> OAS General Assembly. [Resolution AG/RES. 2607 \(XL-O/10\). Model Inter-American Law on Access to Public Information](#). June 8, 2010. Art 62.

<sup>2192</sup> Antigua y Barbuda. [Freedom of Information Act](#). November 5, 2004; Belize. [Freedom of Information Act](#), Chapter 13. Available for consultation at: <http://www.belizelaw.org/web/lawadmin/index2.html>; Brazil. Palácio do Planalto/Presidência da República. [Lei 12.527](#). November 18, 2011; Canada. Government of Canada/Justice Laws Website. [Access to Information Act. \(R.S.C., 1985, c. A-1\)](#); Chile. Biblioteca del Congreso Nacional de Chile. [Ley 20.285 sobre Acceso a la Información Pública](#). August 20, 2009; Colombia. Secretaría General del Senado. [Ley 1712 de 2014. Diario Oficial No. 49.084](#), March 6, 2014; Ecuador. [Ley No. 24. Ley Orgánica de Transparencia y Acceso a la Información Pública de Ecuador](#). Registro Oficial Suplemento 337. May 18, 2004; El Salvador. Asamblea Legislativa de El Salvador. [Ley de Acceso a la Información Pública](#). Diario Oficial. Tomo N° 391. April 8, 2011; United States Department of Justice. [Freedom of Information Act, 5 U.S.C. § 552](#); Guatemala. Congreso de la República de Guatemala. [Ley de Acceso a la Información Pública de Guatemala. Decreto No. 57-2008](#). October 23, 2008; Guyana. OEA. [Access to Information Act](#). Act No. 21 de 2011. September 15, 2011; Honduras. Congreso Nacional/ Instituto de Acceso a la Información Pública. [Ley de Transparencia y Acceso a la Información](#)

14. The variety of institutional designs is related to the degree of independence and autonomy of the agency, its composition and mechanisms for the appointment of its authorities, its powers or duties to guarantee access to information, the accessibility of its mechanisms, and its efficiency in settling disputes.

15. Indeed, as discussed in this report, in some States the laws provide for a specialized mechanism for the guarantee of the right to access to information before an autonomous, independent, and specialized administrative agency; in other places, the law provides for the creation of specialized administrative agencies that do not issue binding decisions, or assign the defense of this right to authorities such as the Ombudsman of the People or Office of the Attorney General as part of their duties.<sup>2193</sup>

16. In short, the countries of the Americas have begun to develop—slowly and laboriously—a community of public entities for the promotion and protection of access to public information.<sup>2194</sup> The paragraphs below provide descriptive information on the design and practices of several such supervisory bodies in the hemisphere, in terms of their features, powers, and duties that are considered key to the effective exercise and enforcement of the right to access to information, such as: the independence and autonomy of the bodies; their composition and mechanisms for the appointment and removal of their authorities; the duties they perform; the mechanisms they have developed to manage requests, monitor compliance with transparency obligations, compile statistics, and to classify and declassify information.

### C. Independence and autonomy of specialized entities

17. The Implementation Guide for the Model Inter-American Law on Access to Public Information recognizes that independence is essential for the success of entities such as the Information

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[Pública](#). Decreto Legislativo No. 170 -2006. Diario Oficial La Gaceta. December 30, 2006; Jamaica. Access to Information Unit. [Access to Information Act](#). Act No. 21-2002. July 22, 2002; México. Cámara de Diputados del H. Congreso de la Unión. [Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental](#). June 11, 2002; Nicaragua. [Ley 621 de 2007. Ley de Acceso a la Información Pública](#). Published on La Gaceta No. 118 of July 22, 2007; Panamá. [Ley N° 6. Ley de Transparencia en la Gestión Pública](#). January 22, 2002; Panamá. OEA/Gobierno Nacional de Panamá. [Gaceta Oficial Digital No. 27275-A](#). April 26, 2013; Paraguay. Congreso Nacional/Biblioteca Archivo Central. [Ley No. 5.282. De libre acceso ciudadano a la información pública y transparencia Gubernamental](#). September 18, 2014; Perú. [Ley No. 27.806. Ley de Transparencia y Acceso a la Información Pública](#). Decreto Suprema No. 043-2003-PCM. April 22, 2003; República Dominicana. Comisión Nacional de Ética y Combate a la Corrupción. [Ley General de Libre Acceso a la Información Pública, No. 200-04](#). February 25, 2005; San Vicente y las Grenadinas. Freedom of Information Act, 2003. June 27, 2003. Available for consultation at: [http://www.rti-rating.org/files/pdf/Saint\\_Vincent\\_and\\_the\\_Grenadines.pdf](http://www.rti-rating.org/files/pdf/Saint_Vincent_and_the_Grenadines.pdf); Trinidad y Tobago. [The Freedom of Information Act, 2009. Act No. 26 of 1999](#). July 16, 1999; Uruguay. Asamblea General de la República Oriental del Uruguay. [Ley N° 18.381. Derecho de Acceso a la Información Pública](#). Published on Diario Oficial No. 27607 of November 7, 2008.

<sup>2193</sup> IACHR. [2011 Annual Report. 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>2194</sup> The *Red de Transparencia y Acceso a la Información Pública (RTA)* is a network of bodies and agencies in Latin America and the Caribbean engaged in the supervision of transparency and the right to access to public information. Full members participating in RTA are: Bolivia's Ministry for Institutional Transparency and Corruption Combating [*Ministerio para la Transparencia Institucional y Lucha contra la Corrupción*]; the Office of the Comptroller General of Brazil [*Controladoria-Geral da União*]; Council for Transparency of Chile [*Consejo para la Transparencia*]; the Ombudsman of Ecuador [*Defensoría del Pueblo*]; the Institute for Access to Public Information of El Salvador [*Instituto de Acceso a la Información Pública*]; Federal Institute for Access to Public Information and Data Protection of Mexico [*Instituto Federal de Acceso a la Información Pública y Protección de Datos*]; the Ombudsman of Peru [*Defensoría del Pueblo*]; and the Unit of Access to Public Information of Uruguay [*Unidad de Acceso a la Información Pública*]. As associate members: The Government of the Autonomous City of Buenos Aires, represented by the Undersecretariat of Public Affairs of Argentina [*Subsecretaría de Asuntos Públicos de Argentina*]; the Provincial Anti-Corruption and Transparency Directorate of the Public sector of the Ministry of Justice and Human Rights of Santa Fe, Argentina [*Dirección Provincial de Anticorrupción y Transparencia del sector Público del Ministerio de Justicia y Derechos Humanos de Santa Fe, Argentina*]; Undersecretary of Transparency and Corruption of El Salvador [*Subsecretaría de Transparencia y Anticorrupción*]; The Presidential Commission for Transparency and Guatemala's Electronic Government [*Comisión Presidencial de Transparencia y Gobierno Electrónico de Guatemala*]; High Level Anti-Corruption Commission of the Presidency of Ministers of Peru [*Comisión de Alto Nivel Anticorrupción de la Presidencia de Ministros*]. Furthermore, participating as adherent members: the Secretary of Transparency of Colombia [*Secretaría de Transparencia*]; EUROSocial Regional Cooperation Program; and the Organization of American States. In 2014 they joined as new members: The Office of the Inspector General of Colombia [*La Procuraduría General de la Nación*], the Office of Human Rights Ombudsman of Guatemala [*Institución del Procurador de Derechos Humanos*] and the Institute of Access to Public Information of Honduras [*Instituto de Acceso a la Información Pública*]. Red de Transparencia y Acceso a la Información Pública. [Quiénes somos](#); Red de Transparencia y Acceso a la Información Pública. November 13, 2014. [Red de Transparencia y Acceso a la Información Pública, RTA: La agrupación de órganos garantes en materia de transparencia y acceso a la información se posiciona como la más importante de América Latina](#).

Commission. In this regard, it states that “A series of factors may determine the real (or perceived) independence of this office and its officers, including the manner of selecting the Commissioners, their term limit and procedures for dismissal, from which branch of government they receive their powers and to whom they report, and the autonomy in budgeting.”<sup>2195</sup>

18. Indeed, the independence and autonomy of an entity can be evaluated according to both external and internal factors. The external factors concern the manner in which the body has been created and established or the way in which its mandate to supervise and enforce the access to information laws was granted. It concerns the characteristics conferred upon the body prior to its operation, at the time it was established or received its mandate. One of these aspects is the legal basis and operational autonomy conferred upon the entity. In this regard, the instruments of the Inter-American System provide that “Regardless of which system is selected, it is vital that the oversight body or unit enjoy a statutory mandate.”<sup>2196</sup>

19. Among other external aspects to consider are the body’s position within the organizational flow chart and its geographic coverage, the rules for the selection and removal of its authorities, and the existence of rival organizations—that is, organizations that may challenge the body’s performance of its duties.

20. The internal characteristics are related to the actions taken by the organization once its members have been selected. From this perspective, the body’s independence and autonomy will depend upon the budget it receives for its activities, the staff it has to perform its duties, and the degree of specialization of its staff.

## **1. Legal basis, legal personality, and operational autonomy**

21. In Brazil, Public Information Access Law (Law No. 12527)<sup>2197</sup> was enacted in 2011 and the regulations thereto were issued by the Federal Government by decree on 2012.<sup>2198</sup> Both the law and the regulations state that the Office of the Comptroller General (CGU) [*Controladoria-Geral da União*] is responsible for decisions on remedies and complaints, and for monitoring the implementation of the Public Information Access Law by the Federal Executive Branch.<sup>2199</sup> The Office of the Comptroller General was created by Law No.10.683<sup>2200</sup> on 2003 and is the body responsible for providing direct and immediate assistance to the President of the Republic on matters concerning the defense of public assets and increased transparency. The CGU’s fundamental strategic areas include internal oversight; public hearings; inspection; the prevention and fight against corruption, and advocacy.<sup>2201</sup>

22. In Canada, the Office of the Information Commissioner<sup>2202</sup> was created in 1983 with the enactment of the Access to Information Act.<sup>2203</sup> The entity is headed by a Commissioner with federal

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<sup>2195</sup> Permanent Council of the OAS. Committee on Political and Juridical Affairs. [Commentary and Guide for Implementation for the Model Inter-American Law on Access to Public Information](#). OEA/Ser.G. CP/CAJP-2841/10. April 23, 2010. P. 20.

<sup>2196</sup> Permanent Council of the OAS. Committee on Political and Juridical Affairs. [Commentary and Guide for Implementation for the Model Inter-American Law on Access to Public Information](#). OEA/Ser.G. CP/CAJP-2841/10. April 23, 2010. P. 14.

<sup>2197</sup> Brazil. Palácio do Planalto/Presidência da República. [Lei 12.527](#). November 18, 2011.

