

27. PERU

867. In 2018, the Office of the Special Rapporteur noted that investigative journalism was threatened in Peru due to harassment coming from the judicial and political sphere against a group of journalists that revealed a plot of alleged corruption that involved members of the Legislative and Judicial Branch, politicians, and businesspersons. The harassment was characterized by the filing of requests to reveal the sources of the investigations. On the other hand, several journalists were victims of threats and physical and verbal aggressions due to their work. In addition, the Office of the Special Rapporteur was informed that reporters were frequently attacked by security forces and demonstrators while covering social protests. In another context, the approval of a law by the Legislative Branch that banned the State from allocating advertisement to private media, generated opposition by the Executive Branch, and motivated a note from the Office of the Special Rapporteur. Ultimately, the law was declared unconstitutional by the Constitutional Court. Regarding access to public information, the State made legislative efforts to strengthen the National Authority for Transparency and Access to Public Information [*Autoridad Nacional de Transparencia y Acceso a la Información Pública*], due to this the Office of the Special Rapporteur recalled the importance of providing the initiative with the necessary budget and guaranteeing its autonomy and institutional independence.

A. Progress

868. On April 26, Supreme Decree No. 044-2018-PCM was approved, establishing the "National Plan for Integrity and Fight against Corruption 2018-2021"¹¹³². The Decree provides, among other things, actions to "strengthen the National Authority for Transparency and Access to Public Information in order to guarantee its autonomy and effectiveness"¹¹³³ by presenting a bill—which at the close of this edition is under study—. It also establishes guidelines to improve the level of active transparency, standardization of portals, publication of criminal sanctions linked to corruption, promotion of accountability hearings, among others¹¹³⁴. In addition, the regulations include recommendations raised by the Presidential Integrity Commission, whose compliance is monitored by civil society¹¹³⁵.

869. On September 25, the Ministry of Justice and Human Rights [*Ministerio de Justicia y Derechos Humanos*] (MINJUSDH) reported that the National Authority for Transparency and Access to Public Information (ANTAIP), ascribed to said ministry, issued a binding opinion on the publicity of public officials' e-mails or technological messaging applications, in which it argued that institutional emails and messaging applications for institutional use should be considered protected within the right of access to public information¹¹³⁶.

870. On November 3, the National Institute of Radio and Television of Peru [*Instituto Nacional de Radio y Televisión del Perú*] (IRTP) launched an information program in the Asháninka language that seeks to give a national presence to the culture of the Asháninka ethnic group, the largest in the Peruvian Amazon. The program "Ashi Añane" joins two other informative programs in native languages of the country (Ñuqanchik, in Quechua and Jiwasanaka, in Aymara) that were launched between 2017 and 2018¹¹³⁷.

B. Prosecution

871. On October 4, the National Criminal Chamber would have acquitted Daniel Urresti, former Minister of the Interior, of the charge of co-authorship in the murder of journalist Hugo Bustíos, which occurred in 1988 in Huanta, Ayacucho. The Attorney General's Office, which had requested 25 years in prison for Urresti,

¹¹³² Comisión de Alto Nivel Anticorrupción. April 26, 2018. [Poder Ejecutivo aprueba el Plan Nacional de Integridad y Lucha contra la Corrupción 2018-2021](#).

¹¹³³ Comisión de Alto Nivel Anticorrupción. April 26, 2018. [Poder Ejecutivo aprueba el Plan Nacional de Integridad y Lucha contra la Corrupción 2018-2021](#).

¹¹³⁴ Comisión de Alto Nivel Anticorrupción. April 26, 2018. [Poder Ejecutivo aprueba el Plan Nacional de Integridad y Lucha contra la Corrupción 2018-2021](#).

¹¹³⁵ Observatorio de Integridad. [Recomendaciones de la Comisión Presidencial de Integridad](#). No date.

¹¹³⁶ Ministerio de Justicia y Derechos Humanos. September 25, 2018. [Correos electrónicos de funcionarios y servidores sí son de acceso al público, precisa la Autoridad Nacional de Transparencia del MINJUSDH](#).

¹¹³⁷ Instituto Nacional de Radio y Televisión del Perú. November 12, 2018. [Presidente del IRTP destaca lanzamiento de Ashi Añane](#); Knight Center for Journalism in the Americas. November 20, 2018. [Peruvian state TV and radio launch third news program hosted in an indigenous language](#).

announced that it would file an appeal for annulment of the ruling, while the family of the journalist said they would appeal. The sentence would have enabled Urresti to continue in the electoral contest for the Mayor's Office of the Municipality of Lima for the Podemos Peru party¹¹³⁸.

