

ARTICLE 19, APRODEH, IPYS and Suma Ciudadana

Submission to the UN Universal Periodic Review of the Republic of Peru

14th Session of the Working Group of the Human Rights Council, October-November 2012

Executive summary

1. This submission is provided jointly by ARTICLE 19: Global Campaign for Free Expression, an international human rights organisation that works globally to promote and protect freedom of expression and information, and Peruvian organizations Asociación Pro-Derechos Humanos (APRODEH), Instituto Prensa y Sociedad (IPYS) and Suma Ciudadana (signatories). With this submission, the signatory organisations seek to make a constructive contribution to the preparation process of the second cycle of the UPR for the Republic of Peru. Given the expertise of the signatories, this submission focuses on Peru's compliance with its international obligations with respect to freedom of expression and information.
2. The signatories note that during the first UPR cycle, the Peruvian Government received a number of recommendations related to freedom of expression issues. Specifically, the Peruvian Government was asked, *inter alia*, to ensure that human rights defenders are able to carry out their work without intimidation, to consider developing a national policy on the protection of human rights defenders, to sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearance and to further strengthen the capacities and independence of the judicial system and effectively combat corruption within the judiciary. Although the Government has not responded to these recommendations during the first UPR cycle review, this submission addresses the progress, or lack thereof, on these issues. In addition, it provides further information on the developments since the first cycle, including **media censorship** and related problems with **independence of the media**, defamation, incidents of **violence and harassment** against journalists and human rights defenders and **impunity** for the attacks.

Censorship and media independence

3. The signatories remain concerned about the various forms of control that the Government exercises of the media. The regulatory body for telecommunications is the *Organismo Supervisor de Inversión Privada en Telecomunicaciones* (OSIPTEL), in operation since 1993. It is a decentralized public body attached to the Office of the President of the Council of Ministers, hence enjoying a certain degree of independence. OSIPTEL is responsible for regulation and standard-setting, remedies and penalties, and dispute settlement. However, the Government retains the power to license broadcasters: it is the responsibility of the Ministry of Transport and Communications (MTC), under the 2004 Radio and Television Law. The legislation restricts majority ownership of broadcast media to Peruvian citizens. Failure to comply with the often arbitrary orders issued by the Government can lead to jail or deportation. Inevitably, this has led to the politicisation of media regulation. For example:
 - On 11 September 2008, MTC tried to interfere with the broadcasting of *Radio Uno*, a provincial radio station. The MTC employees, claiming that the radio's license expired, forcibly opened the station's doors with crowbars, entered the premises and forced their way into the broadcasting booth. There, they demanded that the radio journalists put an immediate end to their programming. The intervention was aborted after 400 local residents spontaneously turned up to support the station. It was alleged that the intervention was politically motivated since the radio station has been critical of the Government.
 - In June 2009, following violent struggles near the town of Bagua between indigenous protesters opposing commercial development in the Amazon and security forces, Bagua's local community radio station, *La Voz*, was closed down. *La Voz* had been outspoken in

reporting the events in Bagua, and during the protests it had broadcast live, warning listeners of action by the security forces and keeping families in touch with each other. The Government originally shut off the electricity at *La Voz*, alleging that it had been inciting indigenous people to kill the police. When, however, it emerged that the signals from *La Voz* did not reach the areas where the violence occurred, the station's license was revoked for arbitrary administration reasons (specifically, for using a frequency without authorisation, despite having had a 10-year license since 2007) after a random inspection of the station. The station's owner Aurora Doraliza Burgos de Flores, meanwhile, was charged with "aggravated theft of the radio spectrum"; after the case was reinstated in June 2011, he now faces up to four years in prison.

