



Human Rights Foundation

# Arbitrary Detention and Expulsion of Foreign Journalists and Human Rights Defenders from Panama

*The Case of Francisco José Gómez Nadal  
and María Pilar Chato Carral*

**Legal Report**

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## **Arbitrary Expulsion of Francisco Gómez Nadal and María Pilar Chato Carral from Panama**

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### **A. Background**

#### **a. Who are Francisco José Gómez Nadal and María Pilar Chato Carral?**

Francisco José Gómez Nadal and María Pilar Chato Carral are journalists and human rights defenders. They are both Spanish nationals, and have been practicing journalism in Panama and Spain for six and 15 years, respectively.<sup>1</sup> They are both volunteer members at Human Rights Everywhere (HREV), a human rights organization with offices in Europe and Panama.<sup>2</sup>

As of the date of this report, and since its legal incorporation in Panama in March 2010, HREV has published four reports documenting the human rights situation of the indigenous peoples of Panama.<sup>3</sup> The reports focus, in particular, on the human rights situation of the Ngäbe and Buglé peoples, 69% of whom live in the Ngäbe-Buglé district.<sup>4</sup>

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<sup>1</sup> From February 2005 to May 2007, Gómez Nadal was advisor to the editor in chief of the Panamanian journal, *La Prensa*. Since then, he has published a weekly op-ed at the same journal. He is also a consultant for the media company García Media Latinoamerica. His career as a journalist in the region spans over 14 years, working between Colombia, Nicaragua, and Panama. Chato Carral is an editor on leave from the Spanish journal *El Diario Montañés*. As of July, 2010, she divides her time living in Spain and Panama, where she works as a volunteer for HREV, a human rights organization. In Santander, Spain, Chato Carral worked as a journalist for 15 years, first as a freelancer for the news agency Efe, and then as an editor since 1997.

<sup>2</sup> HREV is a non-profit organization incorporated in Europe since 2003, and in Panama since 2010. Gómez Nadal is the coordinator of HREV's Latin America and Caribbean sections ("HREV was registered in Madrid from September 2003 to 2009 as an ASSOCIATION under Constitutional Law 1/2002. Since April 2009 we have been registered as Human Rights Everywhere a.s.b.l., HREV, in the Grand Duchy of Luxembourg under the Law of 21 April 1928 (a.s.b.l. = *Association sans but lucrative*/a not-for-profit association). HREV-LAC has been registered as a not-for-profit association in Panama City since March 2010."). See HREV's website, About Us webpage. Available at:

[http://www.hrev.org/en/?page\\_id=31](http://www.hrev.org/en/?page_id=31)

<sup>3</sup> See HREV, *Report on discrimination against the indigenous peoples of Panama for the 76<sup>th</sup> Session of the UN-CERD Committee*.

Available at: <http://www.hrev.org/wp-content/uploads/2011/02/Sombra-CERD-CIAM-HREV.pdf>; HREV, *Report on the elections of delegates for the general, regional and local congresses in the Ngäbe-Buglé Comarca (24 October 2010)*, October 28, 2010. Available at: <http://www.hrev.org/en/wp-content/uploads/2011/03/HREVelection-report.pdf>; HREV, *Report on Human Rights violations Changuinola July 7-11, 2010, August 2, 2010*. Available at [http://www.thepanamanews.com/pn/v\\_16/issue\\_10/Opinion\\_HREV.pdf](http://www.thepanamanews.com/pn/v_16/issue_10/Opinion_HREV.pdf); HREV, *Preliminary report on human rights violations during the days of protest against mining reform in Panama, January to March 2011*, March 14, 2011. Available at: <http://www.hrev.org/wp-content/uploads/2011/03/HREV-HHRRreport-ENG.pdf>.

<sup>4</sup> See HREV website, *supra* note 2 ("The Ngäbe and the Buglé, the majority original people in Panama, have been engaged in a hard struggle against mining and tourism megaprojects which are threatening their poverty-stricken Comarca. There have been blatant attacks on their political autonomy, persecution of their leaders and excessive and unjustified use of force by the State. There was a particularly serious crisis in 2010 when the state security forces brutally broke up an Ngäbe protest in Bocas del Toro province, leaving at least 10 dead and 800 injured. HREV produced the

HREV reports have documented human rights violations and criticized the Panamanian state for, among other reasons, not implementing "public policy designed to tackle the problem of racial discrimination" and for not even recognizing its existence;<sup>5</sup> the use of excessive force by police during the repression of a demonstration organized by various Panamanian unions protesting the content of reforms—led by President Ricardo Martinelli's government—to criminal, labor, environmental, and police statutes; and the rapid approval of these reforms by Panama's National Assembly without consultation.

On July 4, 2010, when Gómez Nadal was preparing to travel abroad, the office of the National Immigration Service (SNM) at Tocumen International Airport held him for four hours and informed him that he had an "entry ban" due to "tax debt," which prohibited him from returning to Panama. In a public announcement, the SNM argued that the ban was due to Gómez Nadal's infringement of "current labor and residence law," since his permanent resident status was granted to him for his work at the newspaper *La Prensa*, and not for his work at HREV.

According to a certificate issued to him on July 13, 2010 by the SNM, Gómez Nadal has been a permanent resident of Panama since February 2007.<sup>7</sup> Neither Panamanian law nor the certificate indicate that permanent residency is conditioned by the exercise of any specific profession. On July 15, 2010, the president of HREV, Fidel Mingorance, wrote a letter to President Martinelli, in which he informed him of the incident where Gómez Nadal was held at the airport,<sup>8</sup> expressed HREV's concern "about the harassment Paco Gómez Nadal is being subjected to," and asked Panamanian authorities to "allow him to carry out his work without obstructions and to allow him to freely enter and leave the country."<sup>9</sup>

## **b. The state of freedom of expression in Panama**

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only detailed independent report on the human rights violations committed during the crisis. HREV supports these peoples by acting as independent observers of their processes and collaborating at times of crisis by attending to victims of human rights abuses as well as in raising awareness of their situation.").

<sup>5</sup> See HREV, *Report on discrimination against the indigenous peoples of Panama for the 76<sup>th</sup> Session of the UN-CERD Committee*, p. 36, supra note 3.

<sup>6</sup> That day, representatives of the Spanish Embassy verified this version of the story. The next day, Gómez Nadal's lawyers confirmed it. On July 7, 2010, the Ministry of the Economy and Finance confirmed that Gómez Nadal did not have any pending tax obligations. <sup>7</sup> In HRF archives.