C. Attacks, Threats, and Intimidation of Journalists and the Media

872. The Office of the Special Rapporteur received information on some acts of threat and intimidation against journalists for the performance of their work. Among these, on January 6, unidentified persons would have intentionally set fire to the vehicle of journalist Juan Ferdinand Berrios Jiménez, of *Radio Tahuamanu RTV*, allegedly for his reports of acts of corruption in a municipality¹¹³⁹; On January 24, reporter Eduardo Juárez, of *RPP*, would have been threatened with a firearm while broadcasting live an interview from the Fiori Terminal, located in the district of San Martín de Porres, in Lima, where a group of transporters tried to resist a judicial order of eviction¹¹⁴⁰; On January 29, reporter Manuela Camacho Jaramillo and her cameraman Johnny Richard García Carrillo, of *América TV*, reported being attacked by traveling merchants who work on Pucusana beach while trying to document the contamination of the place¹¹⁴¹.

873. On February 13 journalists Idelfonso Espinoza, from the *Noticierolibre.com* portal, and Guillermo Ibarra, from *Radio Armonía* and *Canal 13* from Huaraz, would have been abducted and beaten by a group of people from a district in the Ancash region, northeast of the country, when they covered a complaint about alleged irregularities in a construction for water installation and sewerage of the municipality¹¹⁴².

874. The Office of the Special Rapporteur received information that on March 27 Congresswoman Patricia Donayre had threatened to sue journalist Nancy Alarcón after abruptly ending an interview that the communicator was carrying out on the "En Directo" program through *Canal 21*. The threat would have been registered after the communicator reiterated questions about alleged acts of corruption in which the congresswoman would be involved¹¹⁴³.

875. On September 25, journalist Liubomir Fernández, a contributor to *La República* in the Puno region, would have been the victim of death threats following the publication of investigations into the candidate for regional governor, Alexander Flores Pari, and the alleged link between his family and illegal mining, and the consequent contamination of the area¹¹⁴⁴.

876. On October 9, the congresswoman of the Fuerza Popular party, Esther Saavedra, allegedly assaulted journalist Edgar Alarcón, of the newspaper *El Poder*, at an office of the Judicial Branch. The congresswoman, who was supposed to testify in the framework of an investigation into alleged false documents, sought to prevent the reporter from taking photographs of her. Several police officers would have temporarily arrested Alarcón¹¹⁴⁵.

¹¹³⁸ La República. October 4, 2018. [Elecciones 2018: Daniel Urresti quedó absuelto por caso Bustíos y continúa en carrera](#); El Comercio. October 5, 2018. [Absuelven a Daniel Urresti por asesinato del periodista Hugo Bustíos](#); Committee to Protect Journalists (CPJ). October 4, 2018. [Peru mayoral candidate Daniel Urresti acquitted of Hugo Bustíos murder](#).

¹¹³⁹ Asociación Nacional de Periodistas del Perú. January 6, 2018. [Perú: Incendian vehículo de periodista para amedrentarlo](#). El Comercio. January 9, 2018. [Incendian vehículo de periodista de Madre de Dios](#). Telemás. January 8, 2018. [Madre de Dios: Queman carro de periodista para amedrentarlo](#).

¹¹⁴⁰ La República. January 25, 2018. [Fiori: periodista fue amenazado en vivo con arma de fuego](#). Perú 21. January 25, 2018. [Terminal Fiori: Periodista fue amenazado con arma de fuego en plena transmisión](#). Perú.com. January 25, 2018. [Fiori: amenazan con arma a reportero durante transmisión en vivo](#). RPPNoticias. January 25, 2018. [Periodista fue amenazado con pistola durante transmisión en vivo](#). Diario Correo. January 25, 2018. [Hombre amenaza con arma a reportero en transmisión durante protesta en Fiori](#); elPopular.pe. January 26, 2018. [Terminal Fiori: Reportero es amenazado en vivo con un arma de fuego](#).

¹¹⁴¹ Asociación Nacional de Periodistas del Perú. March 30, 2018. [Perú: Bañistas de Pucusana agreden verbalmente a reportera y camarógrafo](#). Correo. January 30, 2018. [Manuela Camacho fue amenazada y agredida por bañistas de Pucusana](#); Altavoz. January 31, 2018. [Video: Bañistas de Pucusana agreden a periodista por grabar playa contaminada](#); Rafaelnippon Chanel/Youtube. January 29, 2018. [Pucusana: Agreden a reportera de la Banda del Chino!](#)

¹¹⁴² Ipys. February 15, 2018. [Perú: secuestran y golpean a periodistas](#).

¹¹⁴³ La República. March 27, 2018. [Congresista Patricia Donayre amenaza a periodista en programa de televisión](#). Instituto Prensa y Sociedad. March 28, 2018. [Congresista Patricia Donayre amenaza a periodista en programa de televisión](#). Lima Noticias 360. April 1, 2018. [Congresista amenaza con denunciar a diario local](#).