- In September 2009, the Government ordered the shutdown of a cable television station, *Canal 19*, in North-Eastern Peru. The station was accused of not having a proper contract for operations and of holding debt with the building manager. A day before the closure, it had broadcast a report accusing a former government official of corruption and political manipulation during his time in office.
 - On 15 January 2010, *Television Oriente*, a TV station based in the Amazon town of Yurimaguas, was stripped of its license by the MTC. This came after the Interior Minister, Mercedes Cabanillas, had earlier publicly threatened to close the station for its alleged "support" of violence by indigenous protesters against security forces. Although the station complied with all legal requirements, the authorities spuriously claimed that the station had failed to do so within the established deadlines.
4. In addition to Government control, the main source of the media censorship in Peru comes from media owners and managers themselves, due to the importance of advertising. Ties between politicians and media outlets are so close that journalists face job loss - irrespective of the popularity of their programmes - if they fail to conform to the editorial line. This trend became particularly pronounced in the run-up to the June 2011 presidential elections. For example:
- On 17 May 2011, television journalist Elvis Italo Gillerme Espinoza's show on the regional *Channel 4 JSV* was cancelled. While the station manager claimed the cancellation was a result of the journalist's lack of objectivity and "irresponsibility", Espinoza alleged the cancellation was related to his harsh criticism of presidential candidate Keiko Fujimori. Espinoza later reported receiving death threats left as cell phone messages.
 - On 28 June 2011, *Prensa Libre*, at *America TV*, one of the most popular and credible news programmes in Peru, was suddenly cancelled and replaced with a sports show. The Press and Society Institute claim that this cancellation was a reprisal for the programme's insistence on maintaining editorial independence during the election.
 - A number of incidents at *El Comercio*, Peru's biggest media conglomerate, also demonstrate this phenomenon. On 5 May 2011, journalist Gustavo Gorriti said in an interview that there was an "explicit alliance" against the Peruvian President by *El Comercio*. This has led to multiple firings and resignations by journalists.

Defamation

5. Recently, Peru has become notorious for its criminal defamation laws, which have become increasingly anomalous as a growing number of countries in the region decriminalise defamation. While in July 2011, the Congress approved changes to the Penal Code that would have eliminated prison sentences for defamation, these changes have yet to be promulgated by the President Humala. By the end of 2011, defamation convictions had actually increased.
6. The signatory organisations are particularly concerned about the frequency with which politicians and public officials resort to defamation to subdue legitimate criticism and investigation. This is incompatible with the well-established international principle that public

officials should tolerate more criticism than ordinary persons. Examples of this trend include the following:

- In April 2010, Enrique Lazo Flores, editor of *La Región* newspaper, received a suspended sentence of 18 months for attacking the honour of regional politician Renato Ascuña Chavera. The lawsuit questioned a series of articles about Chavera's suspension from his post for indiscipline and breach of duty.
- On 31 August 2010, reporter Fernando Santo Rojas received a one-year suspended sentence for aggravated defamation after he called the Mayor of Satipo "*inept and incapable*." After the sentence the journalist remained on probation and was forced to correct his stories to rectify his opinion.
- On 29 October 2010, José Alejandro Godoy became the first blogger to be imprisoned for his work after he was sentenced to three years in prison, a fine of approximately \$100,000 and 120 days of social work for "aggravated defamation" of a politician. He was convicted for a posting in which he linked to several outlets that discussed criminal accusations against Congressman Jorge Mufarech.
- On 7 December 2010, journalist Luis Torres Montero was sentenced to two years' imprisonment and a fine of approximately \$55,000 for defaming the former defence minister, Rafael Rey. In a literary satire on Peru's conservative society, the story headlined '*Rafí Rey doesn't dare come out of the closet*' and presented Rey (a high official of Opus Dei and vociferous critic of gay rights) as a homosexual.
- On 6 July 2011, Hans Francisco Andrade Chávez, a journalist with the network *América TV*, was sentenced to two years in prison for defamation of a local public servant, Juan José Vásquez Romero. Andrade Chávez was also ordered to pay a fine of approximately \$1,500 and to issue a public retraction and apology. The case originated from an interview that Andrade Chávez held with a political party member who claimed Vásquez Romero had threatened his life. Andrade Chávez asserts that he sought comment from Vásquez Romero before running the story, and that he has been repeatedly targeted in the past for his critical reporting on regional government.
- On 22 September 2011, Fritz Du Bois, the editor, and Gressler Ojeda, a reporter, of daily *Peru 21*, received two-year suspended prison sentences and a fine of approximately \$11,230 for defaming Ana Maria Solorzano Flores, the leading parliamentary candidate for a ruling party, in an article. The article claimed that relatives of Solorzano were linked to prostitution and were financing her campaign.
- On 30 September 2011, Gaston Dario Medina Sotomayor, a reporter for *Cadena Sur TV-Canal 15* and *Radio Nova FM*, received a suspended prison sentence and a fine of approximately \$3,700 for defaming local Congressman José Luis Elias Avalos. He was convicted for describing Avalos as a political defector, in reference to a 2008 political scandal where members of Parliament were accused of accepting cash payments to leave their party to join the former president Alberto Fujimori.
- On 7 November 2011, Teobaldo Meléndez Fachín, a provincial journalist, was found guilty of defamation for his reports about the alleged corruption of Daniel Mesía Camus, mayor of Yurimaguas. Fachín received a three-year suspended prison sentence and a fine of approximately \$11,230 for alleging that Mayor Camus had misused a 5.5 million soles (\$2.1 million) government loan, using it for public works projects that benefited his own political allies.