<sup>8</sup> See HREV's website, Letter from Fidel Mingorance to President Martinelli, July 15, 2010 (Spanish only: "En un contexto en el cual se han registrado en el país casos de detenciones de periodistas, líderes de organizaciones sociales, indígenas, ambientales y de derechos humanos, el 04/07/10 se retuvo durante 4 horas al miembro de HREV, defensor de derechos humanos y periodista, en el aeropuerto internacional de Tocumen en base a una orden dada por el Servicio Nacional de Migración. Según el funcionario de migración del aeropuerto pesaba sobre él una orden de 'impedimento de entrada' al país por lo que si salía no podría volver a ingresar. No le quisieron explicar las razones y le fue retenida la cédula panameña y su pasaporte español, lo que obligó a la intervención de la Embajada española. Desde entonces, el Servicio Nacional de Migración se ha negado a comunicar oficialmente las causas de ese impedimento, ni a Paco Gómez Nadal ni a sus abogados, y ha cambiado hasta en tres ocasiones de versión para justificar la medida -siempre a través de notas de prensa y nunca de forma oficial al periodista-: primero por supuestas irregularidades fiscales, posteriormente por una supuesta variación de las condiciones por las que le fue concedida la residencia y finalmente por un supuesto impago al Seguro Social, todo ello demostrado como no fundado por las pruebas presentadas ante la autoridad por Paco Gómez Nadal.") Available at: <http://www.hrev.org/wp-content/uploads/2011/03/Carta-preocupaci%C3%B3n-por-acoso-a-miembro-HREV-en-Panam%C3%A1.pdf>, Id.

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## *Arbitrary Expulsion of Francisco José Gómez Nadal and María Pilar Chato Carral*

Since President Ricardo Martinelli took office in 2010, freedom of expression in Panama has deteriorated. According to the Press<sup>th</sup>Freedom Index of 2010, published by Reporters Without Borders, Panama fell abruptly from 55 to 81<sup>st</sup> in the ranking<sup>10</sup>, out of 178 countries surveyed:

Three serious episodes explain this sudden drop. First, the detention - at the end of June and for nineteen days - of retired journalist Carlos Nuñez, on grounds of a conviction for "defamation" and "insult," which happened twelve years earlier and of which he had not even been aware. Next, the harsh treatments inflicted in his cell on a photographer arrested because of a harmless negative. Lastly, the threats, accompanied by an expulsion procedure, which were imposed on Spanish journalist Paco Gómez Nadal, a critical columnist and defender of indigenous rights.<sup>11</sup>

This opinion is shared by the Inter American Press Association (IAPA). In its general assembly of 2010, IAPA stated, "Over the past six months, freedom of the press has been threatened by actions by institutions belonging to the government of President Ricardo Martinelli, as well as from the Judicial Branch and the Public Ministry." The general assembly mentioned several specific cases that exemplified this tendency.<sup>12</sup>

### **B. Chronology of facts**

#### **a. The protest**

On February 26, 2011, dozens of members of the Ngäbe-Buglé indigenous group organized a demonstration around Plaza 5 de Mayo in Panama City. These demonstrators held banners and flags across a street, blocking traffic.<sup>13</sup> According to a 10-minute video captured by a public surveillance camera, Gómez Nadal and Chato Carral did not take part in the demonstration, although they did stand nearby. In the surveillance footage, Gómez Nadal alternately appears collecting footage of the demonstration with a small video camera, talking on a cell phone, and speaking to his colleague Chato Carral, a police officer, and a few of the demonstrators.<sup>14</sup> Throughout the events, Gómez Nadal is wearing his HREV credentials.<sup>15</sup>

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<sup>10</sup>Reporters Without Borders (RSF), Press Freedom Index, 2010. Available at: [http://www.rsf.org/IMG/CLASSEMENT\\_2011/GB/C\\_AMERICAS\\_GB.pdf](http://www.rsf.org/IMG/CLASSEMENT_2011/GB/C_AMERICAS_GB.pdf); RSF, Press Freedom Index, 2009. Available at: <http://en.rsf.org/press-freedom-index-2009,1001.html>

<sup>11</sup> Available at: <http://en.rsf.org/press-freedom-index-2010,1034.html>

<sup>12</sup> Inter-American Press Association (IAPA), *Report on Panama*, IAPA General Assembly, November 5 - 9, 2010, Mérida, México. Available at: [http://www.sipiapa.org/v4/index.php?page=der\\_informe&asamblea=26&infoid=787&idioma=us](http://www.sipiapa.org/v4/index.php?page=der_informe&asamblea=26&infoid=787&idioma=us) <sup>13</sup> The demonstration took place on 5 de mayo St., at the intersection with L St. It was held to protest reforms to the Mineral Resources Code being debated in the Panamanian National Assembly and approved by President Martinelli in February. According to the protesters, these reforms would increase royalties for mining companies and would encourage foreign investment in mining, but would have a negative impact on the environment. Committee to Protect Journalists, 'Critical Spanish journalists expelled from Panama,' March 2, 2011. Available at: <http://www.cpj.org/2011/03/critical-spanish-journalists-expelled-from-panama.php>

<sup>14</sup> Surveillance camera video. Available at:

[http://www.youtube.com/watch?v=KDpEOIIXEyM&feature=player\\_embedded](http://www.youtube.com/watch?v=KDpEOIIXEyM&feature=player_embedded); and <http://www.youtube.com/watch?v=oBJEltowB1c&NR=1> or <http://www.youtube.com/watch?v=uPiZ0hW6yR4>.

<sup>15</sup> Ibid. At seconds 25-30 of the YouTube video "Policía detiene a extranjero incitando a la violencia", Gómez Nadal is seen putting on his HREV credentials. Available at: <http://www.youtube.com/watch?v=oBJEltowB1c&NR=1>; In a picture dated July 18, 2010, taken in Changuinola during the funeral procession of Antonio Smith, one of the indigenous persons killed during the Changuinola protests between July 7 and 11, 2010, Gómez Nadal and Chato Carral both appear using visible HREV credentials. <http://www.hrev.org/wp-content/uploads/2011/02/NOS.jpg>; In a picture of

In a phone interview with HRF,<sup>16</sup> Gómez Nadal said that he and Chato Carral were present at the protest to cover and document the demonstration both as journalists and as members of HREV—a human rights organization whose past work includes the documentation of indigenous persons wounded and killed as a result of use of excessive force by police as they dispersed previous Ngäbe-Buglé protests.<sup>17</sup> HREV's previous work has typically included properly identified staff accompanying indigenous communities on the ground, to "monitor, shed light on and alert about potential human rights violations"<sup>18</sup> against these communities.<sup>19</sup>

In a March 4 interview, Gómez Nadal told the press that one indigenous leader had contacted Carral and him to let them know about the protest taking place in front of the National Assembly. He stated that he arrived to the protest about 15 minutes after the demonstration started. Gómez Nadal also stated that, before the police arrived, he asked the demonstrators to list their demands. He said that when a police officer arrived he acted as a mediator, and<sup>20</sup> then told the protesters that what they were doing was dangerous and that they would be dispersed.