¹¹⁴⁴ IFEX/Ipys. October 3, 2018. [Periodista Liubomir Fernández es amenazado de muerte](#).

¹¹⁴⁵ 24 horas. October 9, 2018. [Congresista Esther Saavedra pierde los papeles y agrede a periodista en Tarapoto](#); Ipys. October 9, 2018. [Perú: congresista agrede a periodista. Policía intenta detenerlo](#).

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

D. Subsequent Liabilities

878. The bishop of Piura and Tumbes, José Antonio Eguren Anselmi, would have criminally sued journalists Pedro Salinas and Paola Ugaz for aggravated defamation, due to their investigations that would link him to abuses and irregularities committed in the religious organization Sodalicio Vida Cristiana. The lawsuit against Salinas was filed before the First Unipersonal Criminal Court of Piura in August¹¹⁴⁶. On October 4, the lawsuit against Ugaz was reportedly admitted for trial by Judge Esther Alva Pantaleón of the Fifth Unipersonal Criminal Court of Piura¹¹⁴⁷.

879. Sol Carreño, journalist of *América TV*, would have been reported to the Attorney General's Office for the alleged crime of money laundering, due to the statements of journalist Laura Bozzo -who was convicted for association to commit a crime and embezzlement- who would have suggested that the Carreño would have received money from Vladimiro Montesinos, presidential adviser to former president Alberto Fujimori, in the 1990s¹¹⁴⁸.

880. The Inter-American Commission stated that "[t]his kind of political debate encouraged by the right to freedom of expression will inevitably generate some critical speeches or even offensive to those who hold public office or are intimately involved in the formation of public policy."¹¹⁴⁹ Therefore, as stated in Principle 10 of the Declaration of Principles on Freedom of Expression adopted by the Inter-American Commission in 2000, "[t]he protection to reputation should only be guaranteed through civil sanctions in those cases which the person offended is a public official." That is, the use of criminal mechanisms to punish speech on matters of public interest, and especially public officials or politicians does not respond to a pressing social need that justifies it, is unnecessary and disproportionate and it can be a means of indirect censorship given its chilling effect of the debate on matters of public interest.

E. Source confidentiality

881. On July 12, the Office of the Special Rapporteur issued a statement in which it expressed concern regarding the actions of Peruvian government institutions aimed at forcing journalists to reveal their sources and information materials. According to the information received, journalists Gustavo Andrés Gorriti Ellenbogen, director of the Legal Defense Institute [*Instituto de Defensa Legal*] (IDL-Reporteros), and Rossana Cueva Mejía, director of the "Panorama" Journalistic Program, were summoned to an Extraordinary Session on July 12 before the Congress of the Republic of Peru, convened by the Audit Commission and Comptroller [Comisión de Fiscalización y Contraloría], with the objective of addressing "the claim regarding the wiretapping." The purpose of summoning the journalists was for them to inform about "the form and circumstances in which they obtained the audios and/or documentation in relation to the wiretapping". Also, in the document, they were required to deliver "the audios and/or original documentation that supported the aforementioned report"¹¹⁵⁰.

882. The summoned media disclosed a series of audios by which representatives of the Judicial Council would be involved in an alleged traffic of influence. In turn, on July 10, the Anti-Corruption Prosecutor's Office

¹¹⁴⁶ El Comercio. August 16, 2018. [Caso Sodalicio: obispo denuncia a Pedro Salinas por difamación agravada](#); Ipy. August 16, 2018. [Perú: Obispo denuncia a periodista por difamación agravada](#).

¹¹⁴⁷ La República. October 14, 2018. [Arzobispo de Piura investigado por Sodalicio, demanda a periodista Paola Ugaz](#); Ipy. October 14, 2018. [Perú: Obispo denuncia a periodista por difamación agravada](#).

¹¹⁴⁸ La República. August 18, 2018. [IPYS denuncia campaña contra Sol Carreño tras dichos de vinculados a Montesinos](#); Ipy. August 18, 2018. [Perú: denuncian a periodista por dichos de cómplice de Montesinos](#); Informatoperu. August 18, 2018. [Denuncian que Sol Carreño percibía 10 mil dólares mensuales de gobierno fujimorista](#); Lucidez. July 3, 2018. [Sol Carreño: "Intentan desprestigiar a los medios que investigan y denuncian"](#); La República. December 20, 2017. [Vía Twitter: Laura Bozzo hace serias acusaciones contra Sol Carreño](#).