<sup>2198</sup> Brazil. Câmara dos Deputados. [Decreto 7.724](#). May 16, 2012.

<sup>2199</sup> As will be explained below, the Access to Information Law also created a Mixed Committee with jurisdiction to decide appeals challenging decisions of the Office of the Comptroller General that deny access to information, and to rule on denials of requests to declassify information issued by the Ministers of State.

<sup>2200</sup> Brazil. Palácio do Planalto/Presidência da República. [Lei 10.683](#). 28 de mayo de 2003. Law that establishes the creation of the Office of the Comptroller General [*Contraloría General de la Unión*].

<sup>2201</sup> Brazil. Controladoria-Geral da União/ Presidência da República. [Institucional](#)

<sup>2202</sup> Canadá. Office of the Information Commissioner of Canada. [Who we are](#)

<sup>2203</sup> Canadá. Government of Canada/Justice Laws Website. [Access to Information Act. \(R.S.C., 1985, c. A-1\)](#).

jurisdiction and its goal is to assist individuals and organizations who believe that federal institutions have not respected their rights under the Act. The Information Commissioner is an “Agent of Parliament”<sup>2204</sup>, independent and reports directly to Parliament. The Office of the Information Commissioner investigates complaints about federal institutions’ handling of access requests.<sup>2205</sup>

23. In Chile, Law 20285 on Access to Public Information created the Transparency Council [*Consejo para la Transparencia*]<sup>2206</sup> (CPLT) as “an autonomous public law entity, with its own legal personality and assets” (Art. 31) with the objective of “promoting transparency in government, overseeing compliance with the legal provisions on transparency and the public disclosure of information held by Government bodies, and guaranteeing the right to access to information” (Art.32).<sup>2207</sup>

24. In Colombia, on March 6, 2014, the President of the Republic enacted the Transparency and Access to National Public Information Law.<sup>2208</sup> The Transparency and Right to Access National Public Information Act [*Ley de Transparencia y del Derecho de Acceso a la Información Pública Nacional*] provides that the Public Ministry [*Ministerio Público*] headed by the Office of the Inspector General [*Procuraduría General de la Nación*] “is responsible for ensuring proper compliance with the obligations set forth in the law”, and assigns it specific functions to do so. Among these functions, the promotion of the awareness and application of the law; the imposition of disciplinary sanctions; the promotion of government transparency; and the issuance of reports, statistics, and papers regarding compliance with the law. According to the Law, the entities of the Public Ministry will create an “office with all necessary resources” to comply with its functions. On May 8, the Office of the Inspector General [*Procuraduría General de la Nación*], responsible for enforcing legal provisions, issued Resolution No. 146, which created the group responsible for ensuring compliance with the obligations stipulated in the Law.<sup>2209</sup> On September 5, the Transparency and Access to Information Committee was created within the Public Ministry. Some of the functions of this Committee are: to coordinate actions and joint efforts of the Public Ministry in this issue; b) establish an action plan and annual goals for the compliance of the functions assigned to Public Ministry by law; c) monitor and evaluate compliance by the Public Ministry, as well as by those subject to the law<sup>2210</sup>.

25. In the case of El Salvador, the Public Information Access Act<sup>2211</sup> created the Institute for Access to Public Information [*Instituto de Acceso a la Información Pública*]<sup>2212</sup> as a “public institution with legal personality, its own assets, and administrative and financial autonomy” (Art. 51). According to the Act, the Institute is an independent entity that does not report to any State body, and has national jurisdiction that includes oversight over the three branches of government, “their offices, autonomous institutions, municipalities, and any other entity or body that manages public resources or government assets, or carries out acts of public administration in general” (Art. 7 and 58).

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<sup>2204</sup> The “Agents of Parliament” oversee the activities of government in accordance with their specific mandate. Other agents deal with audits, lobbying, official languages, protection of personal information, elections and public sector integrity. Canada. Parliament of Canada. [Officers and Officials of Parliament](#).

<sup>2205</sup> Canada. Office of the Information Commissioner of Canada. [What we do](#). Canadá. Office of the Information Commissioner of Canada. [Who we are](#).

<sup>2206</sup> Consejo para la Transparencia. [¿Qué es el Consejo para la Transparencia?](#).

<sup>2207</sup> Chile. Biblioteca del Congreso Nacional de Chile. [Ley 20.285 sobre Acceso a la Información Pública](#). August 20, 2009; Chile.

<sup>2208</sup> Colombia. Secretaría General del Senado. [Ley 1712 de 2014](#). [Diario Oficial No. 49.084](#). March 6, 2014. On September 2014, the Law took effect for all entities at the national level and will take effect on March 6, 2015 for regional authorities.

<sup>2209</sup> Procuraduría General de la Nación. [Resolución 146](#). May 8, 2014. Colombia. Procuraduría General de la Nación. [Grupo de Transparencia y del Derecho de Acceso a la Información Pública Nacional](#).

<sup>2210</sup> Procuraduría General de la Nación. [Resolución 282](#). September 5, 2014.

<sup>2211</sup> Asamblea Legislativa de El Salvador. [Ley de Acceso a la Información Pública](#). Diario Oficial. Tomo N° 391. April 8, 2011. The Act was approved by Decree 534 dated April 8, 2011 and became effective on May 8, 2011.

<sup>2212</sup> El Salvador. [Instituto de Acceso a la Información Pública](#).

26. In the United States, following the 2007 amendment of the Freedom of Information Act (FOIA), the Office of Government Information Services (OGIS) was created as an independent office within the National Archives and Records Administration. This Office serves as a bridge between requesters and agencies. It is said to be “the Federal FOIA Ombudsman.” OGIS responsibilities include the review of policies and procedures of administrative agencies under the FOIA and the compliance with FOIA agencies. Moreover, OGIS can recommend policy changes to Congress and the President to improve the administration of FOIA. This Office may also offer mediation services to resolve disputes between persons making FOIA requests and agencies (non-exclusive alternative to litigation). In this sense, it may issue advisory opinions if mediation has not resolved the issue.<sup>2213</sup> The OGIS Director reports to the Archivist of the United States and works with all of the administrative agencies of the Executive Branch.<sup>2214</sup> Moreover, the United States also has the Office of Information Policy of the Department of Justice and the Office of Government Information Services. This Office<sup>2215</sup> is responsible for developing guidance for Executive Branch agencies on the FOIA, for ensuring that the President's FOIA Memorandum<sup>2216</sup> and the Attorney General's FOIA Guidelines<sup>2217</sup> are fully implemented across the government, and for overseeing agency compliance with the law.<sup>2218</sup>

27. In Honduras, the Institute for Access to Public Information [*Instituto de Acceso a la Información Pública*] (IAIP) was created by the Transparency and Access to Public Information Act.<sup>2219</sup> According to the Act, the Institute is “a decentralized government body with operational, decision-making, and budgetary independence, responsible for promoting and facilitating citizen access to public information, as well as regulating and supervising the procedures of the institutions subject to this law with respect to the protection, classification, and safekeeping of public information in accordance with this Act” (Art. 8). As a decentralized body, the Institute does not report to any other State entity. It has national jurisdiction and the authority to create or set up regional offices in places where there is a proven need for its operation.<sup>2220</sup> Furthermore, on 2014 Presidential Office of Transparency, Modernization, and Reform of the State<sup>2221</sup> [*Dirección Presidencial de Transparencia, Modernización y Reforma del Estado*] was created with the goal of strengthening transparency in institutions through a process of formulating and proposing policies and programs of transparency.<sup>2222</sup> Moreover, according to the law for the Classification of Public Documents related to National Security of 2014, the National Council for Defense and Security<sup>2223</sup> [*Consejo Nacional de Defensa y Seguridad*] is responsible for classifying as reserved, confidential, secret and top secret information regarding defense and national security.<sup>2224</sup>

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<sup>2213</sup> United States. United States Department of Justice. [Freedom of Information Act, 5 U.S.C. § 552](#). Section (h)(1).

<sup>2214</sup> United States. National Archives and Records Administration/ Office of Government Information Services. [About OGIS](#).

<sup>2215</sup> United States. The United States Department of Justice/Office of the Information Policy. [About the Office](#).

<sup>2216</sup> United States. The United States Department of Justice. Presidential Documents. [Memorandum of January 21, 2009/Freedom of Information Act](#). January 26, 2009.

<sup>2217</sup> United States. The United States Department of Justice. Office of the Attorney General. [Memorandum for Heads of Executive Departments and Agencies](#). March 19, 2009.

<sup>2218</sup> United States. The United States Department of Justice/Office of the Information Policy. [Meet the director](#).

<sup>2219</sup> Honduras. Congreso Nacional/ Instituto de Acceso a la Información Pública. [Ley de Transparencia y Acceso a la Información Pública](#). Decreto Legislativo No. 170 -2006. Diario Oficial La Gaceta. 30 de diciembre de 2006.

<sup>2220</sup> Honduras. La Gaceta/Instituto de Acceso a la Información Pública. [Reglamento de la Ley de Transparencia y Acceso a la Información Pública](#). March 6, 2008. Article 11.

<sup>2221</sup> The Presidential Office of Transparency, Modernization, and Reform of the State was created by Executive Order PCM 001-2014 of February 3, 2014, as an administrative body within the Office of the President of the Republic, attached to the Office of the Minister of State in the Bureau of General Government Coordination, whose Director shall be appointed and removed at the will of the President of the Republic. Honduras. La Gaceta/Instituto Hondureño de Turismo. [Decreto Ejecutivo PCM-001-2014](#). February 22, 2014.

<sup>2222</sup> Honduras. Secretaría de Coordinación General de Gobierno. [Dirección Presidencial de Transparencia, Modernización y Reforma del Estado](#).

<sup>2223</sup> The National Council for Defense and Security is composed by: The President, who shall preside; President of the National Congress; the President of the Supreme Court; the General Prosecutor; The Secretary of State for Security; and Secretary of State in the Department of National Defense. Honduras. Poder Judicial de la República de Honduras. [Ley Especial del Consejo Nacional de Defensa y Seguridad. Decreto No. 239-2011](#). Published on La Gaceta No 32.692 of December 12, 2011.

