

REPORTERS WITHOUT BORDERS

PERU

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Decriminalization of press offences a major issue in 2012

An end to prison terms and exorbitant fines for crimes of defamation, slander and libel remains a key objective for the overall improvement in freedom of information, and more broadly freedom of expression, in Peru

Decriminalization is urgent. A promising reform of the criminal code approved in July 2011 has not yet been enacted. President Ollanta Humala needs to carry out his commitments to the Press and Society Institute (IPYS) just over a month before he was elected on 5 May.

Reporters Without Borders notes that, in contrast to the head of state's personal wishes, too many legal proceedings and vexatious applications continue to hamper the free flow of information and opinion, encouraging self-censorship on the part of journalists and bloggers.

Bureaucratic harassment is particularly evident when an article or a report criticises a politician, highlights cases of corruption and conflicts of interest or examines allegations of collusion – sometimes borne out -- between some members of the security forces and organized crime.

2011 in review

2011 was a fateful year for the Peruvian press, with the murders of three of its members and the six-month detention of radio and television journalist **Paul Garay Ramírez**, wrongfully convicted of defaming a prosecutor.

Other cases still pending require the country's highest authorities to keep their promises. The future of freedom of information and the right to criticise depends on their outcome.

On 9 January, TV journalist **Gaston Dario Medina Sotomayor** will learn whether his three-year suspended prison sentence and the award of civil damages of 10,000 soles (3,700 dollars) against him have been upheld on appeal.

Sotomayor, who works for the TV station *Cadena Sur TV-Canal 15* and *Radio Nova FM* in the southern city of Ica, was convicted by a local court on 30 September 2011 for having described Congressman José Luis Elias Avalos as a political defector.

The term refers to a political scandal that broke in 2008 when members of parliament were accused of accepting cash payments to leave their original party in mid-term and join that founded and led by former President Alberto Fujimori. Avalos, a former member of the Avancemos party, was eventually cleared of accepting nearly 100,000 dollars to join the Fujimori camp.

Teobaldo Meléndez Fachín, editor of the radio and television programme “Ribereña Noticias”, received an even harsher sentence for “aggravated defamation” on 7 November for condemning a banking and property scam implicating the mayor of the northern town of Yurimaguas, Juan Daniel Mesía Camus.

The three-year suspended sentence he was given could be made custodial unless he pays 30,000 soles (11,000 dollars) in damages claimed by the plaintiff. The journalist filed an appeal a week after he was convicted.

“Local authorities believe themselves to be all-powerful because they have money, but this money really belongs to the people,” **Meléndez** told Reporters Without Borders. “It is the second time I have been convicted for exposing cases of corruption and fraudulent operations.”

He pointed out that the first judge appointed to hear his case was replaced just as the aggravated defamation charges were about to be quashed.

Norbil Vallejo Saavedra, managing editor of the bi-monthly *Quincenario Macro Regional Nuevo Confidencial* in the north-western province of Chiclayo was sentenced to a year’s imprisonment and a fine of 10,000 soles (3,700 dollars) two days ago. He immediately filed an appeal.

A complaint had been lodged against him on 3 October 2011 by David Cornejo Chinguel, owner of the private university Instituto Juan Mejía Baca for reporting fraud allegations made by students against the institute’s management.

The case implicates the plaintiff’s son who is suspected of getting young people to hand over large sums of money for non-existent courses.

The journalist told Reporters Without Borders he feared for his newspaper’s survival. He also pointed to the close relations between the complainant and local magistrates.

Satire banned

The journalist and blogger **Luis Torres Montero** was sentenced to two years’ imprisonment – the first year custodial and the second suspended – and a fine of 155,000 soles (55,000 dollars) for defaming the former defense minister, Rafael Rey, in an article published in the newspaper *La Primera* in April 2010.

The story, regarded as a literary satire by the journalist, was headlined “Rafi Rey doesn’t dare come out of the closet” and presented Rey as a homosexual, which was cited by the latter as grounds for legal proceedings.

Torres lodged an appeal on 22 December and awaits the forthcoming verdict.

“The article is a criticism of Peru’s conservative society which has a low tolerance of minorities and regards homosexuality as something unnatural,” Torres told Reporters Without Borders.

“By writing this piece, which is fiction and not based on fact, I wanted to place Rafal Rey, a former defense minister and a high official of Opus Dei, in a scene that he himself does not tolerate.”

Another blogger, **José Alejandro Godoy**, was accused of defaming the former Fujimori minister, Jorge Mufarech, and sentenced by a Lima court on 29 October 2010 to three years’ imprisonment and a fine of 300,000 soles (107,000 dollars), as well as 120 days of social work.

Godoy published an article in his blog *Desde el Tercer Piso* repeating all the allegations reported in other media outlets against Mufarech over various financial scandals and including links to the source of each one.

On 3 November 2011, his lawyer Roberto Pereira filed a new appeal against the sentence, which is unjust in substance, contrary to the constitution and a breach of precedents set by the Inter-American Commission on Human Rights in three similar cases.

The radio station *La Voz de Bagua*, based in the town of the same name, was closed down in June 2009 on the pretext of using a frequency without authorisation, although it had a 10-year licence to broadcast on the frequency since 2007. In reality, the station was accused by the government of the time of supporting an uprising by indigenous groups in the Amazonian region of Yurimaguas.

The station, also with Roberto Pereira as defense counsel, was allowed to return to the airwaves in August 2010. However, its manager **Aurora Burgos de Flores** still faces a charge of illegal use of the radio spectrum, for which she faces four years’ imprisonment and a fine demanded by the public prosecutor.

Her retrial was to have been held on 15 November 2011 after countless appeals but Judge Marleni Urbina Quispe, who had been assigned to the case, never turned up at court. As Burgos de Flores’s friends have pointed out, President Humala himself expressed concern about the fate of the station and its staff before he was elected. This legal farce must be now be brought to an end.