According to the surveillance camera footage, Gómez Nadal was standing next to two police officers and filming them as one spoke to a group of about eight demonstrators. The officer spoke meters away from another seven or eight protesters who stood holding banners and blocking the street. The officer spoke for at least one minute, when he suddenly turned around and walked away out of the surveillance camera range, leaving the protesters standing on the street.<sup>21</sup>

In a phone interview with HRF, Gómez Nadal said that the police officer speaking to the demonstrators was a deputy officer with the surname Ávila. Gómez Nadal explained that Officer Ávila warned the protesters that their activity was illegal and that if they did not vacate the street voluntarily, police forces would disband the demonstrators. Gómez Nadal stated that he asked the officer why they were going to take action on that specific day, when there had been at least three other recent protests (two of which Gómez Nadal says he personally witnessed) at the same location without police intervention. According to Gómez Nadal, the officer responded by saying that he (Gómez Nadal) did not have the right to speak since he was a f22oreigner. The officer left saying that he would give the protesters time to think and leave voluntarily.

According to the surveillance camera footage, after the officer left, Gómez Nadal alternately collected footage, talked on his cell phone, and spoke to his colleague Chato Carral and to some of

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Gómez Nadal taken on February 26, as he remained incarcerated at the El Chorrillo Police Station, Gómez Nadal also appears wearing his visible HREV credentials behind bars. Available at:

<http://www.bananamarepublic.com/2011/02/28/martinelli-foreigners-shut-up/><sup>16</sup>

Through March 2011, HRF held multiple phone calls with Gómez Nadal.

<sup>17</sup> See HREV, Informe sobre violación de Derechos Humanos en Changuinola del 7 al 11 de julio de 2010, August 2, 2010, *supra* note 3.

<sup>18</sup> Gómez Nadal described this as part of HREV's mission, during a television interview on March 4. See Interview on NTN 24's show *La Noche*, March 4, 2011. Available at:

[http://www.youtube.com/watch?v=ig92vZmmaKg&feature=player\\_embedded](http://www.youtube.com/watch?v=ig92vZmmaKg&feature=player_embedded)<sup>19</sup> See

*supra* note 4.

<sup>20</sup> Gómez Nadal claimed that he even prevented a woman from throwing a stone at the police officer. See March 4 TV interview, *supra* footnote 18. <sup>21</sup> See *supra* note 14. <sup>22</sup> See *supra* note 16.



the people at the protest. This took place a few meters away from where the demonstrators were holding up their signs.<sup>23</sup>

#### **b. Arrest**

The surveillance video shows that approximately twenty uniformed members of the Panamanian police suddenly appeared from around the corner and marched in a line towards the protesters. In the next few seconds, as the policemen approached the protest, most of the standing demonstrators sat down and some laid down on the pavement. As the twenty policemen marched to meet the demonstrators, Gómez Nadal walked towards a car that had just arrived at the corner of the street and began speaking with the driver. In the next few seconds, as another twenty policemen arrived from the opposite side of the street, Gómez Nadal turned his back, took out a small video camera, and started filming the police officers as they stood next to the protesters lying on the ground.<sup>25</sup>

Five seconds later, as soon as the police officer who appeared to be in command of the operation saw Gómez Nadal filming the events, he ran towards him, forced the camera down, seized it from him, and held him by both arms with the help of two other officers. As Gómez Nadal attempted to reclaim his camera, he remained held by both arms for about 50 seconds, after which he was forced into one of the seven or eight police trucks that suddenly arrived. As Gómez Nadal was being held, two other police officers identified, approached, and detained his colleague Chato Carral, who was standing on the sidewalk several meters away. Gómez Nadal and Chato Carral were forced into two different police vehicles. In the meantime, the policemen standing next to the protesters proceeded to drag them from the ground and into the remaining trucks.<sup>26</sup>

In a statement sent via email—with the subject "Police detains foreigner inciting violence"—on February 26 at 7:51 pm from the office of the President of Panama to various media sources, the government of Panama informed the public of the detention of Gómez Nadal "while he was instigating and organizing a group of citizens as they were preparing to engage in a demonstration at the National Assembly."<sup>27</sup> The statement claimed that the "foreign citizen's participation in the protest had been fully documented in footage from surveillance cameras." On February 26, at night, the government gave television channels a five-minute clip showing edited footage from the same surveillance camera video analyzed above, along with a voice reading the government's email communiqué.<sup>28</sup> The next day, the same clip, titled "Police detains foreigner inciting violence," was uploaded to YouTube.

In its statement, the office of the President of Panama claimed that "the National Government has denounced that, in clear violation of the law, foreign citizens not only participate in demonstrations, but incite Panamanian indigenous peoples to defy national authorities."<sup>30</sup> The statement issued by the office of the President of Panama claimed that "foreigners are banned from

<sup>23</sup> See supra note 14.

<sup>24</sup> See supra note 16. According to Gómez Nadal, the driver was a journalist who was asking him about the protest.

<sup>25</sup> See supra note 14. <sup>26</sup> See supra note 14.

<sup>27</sup> State Communications Ministry, *Police detains foreigner inciting violence*, February 26, 2011, 7:51 pm. The email was from: [prensa@presidencia.gob.pa](mailto:prensa@presidencia.gob.pa). HRF's archives.

<sup>28</sup> For instance, see live broadcast by news channel TVN here: <http://www.youtube.com/watch?v=uPiZ0hW6yR4>

<sup>29</sup> Available at: <http://www.youtube.com/watch?v=oBJEltowBTc&NR=1> <sup>30</sup>

Secretaría de Comunicación del Estado, supra note 27.

participation in all kinds of political activities or protests,"<sup>31</sup> and proceeded to cite article 71.1 and 71.2 of Law Decree 3 of 2008 as grounds for the potential expulsion of Gómez Nadal and Chato Carral. Pursuant to this provision, the National Immigration Service may evict foreigners that

"advocate for crimes and incite national, racial, religious, cultural or political hatred;<sup>32</sup> or foreigners that "are a threat to collective security, health and public order."

### c. Detention period

Gómez Nadal and Chato Carral were detained for almost 48 hours in three separate detention centers: at the "El Chorrillo" Police Station, for five hours (from 4 pm to 9 pm, Saturday, February 26);<sup>33</sup> at the Judicial Investigation Department (DIJ de la Policía Nacional en Ancon) of Ancón, for 19 hours (from 9 pm on Saturday, February 26, to 4 pm on Sunday, February 27); and at SNM facilities, for twenty hours (from 5 pm on Sunday, February 27, to 1 pm on Monday, February 28).<sup>34</sup> On February 27, they were also taken to the administrative police station of Corregiduría de Ancón, before heading to the SNM facilities.<sup>35</sup>

In a picture of Gómez Nadal taken while he was incarcerated at "El Chorrillo," he appears wearing the same HREV credentials both he and Chato Carral usually wear as they monitor demonstrations in Panama.<sup>36</sup> Gómez Nadal and Chato Carral left the SNM facilities on February 28, at around 1 pm, to be taken to Tocumen Airport. They were flown to Madrid at 4:40 pm on a commercial flight, accompanied by two SNM agents.<sup>37</sup>

In a television interview on March 4, Gómez Nadal said that, for 20 to 22 hours after their detention, they were not given permission to speak to their lawyers or to the Spanish Embassy and were not given an explanation as to why they were being held.<sup>38</sup> In a phone interview with HRF, Gómez Nadal explained that, after great insistence, his colleague Chato Carral was allowed to take a call by the Spanish Embassy at the "El Chorrillo" Police Station, but that he himself was denied that

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<sup>31</sup> Ibid. The original sentence in Spanish is: "A los extranjeros les está prohibida la participación en todo tipo de actividades políticas o protestas."