Violence and harassment against journalists and human rights defenders

7. The signatories are also profoundly concerned about the frequency of violent attacks against journalists and human rights defenders in Peru, creating a climate of fear that is inimical to freedom of expression. The past year, in particular, has seen a worrying intensification of this violence and a resultant deterioration in the conditions for a free media and civil society. The Press and Society Institute recorded 79 attacks on journalists and media workers between January and September 2011 alone. Many of these appear to originate from public officials.

- On 8 August 2011, journalist Humberto Espinoza Maguiña received a bullet with a letter containing death threats; the incident was linked to his investigative journalism on the regional government.
 - On 12 August 2011, journalist Pompillo Peña Ríos was assaulted by the Mayor of Balsapuerto and his bodyguards after he confronted the mayor about overdue payments for official radio messages. Ríos ultimately had to be treated for sustained injuries. The journalist claimed that the attack had been motivated by his investigation into the Mayor's involvement in the killing of 12 Shawi indigenous people and healers.
 - On 5 November 2011, reporter Feliciano Gutierrez Suca was shot and seriously wounded while resisting an attempted kidnapping. It is believed the incident was a reprisal for his coverage of police corruption (Suca's reports, detailing how police were pressuring smugglers for extortion payments, had led to the arrest of one of the officers).
 - On 2 December 2011, Pedro Reyes, journalist with *Canal 39 TV*, and his crew were beaten by police while covering a protest against the extension of a prison, which left one person dead and a number of wounded. After the officers realised that their actions against demonstrators were recorded, they assaulted the journalists and confiscated the equipment.
 - On 6 December 2011, journalist Armando Huamán Tasayco was attacked by individuals associated with the mayor of El Carmen. The journalist was physically assaulted and his belongings, including his video recorder, were taken. It was alleged that the attack was in retaliation for a journalistic investigation Huamán Tasayco had been carrying out into allegations of embezzlement involving the Mayor. He has since received several death threats telling him to top his investigations.
 - On 25 January 2012, Moisés Campos, director and host of the weekly news programme *Noticias TV*, received a death threat, warning him that he and his family would be killed unless he stopped investigating the Mayor of Tocache. This was the second incident involving the Mayor: in August 2011, journalist Ketty Vela was threatened after reporting on the Mayor's supposed links with drug trafficking. According to Vela, a would-be assassin told her that he had been paid more than \$1,800 to kill her.
8. In 2011 alone, three journalists have been killed for their work. These acts of violence appear to have been provoked by reports made against public officials: the journalists were Julio Castillo Narváez on 3 May 2011 (he was known for his criticism of local authorities and the radio station, where he worked had earlier been vandalized after he had reported on a local politician); Pedro Alonso Flores Silva on 8 September 2011 (he had been previously receiving death threats relating to his reports on supposed acts of corruption in the city of Comandante Noel and was sued for defamation earlier); and Jose Oquendo Reyes on 14 September 2011 (he had earlier accused the mayor of Chíncha of corruption).
9. The trend became particularly pronounced in the run-up to the presidential election in June 2011, during which journalists reported an alarming rise in attacks and threats in response to campaign coverage. Most of the culprits appeared to be supporters of the presidential candidates. In total, eight journalists were attacked or threatened in May 2011 alone.
10. The signatories are also concerned about the vilification of human rights activists by some top government officials sympathetic to former president Fujimori and who have aggressively sought to discredit NGOs that advocate for an end to impunity. Such NGOs have been falsely accused of sympathy with terrorist groups or of undermining the armed forces. There have also been continued reports of human rights activists being persecuted and harassed due to their work. For example:
- Dr. Salomón Lerner Febres, the former president of the Truth and Reconciliation Commission, had suffered attacks in 2009, including the poisoning and killing of his dog and receiving death threats in his home and at his office.