<sup>2224</sup> Honduras. La Gaceta/Tribunal Superior de Cuentas. [Ley para la Clasificación de Documentos Públicos relacionados con la](#)

28. In Mexico, the Federal Institute for Access to Information [*Instituto Federal de Acceso a la Información*] (IFAI) was created in 2003 by the Federal Transparency and Access to Government Information Act.<sup>2225</sup> In 2010, the entity changed its name to the Federal Institute for Access to Public Information and Data Protection, with jurisdiction to also guarantee the right to the protection of personal data. In February 2014, a constitutional amendment on transparency was enacted which, both broadened and strengthened Mexico's system for access to information and gave the Institute constitutional autonomy.<sup>2226</sup> One notable characteristic that the IFAI has its autonomy guaranteed in the Constitution. Article 6(A)(VIII) of the Constitution of the United Mexican States now states that "The Federation shall have an autonomous, specialized, impartial, collegial body that has its own legal personality and assets, full technical and management autonomy, decision-making power over budget execution, and the ability to determine its internal organization, that is responsible for enforcing the right to access to public information and the protection of personal data in the possession of parties subject to the law and in the terms established by law."<sup>2227</sup> The scope of the IFAI-OA's purview is federal.

29. In the case of Jamaica, the Access to Information Unit—which operates within the Office of the Prime Minister—was established to monitor and guide the government in the implementation of the Access to Information Act passed in 2002.<sup>2228</sup> The Unit provides guidance and training for government bodies on how to interpret and administer the Act; identifies and address difficult or problematic issues arising from implementation of the Act; provides policy recommendations on how best these problems may be addressed.<sup>2229</sup> The work of this Unit is complemented by the actions undertaken by the Appeal Tribunal<sup>2230</sup> created in December 2003 for the exclusive adjudication of claims alleging the denial of the right to information. The Access to Information Unit has been mandated to provide logistical and secretarial support to the Appeal Tribunal.<sup>2231</sup>

30. In Uruguay, the Law on the Right of Access to Public Information<sup>2232</sup> also established a Public Information Access Unit [*Unidad de Acceso a la Información Pública*] (UAIP) within the Agency for the Development of e-Government Management and the Information and Knowledge Society [*Agencia para el Desarrollo del Gobierno de Gestión Electrónica y la Sociedad de la Información y del Conocimiento*] (AGESIC) responsible for monitoring compliance with the law.<sup>2233</sup> Law 19.178<sup>2234</sup> granted additional powers to the Unit

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[Seguridad Nacional. Decreto No. 418-2013](#). Published on La Gaceta No 33.373 on March 7, 2014.

<sup>2225</sup> México. Cámara de Diputados del H. Congreso de la Unión. [Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental](#). June 11, 2002.

<sup>2226</sup> The enactment of the constitutional amendment created a legislative agenda for the drafting of a number of general laws (the General Transparency Act, the General Archives Act), as well as the amendment of the Federal Transparency and Access to Government Information Act and the Federal Law on the Protection of Personal Data Held by Private Parties. Until this legislation passes, the IFAI-OA must continue to carry out its duties in accordance with the existing law, that is, the law that provided for its creation in 2003. México. Diario Oficial de la Federación. [Decreto por el que se reforman y adicionan diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos, en materia de transparencia](#). February 7, 2014.

<sup>2227</sup> México. Cámara de Diputados. H. Congreso de la Unión. [Constitución Política de los Estados Unidos Mexicanos](#). February 7, 2014; México. Diario Oficial de la Federación. [Decreto por el que se reforman y adicionan diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos, en materia de transparencia](#). February 7, 2014.

<sup>2228</sup> Jamaica. Access to Information Unit. [About Us](#); Jamaica. Access to Information Unit. [Access to Information Act](#). Act No. 21-2002. July 22, 2002.

<sup>2229</sup> Jamaica. Access to Information Unit. [About Us](#); Jamaica. Jamaica Information Service. [Access to Information Unit](#).

<sup>2230</sup> Jamaica. Access to Information Unit. [Access to Information \(Appeal Tribunal\) Rules, 2005](#).

<sup>2231</sup> Jamaica. Ministry of Local Government & Community Development. [Access to Information/The Appel Tribunal & Secretariat](#).

<sup>2232</sup> Uruguay. Asamblea General de la República Oriental del Uruguay. [Ley No. 18.381. Derecho de Acceso a la Información Pública](#). Published on the Diario Oficial No. 27607 November 7, 2008. Article 19.

<sup>2233</sup> Uruguay. Asamblea General de la República Oriental del Uruguay. [Ley No. 19.178](#). December 18, 2013. Published on the Diario Oficial No. 28879 of January 18, 2014.

<sup>2234</sup> Uruguay. Asamblea General de la República Oriental del Uruguay. [Ley N° 18.381. Derecho de Acceso a la Información Pública](#). Published on the Diario Oficial No. 27607 November 7, 2008.; Uruguay. Asamblea General de la República Oriental del Uruguay. Uruguay. Asamblea General de la República Oriental del Uruguay. [Ley No. 19.178. Derecho de Acceso a la Información Pública](#). December 18, 2013.



regarding the authority to declassify information which the classification process does not comply with the provisions set forth in the regulations. The Public Information Access Unit is a decentralized body of the AGESIC, which operates within the sphere of the Office of the President of the Republic. The Unit has technical autonomy and is national in scope.

## 2. Budget

31. As stated previously, independence and autonomy can also be evaluated on the basis of its budget sovereignty. In this respect, the Implementation Guide to the Model Inter-American Law asserts that “[...] budget sovereignty is a significant component to overall independence and autonomy. If the Commission is vested with its own line item in the budget, it is less obliged to a specific ministry or agency for proposing and promoting its financial needs. In cases, for example, where an executive branch ministry must submit the Commission’s budget for legislative approval, there is an inherent dependency created with that ‘host’ agency. Fiscal autonomy is afforded in the Model Law by allowing the Commission to present its budget requirements directly to the legislature.”<sup>2235</sup>

32. In this regard, in States like Canada,<sup>2236</sup> Chile,<sup>2237</sup> El Salvador,<sup>2238</sup> Honduras,<sup>2239</sup> and Mexico,<sup>2240</sup> the law gives the specialized supervisory and enforcement agency in charge of overseeing the Access Law the authority to design, present, and manage its own budget. In the case of bodies that do not have such power, the manner in which they manage each fiscal year and negotiate their annual budgets will determine the degree of autonomy they enjoy. In some countries of the region like Brazil,<sup>2241</sup> Colombia, and Uruguay,<sup>2242</sup> the budget of the specialized supervisory and enforcement agency depends upon the State body to which it reports.

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Published on the Diario Oficial No. 28879 of January 18, 2014.; Uruguay. Unidad de Acceso a la Información Pública. [Quiénes somos](#).

<sup>2235</sup> Permanent Council of the OAS. Committee on Political and Juridical Affairs. [Commentary and Guide for Implementation for the Model Inter-American Law on Access to Public Information](#). OEA/Ser.G. CP/CAJP-2841/10. April 23, 2010. P. 21.

<sup>2236</sup> The 2014 annual budget of the Office of the Information Commissioner, which has budget autonomy, was \$11.2 million. The execution of the budget is examined annually by the chamber and monitored by the Treasury Board Secretariat. Canada. Office of the Information Commissioner of Canada. [Future-Oriented Statement of Operations](#).

<sup>2237</sup> The Transparency Council reportedly has an annual budget of US\$ 4.606.752. In addition, it reportedly has 117 staff members. Chile. Dirección de Presupuesto. Ley de presupuesto del Sector Público año 2014. [Ley No. 20.713. Publicada en el Diario Oficial del 18 de diciembre de 2013](#). P. 28; Information received from the Transparency Council in Chile. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>2238</sup> The Institute for Access to Public Information has its own assets and enjoys administrative and financial autonomy. The Institute reportedly had a budget of US\$ 885,565 for the 2014 fiscal year and a 35-person staff. El Salvador. Instituto de Acceso a la Información Pública. [Presupuesto 2014 Instituto de Acceso a la Información Pública](#); El Salvador. Instituto de Acceso a la Información Pública. [Memoria de Labores 2013-2014](#), September 29, 2014. Information received from the Institute for Access to Public Information in El Salvador. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>2239</sup> The Institute for Access to Public Information, which has budget autonomy, was reportedly allocated a budget of approximately US\$ 1,500,000 from the General Budget of the Republic for the 2014 fiscal year. The Institute is said to employ 55 public servants. Honduras. Secretaría de Finanzas/La Gaceta. [De los Ingresos de la Administración Pública. Decreto No. 360-2013](#). January 24, 2014; Information received from the Institute for Access to Public Information in Honduras. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>2240</sup> The budget allocated to the IFAI-OA for 2014 was approximately \$607 million Mexican pesos (approximately US\$ 44,792,254). The agency reportedly has 542 authorized staff positions. México. Instituto Federal de Acceso a la Información Pública y Protección de Datos. [11 Informe de Labores al H. Congreso de la Unión 2013](#); Information received from the IFAI-OA in Mexico. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>2241</sup> In 2014, the National Congress allocated a budget of \$ 810,492,921.00 reales (approximately US\$ 328,600,000) to the Office of the Comptroller General [*Controladoria-Geral da União*]. This sum was reportedly earmarked for the entire Office of the Comptroller General—which does not have budget autonomy—so it is impossible to identify precisely how much is designated for the implementation of the Information Access Law insofar as it does not have a specific item. Around 35 people work directly with the Information Access Law in the central body of the Office of the Comptroller General. Similarly, 64 staff members, who work in the regional units of the CGU, reportedly work on matters related to the Information Access Law as part of their activities. Brazil. Palácio do Planalto/Presidência da República. [Anexo I – Receita dos Orçamentos Fiscal e da Seguridade Social por Categoria Economica e Fonte](#); Information received from the Contraloría General de la Unión. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>2242</sup> The Public Information Access Unit reportedly has a budget and staff provided by the Agency for the Development of e-Government Management and the Information and Knowledge Society, to which it reports. Information received from the Public Information

33. Having a sufficient budget is essential for the orderly management of the body and the discharge of its missions and duties. On this topic, the Implementation Guide states that “The ultimate risks of under-resourcing the program are a lack of credibility in the program and negative public perception of the transparency and openness of government. Lack of resources will also expose the public authority to complaints.” In this respect, the Guide recommends designing a budget that takes account of: the scope of the law, the expected demand of requests, an estimate of the staff requirements to cover this demand, the inclusion of activities designed to enhance the management of information, record-keeping and the use of technology, staff training and organizational capacity-building, and the stipulation of promotional activities.<sup>2243</sup>

### **3. Structure of the implementing authority and mechanisms for the appointment of authorities**

34. As established in the Implementation Guide to the Model Inter-American Law, the selection process and the threshold assents for the appointment of authorities are key to the autonomy, political differentiation, and legitimacy of the body charged with ensuring access to information. Both the selection of authorities and the rules for their removal can help shield the body from political influence. The numerical composition, in the case of collegial bodies, and the duration of the mandate can also be factors in assessing the body’s independence and autonomy.