<sup>32</sup> See Law Decree 3 of February 22, 2008. Available at:

[http://www.asamblea.gob.pa/APPS/LEGISPAN/PDF\\_GACETAS/2000/2008/25986\\_2008.PDF](http://www.asamblea.gob.pa/APPS/LEGISPAN/PDF_GACETAS/2000/2008/25986_2008.PDF)

<sup>33</sup> HRF interview with Gómez Nadal, supra note 16 ("[En "El Chorrillo"], las mujeres estaban junto a delincuentes comunes. El barrio es considerado "caliente" con presencia de pandillas. A las mujeres las tuvieron en la sala de guardia junto a hombres y mujeres esposados, en ropa interior, vomitando...")

<sup>34</sup> Ibid.; La Prensa, *Trasladan a Paco Gómez a Migración*, February 27, 2011. Available at:

[http://mensual.prensa.com/mensual/contenido/2011/02/27/uhora/local\\_2011022716212919.asp](http://mensual.prensa.com/mensual/contenido/2011/02/27/uhora/local_2011022716212919.asp); La Estrella, *Indigenas*

*retienen a 2 funcionarios de Gobernación de Chiriquí; detenidos no son liberados*, February 27, 2011. Available at:

[http://www.laestrella.com.pa/online/noticias/2011/02/27/indigenas\\_retienen\\_a\\_2\\_funcionarios\\_de\\_gobernacion\\_de\\_chiriqui%3B\\_detenidos\\_no\\_son\\_liberados.asp](http://www.laestrella.com.pa/online/noticias/2011/02/27/indigenas_retienen_a_2_funcionarios_de_gobernacion_de_chiriqui%3B_detenidos_no_son_liberados.asp)

<sup>35</sup> See video of Gómez Nadal and Chato Carral being taken from the Corregiduría de Ancón to the SNM. Available at:

<http://www.eldiariomontanes.es/videos/cantabria/cantabria-general/806700061001-pilar-chato-paco-gomez-nadal-conducidos-migracion.html>; On the administrative law enforcement functions of the "Corregidurías" in Panama, see

Law 112 of December 30, 1974, Arts. 1-6. Available at:

[http://www.asamblea.gob.pa/legispan/PDF\\_NORMAS/1970/1974/1974\\_025\\_1401.pdf](http://www.asamblea.gob.pa/legispan/PDF_NORMAS/1970/1974/1974_025_1401.pdf); <sup>36</sup> See

supra note 15.

<sup>37</sup> See supra note 16 (According to Nadal, in Costa Rica, where the plane made a stop, the two agents apologized to them for what they were doing. They said they knew that they weren't criminals);<sup>7</sup> see also La Prensa, *Periodistas repatriados*, March 1, 2011. Available at:

<http://mensual.prensa.com/mensual/contenido/2011/03/01/hoy/panorama/2519696.asp>; <sup>38</sup> See

supra note 18.

right.<sup>39</sup> He stated that they were only able to speak to their lawyers at 11 am on Sunday, while they were at the Judicial Investigation Department of Ancón. Gómez Nadal told HRF that at 40 l "E Chorrillo," they were not given any explanation about their situation or the charges against them.

When they were taken to the administrative police station of Corregiduría de Ancón, where they spent 45 minutes, Gómez Nadal and Chato Carral, along with the 14 demonstrators detained, were "verbally cautioned" and informed that they had committed an "administrative offense." The 14 demonstrators were sanctioned with a 15 dollar fine for staging a protest that blocked a public road, but Gómez Nadal and Chato Carral were transported to the SNM. According to Gómez Nadal, on Sunday they discovered that their lawyers, upon seeing the communication the government had released to the press, had gone to the prosecutor's office on Saturday night to determine if a criminal investigation had been opened against their clients, but they were told nothing had been filed about them. According to Gómez Nadal, he asked police officers and immigration officials at each center for a copy of the legal proceedings against them, but they were never given any supporting documents.<sup>41</sup>

#### **d. Repatriation**

On February 27-28, the SNM, through its general director Maria Cristina Gonzalez, issued four resolutions concerning Gómez Nadal and Chato Carral.<sup>42</sup> The resolutions were based on a handwritten police report of February 27, 2011, from the Corregidor of Ancón,<sup>43</sup> who found that the "demonstrators blocking the street threatened the police with stones."<sup>44</sup> The police report allegedly states that "two citizens were seen giving instructions to the demonstrators." The police report allegedly concludes that "those involved were altering public order" and proceeds to "verbally caution" Gómez Nadal and Chato Carral, and to refer them to the SNM so that "their migratory status is verified."<sup>45</sup>

Through Resolutions 5168 and 5169, dated February 27, 2011,<sup>46</sup> and "upon review of their migratory situation,"<sup>47</sup> the SNM first decided to "order the detention" of Gómez Nadal and Chato Carral. The detainees were notified of these resolutions on February 28, 2010, at 12:06 am.<sup>48</sup> The resolutions cited Article 6.18 of the Law Decree 3 of 2008 as legal grounds and the police report as

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<sup>39</sup> See supra note 16.

<sup>40</sup> Ibid. (Gómez Nadal told HRF that, at this point, a human rights lawyer informed him about the communication the office of the President of Panama had sent to the press.). <sup>41</sup> See supra note 18.

<sup>42</sup> The four resolutions by the SNM are available at: <http://elmalcontento.blogspot.com/2011/03/las-excusas-legales.html>

<sup>43</sup> HRF has not seen the police report on which the SNM resolutions are supposedly based. Therefore, our assertions about its content are solely based on the SNM resolutions themselves. To this date, and upon multiple formal requests, Gómez Nadal and Chato Carral's lawyers in Panama have not been given the alleged police report. <sup>44</sup> See supra note 42. <sup>45</sup> Ibid. <sup>46</sup> Ibid.