- Benicia Chichay Mulatillo, an activist from the environmental group Community Association of Agricultural workers in Santa Rosa de Suyu, has been subject to an ongoing campaign of harassment and intimidation (including death threats) since her husband, another environmental leader, Arcesio Gonza Castillo, was stabbed outside their house in August 2010. Despite one perpetrator being identified, no arrests have been made, nor has prosecution been initiated.
- During the June 2011 elections, a number of incidents of harassments were reported to have been carried out against women's organisations, including telephone threats, raids of organizational headquarters and theft of equipment, the hacking of Facebook and email accounts, and personal assaults.

Impunity for attacks

11. The above culture of violence towards the media is aggravated by the continued failure to bring perpetrators to justice. Such a failure provides little deterrent against future attacks. One notable exception to this was the April 2009 conviction of former Peruvian President Alberto Fujimori, who was sentenced to 25 years in prison for a variety of human rights crimes, including numerous attacks on journalists. This conviction sent a powerful message to would-be perpetrators that no one, however prominent, is safe from prosecution.
12. In one of the more positive developments of the cycle, meanwhile, violent crimes against journalists were brought under the specialist jurisdiction of the National Criminal Court in 2010. However, in the same year President Alan Garcia signed a decree - essentially amounting to a blanket amnesty - which placed limits on the prosecution of human rights abuses. While President Garcia later asked the Congress to revoke this decree in response to national and international pressure, such official indifference to accountability and justice continues to be reflected in public bodies.
13. The most powerful symbol of this impunity is Alberto Rivera Fernández, who was shot and killed in 2004. After numerous judicial proceedings, apparently designed to protect local government officials implicated in the murder, the court acquitted the two alleged masterminds on 8 February 2010. Despite protests from Rivera's family, former Pucallpa mayor Luis Valdez Villacorta (who had been accused by Rivera of corruption) and Solio Ramírez Garay, a former Pucallpa official, were acquitted by the high court for "lack of evidence." According to the lawyer, the evidence presented during the trial showed a clear link between Valdez and Ramírez and the plot to kill Rivera.

Freedom of information and combating corruption

14. The signatories appreciate the existing framework on the protection of the right to freedom of information in the country. Namely, the 1993 Constitution of Peru guarantees the right to information. The Law 27806 on Transparency and Access to Public Information (the Law on Access to Information), adopted in 2002, guarantees the right of every individual to request information by any means, from every public authority, regardless of identity and motive; and has served to promote the right of access to public information.
15. While there is no reliable official data which shows the number of requests for information, a 2011 report prepared by the NGO Suma Ciudadana shows that the number of prosecutions of *habeas data*, for breach of the Law on Access to Information, has increased steadily every year in Peru since 2002. This report assumes that there has been an increase in the understanding of the law by the society at large. Suma Ciudadana has also identified an extraordinary case of use of *habeas data* as strategic litigation between 2006 and 2007. In those years, former state employees began through a coordinated manner approximately 2000 identical *habeas data* processes against the ministry of Labour, looking for evidence of improper assessments of their applications for annulment of dismissal. Seventy per cent of these *habeas data* processes have been ending successfully between 2010 and 2012, and with

the evidence gained as a result of this processes, these former employees have initiated new demands, with documentary support, against the same Ministry to ask it to review its dismissal files.

16. The 2011 report also shows that, in general, the judiciary supports lawsuits for access to information, although there are still serious problems, as legislation lacks a more effective procedure that affects the ability of people to exercise their rights quickly. The uneven quality of the arguments used by the judiciary to resolve the *habeas* data complaints is also problematic. In this sense, in 2012 Suma Ciudadana is working with the Constitutional Court and the Court of Appeal of Lima (that process the 60% of the *habeas* data in Peru) in order to improve the capacities of the judges to use the jurisprudence on *habeas* data to make their judgments and ultimately create public policies.
17. However access to information continues to be threatened by a pervasive culture of secrecy and a lack of systemised information. Problems remain, in particular, in the way public authorities interpret and implement the law. The release of information is often politicised, for example, with the final decision on whether to release a particular piece of information often falling on a politician rather than a public servant. Since 2011, the Defensoría del Pueblo (the Public Defender's Office) has been asking the government to create an administrative authority (like those in Mexico and Chile) in order to standardise the rules and practices of transparency in the State.
18. In two notable cases in 2011, the courts ruled that Congress had violated the country's access-to-information law by withholding records related to alleged malfeasance by its members, and that Congress would be required to turn over information requested by the regional press group Instituto Prensa y Sociedad. While this was a significant judgment, it took IPYS four years to win the court ruling, and by the end of the year Congress had still not complied. More generally, a monitoring project by IPYS found that only 17% of requests were fully responded to, 32% of requests were not answered at all and 68% of requests answered were not answered within the proper time frames.