35. According to the Guide, “the Model Law calls for the selection of an odd number of Commissioners – such as five – in order to facilitate voting and to have a sufficient number of Commissioners to diminish potentials for political capture. [...]Once appointed, the term of office becomes a key consideration for continuing independence. Periods of appointment are in many respects a balancing act. If term limits are too short, then the Commissioner may be more concerned with pleasing those responsible for subsequent appointments than in serving the duties of his or her post. On the other hand, if terms are too long then officers may be less responsive to the shifting trends of openness and needs of all constituencies. At a minimum, the term of service should be longer than the term of the President or appointing body, thus reducing potential for politicization. The length of term is relevant not just to ensure sufficient independence, but also the functioning of the Commission. As previously noted, enforcing the right of access to information often necessitates some specialization, which takes time to acquire.”<sup>2244</sup>

36. The rules for the removal of a commissioner are one of the most important elements in guaranteeing the continued independence of the Commission. According to the Implementation Guide, in general, “members of the enforcement body should only be suspended or removed ‘for reasons of incapacity or behavior that renders them unfit to discharge their duties.’” Such reasons, as the Model Law provides, may include a criminal conviction or an illness that affects the person’s ability to perform his or her duties.<sup>2245</sup>

37. There are a variety of systems in the region for the appointment and composition of authorities for the monitoring of access to information. The Information Commissioner of Canada is appointed by the Governor in Council after consultation with the leader of every recognized party in the Senate and House of Commons and approval of the appointment by resolution of the Senate and House of Commons. The term of office is 7 years—longer than the duration of an administration—and can be renewed

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Access Unitin Uruguay Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>2243</sup> Permanent Council of the OAS. Committee on Political and Juridical Affairs. [Commentary and Guide for Implementation for the Model Inter-American Law on Access to Public Information](#). OEA/Ser.G. CP/CAJP-2841/10. April 23, 2010.

<sup>2244</sup> Permanent Council of the OAS. Committee on Political and Juridical Affairs. [Commentary and Guide for Implementation for the Model Inter-American Law on Access to Public Information](#). OEA/Ser.G. CP/CAJP-2841/10. April 23, 2010. P. 20.

<sup>2245</sup> OAS General Assembly. [Resolution AG/RES. 2607 \(XL-O/10\). Model Inter-American Law on Access to Public Information](#). Article 12. June 8, 2010. Article 59.

for one term. The Commissioner may be removed from office at any time by the decision of the Governor in Council in consultation with Parliament.<sup>2246</sup>

38. In Chile, the four members of the Directive Council of the Transparency Council are appointed by the President of the Republic upon the assent of a two-thirds majority of the Senate. Their term of office is six years, and they can be reappointed for one additional term only (Art. 36). They can be removed by the Supreme Court at the request of the President of the Republic, a simple majority of the House of Representatives, or at the request of ten members of the House of Representatives (Art. 38).<sup>2247</sup>

39. In Mexico, the IFAI Commissioners are appointed by the Senate, following public consultation and nomination by the parliamentary groups, by a two-thirds majority vote of those members present. The President of the Republic may object to the appointment within ten business days. The commissioners' term of office is seven years, and they can be removed from their positions by means of impeachment.<sup>2248</sup>

40. In El Salvador, the Institute for Access to Public Information is managed by five commissioners selected by the President of the Republic from short lists of three candidates nominated by different sectors of society: duly registered business associations; duly registered professional associations; the University of El Salvador and private universities duly authorized; duly registered journalists associations; unions authorized by the Ministry of Labour and Social Welfare [*Ministerio de Trabajo y Previsión Social*]. According to the law, the candidates on the short lists are chosen via a "general assembly" convened by the Executive Branch. The commissioners' term of office is 6 years, and they cannot be reelected.<sup>2249</sup>

41. In Honduras, the Institute for Access to Public Information is composed of three commissioners elected by the National Congress, through a two-thirds vote of its members. They have a five-year term of office. The members are elected from among candidates nominated by: the President of the Republic; the Attorney General of the Republic; the National Commissioner of Human Rights; National Convergence Forum [*Foro Nacional de Convergencia*]; and the Superior Court of Auditors [*Tribunal Superior de Cuentas*]. They have a mandate for 5 years and can only be replaced in the event of legal or physical impossibility, when their actions are incompatible with the nature of the Institute's duties (Art. 9). The candidates for commissioner are interviewed at public hearings by a committee that includes all of the political parties represented in the National Congress, who present a short list of five candidates to the full session of the Legislative Chamber for the selection of the three commissioners who will head the entity.<sup>2250</sup>

42. Although the Access to Information Unit of Jamaica operates under the Office of the Prime Minister, the Appeal Tribunal is composed through a special selection mechanism. The five members of the Tribunal are appointed by the Governor-General after a series of consultations with the Prime Minister and the leader of the opposition in Parliament. The members of the Tribunal have a 5-year term of office and can be reelected. By law, the members of the Tribunal can be terminated by the Governor-General upon consultation with the Prime Minister and the leader of the opposition in Parliament. They may terminate the appointment of any member of the Tribunal who, among others, becomes of unsound mind or becomes permanently unable to perform his functions by reason of ill health; is convicted and sentenced to a term of

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<sup>2246</sup> Canadá. Government of Canada/Justice Laws Website. [Access to Information Act. \(R.S.C., 1985, c. A-1\)](#). Section 54.

<sup>2247</sup> Chile. Biblioteca del Congreso Nacional de Chile. [Ley 20.285 sobre Acceso a la Información Pública](#). August 20, 2009.

<sup>2248</sup> México. Cámara de Diputados del H. Congreso de la Unión. [Constitución Política de los Estados Unidos Mexicanos](#). Article 6.

<sup>2249</sup> El Salvador. Asamblea Legislativa de El Salvador. [Ley de Acceso a la Información Pública](#). Diario Oficial. Tomo N° 391. April 8, 2011. Article 53.

<sup>2250</sup> Honduras. Congreso Nacional/ Instituto de Acceso a la Información Pública. [Ley de Transparencia y Acceso a la Información Pública](#). Decreto Legislativo No. 170 -2006. Diario Oficial La Gaceta. December 30, 2006; Information received from the Institute for Access to Public Information in Honduras. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

imprisonment; is convicted of any offence involving dishonesty; or who fails to carry out the functions conferred or imposed on him by the Act.<sup>2251</sup>

43. Uruguay's Public Information Access Unit is directed by a Executive Committee [*Consejo Ejecutivo*] conformed by has three members: the Executive Director of the Agency for the Development of e-Government Management and the Information and Knowledge Society [*Agencia para el Desarrollo del Gobierno de Gestión Electrónica y la Sociedad de la Información y del Conocimiento*] (AGESIC); and two persons appointed by the Executive Branch who can ensure independence of opinion, efficiency, objectivity, and impartiality. The appointed members rotate through the position of President of the Committee. The removal of the members is given by "ineptitude, omission, or the commission of an offense, in accordance with due process guarantees." The authorities of the Executive Committee are appointed for four years, with the exception of the Executive Director of the AGESIC. The authorities may be reappointed (Art. 19).<sup>2252</sup>

#### **D. Powers and duties to guarantee access to information**

##### **1. Authority to resolve disputes**

44. The evaluation of the entity's ability to guarantee access to information must consider whether they have specific—not ambiguous—duties and clear jurisdiction vis-à-vis the authority of other bodies. In the case of the guarantor bodies responsible for ensuring access to information, a key point of authority lies in their ability to resolve disputes regarding the provision of information through binding decisions. In this regard, 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>2253</sup>

45. In Brazil, the Law on Access to Public Information and its regulations provide that the Office of the Comptroller General [Controladoria-Geral da União] (CGU) is responsible for decisions about appeals and complaints about access to information from the Federal Executive. Prior to going to the Comptroller, the applicant must go to the hierarchically higher authority to the one which refused the access to information. If the superior refuses the access to information, the applicant may appeal the decision to the supreme authority of the agency or entity. Subsequently, the applicant may appeal to the CGU and if it refuses the access to information, he/she may appeal to the Joint Committee on Reevaluation of Information (see supra para. 56).<sup>2254</sup>

46. In Canada, the Information Commissioner's powers include investigating claims (Section 30). For the discharge of this function, the Law grants the Commissioner the authority to summon and require the appearance of individuals before the entity to provide sworn statements or testimony and to produce documents or evidence that the Commissioner deems necessary for the complete investigation and examination of the claim, as well as the authority to access all necessary documents under the control of a government agency during an investigation (Section 36). As an ombudsperson, the Commissioner may not order a complaint to be resolved in a particular way, and therefore his/her recommendations are not binding, though she/he may refer a case to the Federal Court for resolution. After the investigation and the recommendations, any persona who has been refused access to information may apply to the Court directly (Section 41).<sup>2255</sup>

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<sup>2251</sup> Jamaica. Access to Information Unit. [Access to Information Act](#). Act No. 21-2002. July 22, 2002. Section 32.

<sup>2252</sup> Uruguay. Asamblea General de la República Oriental del Uruguay. [Ley N° 18.381. Derecho de Acceso a la Información Pública](#). Publicada en el Diario Oficial No. 27607 de 7 de noviembre de 2008.

<sup>2253</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.

<sup>2254</sup> Brazil. Palácio do Planalto/Presidência da República. [Lei 12.527](#). 18 de noviembre de 2011; Brazil. Câmara dos Deputados. [Decreto 7.724](#). May 16, 2012.