<sup>47</sup> Chato Carral entered Panama on December 27, 2010, as a tourist, and Gómez Nadal is a permanent resident of Panama since 2007. See supra note 7

<sup>48</sup> See supra note 16 (Según Gómez Nadal: "Hay que destacar que sobre las 19:30 horas del domingo 27, el SNM garantizó a funcionarios de la defensoría del pueblo y al cónsul de España, Alberto Miranda, que no se realizaría ningún trámite o proceso hasta las 9 a.m. del lunes con presencia de ellos, y que estaríamos juntos (eso se refleja en el informe de Defensoría del Pueblo que les adjunto). En cuanto se fueron los funcionarios, nos separaron. Pilar fue puesta una celda de mujeres y yo en un cuarto de aire acondicionado.").

factual grounds for their detention.<sup>49</sup> Specifically, the resolutions mentioned that the Corregidor of Ancón had "verbally cautioned them," along with 14 others,<sup>50</sup> for their involvement in "administrative offenses related to the alteration of public order, the corresponding threat to national security, as well as the incitement of Panamanian citizens to disorder."<sup>51</sup>

Acting upon the same grounds, through Resolutions 5194 and 5195 of February 28, 2011, the SNM decided to "order the voluntary repatriation" of Gómez Nadal and Chato Carral to Spain, pursuant to Article 84 of the Law Decree 3 of 2008, which establishes "voluntary repatriation" as an administrative sanction that, upon request, may apply to "irregular immigrants."<sup>52</sup> The four resolutions state that Gómez Nadal and Chato Carral can file an "appeal within five days" before the same person that issued them—the director of the SNM.<sup>53</sup>

According to Gómez Nadal and Chato Carral, they were certain—judging from the way they had been treated up to that point—that they would not be given due process guarantees to effectively challenge the accusations against them. As a result, they opted to accept an informal proposal by SNM officials to "request" voluntary repatriation. Based on their lawyers' advice, Gómez Nadal and Chato Carral believed that their only realistic alternative to voluntary repatriation was to remain detained at the SNM for another fifteen to twenty days and then face deportation.<sup>54</sup>

According to Article 69 of Law Decree 3, "voluntary repatriation" entails the prohibition of returning to Panama for at least two years, while deportation entails a prohibition of five to ten years.<sup>55</sup> When leaving the Judicial Investigation Department of Ancon on February 28, Gómez Nadal's video camera was returned to him. Gómez Nadal asserts that all the footage he took at the protest had been deleted.<sup>56</sup>

Asked on February 28 to comment about the repatriation of Gómez Nadal and Chato Carral, President Martinelli said,

A person that becomes an activist, that throws himself on the street, incites violence, incites chaos, that's another thing. No foreigner can come to Panama to incite violence, because... I'll ask any of you, you and everybody, when you go to Spain or to any country, and cause chaos, violence, throw yourself into the street, you get deported.<sup>57</sup>

Also, on a February 28 interview, the Minister of the Interior of Panama claimed,

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<sup>49</sup>See supra note 32 (Article 6.18 of the Law Decree 3 of 2008 states that the SNM has the power to "apprehend, guard and detain foreigners who infringe upon migratory law"). <sup>50</sup> See supra note 34.

<sup>51</sup> See supra note 42.

<sup>52</sup> See Law Decree 3, Article 84, supra note 32. <sup>53</sup> See supra note 42.

<sup>54</sup> See supra note 16 (Gómez Nadal and Chato Carral's lawyers advised them that the director of the SNM who was supposed to sit through the appeal process was the same person who ordered the detention. In view of the treatment they had received since they were arrested, both Gómez Nadal and Chato Carral concluded that there was no possibility of getting due process guarantees and, therefore, no possibility of challenging the decisions successfully). <sup>55</sup> See Law Decree 3, Article 69, supra note 32.

<sup>56</sup> La Prensa, *Trasladan a Paco Gómez a Migración*, February 27, 2011. Available at: [http://mensual.prensa.com/mensual/contenido/2011/02/27/uhora/local\\_2011022716212919.asp](http://mensual.prensa.com/mensual/contenido/2011/02/27/uhora/local_2011022716212919.asp); see also supra notes 14 and 16.

<sup>57</sup> See May 4 TV Interview at NTN 24, supra note 18.

[Gómez Nadal] is not an accredited journalist in Panama; he should have fixed this; it is an immigration issue, it has to do with his [immigration] status. He's not detained;<sup>7</sup> he's undergoing a migratory process for having failed to comply [with the law] as a foreigner.<sup>58</sup>

**C. International law: Prohibition of arbitrary expulsion of aliens, especially if they are human rights defenders, and the protection of freedom of expression of foreign journalists and human rights defenders**

**a. Prohibition of arbitrary expulsion of aliens, especially if they are human rights defenders**

International human rights law<sup>59</sup> recognizes "the right of an alien lawfully in a State's territory not to be expelled without meeting minimum due process conditions."<sup>60</sup>

Article 7 of the *Declaration on the human rights of individuals who are not nationals of the country in which they live*, adopted by the UN General Assembly through Resolution 40/114 of December 13, 1985, establishes:<sup>61</sup>

An alien lawfully in the territory of a State may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons why he or she should not be expelled and to have the case reviewed by, and be represented for the purpose before, the competent authority or a person or persons specially designated by the competent authority. Individual or collective expulsion of such aliens on grounds of race, color, religion, culture, descent or national or ethnic origin is prohibited.

In *jurisprudence constant*, the Inter-American Court of Human Rights (hereafter, the Court) has established that in order to interpret international law for both administrative and jurisdictional processes, article 8 of the Convention must be applied,<sup>62</sup> "as well as [...] the rules regarding the right to judicial protection found in article 25."<sup>63</sup>

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<sup>58</sup> Ibid.

<sup>59</sup> See Art. 22 par. 6 of the American Convention on Human Rights ("An alien lawfully in the territory of a State Party to this Convention may be expelled from it only pursuant to a decision reached in accordance with law.") Panama ratified the American Convention on Human Rights August 5, 1978. See also Art. 13 of the International Covenant on Civil and Political Rights ("An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.") Panama ratified the International Covenant on Civil and Political Rights, and his Optional Protocol, on March 8, 1977.

<sup>60</sup> O'DONNELL, Daniel, *Derecho internacional de los derechos humanos. Normativa, jurisprudencia y doctrina delos sistemas universal e interamericano*. Oficina en Colombia del Alto Comisionado de las Naciones Unidas para los Derechos Humanos, p. 591.

<sup>61</sup> United Nations, *Declaration on the human rights of individuals who are not nationals of the country in which they live*. Resolution 40/144, 13 December 1985. Available at: <http://www.un.org/documents/ga/res/40/a40r144.htm>.

<sup>62</sup> Ibid., p. 1119. See also HUERTA GUERRERO, Luis Alberto, *El debido proceso en las decisiones de la Corte Interamericana de Derechos Humanos (análisis del artículo 8 de la Convención Americana sobre Derechos Humanos*. Available at: <http://190.41.250.173/RIJ/bases/nuevdh/dh2/lh-deb2.HTM>.