¹¹⁴⁹ IACHR. [Annual Report 1994. Chapter V: Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights](#). Title III Section B. OEA/Ser. L/V/II.88. Doc. 9 rev. February 17, 1995.

¹¹⁵⁰ IACHR. Office of the Special Rapporteur for Freedom of Expression. July 12, 2018. [Press Release 151/18 Office of the Special Rapporteur Expresses Concern over Measures Forcing Journalists in Peru to reveal their sources and materials](#).

would have opened investigations into the alleged irregularities denounced by IDL-Reporteros and Panorama. According to reports, the Prosecutor's Office would have issued a warrant for IDL Reporters to produce documents in order to access the material and the journalistic work carried out. The implementation of the warrant was reportedly initiated, but soon after it would have been suspended¹¹⁵¹. After an alert issued by civil society organizations, the Public Prosecutor's Office, on the same date, issued a press release stating that "[t]he Attorney General of the Nation, Pablo Sánchez Verlarde, reiterates his respect for freedom of the press and affirms that during all his professional and personal trajectory he has been a firm defender of the democratic values of our society"¹¹⁵².

883. During the 169 Period of Sessions of the IACHR held in Boulder, Colorado, from October 1 to 5, the organization IDL-Reporteros spoke about corruption events that involve high-level authorities, political, and economic actors, and that affect judicial independence. It also referred to the violation of freedom of expression and the right to source confidentiality due to judicial harassment against journalists who broadcasted the audios that revealed a plot of alleged corruption, and other measures adopted by state institutions. The organization noted the lack of guarantees from the investigators to continue the work. For their part, the representatives of the State recognized and repudiated the acts of corruption, spoke about measures led by the Executive and reforms to take on in order to strengthen the fight against corruption, transparency, and access to public information. The IACHR expressed its appreciation for the work of investigative journalism and the work of the petitioning organization, as well it thanked the representatives of the State for their openness¹¹⁵³.

884. The IACHR has urged States to "[f]oster a climate of guarantees for the freedom to report acts of corruption, the development of the practice of investigative journalism and the exercise of the right to seek, receive and impart information related to corruption. This includes guaranteeing the safety of journalists, human rights defenders and activists who investigate and report corruption; repealing so-called "contempt" and criminal defamation laws while ensuring the proportionality of penalties in civil proceedings; ensuring protection for the confidentiality of journalistic sources; and establishing protection systems for corruption whistleblowers."¹¹⁵⁴

885. The Inter-American Commission recalls that Principle 8 of the IACHR's Declaration of Principles on Freedom of Expression states that "[e]very social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential."

F. Access to Public Information

886. According to official information, on August 28 the Ministry of Justice and Human Rights presented a bill that creates the "National System for Transparency, Access to Public Information, and Protection of Personal Data" [*Sistema Nacional de Transparencia, Acceso a la Información Pública y Protección de Datos Personales*]¹¹⁵⁵. The explanatory memorandum of the bill states that its design is consistent with the "Draft Model Inter-American Law on Access to Information." In this sense, it seeks to create the "National Authority for Transparency, Access to Public Information, and Protection of Personal Data" as "specialized technical public body with legal personality of national public law, which enjoys technical, functional, economic, administrative, and financial autonomy" and that "it is ascribed to the Ministry of Justice and Human Rights." It also empowers the Court of Transparency, Access to Public Information, and Protection of Personal Data, created by legislative decree in 2017, as a "decision-making body that exercises its functions as a final administrative authority" and that "has technical and functional autonomy in the adoption of their decisions".

¹¹⁵¹ Twitter account of IDL-Reporteros (@IDL_R). [July 10, 2018](#); El Comercio. July 10, 2018. [Fiscalía suspendió diligencia en IDL-Reporteros por audios de CNM y PJ](#); IACHR. Office of the Special Rapporteur for Freedom of Expression. July 12, 2018. [Press Release 151/18 Office of the Special Rapporteur Expresses Concern over Measures Forcing Journalists in Peru to reveal their sources and materials](#).

¹¹⁵² Twitter account of Ministerio Público del Perú (@FiscaliaPeru). [Fiscal de la Nación reitera su respeto a la libertad de prensa y valores democráticos](#). July 10, 2018.

¹¹⁵³ IACHR, 169 Period of Sessions, Hearing on: [Crisis de corrupción judicial en Perú y su impacto sobre los derechos humanos y a la libertad de expresión](#). October 1, 2018.

¹¹⁵⁴ IACHR. Resolution 1/18. [Corruption and Human Rights](#). March 16, 2018.

¹¹⁵⁵ Ministerio de Justicia y Derechos Humanos. [Proyecto de Ley que crea el Sistema Nacional de Transparencia, Acceso a la Información Pública y Protección de Datos Personales](#). August 28, 2018.