<sup>2255</sup> Canadá. Government of Canada/Justice Laws Website. [Access to Information Act. \(R.S.C., 1985, c. A-1\)](#); Canadá. Office of the

47. In Chile, the duties of the Transparency Council include monitoring compliance with the provisions of the Access to Information Act and assessing penalties in cases of their violation. The most relevant powers and duties granted to the Council by law include: adjudicating claims alleging government authorities' refusal to disclose information, promoting transparency, training public servants, keeping statistics, and issuing general instructions on the implementation of transparency and access to information, as well as requiring that government agencies change their procedures and systems for serving the public (Art. 31).<sup>2256</sup> Its decisions are binding, although requesters and agencies can file complaints challenging the Council's decisions to deny access to information before the Court of Appeals in their local jurisdiction (Art 28).<sup>2257</sup>

48. In Colombia, the Law does not assign the Public Ministry [*Ministerio Público*] or any other specialized entity with responsibility to settle disputes regarding denials of access to information. Article 28 of the Law provides that denials of information can be challenged by individuals through an administrative appeal [*recurso de reposición*] before the same authorities that adopted the decision. It also provides for judicial review in case of negative decisions. A court or competent administrative judge will handle the case if the reserve invoked to not grant information refers to security and national defense or international relations. This authority within ten days has to decide as sole instance if it refuses or accepts, in whole or in part the request. A judge competent to review request for protection of constitutional rights [*juez de tutela*] will handle the other cases once the internal administrative appeal [*recurso de reposición*] is exhausted. The Office of the Inspector General [*Procuraduría General de la Nación*] is responsible, among other things, for ensuring proper compliance with the obligations set forth in the law, and in so doing, has the power to take preventive action; assess the disciplinary penalties provided for in this law; render disciplinary decisions, in cases involving the exercise of preferential power, in cases of infractions or misconduct derived from the right to access to information.<sup>2258</sup>

49. El Salvador's Institute for Access to Public Information also has the authority to hear and decide appeals for review filed by requesters, for which it takes binding decisions by a simple majority.<sup>2259</sup> The Access to Information Act establishes that "private parties may challenge denials of their claims before the Administrative Disputes Division of the Supreme Court of Justice" (Art. 101). The salvadorian law is clear on the powers of the Institute to enforce the right to information, including in particular: the power to hear and decide appeals, render decisions in sanctions proceedings, and issue administrative sanctions; issue the pertinent precautionary measures in a reasoned decision; resolve disputes relating to the classification and declassification of confidential information, and hear proceedings initiated as a result of the Information Official's failure to respond (Arts. 58 and 75).<sup>2260</sup>

50. In the United States, the Office of Government Information Services mandate is to offer mediation services to resolve disputes between persons making FOIA requests and agencies. The goal is to identify issues that are ripe for partnership and explore ways to work together to prevent and resolve disputes as well as avoid litigation. The Office may issue advisory opinions if mediation has not resolved the issue.<sup>2261</sup>

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Information Commissioner of Canadá. [What we do](#). Information received from the Office of the Information Commissioner of Canadá. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>2256</sup> Chile. Biblioteca del Congreso Nacional de Chile. [Ley 20.285 sobre Acceso a la Información Pública](#). August 20, 2009.

<sup>2257</sup> Government agencies cannot file claims before the Court of Appeals when they have alleged, as a ground for the confidentiality of information based on article 21(1) (the disclosure of that information would adversely affect the proper discharge of their institutional duties). Biblioteca del Congreso Nacional de Chile. [Ley 20.285 sobre Acceso a la Información Pública](#). August 20, 2009.

<sup>2258</sup> Colombia. Secretaría General del Senado. [Ley 1712 de 2014. Diario Oficial No. 49.084](#). 6 de marzo de 2014. Article 27.

<sup>2259</sup> El Salvador. Asamblea Legislativa de El Salvador. [Ley de Acceso a la Información Pública](#). Diario Oficial. Tomo N° 391. April 8, 2011. Arts. 51, 52 & 58.

<sup>2260</sup> El Salvador. Asamblea Legislativa de El Salvador. [Ley de Acceso a la Información Pública](#). Diario Oficial. Tomo N° 391. April 8, 2011.

<sup>2261</sup> Unites States. Office of Government Information Services. [Building a Bridge Between FOIA requesters & Federal Agencies. 2014 Report for FY 2013](#).

51. The Institute for Access to Public Information of Honduras is authorized to resolve disputes related to access to public information. Its decisions are binding and can only be challenged through “the *amparo* in terms of the Constitutional Justice Law” [*recurso de amparo en los términos de la Ley de Justicia Constitucional*] (Art. 4[15] and 26). This entity also has broad powers related to the implementation of a culture of transparency, including in particular the power to: (a) create manuals and instructions on procedures for the classification, archiving, safekeeping, and protection of public information; (b) support the actions of the national archives with regard to the formation and protection of the Nation’s document collections; (c) establish criteria and recommendations for the operation of the National Public Information System; and (d) conduct promotion and disclosure activities in connection with the right to access to public information (Art 11).<sup>2262</sup>

52. In Mexico, the IFAI has the power to hear and decide appeals for review filed by requesters. The Constitution states that IFAI’s decisions are “binding, final and not subject to appeal by the entities under the Law.” However, the Legal Adviser to the Government [*Consejero Jurídico del Gobierno*] “may appeal for review before the Supreme Court of Justice of the Nation in the terms established by law only in the case that such decisions may endanger national security under the law on the issue”. IFAI has jurisdiction over matters decided by counterpart bodies at the state level, as well as over challenges of denials of information adjudicated by other autonomous constitutional bodies and the rest of the authorities of the Union, with the exception of the Federal Supreme Court. It is also authorized to participate in disputes regarding the constitutionality of acts and regulations.<sup>2263</sup> Moreover, IFAI has the power to: establish and review criteria for the classification, declassification, and safekeeping of secret and confidential information; assist the National Archives in the drafting and application of criteria for cataloging and preserving documents, as well as the organization of the archives of government offices and agencies; monitor, and in the event of noncompliance, make recommendations to government agencies to comply with the obligations of proactive transparency; guide and advise private parties with regard to requests for access to information; prepare access to information request forms, as well as forms for access to and the correction of personal data; hold training sessions for public servants on matters concerning access to information and the protection of personal data, and to draft and publish studies and research to disseminate and broaden knowledge of the laws on the issue (Art. 37)<sup>2264</sup>.

53. In Uruguay, the Executive Council of the Unit for Access to Public Information, by virtue of its authority to monitor compliance with the law, can issue resolution which may, in some case, instruct agencies under the law to disclose certain information. However, decisions are not binding<sup>2265</sup>. The Unit also has the following duties: (a) advise the Executive Branch with regard to compliance with the laws on access to public information; (b) oversee the implementation of the law at the respective government agencies; (c) coordinate with national authorities for the implementation of policies; (d) provide training to public servants at the agencies required to provide access to information; (e) promote educational and advertising campaigns to reaffirm the right to access to information as a fundamental right; (f) prepare an annual report for the Executive Branch on the status of access to information, and (g) report any conduct that violates the law to the competent authorities.<sup>2266</sup> In addition to these powers, Law 19.178 grants the UAIP the authority to declassify information whose classification process is inconsistent with the provisions of the laws in force.<sup>2267</sup>

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<sup>2262</sup> Honduras. Congreso Nacional/ Instituto de Acceso a la Información Pública. [Ley de Transparencia y Acceso a la Información Pública](#). Decreto Legislativo No. 170 -2006. Diario Oficial La Gaceta. December 30, 2006.

<sup>2263</sup> México. Cámara de Diputados. H. Congreso de la Unión. [Constitución Política de los Estados Unidos Mexicanos](#). Article 6.

<sup>2264</sup> México. Cámara de Diputados del H. Congreso de la Unión. [Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental](#). June 11, 2002.

<sup>2265</sup> Uruguay. Unidad de Acceso a la Información Pública. [Resoluciones](#); Information received by the Office of the Special Rapporteur for Freedom of Expression. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>2266</sup> Uruguay. Asamblea General de la República Oriental del Uruguay. [Ley N° 18.381. Derecho de Acceso a la Información Pública](#). Published on the Diario Oficial No. 27607 of November 7, 2008.

<sup>2267</sup> Uruguay. Asamblea General de la República Oriental del Uruguay. [Ley No. 19.178](#). 18 de diciembre de 2013. Published on the Diario Oficial of January 8, 2014.

## 2. Authority to classify and declassify information

54. The right to access to information, as a constituent element of the freedom of expression protected by the American Convention, is not an absolute right; it can be subject to limitations. Nevertheless, such limitations must be in strict conformity with the requirements derived from Article 13.2 of the American Convention—that is, they must be truly exceptional, clearly established by law, pursue legitimate aims, and be necessary to accomplish the aim pursued.<sup>2268</sup>

55. In their Joint Declaration of 2004, the UN, OAS and OSCE Special Rapporteurs summarized the requirements that limits to the right to access to information must meet, and addressed in greater depth some issues concerning “restricted” or “secret” information and the laws establishing those classifications, as well as the public servants legally required to maintain its confidentiality.<sup>2269</sup> Among other things, they stated that “Certain information may legitimately be secret on grounds of national security or protection of other overriding interests,” but that “secrecy laws should define national security precisely and indicate clearly the criteria which should be used in determining whether or not information can be declared secret, so as to prevent abuse of the label ‘secret’ for purposes of preventing disclosure of information which is in the public interest,” and therefore, “secrecy laws should set out clearly which officials are entitled to classify documents as secret and should also set overall limits on the length of time documents may remain secret.”

56. For purposes of making the classification process more transparent, the bodies and agencies subject to Brazil’s Public Information Access Law must publish a list of classified and declassified information on their websites.<sup>2270</sup> In order to facilitate information searches, the Office of the Comptroller General has compiled a list of agencies to which the law applies.<sup>2271</sup> The Office of the Comptroller General, together with other bodies such as the Ministry of Communication of the Presidency of the Republic [*Secretaria de Comunicação da da República Presidência*], also created a guide for agencies on how to publish the list of classified and declassified information, and statistical reports regarding Access to Information Law on their websites.<sup>2272</sup> In addition, the Public Information Access Law created a Mixed Committee for the Reassessment of Information responsible for deciding the “treatment and classification” of secret information in the federal government. Accordingly, the Mixed Committee has the authority to request clarification from the authorities responsible for classifying information as “top secret” or “secret,” and to request the content of the secret information in part or in whole; to review the classification of “top secret” and “secret” information on its own initiative or at the request of the interested party; and to extend the period of secrecy of information classified as “top secret,” provided that the extension is for a specific period of time. The Mixed Committee also has jurisdiction to decide appeals challenging decisions of the Office of the Comptroller General that deny access to information, and to rule on denials of requests to declassify information issued by the Ministers of State.<sup>2273</sup>

57. In Canada, the Office of the Information Commissioner does not have a statutory role in regard to classification and declassification of documents. Therefore, each institution is responsible for the classification and declassification of its own documents. The Office of the Information Commissioner has produced reference documents in order to guide employees in managing information.<sup>2274</sup>

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<sup>2268</sup> IACHR. [2009 Annual Report. 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>2269</sup> IACHR. [2009 Annual Report. 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. 56.

<sup>2270</sup> Brazil. Palácio do Planalto/Presidência da República. [Lei 12.527](#). November 18, 2011. Art. 30.

<sup>2271</sup> Brazil. Acesso à Informação/Governo Federal. 19 de febrero de 2014. [Órgãos que publicaram página de informações classificadas e desclassificadas](#); Brazil. Acesso à Informação/Controladoria-Geral da União. [Relatório sobre a implementação da Lei No 12.527: Lei de Acesso à Informação](#). 2013.

<sup>2272</sup> Brazil. Acesso à Informação/Governo Federal. [Guia para publicação do rol de informações classificadas e desclassificadas e de relatórios estatísticos sobre a Lei de Acesso à Informação](#). 2ª versão.