<sup>63</sup> GARCÍA RAMÍREZ, Sergio, *Panorama del debido proceso (adjetivo) penal en la jurisprudencia de la Corte Interamericana*, en ANUARIO DE DERECHO CONSTITUCIONAL LATINOAMERICANO 2006, p. 1126 ("esta materia se halla presente en la

García Ramírez, a former judge of the Court, pointed out, in a compilation of the jurisprudence of the Court in due process matters, that a process must meet, among others,<sup>64</sup> the following conditions in order to comply with international law,

- a) The court must be independent,<sup>66</sup> impartial, and competent.<sup>65</sup>
- b) The presumption of innocence.
- c) The adversarial principle.<sup>68e.67</sup>
- d) The right to an appeal.
- e) The right to effective remedies.<sup>69</sup>
- f) The sentence or final resolution must be duly motivated and founded, and it must not be ostensibly in violation of the Convention.<sup>70</sup>

According to Professor Daniel O'Donnell, the same guarantees must be present in a process that determines the expulsion of an alien who is legally in a state's territory:

The Convention (Art. 22.6) provides that the alien who is in such situation "may be expelled from it only pursuant to a decision reached in accordance with law". The ICCPR (Art. 13) establishes two additional guarantees: the right to be heard and the right to request the review of their case and to be represented before whoever reviews it. Both guarantees are conditioned by the absence of "compelling reasons of national security".

[...]

The General Comment No. 15 of the Human Rights Committee refers to, among other things, article 13 of the ICCPR. Of special interest is paragraph 10 of the Observation which establishes the following: "Article 13 directly regulates only the procedure and not the substantive grounds for expulsion. However, by allowing only those carried out 'in pursuance of a decision reached in accordance with law', its purpose is clearly to prevent arbitrary expulsions. [...] An alien must be given full facilities for pursuing his remedy against expulsion so that this right will in all the circumstances of his case be an effective one. The principles of article 13 relating to appeal against expulsion and the entitlement to review by a competent authority may only be departed from when 'compelling reasons of national security' so require."

[...]

The right not to be expelled without minimum conditions of due process - just like the freedom of residence and movement - depends on the legal situation of the alien. The General Comment No. 27 indicates that the question of legality of the migratory status of an alien depends mainly on domestic law, but it adds an important condition—that domestic laws "are in compliance with the State's international obligations." What is essential is not the legality of the alien's entry into the country, but the current status of the alien. An alien who entered a country in an irregular way, may have regularized their situation and, in contrast, an alien who entered the country legally, may have stayed

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mayoría de las sentencias sobre asuntos contenciosos y en un buen número de opiniones consultivas del tribunal interamericano").<sup>64</sup> Id.

<sup>65</sup> Ibid., p. 1134 ff.

<sup>66</sup> GARCÍA RAMÍREZ, Sergio, *supra* note 63, p. 1137 ff. <sup>67</sup>

GARCÍA RAMÍREZ, Sergio, *supra* note 63, p. 1138.

<sup>68</sup> GARCÍA RAMÍREZ, Sergio, *supra* note 54, p. 1140 y ss. <sup>69</sup>

GARCÍA RAMÍREZ, Sergio, *supra* note 54, p. 1141 y ss. <sup>70</sup> GARCÍA RAMÍREZ, Sergio, *supra* note 54, p. 1162 y ss.



there longer than it was permitted, thus making his presence in the country illegal.<sup>71</sup> If the legality of the presence of an alien is controversial in a process that leads to an expulsion, the matter must be resolved in accordance with the guarantees set forth in article 13.

[...]

The Committee reminded that it lacks the competence to "evaluate whether the competent authorities of the State (...) have interpreted and applied the domestic law correctly."<sup>72</sup> When applying Article 13, its function is to determine "if (...) they have not interpreted and applied the law in good faith" or if, on the contrary, "it is evident that there has been an abuse of power."<sup>73</sup> In another decision adopted in 1988, the Committee indicated that the decision of a State which considers an alien a threat to its national security deserves a certain margin of appreciation.<sup>74</sup>

Article 13 allows for the suspension of the requirement of a prior hearing due to "compelling reasons of national security". Until now, although the Human Rights Committee has examined several cases of people who have been expelled or deprived from their right of residence due to reasons of national security, there is no precedent of the application of this assumption. In the case of Hammel, the expulsion of an alien without having properly handed him out the respective warrant and keeping him in custody until his flight's departure, barring him completely from accessing the courts, was considered in violation of article 13.<sup>75</sup>

In fact, regarding the case of *Hammel v. Madagascar*,<sup>76</sup> in which Eric Hammel, a human rights lawyer of French nationality, was expelled from Madagascar in 1982, after 19 years of practicing his profession in that country, the Human Rights Committee ruled:

19.2. The Committee notes that, in the circumstances of the present case, the author was not given an effective remedy to challenge his expulsion and that the State party has not shown that there were compelling reasons of national security to deprive him of that remedy. In formulating its views the Human Rights Committee also takes into account its general comment 15 (27) (see footnote 1), on the position of aliens under the Covenant, and in particular points out that "an alien must be given full facilities for pursuing his remedy against expulsion so that this right will in all the circumstances of his case be an effective one".

19.3. The Committee further notes with concern that, based on the information provided by the State party (para. 15 above), the decision to expel Eric Hammel would appear to have been linked to the fact that he had represented persons before the Human Rights Committee. Were that to be the case, the Committee observes that it would be both untenable and incompatible with the spirit of the International Covenant on Civil and Political Rights and the Optional Protocol thereto, if States parties to these instruments were to take exception to anyone acting as legal counsel for persons placing their communications before the Committee for consideration under the Optional Protocol.

## **b. International protection of freedom of expression of foreign journalists and human rights defenders**

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<sup>71</sup> Human Rights Committee, General Comment 27, 67<sup>o</sup> session (1999) par. 4; General Comment No.15, 27<sup>o</sup> session (1986), par. 9.

<sup>72</sup> Human Rights Committee, Communication N° 58/1979: *Case Maroufidou v. Sweden*, pars. 9.3, 10.1 y 10.2. <sup>73</sup> Ibid, par. 10.1.

<sup>74</sup> Human Rights Committee, Communication N° 236/1987: *Case V.M.R.B v. Canada*, par. 6.3.

<sup>75</sup> Human Rights Committee, Communication N° 155/1983: *Case Hammel v. Madagascar*, pars. 18.2 y 19.2.

<sup>76</sup> See *Eric Hammel v. Madagascar*, Communication No. 155/1983, U.N. Doc. CCPR/C/OP/2 at 179 (1990). Available at: <http://www1.umn.edu/humanrts/undocs/newscans/155-1983.html>

International human rights law<sup>77</sup> establishes that "everyone shall have the right to hold opinions without interference," and that "everyone has the right to freedom of thought and expression." The right to freedom of expression "includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice." This right includes the right of all individuals to "impart" and "receive" information and ideas of all kinds through any media.