887. Regarding the National Authority for Transparency, Access to Public Information, and Protection of Personal Data, in accordance with the bill, it would be integrated by a Board of Directors, a General Secretariat, and the Court of Transparency, Access to Public Information, and Government Transparency. The Board of Directors would be composed of three members and would be the highest body of the institution. The president of the Board of Directors would be elected by public tender and for the other two members, one would be appointed by the president of the Council of Ministers and the other one by the representatives of civil society organizations that make up the High-Level Anticorruption Commission [*Comisión de Alto Nivel Anticorrupción*], created by Law No. 29.976.

888. On October 11, the Office of the Special Rapporteur sent the State of Peru a request for information on the aforementioned bill, in accordance with the powers established in Article 41 of the American Convention on Human Rights. In the letter, the Office of the Special Rapporteur informed the State that it considers essential the creation of an independent and specialized oversight body with the power to promote the implementation of laws on access to public information, and also review the denials of public institutions with the purpose of taking decisive decisions. The Office of the Special Rapporteur noted that the legislative initiative is a step forward in complying with international obligations to protect the right of access to public information, but at the same time reminded the State that technical, functional, and administrative independence, including the budgetary dimension, is important to guarantee the autonomy and institutional independence of the enforcement authority. In this regard, the Office of the Special Rapporteur asked the State for information on where the bill is lodged at, on the legal opinions of the review committees, and on the budgetary aspects for the effective implementation of the aforementioned project, in case it is approved by congress¹¹⁵⁶.

889. Through a note dated November 5, the State replied that the project was still being drafted by the Executive. Regarding the budgetary aspects, it responded that "it is understood that there would not be a final decision on this matter yet and that the Ministry of Justice and Human Rights would be evaluating budget alternatives to finalize its financing"¹¹⁵⁷.

G. Concentration of the Media

890. In April, the El Comercio Group reported to the Stock Market Superintendency [*Superintendencia del Mercado de Valores*] (SMV) the acquisition of 100% of the shares of the company Prensamart (formerly Epsa), of which it owned 54%. In 2013, El Comercio acquired the shares of Epsa and Alfa Beta Sistemas, with which it would have dominated 78% of the newspaper sales market¹¹⁵⁸. The Association of Journalists of Peru [*Colegio de Periodistas del Perú*] (CPP), through a public statement, questioned the commercial operation because it deepens the concentration of journalistic media in Peru, and recalled that a writ of amparo filed in court is still pending resolution against the acquisition made in 2013¹¹⁵⁹.

H. Government Advertising

891. On June 18, the Congress of the Republic of Peru published in the official gazette the text of Law 30.793 that regulates spending on official advertising in the State. In essence, it states: "Article 1. Advertising only in state media. From the entry into force of this law, all public entities, including private law and those under special regimes, as well as state companies, local governments, and regional governments may advertise their management tasks only in the state media at a cost rate"; "Article 2. Free broadcasting in digital network. Said public entities must also open accounts in the main applications of social networks, especially those that have greater broadcasting and number of users and place in them their communications, notices, and other issues of social broadcasting"; "Article 3. Prohibition. All advertising in private media is prohibited, under liability. Journalistic work such as reports, interviews, press conferences, and the like are not considered as such, which can be freely carried out without any payment to the media. The breach of this

¹¹⁵⁶ IACHR. Office of the Special Rapporteur for Freedom of Expression. Ref: Request for information on the bill that creates the "Sistema Nacional de Transparencia, Acceso a la Información Pública y Protección de Datos Personales". October 11, 2018.

¹¹⁵⁷ República de Perú. Permanent Mission of Peru to the OAS. Note Nº 7-5-M /204 to the Office of the Special Rapporteur for Freedom of Expression. November 25, 2018. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

¹¹⁵⁸ La República. April 7, 2018. [El Comercio da un paso más en la concentración de medios impresos](#); Observacom. April 13, 2018. [Se consolida la concentración en la prensa de Perú: El Comercio completa compra de acciones de ex EPENSA](#).

¹¹⁵⁹ Colegio de Periodistas del Perú. April 16, 2018. [Concentración de medios afecta libertad de expresión y pluralidad de información](#).

rule will be considered a crime of embezzlement"; "Article 4. Exceptions. Excluded from the prohibition are cases of disasters or national emergencies declared by the decree of urgency, electoral education campaigns by the electoral entities once the elections have been convened"¹¹⁶⁰.