<sup>2273</sup> Brazil. Palácio do Planalto/Presidência da República. [Lei 12.527](#). November 18, 2011. Art. 16(III), 17 y 35.

<sup>2274</sup> Canada. Office of the Information Commissioner of Canadá. [OIC'S Information Management \(IM\) Training Module](#). Information

58. In Mexico, the IFAI issued General Guidelines for the classification and declassification of information held by Federal Government agencies. These guidelines do not prevent the IFAI, in the exercise of its authority, “from ensuring that the classification adheres strictly to the provisions of the Federal Transparency and Access to Government Information Act, the Regulations thereto, these Guidelines, the specific classification criteria and, if appropriate, other legal provisions.”<sup>2275</sup>

59. In Uruguay, the Public Information Access Unit published a practice manual for the classification of information and held training sessions for parties subject to the respective laws.<sup>2276</sup> In addition, entities under the Law must submit each semester to the Unit an updated report containing the list of confidential information (Art.7).<sup>2277</sup> The 2013 amendment to Uruguay’s Access Law established, as an exception, the option for each agency to classify information at the time a request is handled. When such classification is made, it must be reported to the Unit, which will then “check” that action within a period of 5 days. Also, at all times, the Unit “will have access to classified information to assess the legality of their classification.”<sup>2278</sup>

#### **E. Mechanisms for the management of requests: centralized/decentralized; online management**

60. The bodies of the Inter-American System have reiterated that Article 13 of the American Convention establishes a positive obligation for the State to provide the requested information in a timely, complete, and accessible manner. Otherwise, the State must offer, within a reasonable time period, its legitimate reasons for impeding access.<sup>2279</sup> On this point, this Office of the Special Rapporteur has stated that “In order to guarantee the true universality of the right to access,” the remedy available to request information must meet certain conditions. For example, “it must be a simple [remedy] that is easy for everyone to access and only demands basic requirements, like a reasonable method of identifying the requested information or providing the personal details necessary for the administration to turn over the requested information to the petitioner,” and it must be “free or have a cost low enough so as not to discourage requests for information.”<sup>2280</sup>

61. The Office of the Special Rapporteur observes that all requests for information in Brazil and their respective responses are reportedly processed through the Electronic System for Information Service (e-SIC).<sup>2281</sup> The e-SIC system enables citizens to exercise their right by having a single entry point for requests, and provides them with the opportunity to follow up on requests, view responses, and file complaints. It also facilitates management for public servants, insofar as the system “makes it possible for the agencies and entities and for the CGU to support the implementation of the Law and produce statistics on

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received from the Office of the Information Commissioner of Canada. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>2275</sup> México. Instituto Federal de Acceso a la Información Pública y Protección de Datos Personales. [Lineamientos Generales para la clasificación y desclasificación de la información de las dependencias de la Administración Pública Federal](#). August 18, 2003.

<sup>2276</sup> Uruguay. Unidad de Acceso a la Información Pública. [Guía de Clasificación](#);

<sup>2277</sup> Uruguay. Asamblea General de la República Oriental del Uruguay. [Ley N° 18.381. Derecho de Acceso a la Información Pública](#). Published on the Diario Oficial No. 27607 of November 7, 2008.

<sup>2278</sup> Uruguay. Asamblea General de la República Oriental del Uruguay. [Ley No. 19.178](#). 18 de diciembre de 2013. Published on the Diario Oficial of January 8, 2014.

<sup>2279</sup> IACHR. [2009 Annual Report. 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/A Court H.R., *Case of Claude Reyes et al. v. Chile*. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, paras. 77; IACHR. Arguments before the Inter-American Court in the *Case of Claude Reyes et al.* Reprinted in: /A Court H.R., *Case of Claude Reyes et al. v. Chile*. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, paras. para. 58 (a) & (b).

<sup>2280</sup> IACHR. [2009 Annual Report. 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.

<sup>2281</sup> Brazil. E-SIC/ Sistema Eletrônico do Serviço de Informações ao Cidadão. [Manual do Cidadão](#).



compliance with the extraction of reports containing data on all of the requests for access to information and their respective follow-up.”<sup>2282</sup>

62. Canada has had an online system since 2013 for the management of information requests filed with federal government agencies. As reported, “To date, it is a pilot project that extends to 21 of the 250 institutions covered by the law, but which handle 80% of the requests received at the entire federal level.”<sup>2283</sup>

63. On October 1, 2012, the United States launched FOIAonline, a multi-agency web-application that enables the public to submit FOIA requests to participating agencies.<sup>2284</sup> Moreover, the public can track the progress of an agency’s response to a request, search for information previously made available, and generate up-to-the-minute reports on FOIA processing.<sup>2285</sup>

64. In Honduras, the Institute for Access to Public Information set up the Electronic Information System of Honduras (SIELHO). According to the information available, the SIELHO “is a mechanism designed to manage requests for information and receive appeals for review online. The system is responsible for redirecting citizen requests for information to the public information officers (OIP) of each institution, electronically regulating the process that the request follows; at the same time, it provides feedback to the requester on the status of the request for information. The SIELHO enables the public information officer (OIP) to monitor all of the requests pending response and to handle them in order of their deadlines.”<sup>2286</sup>

65. With regard to request management mechanisms Mexico, the IFAI-OA implemented the INFOMEX system:<sup>2287</sup> “a computer tool that allows citizens to exercise their rights to access to information and the protection of personal data held by the government, through an electronic system for the receipt and expedited handling of requests for information.” According to the information received, “The main objectives of INFOMEX are as follows: to handle requests for access to information and personal data, as well as requests for the correction of such data, filed by citizens electronically through this medium; for citizens to be able to receive the information they request through this medium, to be able to monitor the status and processing of the requests, and to be able to file appeals for review through the same electronic medium in the event of the denial of a request for information. INFOMEX also makes it possible to view the responses of the Federal Government, using multiple filters such as date, status, and response type, by Federal Government office or entity.”<sup>2288</sup>

66. In Uruguay, requests are received in person or electronically. According to the information received, the Public Information Access Unit “is working on the E-access System that will centralize all requests for information filed in Uruguay in a single computer system, thus allowing it to monitor them in its capacity as the supervisory body.”<sup>2289</sup>

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<sup>2282</sup> Brazil. E-SIC/ Sistema Eletrônico do Serviço de Informações ao Cidadão. [Manual e-SIC/Guia do SIC](#).

<sup>2283</sup> Information received from the Office of the Information Commissioner of Canada. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression. Canada. Treasury Board of Canada/Secretariat. [Access to Information and Privacy Online Request Pilot Project](#). Additional information about the initiative is available at: <http://www.tbs-sct.gc.ca/atip-airpr/tools/request-demande-eng.asp>

<sup>2284</sup> FOIAonline participating agencies include: Environmental Protection Agency; National Archives and Records Administration, Office of General Counsel; Department of Commerce (except U.S. Patent and Trademark Office); Merit Systems Protection Board; Federal Labor Relations Authority; U.S. Customs and Border Protection; U.S. Customs and Border Protection; Pension Benefit Guaranty Corporation; Department of the Navy (including Navy and Marine Corps); General Services Administration; Small Business Administration; U.S. Citizenship and Immigration Services (Only accepting requests for records that do not contain Personally Identifiable Information (PII); Federal Communication Commission. United States. [FOIAonline](#).

<sup>2285</sup> United States. FOIAonline. [Frequently asked questions](#).

<sup>2286</sup> Institute for Access to Public Information de Honduras. [Sistema De información Electrónico de Honduras \(SIELHO\)](#).

<sup>2287</sup> México. [Sistema INFOMEX Gobierno Federal](#).

<sup>2288</sup> Information received from IFAI-OA in Mexico. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>2289</sup> Information received from the Public Information Access Unit in Uruguay. Available at: Archives of the Office of the Special

## F. Mechanisms for the monitoring and enforcement of proactive transparency obligations

67. The right to access to information imposes upon the State the obligation to provide the public with the maximum amount of information on its own initiative, at least with respect to: (a) the structure, function, and operating and investment budget of the state; (b) the information needed for the exercise of other rights—for example, those pertaining to the satisfaction of social rights such as pensions, health, and education; (c) the availability of services, benefits, subsidies, or contracts of any kind; and (d) procedures for filing complaints or requests, if they exist. This information should be complete, understandable, available in accessible language, and up to date. Also, given that significant segments of the population do not have access to new technologies—and yet many of their rights can depend on having information about how to exercise them—the State must find efficient ways to meet its obligation of active transparency in these circumstances.<sup>2290</sup>

68. The Model Inter-American Law on Access to Public Information clearly stated some of the State's obligations with regard to proactive transparency. The Model Law prescribes that “even in the absence of a specific request, public bodies should disseminate information about their functions on a routine and proactive basis and in a manner that assures that the information is accessible and understandable.” In addition, Article 9 of the Model Law establishes the obligation to “[make] information available proactively so as to minimize the need for individuals to make requests for information.” Article 12 of the Model Law specifies in detail the types of key information subject to proactive disclosure by a public authority.<sup>2291</sup>

69. In this respect, the specialized entity responsible for overseeing and enforcing access to information laws must be capable of formulating consistent policies for all of the agencies subject to the regulations, and must have the authority to coordinate the efforts of different departments. Therefore, it must have the ability to monitor compliance with the obligation of proactive transparency.

70. With a view to enhancing transparency and facilitating information searches by citizens, the Federal Government of Brazil ordered all bodies and entities of the Executive Branch to disclose information of public interest in an organized and centralized manner in a specific section of their websites. To guide them in this task, the Office of the Comptroller General developed a manual containing guidelines on how to build an “Access to Information” section on their websites. This manual aims to provide consistency with details on the structure, nomenclature, and content of the information of public interest that government agencies and entities are required to publish under the Access to Information Act.<sup>2292</sup> In order to verify compliance with the manual's guidelines and the obligations of proactive transparency, the Office of the Comptroller General is conducting a survey of all of the agencies of the Federal Executive Branch to obtain information about their websites. The agencies that have not observed the provisions of the Law or the guidelines set forth in the manual have received letters with recommendations for proper compliance with their proactive transparency obligations. According to the information received, a Working Group has been formally established in Brazil and authorities responsible for monitoring compliance with the Access Law have been appointed in the agencies and bodies subject to the law.<sup>2293</sup>

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<sup>2290</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [The Inter-American Legal Framework Regarding the Right to Access to Information, Second Edition](#). OEA/Ser.L/V/II. CIDH/RELE/INF. 9/12. March 7, 2011. Para. 261, *et seq.*; IACHR. [2009 Annual Report, 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. 30-32.

<sup>2291</sup> OAS General Assembly. [Resolution AG/RES. 2607 \(XL-O/10\). Model Inter-American Law on Access to Public Information](#). June 8, 2010. Article 12.