The preamble and first principle of the Declaration of Principles on Freedom of Expression of the Inter American Commission on Human Rights (IACHR) establish that "the right to freedom of expression is not a concession by the States but a fundamental right," that "the consolidation and development of democracy depends upon the existence of freedom of expression;" that "freedom of expression in all its forms and manifestations is a fundamental and inalienable right of all individuals" and that "[freedom of expression is] an indispensable requirement for the very existence of a democratic society."

Regarding the intimidation, kidnapping, and the material destruction of communications media, article 9 of the Declaration on the Principles of Freedom of Expression of the IACHR establishes:

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.

Likewise, the IACHR, in its 1998 Report on the Situation of Human Rights in Mexico, established:

Attacks on journalists are specifically intended to silence them, and so they also constitute violations of the right of a society to have free access to information. An independent and critical press is fundamental to ensuring respect for other liberties that are part of a democratic system of government and a state in which the rule of law prevails.

In regard to indirect restrictions to the freedom of expression of foreign journalists, the Inter American<sup>78</sup> Court of Human Rights has already established jurisprudence in the case of Ivcher Bronstein, a Peruvian national of Israeli origin and the majority stockholder of an independent TV channel, who was stripped of his Peruvian nationality because of his channel's critical view of the government:<sup>79</sup>

162. In the context of the facts indicated above, this Court observes that the resolution that annulled Mr. Ivcher's nationality title constituted an indirect means of restricting his freedom of expression, as

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<sup>77</sup>See Art. 13(1) of the American Convention on Human Rights ("1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.") See also Art. 19(2) of the International Covenant on Civil and Political Rights ("Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.") See *supra* note 59.

<sup>78</sup>Inter-American Court of Human Rights, Judgment of February 6, 2001. Merit, Reparations and Cost, *Case Ivcher Bronstein v. Peru*. Available at: [http://www.corteidh.or.cr/docs/casos/articulos/Seriec\\_74\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/Seriec_74_esp.pdf). <sup>79</sup> Ibid, pars. 154, 162 y 163, respectively.



well as that of the journalists who worked and conducted investigations for Contrapunto of Peruvian television's Channel 2.

163. By separating Mr. Ivcher from the control of Channel 2 and excluding the Contrapunto journalists, the State not only restricted their right to circulate news, ideas and opinions, but also affected the right of all Peruvians to receive information, thus limiting their freedom to exercise political options and develop fully in a democratic society.

In regard to indirect restrictions to the freedom of expression of foreign human rights defenders, the UN Human Rights Committee, in observations made to the Democratic People's Republic of Korea (North Korea), has established the "right of foreign journalists and delegations of human rights organizations of foreign origin to gain full access to the national territory of the State."<sup>80</sup> According to Profess<sup>81</sup> Daniel O'Donnell, the observations of the Committee "regarding or the situation were as follows":

The Committee is further concerned about the limited number of human rights organizations in the Democratic People's Republic of Korea, and the limited access to the State party's territory that is accorded to human rights organizations, as reflected in the small number of international human rights non-governmental organizations that have been granted permission to visit the Democratic People's Republic of Korea over the past decade.

The State party should grant access to its territory to international human rights organizations and other international bodies on a regular basis at their request and ensure accessibility to indispensable information about the promotion and protection of human rights.

The *Declaration on the human rights of individuals who are not nationals of the country in which they live*, adopted by the UN General Assembly in Resolution 40/144 of December 13, 1985, establishes that aliens shall enjoy, among other rights, the "right to freedom of expression" and the "right to peaceful assembly."<sup>82</sup> Finally, the *Declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms*, adopted by the UN General Assembly on March 8, 1999, establishes:<sup>83</sup>

*Article 6*

Everyone has the right, individually and in association with others:

(a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;

(b) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;

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<sup>80</sup> O'DONNELL, note 60 supra, p. 690. Id.

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<sup>82</sup> United Nations, supra note 61, Art. 5(2)(b)&(c).

<sup>83</sup> United Nations, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*. Resolution 53/144, March 8, 1999. Available at: <http://www2.ohchr.org/english/issues/defenders/declaration.htm>

(c) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

**D. Analysis of the actions of the Panamanian state in regard to the international standard of protection of freedom of expression**

**a. Violation of the prohibition to arbitrarily expel aliens, especially when they are human rights defenders**

As it was noted above, according to international human rights law, an alien who is legally in the territory of a state cannot be expelled without due process. In other words, the decision of expelling an alien must be according to the law, and in compliance with at least the following rights: a) to the presumption of innocence, b) to be heard by an independent, impartial, and competent court, c) to have the decision of his expulsion reviewed by a second, independent, impartial, and competent court, d) to have access to effective remedies, and e) to receive a duly motivated and founded sentence or final resolution. According to the case of *Hammel v. Madagascar*, these guarantees must be applied with especial attention in cases where the expulsion of an alien may be related with his carrying out legitimate activities in defense of human rights.

On one hand, as it has been noted above, according to the events transpired during February 26, 27, and 28, 2011, Francisco José Gómez Nadal and María Pilar Chato Carral were detained, arrested, verbally cautioned, and sanctioned by SNM with an indefinite "arrest warrant." An appeal could be filed in five days before the same authority that issued the warrant, and could then order deportation. All these measures were carried out in less than 48 hours, and due process guarantees were not respected. Hence, Gómez Nadal and Chato Carral's decision to accept the option of "voluntary repatriation," 12 hours after having been notified of an indefinite "arrest warrant," subject to a deportation decision at the discretion of the same authority that issued the warrant, is equivalent to an arbitrary expulsion.

On the other hand—as it has been noted above—according to the precedent of July 2010, and according to all video footage, press releases, and testimonies of both government officials and those involved in the incidents, Gómez Nadal and Chato Carral's detention, arrest, verbal reprimand, and indefinite detention subject to deportation were all related directly to the exercise of legitimate activities in defense of human rights. According to these events, on February 26, Gómez Nadal and Chato Carral were monitoring and following a Ngäbe-Buglé peoples' protest, and were clearly identified as representatives of the human rights organization, Human Rights Everywhere (HREV).

During the days of February 26, 27, and 28, government authorities—including police officers, immigration service officials, and even the president of Panama—determined and judged that these legitimate monitoring activities constituted an "alteration to public order," a "threat to national security," "incitement of Panamanian indigenous people to defy national authorities," "incitement of Panamanian citizens to unrest," "incitement to chaos" and "incitement to violence." These determinations and judgments were reached arbitrarily, without allowing any degree of evidence examination and without granting the defendants any due process guarantees. Given the

lack of any incriminating evidence, a process with a minimum degree of evidence examination and due process guarantees would have easily allowed the defendants to prove their innocence.