Access to information for the investigation of human rights violations

19. A number of legal provisions and practices in Peru have restricted access to information and documentation that could allow the right to the truth and access to justice concerning the facts that took place during the administration of President Fujimori (during this period, Peru underwent an internal process of armed conflict and violence resulting from the upraise of the terrorist group Sendero Luminoso and measures taken by the State to oppose it). During this period, the State developed counter-subversive strategies that included the use of methods such as massacres, extrajudicial executions, forced disappearances, torture and sexual violence applied in a systematic manner in some regions of the country or during certain periods during the conflict.
20. Victims and their families tried to push for investigations, especially concerning forced disappearances, so that they could find out what exactly happened to their loved ones or hold accountable those responsible for human rights violations. However, there were no investigations during the 80's and 90's, and in 1995 Amnesty Law was adopted. The signatories note that in 2001 the Inter-American Court on Human Rights considered that the Amnesty Law constituted a contravention of international standards and ordered the investigation of cases. A number of judicial proceedings have been filed since then, but hundreds have come to an abrupt end; according to information provided to the Public Prosecutor's Office, from a total of 1674 cases filed, 743 were closed with no consideration on the merits due to, in its large majority, the refusal of the State bodies to provide the information needed for investigations.

21. This situation has been confirmed by reports prepared by the Public Defender's Office in follow-up to the recommendations of the Peruvian Truth and Reconciliation Commission. The situation is especially problematic in relation to the Ministry of Defence. The organization APRODEH has produced a report on this situation, in which it points out that the Public Prosecutor's Office has repeatedly requested information about the names of those responsible for military bases operating in the critical territories; the names of personnel working in those bases; documents referring to the operations carried out, including names of people detained in such operations; as well as manuals and guidelines issued for the conduction of anti-subversive operations. The response has been almost uniform in most cases: the Ministry affirms they do not know about the existence of such military bases, there is no information about who was in charge (certainly no information about those based there) and that there is simply no information on the matter in the Ministry's archives.
22. The signatories wish to also highlight that when the same information is requested by another authority or for the defence of accused military officers, that information said to be inexistent is provided. This situation demonstrates that there is a clear intention by relevant authorities to prohibit access to important information and create obstacles to obtaining clarification on facts that occurred during the period of exception in Peru. In a report prepared by APRODEH and presented to the Inter-American Commission on Human Rights, a table details a number of information requests submitted by the Public Prosecutor's Office and denied by the Ministry for Defence but later used by the Army's Permanent Historical Commission in a report called *In Honour of the Truth*, a document that offers the armed forces official institutional account of the armed conflict in Peru between 1980 and 2000; the document essentially contradicts the conclusions reached by the Truth and Reconciliation Commission.

Recommendations

23. Given the problems and violations outlined above, the signatories call on the Human Rights Council to urge the Peruvian Government to:
- Fully, effectively and speedily investigate all acts of violence perpetrated by public officials against journalists and human rights defenders and end the impunity of those who attack and harass journalists, media workers and human rights defenders;
 - Devolve responsibility for licensing to an independent media regulatory body;
 - Ensure that media regulation is kept free from political interference;
 - Improve the transparency of media ownership and refrain from using advertising contracts to influence media content;
 - Promulgate the amendments to Peru's Penal Code and remove the country's criminal libel laws in their entirety;
 - Consider the creation of an autonomous and independent body in charge of promotional measures and of reviewing appeals in relation to information requests;
 - Review all rules and regulations, as well as practices, to ensure that victims and families of victims of human rights violations have access to relevant information needed for the investigation of serious violations during the period of exception in Peru;
 - Carry out an audit with the participation of the Public Defender's Office to identify information that is relevant to the investigation of human rights violations and put it at the disposal of the Public Prosecutor's Office and the Judiciary, as well as hold responsible all those civil servants that refuse to provide said information.