892. Prior to the enactment of the law, on January 23, the Office of the Special Rapporteur forwarded a communication to the State, based on Article 41 of the American Convention on Human Rights, in which it requested information on the grounds of the bill and its compatibility with international standards of freedom of expression, and on the criteria and regulatory frameworks for the allocation of government advertising in Peru. Also, in the letter the Office of the Special Rapporteur expressed its concern about the content of the then draft law that had as an objective "to optimize the use of public resources and avoid the use of advertising for electoral or political parties' purposes." At that time, the parties represented in Congress who promoted the project based the initiative on the fact that "many (public) entities allocate huge resources to commercial media which have extremely high rates and only affordable to large business entities." They also indicated that the "discretion" of public bodies to allocate government advertising "is very broad both in the amounts and the media."

893. In addition, the Office of the Special Rapporteur took note of the position of various civil society organizations and the media that expressed concern about the scope of the bill, which they considered discriminatory and in violation of inter-American standards on the right to freedom of expression¹¹⁶¹.

894. On March 9, the Government of Peru responded by note that the Executive Branch did not identify with the proposed bill, as it violates the Constitution¹¹⁶². Despite this position, the bill passed its course in Congress and was finally approved. Faced with the entry into force of the legislation, civil society organizations such as the National Radio and Television Society [*Sociedad Nacional de Radio y Televisión*], the Peruvian Press Council [*Consejo de la Prensa Peruana*], and the Press and Society Institute [*Instituto Prensa y Sociedad*] (IPYS), as well as various media outlets publicly announced their opposition to the law and warned about the negative impact that its implementation would have on the viability of the media, the discriminatory exclusion of private media from the allocation of government advertising, and the impact on the population's right to information.

895. On August 9, the Permanent Representation of Peru before the OAS asked the Office of the Special Rapporteur for a technical note on the "Law Governing the Advertising Expenditure of the Peruvian State." On August 14, the Office of the Special Rapporteur sent the State a technical note that contains the analysis of Law 30.793 in light of the inter-American standards on freedom of expression. In order to support the efforts of the State to adequately regulate the matters covered by the bill of reference, the Office of the Special Rapporteur requested that the analysis of the law be sent to the Constitutional Court authorities. In the note, the Office of the Special Rapporteur analyzed that the law would be "excessively costly or disproportionate for the exercise of freedom of expression, in its double dimension." In that sense, the law would affect, on the one hand, "the sustainability of the private sector, with the consequent risk of closing a number of media outlets, which in our region depend largely on access to government financing, which will have an impact on the information sources available to the public". On the other hand, "direct advertising only through state media and social networks will limit and restrict the right of the public to obtain such information through the broadest circulation. Advertising on state media per se does not guarantee access to plural information or reach the entire public." The Office of the Special Rapporteur stated that "the exclusion of an entire sector from the allocation of government advertising is a disproportionate and unnecessary measure to achieve the legitimate goal sought: to eliminate discretionality and arbitrariness in the distribution of government advertising", and in that sense it recommended that "in order to face this problem, it is the State's responsibility to guarantee that all sectors can compete in equal conditions in the allocation of these resources, through clear, objective, prior, and transparent rules that prevent arbitrariness based on the editorial or informative line of the media."

¹¹⁶⁰ Congreso de la República. Ley No 30.793 que regula el gasto de publicidad del estado peruano. June 18, 2018.

¹¹⁶¹ IACHR. Office of the Special Rapporteur for Freedom of Expression. January 23, 2018. Letter to the State of Peru: Proyecto de Ley para la regulación de la publicidad Estatal Solicitud de información conforme al artículo 41 de la CADH. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

¹¹⁶² República de Perú. Permanent Mission of Peru to the OAS. Note Nº 7-5-M /204. November 5, 2018. Received on November 5, 2018. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

896. The Office of the Special Rapporteur also indicated that the law was approved in a context characterized by investigations of corruption in the political system, which are being developed and disseminated by several of the affected media, where congresspersons and prosecutors have even requested the removal of journalistic sources¹¹⁶³.

897. In October, the Constitutional Court of Arequipa declared the aforementioned law inapplicable for the Caja de Ahorro y Crédito of Arequipa, within the framework of a writ of amparo against the rule promoted by the credit institution¹¹⁶⁴.

898. On October 11, the Constitutional Court accepted a lawsuit filed by the Executive Branch and a section of Congress and declared Law 30.793 to be unconstitutional¹¹⁶⁵. The ruling, where the technical note sent by the Office of the Special Rapporteur is mentioned, determined that the law violates the right to freedom of information, criminal legality, freedom of contract for lawful purposes, and constitutional regulation of emergency decrees.