<sup>2292</sup> Brazil. Acesso à informação/Governo Federal. [Guia para Criação da Seção de Acesso à Informação nos sítios eletrônicos dos Órgãos e Entidades Federais](#). 2ª versão.

<sup>2293</sup> Brazil. Acesso à informação/Governo Federal/Controladoria-Geral da Uniao. [Lei No.12.527:Lei de acesso a Informação. Poder Executivo Federal 2011-2012](#). Pag. 13; Brazil. Palácio do Planato/Presidência da República. [Lei 12.527](#). November 18, 2011. Art. 40.

71. In Canada, the government institutions subject to the Access Law must report annually to Parliament regarding their compliance.<sup>2294</sup>

72. Mexico's IFAI created the Transparency Portal, a system through which citizens have access to information relating to the transparency obligations of Federal Government agencies.<sup>2295</sup> The IFAI also implemented *ZOOM*, a search engine of public information requests made to the Federal Government, of the answers provided, and the resolutions that IFAI issues, in addition to studies and opinions that support these resolutions.<sup>2296</sup>

73. In Honduras, the Institute for Access to Public Information created the Office of Transparency Verification [*Gerencia de Verificación de Transparencia*] in 2013 aiming to corroborate the information that the institutions under the Law have to publish on their transparency portals [*portales de transparencia*]. This Office produces annual reports evaluating the compliance of government agencies in accordance with the transparency evaluation methodology design that was approved by the full session of the Commissioners of the Institute. According to the methodology, the transparency portal must have at least the following five main components: "Organic Structure and Services; Planning and Accountability; Finances; Citizen Participation and Oversight. Within this framework, the agencies subject to regulation have been classified according to their interest in or commitment to observing the LTAIP [Transparency and Access to Public Information Act]."<sup>2297</sup>

74. An external audit was conducted of Uruguay's Public Information Access Unit that applied a matrix specially designed by the Unit for the periodic assessment of progress made by the regulated agencies in their compliance with the provisions of the Access Law. With this matrix, the Unit will perform audits on a regular basis.<sup>2298</sup> Decree 484/2009<sup>2299</sup> issued by the Executive Branch established that all agencies subject to the law have the right to conduct self-evaluations in order to report on their compliance with the obligations of proactive transparency.

#### **G. Mechanisms for centralized statistical monitoring**

75. In Mexico, the IFAI-OA compiles and publishes statistics on various topics, which are largely reprinted in its annual report. The themes addressed include: the 20 agencies with the greatest number of requests for information; the most common subjects of requests for information; the geographic location of the requesters; the number of requesters per year according to the reported age of the requester; percentage of requests received by gender; the number of requests per year according to the requester's reported occupation, among other subjects.<sup>2300</sup>

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<sup>2294</sup> Canadá. Treasury Board of Canada/Secretariat. [Access to Information Manual](#). Information received from the Office of the Information Commissioner of Canada. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression. Canada.

<sup>2295</sup> México. Instituto Federal de Acceso a la Información y Protección de Datos. [Lineamientos que habrán de observar las dependencias y entidades de la Administración Pública Federal para la publicación de las obligaciones de transparencia señaladas en el artículo 7 de la Ley Federal de Transparencia y Acceso a la Información Pública](#). Second Edition. November 1, 2006; México. Instituto Federal de Acceso a la Información y Protección de Datos. [Portal de Obligaciones de Transparencia](#).

<sup>2296</sup> México. Instituto Federal de Acceso a la Información y Protección de Datos. [Zoom](#). Buscador de Solicitudes de Información y Recursos de Revisión.

<sup>2297</sup> Honduras. Instituto de Acceso a la Información Pública. Gerencia de Verificación de Transparencia. [Resumen Ejecutivo-Verificación de la información de oficio-Portales de Transparencia-Instituciones Obligadas](#); Information received from the Institute for Access to Public Information in Honduras. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>2298</sup> Information received from the Public Information Access Unit in Uruguay. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>2299</sup> Uruguay. Agencia de Gobierno Electrónico y Sociedad de Información/Presidencia de la República. [Decreto No. 484/009](#). November 3, 2009.

<sup>2300</sup> México. Instituto Federal de Acceso a la Información y Protección de Datos. [Estadísticas e Indicadores](#). Information received from the IFAI in Mexico. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

76. Uruguay's Public Information Access Unit presents its statistics in its annual report. These data refer to the number of compliance forms and confidentiality request forms filed, the number of decisions and opinions issued and their subject matters, and statistics on compliance with the law. To meet this objective, all of the agencies subject to the law must submit a report to the UAIP with data on requests received and procedures followed during the prior year.<sup>2301</sup>

77. In Brazil, according to the information received, the Office of the Comptroller General publishes statistical reports on the Internet with daily data updates on requests for information and appeals, based on the data extracted from e-SIC. These reports include the consolidated data from the entire Federal Executive Branch, as well as data specific to bodies or entities registered in the system, without the need to log in to e-SIC.<sup>2302</sup>

## **H. Conclusions and Recommendations**

78. Over the past decade 22 countries of the hemisphere have enacted laws to guarantee the effective exercise of the right to access to public information; this reality is largely result of the promotion that the Inter-American Human Rights System has given to the protection and implementation of the right of access to public information. In general, the regulatory frameworks, adopted by different States, are in line with the standards developed by inter-American doctrine and caselaw.

79. The main conclusion that can be drawn from the study is the growing consensus in the OAS Member States, in recognizing the right to information as one of the pillars of the consolidation of established and robust democratic systems through citizen participation. This was expressed fundamentally in the enactment of laws on access to public information following the standards developed by the interamerican doctrine and caselaw.

80. In order to implement and enforce the laws on access to information in an efficient, suitable and adequate manner, several countries in the region have created supervisory institutional mechanisms, which demonstrates a concern to promote a culture of transparency in the long term. The existence of such mechanisms is vital both to effectively implement the access to information laws and to satisfy the public's need for a simple and effective remedy for review the denial of information.

81. The information gathered in this report leads to the conclusion that the institutions created in the region to ensure the implementation and enforcement of the right of access to information, inroads in each one of the States very painstakingly, which requires significant efforts from authorities to consolidate their space of autonomy and develop the ability to fulfill their mission .

82. As seen in this report, these bodies are not uniform in their designs and features, and not all meet the inter-America standards for independence, autonomy and power to resolve disputes. A number of countries have set up specialized bodies to implement the right to information with autonomy and independence. In other cases, commissioners have been appointed or specialized units were created and located within preexisting bodies (Public Ministry, Comptroller, the National Archives or Parliament). A third group of states have chosen to establish authorities or expert committees on the right to information, but under the aegis of the Executive branch or other body controlled by it.

83. Among the supervisory bodies that were designed with independence and autonomy within the government structure, we can also find differences due to the factors that makes them independent (process of selection and appointment of the commissioners, dismissal or termination of the mandate, budgetary sovereignty, etc.) A recent constitutional amendment positioned the IFAI as one of the most

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<sup>2301</sup> Information received from the Public Information Access Unit in Uruguay. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>2302</sup> Information received from the Office of the Comptroller General in Brazil. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

important bodies among those created in the region for the enforcement of access to public information, granting it autonomy and independence with a constitutional status within the political organization of the federation. However, Chile, Canada, Honduras, and El Salvador have established bodies with varying degrees of autonomy and independence in relation to the factors that can determine the real (or perceived) independence of these offices.

84. A critical issue in the institutional designs studied lies in the powers granted by law to these bodies to resolve disputes and if they have the power to order agencies under the Law to grant access to information intended to be held in reserve. Only a minority of the cases studied have the power to issue binding resolutions for authorities under the Law, as advised by international standards to provide accessible and affordable appeal to the applicant. The IFAI in Mexico the Transparency Council of Chile, the Institute for Access to Public Information in El Salvador and the Institute for Access to Public Information of Honduras can issue binding resolutions but not final; this has allowed agencies under the Law to challenge the decisions of those bodies in court, thereby delaying the disclosure of the requested information.

85. In the cases of Canada, United States and Uruguay the supervisory bodies overseeing access to information can only issue recommendations, for the government bodies who denied access to information to review their decisions. In these cases, the requesters who wish to enforce their right to information may avail themselves of the judiciary, with all of the attending costs.

86. The rest of the designs studied must be examined individually. Brazil delegated the duties of implementing and monitoring compliance with the law to a pre-existing body with sufficient authority, independent from the Executive Branch, and federal in scope. In case of dispute the regulation on access to information established a complex mechanism that requires prior presentation of a petition for review before the agency under the law, and then he may appeal to his superior. If the superior refuses the access to information, the applicant may appeal the decision to the supreme authority of the agency or entity. Subsequently, the applicant may appeal to the Office of the Comptroller General [*Controladoria-Geral da União*] and if it refuses the access to information, he/she may appeal to the Joint Committee on Revaluation of Information.

87. A similar case is that of Colombia, which by law assigned the implementation of decisions on access to public information to the Office of the Inspector General [*Procuraduría General de la Nación*] of Colombia, a pre-existing agency with the power to sanction public official and within which a Working Group was established for the application of the Access to Information Act. However, when there is a dispute between a person requesting information and an agency under the Law, applicants should go to the courts to seek protection of their rights.

88. In light of the issues presented on this report, the countries of the region may continue to make progress in their obligation to implement a culture of transparency and guarantee the right to access to information. It is therefore essential to persist in building robust supervisory bodies with sufficient power to give life and meaning to the mandates of transparency of access to information laws and align State practice to international case law.

89. The Office of the Special Rapporteur reiterates the importance that bodies responsible of defending the right to information have a budget and allocation of human resources to fulfill their important assigned mission. Without resources or staff, is very difficult to fulfill all the functions assigned to these agencies, such as the promotion of the regulation, exercise control over the rest of the state organization and resolve appeals with the speed necessary to guarantee the right to access to information.

90. The Office of the Special Rapporteur hopes that this report will be of use to the States and to civil society, to get to know the legal frameworks and institutional practices developed in the region to build supervisory bodies that grant the protection and defence of the right to access to information, capable of implementing systematic transparency policies and of resolving disputes between citizens and government agencies to access information of public interest. In this regard, this report is expected to be useful to bring

the regulatory frameworks into line with the highest relevant standards and inspire those states that have not yet adopted laws to defend the right of access to information.



## CHAPTER V CONCLUSIONS AND RECOMMENDATIONS

1. As on previous occasions, the Office of the Special Rapporteur closes its annual report with a chapter of conclusions and recommendations. The objective of this practice is to begin a fluid dialogue with Member States that will enable the Americas to emerge as an example in the area of respect, protection, and promotion of the right to freedom of expression.