899. The Court held that although the arbitrariness in spending on public advertising could be reduced through the challenged law, since public resources would no longer be allocated to private media, "the drawbacks generated by the excessive use of public spending on advertising" can be combated with "less burdensome measures for freedom of information", without needing "to resort to absolute prohibition and criminalization". Indeed, "it is possible to face this scourge with control measures and with the introduction of limits on financing," the Court said. In this sense, the judgment concluded that the challenged law did not pass the proportionality test and therefore declared its articles 1 and 3 unconstitutional. Likewise, it considered that engaging in advertisement with the State cannot be considered unlawful, since such action is necessary to protect other fundamental rights, for which it ruled that Article 3 of the challenged law "constitutes an unjustified limitation to the right to freedom of contract". "The State contracts advertising not because it is an end in itself, but because it is a necessary means to satisfy the right to freedom of information and comply with its constitutional duties," said the Court. It added that it is also appropriate to declare the unconstitutionality of article 3 because, by criminalizing the allocation of government advertising in private media, it implies a criminal sanction, "which must be the last ratio of the intervention of the state force, to suppress an act (...) necessary to guarantee the fundamental rights of the population". On the other hand, the Court rejected that the law violates freedom of expression, because "if one starts from the premise that there is no fundamental right to obtain financing from the State, it could not be said that the decision not to grant supposes a censorship mechanism"¹¹⁶⁶.

I. Social Protest

900. On December 27, 2017, a group of students from the Universidad Tecnológica de los Andes, located in the community of Abancay, who took the seat of the university in protest of the temporary closure of the institution, would have been evicted with tear gas. At least 40 students would have been arrested and released hours later¹¹⁶⁷.

901. At least three demonstrations held on February 23 and 26, as well as on March 15, in the city of Lima, would have been repressed by police officers using tear gas. The demonstrations, in which mainly students participated, were held in rejection of a bill that is being discussed in Congress on reforms to the law on labor training¹¹⁶⁸.

¹¹⁶³ IACHR. Office of the Special Rapporteur for Freedom of Expression. REF.: Technical note in relation to Law 30.793 that regulates spending on official advertising. August 14, 2018.

¹¹⁶⁴ La República. October 2, 2018. [Juzgado declara fundada medida cautelar contra la Ley Mulder](#); El Comercio. October 3, 2018. [Juzgado de Arequipa declara inaplicable ley de publicidad estatal](#).

¹¹⁶⁵ Tribunal Constitucional. [Sentencia. Expedientes 00 18-131/TC y 0013-2018-PFTC \(Acumulados\)](#). October 11, 2011.

¹¹⁶⁶ TV Noticias. October 11, 2018. [TC declara inconstitucional ley de publicidad estatal](#); Ipy. October 11, 2018. [TC declara inconstitucional 'Ley Mulder'](#).

¹¹⁶⁷ La República. December 29, 2017. [Procesan a 42 estudiantes de UTEA por causar disturbios](#); Diario Correo. December 28, 2017. [Policía desaloja a universitarios que tomaron local en Abancay](#); El Comercio. December 27, 2017. [Abancay: detienen a alumnos atrincherados en local universitario](#).

¹¹⁶⁸ Publímetro. February 21, 2018. [Rosa Bartra defiende ley de modalidades formativas laborales](#); Noticias de América Latina y el Caribe. February 24, 2018. [Represión en Perú tras manifestaciones en contra de la "ley de esclavo juvenil"](#); La República. February 23, 2018. [Marcha contra la "Ley del esclavo juvenil": los incidentes durante la manifestación](#); La República. February 24, 2018. [Los estudiantes y](#)

902. On March 23, a team of journalists from *Canal N* would have been assaulted by demonstrators of the march "Que se vayan todos", which took place in Lima in protest of the country's political situation¹¹⁶⁹. On April 21, photographers reported being attacked by the National Police of Peru [*Policía Nacional del Perú*] (PNP) during their coverage of World Marijuana Day, held at the Plaza San Martín in Lima¹¹⁷⁰.

903. The National Association of Journalists of Peru [*Asociación Nacional de Periodistas del Perú*] (ANP) sent a letter to Interior Minister, Mauro Medina, in September to express its deep concern over the repeated physical attacks that photojournalists are victims of during their information coverage. The ANP mentioned as a recent example the shot wound suffered by photojournalist César Zamalloa, of the magazine *Caretas*, on July 27 during a citizen mobilization, and maintained that it is not an "isolated incident". "Journalists in 2017 and this year have been frequent targets of the use of the repressive force of police officers during coverage of demonstrations or social protest, apparently, with the intention of avoiding their informative work," said the journalistic union. Because of this, it raised the "immediate need to prepare an action protocol for the National Police of Peru regarding the work of men and women in the press during the coverage of these events and situations that put them at risk"¹¹⁷¹.

904. According to the preliminary conclusions of the international investigation mission carried out in Peru by the Observatory for the Protection of Human Rights Defenders [*Observatorio para la Protección de los Defensores de Derechos Humanos*] (OBS) of the World Organization Against Torture, from June 4 to 9, criminalization, stigmatization, and a punitive and repressive framework against social protest and against the defense of human rights, affects many defenders, including journalists¹¹⁷².

905. 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"¹¹⁷³ 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."¹¹⁷⁴

906. 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

[el Gobierno rechazan la ley del esclavo juvenil](#), TeleSur. February 23, 2018. [Reprimen marcha en Perú contra "ley del esclavo juvenil"](#), La República. February 24, 2018. [Marcha contra la "Ley del esclavo juvenil": los incidentes durante la manifestación \[FOTOS\] \[VIDEOS\]](#), Perú 21. February 27, 2018. [Policía dispersó a manifestantes en contra de la Ley de Empleo Juvenil \[VIDEO\]](#), Nodal. February 24, 2018. [Represión en Perú tras manifestaciones en contra de la "ley del esclavo juvenil"](#), Diario Norte. February 27, 2018. [Perú: enorme manifestación estudiantil contra nueva norma de Prácticas Laborales](#), RT.com. March 16, 2018. [Perú: Jóvenes toman las calles por cuarta vez contra la "ley de esclavitud juvenil"](#), Congreso de la República. June 21, 2018. [Congreso en cifras. Pleno del Congreso y Comisión Permanente](#) (page 18).

¹¹⁶⁹ Ipys. March 22, 2018. [Lima: Manifestantes agreden a equipo de Canal N en marcha "Que se vayan todos"](#); EFE. March 22, 2018. [Agreden a reporteros en una marcha contra el fujimorismo y los políticos en Lima](#).

¹¹⁷⁰ Ipys. April 21, 2018. [Lima: Fotógrafos denuncian represión policial durante cobertura del Día Mundial de la Marihuana](#).

¹¹⁷¹ Asociación Nacional de Periodistas del Perú. No date. [ANP advierte a sector Interior reiteradas agresiones a fotoperiodistas](#); IFEX. September 11, 2018. [ANP advierte al gobierno sobre reiteradas agresiones a fotoperiodistas](#); Ipys. September 17, 2018. [Fotoperiodistas en riesgo: ANP recomienda creación de protocolo para PNP](#).

¹¹⁷² World Organisation Against Torture. [Peru: Human rights defenders stigmatised, criminalised and repressed](#), June 26, 2018.

¹¹⁷³ IACHR. [Report on Citizen Security and Human Rights](#), OEA/Ser.L/V/II.Doc.66. December 31, 2009. Para. 197.

¹¹⁷⁴ 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.

exception, used under strictly necessary circumstances consistent with internationally recognized principles.”¹¹⁷⁵

J. Other relevant situations

907. On November 5, the First Mixed Court of the district of Wanchaq, by Resolution No. 76 of Judge Yanet Ofelia Paredes Salas, accepted the writ of amparo filed by four citizens against the television programs of the character "La Paisana Jacinta", on the understanding that it violates the right to human dignity, equality, non-discrimination, and cultural ethnic identity, by representing an Andean indigenous woman as a "vulgar", "dirty", and "of poor intellectual capacity", which would generate "a stereotype that only causes, promotes, and reinforces discrimination based on ethnic and cultural origin". The decision ordered the Compañía Latinoamérica de Radiodifusión, *Frecuencia Latina*, not to broadcast again the "La Paisana Jacinta" and "Circo de la Paisana Jacinta" programs on open and cable channels; and to remove all videos containing the television program from their YouTube channel and other virtual platforms¹¹⁷⁶.

908. On October 12, six members of the Fuerza Popular party sent a letter to the Culture Minister, Patricia Balbuena, requesting that the journalist of the state TV channel *TV Perú* be sanctioned for having shared a 'meme' that made a humorous reference to the legal situation of the party leader, Keiko Fujimori¹¹⁷⁷.

¹¹⁷⁵ 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](#).

¹¹⁷⁶ Poder Judicial del Perú. Primer Juzgado Mixto del distrito de Wanchaq. [Resolución N° 76](#). November 5, 2018. La República. November 28, 2018. [La Paisana Jacinta: Poder Judicial ordena a Latina no volver a emitir programa](#); Chirapaq. May 1, 2018. [La Paisana Jacinta vuelve a ser cuestionada en la ONU](#); Ipys. December 5, 2018. [PERÚ: el IPYS rechaza arbitrario control de contenidos por parte del poder judicial](#).

¹¹⁷⁷ Ipys. October 17, 2018. [Perú: congresistas piden amonestar a periodista por comentario en Facebook](#); Altavoz. October 18, 2018. [Alejandra Aramayo exige sanción a periodista que compartió meme sobre Keiko Fujimori](#).