### **A. Violence against journalists and media outlets**

2. According to the information received by the Office of the Special Rapporteur, at least 25 people, most of them journalists, 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 2014 there was also important progress in the investigation, trial, and punishment of some of those responsible for crimes committed against journalists in past years. However, despite these efforts, the majority of these crimes remain in a troubling state of impunity.

4. On this point, 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 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. Social Protests**

5. 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 2014. 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.

6. Likewise, the Office of the Special Rapporteur observes that it is necessary for States to design regulatory frameworks that respect the exercise of social protest. States must not fail to take into account that, when facing institutional frameworks that do not favor participation or that present serious barriers to accessing more traditional methods of mass communication, public protest can become the only method that truly permits sectors that are discriminated against or marginalized from the public discourse to make their points of view heard and considered.

7. On this point, the Office of the Special Rapporteur recommends that member States:

- a. 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.
- b. Ensure the protection of individuals and refrain from stigmatizing or stereotyping protesters and their demands, avoiding generalizations based on the behavior of particular groups or isolated events. If security forces have to intervene on demonstrations, they should use the safest and least harmful measures to individual rights.
- c. 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. Criminalization of expression and proportionality of subsequent liability**

8. 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 because they criminalize speech related to public officials and public interest matters, and other criminal provisions 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.

9. 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.

**D. Statements of high-level State authorities**

10. 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.

11. 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.

**E. Prior censorship**

12. The Office of the Special Rapporteur received information about judicial decisions and government measures that prohibited the exercise of journalism, the operation of media outlets or 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.

13. 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.

**F. Indirect Censorship**

14. 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. The Office of the Special Rapporteur received complaints about the use of other mechanisms of state power, such as tax and administrative control, in order to pressure and punish or reward and provide privileges to journalists and media outlets depending on their editorial position.

15. 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.
  - c. Adopt legislation 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.

**G. Internet**

16. 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.

17. Furthermore, the Office of the Special Rapporteur highlights the promotion of regulation in certain countries of the hemisphere to ensure there is no discrimination, restriction, interference or blocking in the transmission of Internet traffic, in accordance with the principle of net neutrality.

18. In this sense, 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.
- e. Ensure that the processing of data and Internet traffic is not subject to any discrimination based on factors such as devices, content, author, source and / or destination of the material, service or application, in accordance with the principle of net neutrality.

#### **H. Surveillance programs and confidential sources**

19. 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.

20. 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.

#### **I. Access to information**

21. 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.

22. 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.
- d. 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”.

#### **J. Diversity and Pluralism in the allocation of radio frequencies**

23. The Special Rapporteur received complaints about the lack of recognition of the community and indigenous broadcasting sector in some countries in the region. It also received information about the absence of regulatory mechanisms to ensure access to frequencies to this type of media as well as the existence of obstacles to their proper functioning. The Office of the Special Rapporteur also noted that concentration of public and private media is still a problem in some countries in the region

24. 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.

25. In this regard, this year the Office of the Special Rapporteur noted with satisfaction the adoption of broadcasting regulatory frameworks which represented progress in some countries in the region in relation to the pre-existing situation, but also identified provisions that could be incompatible with the exercise the right to freedom of expression. In this regard, this Offices noted that in several countries there still obstacles for 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.

26. Also, as mentioned in Chapter III of this report, the Office of the Special Rapporteur observes that today, the countries in the region are transitioning from analogue to digital television, while others have just begun this process. Thus, it is important—from the standpoint of the rights to freedom of expression and access to information—to define guiding principles to ensure that the digitalization of television signals becomes an opportunity to guarantee freedom of expression, universal access to all types of information and ideas, media diversity, and pluralism of information and opinions.

27. 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. Ensure that respect for freedom of expression, including media diversity according to editorial position or type of property, is ensured in the digital terrestrial transition process. To that aim, 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.



## JOINT DECLARATION ON UNIVERSALITY AND THE RIGHT TO FREEDOM OF EXPRESSION

The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information,

*Having* 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, 25 June 2012 and 4 May 2013;

*Stressing*, once again, the fundamental role 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 universal nature of freedom of expression, which is reflected in its inclusion in international and regional general human rights treaties and standards, as well as in national constitutions, in the ubiquitous adoption by States of democracy, which rests on freedom of expression, as a system of government, and in the recognition of freedom of expression as a core human value in all major cultural, philosophical and religious traditions around the world;

*Mindful of* the fact that, in the context of freedom of expression, universality implies both an obligation on States to refrain from unduly restricting this right and a positive obligation on States to ensure that all individuals and groups in society can enjoy and exercise this right without discrimination in terms both of seeking and receiving information and of imparting information and ideas;

*Cognisant of* the fact that, when freedom of expression comes under attack, it is often an early warning that all human rights are at risk and of a deteriorating security situation;

*Recalling* that freedom of expression is essential as an underpinning of sustainable development and for ensuring effective, transparent, accountable and democratic public institutions;

*Concerned* about the frequent attempts to justify violations of freedom of expression, often for purely political ends, by reference to culturally specific, traditional or community values, moral or religious beliefs, or claimed threats to national security or public order;

*Gravely concerned* about the fact that minorities and other groups which have suffered from historical discrimination are prevented from enjoying fully their right to freedom of expression with the result that they continue to be marginalised from the political, economic, cultural and social spheres;

*Noting* that freedom of expression, in concert with the right to protection from discrimination, which is a non-derogable human right, protects the rights of all individuals and groups in society to express viewpoints which differ, however strongly, from those of the majority, as long as these do not violate legitimate restrictions on free speech, for example those relating to incitement to hatred;

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<sup>2303</sup> The Office of the Special Rapporteur for Freedom of Expression issued 32 press releases in 2014. Available for consultation: <http://www.oas.org/es/cidh/expresion/artListCat.asp?year=2014&countryID=1&IID=2&catID=1>



*Emphasising* that it is inherent in the overriding nature and importance of human rights that they require the modification or elimination of laws, regulations, customs and practices which lead to discrimination or other forms of human rights abuses, and noting that this is reflected in many leading human rights statements, including the 1993 Vienna Declaration and Programme of Action and the *Convention on the Elimination of All Forms of Discrimination against Women* and the *Convention on the Rights of Persons with Disabilities*;

*Aware of* the important positive role that open debate about different cultures, values, traditions, beliefs and practices can have in promoting understanding and peace, and in combating hatred, discrimination and violence;

*Adopt*, in Paris, on 6 May 2014, the following Joint Declaration on Universality and the Right to Freedom of Expression:

1. Recommendations for States

- a. States should take positive steps to ensure that all individuals and groups in society can realise their right to freedom of expression without discrimination. The specific steps that may be necessary will vary from State to State but the following measures should be considered:
  - i. Strengthening obligations on public broadcasters to serve the information and expressive needs of different individuals and groups in society, as well as to promote understanding and tolerance in society.
  - ii. Creating an enabling legal framework for community media, including so it can serve the information and expressive needs of different individuals and groups.
  - iii. Providing support, whether of a financial or regulatory nature, for media outlets or media content, for example in certain formats or languages, that serve the information and voice needs of different individuals and groups.
  - iv. Generally putting in place a legal and regulatory framework that promotes the rights of different individuals and groups to access and use media and digital technologies to disseminate their own content as well as to receive relevant content produced by others.
- b. States should take concrete and effective steps to modify or eliminate harmful stereotypes, prejudices and practices, including traditional or customary values or practices, which undermine the ability of all individuals and groups in society to enjoy the right to freedom of expression.
- c. States should not impose restrictions on freedom of expression unless they meet the minimum test for such restrictions under international law, including that they meet the standards of legality (provided by law), serve one of the legitimate aims recognised in the *International Covenant on Civil and Political Rights* (ICCPR), and are necessary and proportionate.
- d. States have some limited flexibility under international law in deciding whether or not, and if so how, to restrict freedom of expression to protect legitimate aims while respecting the standards set out above, including to reflect their own traditions, culture and values. International law also recognises that different approaches towards restrictions on freedom of expression may be justified by the very different factual situations States may face. Neither of these variations in any way undermines the principle of universality of freedom of expression and restrictions on freedom of expression should never represent an imposition by certain groups of their traditions, culture and values on others.
- e. There is a core of freedom of expression in relation to which States have either no power or extremely limited power to adapt restrictions to take into account local traditions, culture and values, which particularly includes political speech, broadly defined, given the centrality of such speech to democracy and respect for all human rights, which also implies that public figures should accept a greater degree of scrutiny by society.

- f. Certain types of legal restrictions on freedom of expression can never be justified by reference to local traditions, culture and values. Where they exist, such restrictions should be repealed and anyone who has been sanctioned under them should be fully absolved and be afforded adequate redress for the violation of their human rights. These include:
  - i. Laws which protect religions against criticism or prohibit the expression of dissenting religious beliefs.
  - ii. Laws which prohibit debate about issues of concern or interest to minorities and other groups which have suffered from historical discrimination or prohibit speech which is an element of the identity or personal dignity of these individuals and/or groups.
  - iii. Laws which provide for special protection against criticism for officials, institutions, historical figures, or national or religious symbols.
- g. States should give special attention, as needed given local circumstances, to combating, including through programmes designed to counter them, historical discrimination, prejudices and/or biases which prevent the equal enjoyment of the right to freedom of expression by certain groups.
- h. The global reach and effectiveness of the Internet, as well as its relative power and accessibility compared to other communication platforms, means that it plays a key role in realising the universality of freedom of expression. In this context, the following principles apply:
  - i. The right to freedom of expression, which applies regardless of frontiers, protects the Internet, as it does other forms of communication.
  - ii. Extreme caution should be taken in applying restrictions on freedom of expression to the Internet and other digital technologies, taking into account that such actions in one jurisdiction may affect other jurisdictions.
  - iii. States should actively promote universal access to the Internet regardless of political, social, economic or cultural differences, including by respecting the principles of net neutrality and of the centrality of human rights to the development of the Internet.

## 2. Recommendations for Other Actors

- a. International, regional and national human rights bodies should monitor and take steps to address restrictions on freedom of expression which are claimed to be justified by reference to specific traditions, practices, cultures and/or values, as well as situations where certain groups suffer from systematic barriers in terms of their ability in practical terms to exercise their right to freedom of expression.
- b. The international community – including inter-governmental bodies and individual States – should take steps to promote more dialogue and debate about these issues with a view to promoting greater understanding about and collaboration to support universal respect for freedom of expression.
- c. The media should play a positive role in countering discrimination, stereotypes, prejudices and biases, including by highlighting their dangers, by adhering to the highest professional and ethical standards, by addressing issues of concern to minorities and by giving members of minorities an opportunity to speak and to be heard.

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