Judging from the video footage presented by the government itself, it is evident that the detention of Gómez Nadal occurred while he was filming the protest and that the detention of Chato Carral occurred as she was standing on the sidewalk removed from where the protesters stood. It is also evident that the Office of the President of Panama issued an accusatory statement only four hours after their arrest, and that the government sent a video clip—edited to appear incriminating—to local TV stations that same night. Days later, even President Martinelli himself commented on the case, implying that Gómez Nadal and Chato Carral were guilty of inciting violence and deserved deportation.

All evidence available behind this case leads to the conclusion that Gómez Nadal and Chato Carral were arbitrarily detained, arrested, and expelled from Panama. Also, the speedy involvement of the Office of the President and—days later—of the president himself strongly suggests that both police officers and SNM officials acted under high government pressure or informal orders, and that their actions were aimed at silencing and stopping the legitimate work of these Spanish nationals.

To summarize, since the expulsion of Gómez Nadal and Chato Carral by the SNM violated their due process guarantees and was a consequence of their legitimate actions in defense of human rights, it should be concluded that they were expelled arbitrarily. Hence, the SNM violated the prohibition of arbitrary expulsion of aliens, especially if said aliens are human rights defenders. This action by the SNM makes the Panamanian state responsible internationally for violating articles 22(6) of the Inter-American Convention on Human Rights, and 13 of the International Covenant on Civil and Political Rights.

#### **b. Violation to the freedom of expression of journalists and human rights defenders**

As noted above, according to international human rights law, the aggression, intimidation, and kidnapping of journalists, as well as the material destruction of communications media, violate fundamental human rights and severely hinder freedom of expression. According to the Inter-American Commission on Human Rights (IACHR), aggressions committed against journalists are specifically intended to silence them, and so they also constitute violations of the right of a society to have free access to information. An independent and critical press is fundamental to ensuring respect for other liberties that are part of a democratic system of government and a state in which the rule of law prevails.

International law in matters of freedom of expression also protects foreign journalists who carry out critical and independent journalism. In the case of *Ivcher Bronstein v. Peru*, in which the Peruvian state reverted the migratory status of a majority shareholder of a TV channel critical of the government, the Inter-American Court of Human Rights determined that this measure "constituted an indirect means of restricting his freedom of expression" and "not only restricted their right to circulate news, ideas and opinions, but also affected the right of all Peruvians to receive information, thus limiting their freedom to exercise political options and develop fully in a democratic society."

Likewise, international law in matters of freedom of expression protects the rights of human rights defenders to "freely to publish, impart or disseminate to others views, information and

knowledge on all human rights and fundamental freedoms" and to "hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters." Along the same lines, the UN Human Rights Committee has recognized the "right of foreign journalists and delegations of human rights organizations of foreign origin" to gain full access to the national territory of the state "in an ordinary fashion, whenever they require so, and guarantee access to all the necessary information regarding the promotion and protection of human rights."

As highlighted above, drawing from the antecedents of July 2010—as well as the video footage, news wires, and testimonies both from government officials and from those affected—the harassment through immigration of July 2010, and the arbitrary expulsion of Gómez Nadal and Chato Carral, are directly related to the fact that they were engaging in journalism critical of the Panamanian government. Furthermore, this critical journalism is directly related to the legitimate activities of monitoring, receiving, possessing, and publishing reports, reviews, and information about the human rights of the Ngäbe and Buglé peoples in Panama, which Gómez Nadal and Chato Carral pursued through Human Rights Everywhere (HREV).

As noted above, on February 26, 2011—when the events that led to their arbitrary expulsion took place—Gómez Nadal and Chato Carral were monitoring and accompanying a protest organized by members of the Ngäbe and Buglé peoples, and were clearly identified as representatives of HREV.

The harassment which took place in July 2010—as well as the arrest, detention, and arbitrary expulsion of Gómez Nadal and Chato Carral—constitutes an indirect means of restricting their freedom of expression, with the objective of silencing their journalistic work. These measures did not only restrict their rights, and those of HREV, to circulate news, ideas, and opinions, but also affected the rights of all Panamanian citizens to receive information, thus limiting their freedom to exercise their political options and to develop fully in a democratic society. Furthermore, because an independent and critical press is an essential element for the realization of other freedoms that constitute democracy and rule of law, restricting the freedom of expression of Gómez Nadal, Chato Carral, and HREV affects the democratic system and rule of law in Panama.

Regarding their role as human rights defenders, the July 2010 harassment and the arrest, detention, and arbitrary expulsion of Gómez Nadal and Chato Carral, violate their rights to seek, obtain, receive, and possess information about the human rights of the Ngäbe and Buglé peoples; to publish, impart, or disseminate opinions, information, and knowledge concerning human rights in Panama; to hold opinions regarding human rights; and to bring these issues to public attention in Panama and internationally.

Therefore, the July 2010 harassment and the arrest, detention, and arbitrary expulsion of journalists and human rights defenders, Gómez Nadal and Chato Carral, violate freedom of expression. Consequently, the Panamanian state is internationally responsible violating Article 13 of the American Convention on Human Rights, and Article 19 of the International Covenant on Civil and Political Rights.

## **E. Conclusions**

### *Arbitrary Expulsion of Francisco José Gómez Nadal and María Pilar Chato Carral*

Francisco José Gómez Nadal and María Pilar Chato Carral were detained, arrested, and arbitrarily expelled from Panama for engaging in journalism critical of the government, and for undertaking legitimate activities as human rights defenders.

Firstly, Gómez Nadal and Chato Carral's decision to accept "voluntary repatriation,"—which happened 48 hours after their arrest, and 12 hours after being notified with an indefinite "arrest warrant" subject to deportation at the discretion of the same authority who issued the warrant—is equivalent to an expulsion. Also, due to the fact that the expulsion by the National Immigration Services (SNM) took place without due process guarantees, it should be considered arbitrary. As a result, the SNM violated the prohibition of arbitrary expulsion of aliens, established in Article 22.6 of the American Convention on Human Rights and Article 13 of the International Covenant on Civil and Political Rights.

Secondly, the harassment which took place in July 2010, and the arrest, detention, and arbitrary expulsion of Gómez Nadal and Chato Carral, are indirect means of restricting their freedom of expression. In addition to restricting the rights of Gómez Nadal, Chato Carral, and Human Rights Everywhere (HREV) to circulate news, ideas, and opinions, the right of all Panamanian citizens to receive information was also affected, thus limiting their freedom to exercise their political options and to develop fully in a democratic society. Likewise, these measures violate their rights to seek, obtain, receive, and possess information about the human rights of the Ngäbe and Buglé peoples; to publish, impart, or disseminate opinions, information, and knowledge concerning human rights in Panama; to hold opinions regarding human rights; and to bring these issues to public attention in Panama and internationally. Consequently, the Panamanian State violated Article 13 of the American Convention on Human Rights and Article 19 of the International Covenant on Civil and Political Rights.

In summary, the law enforcement and administrative authorities of the Panamanian state that made possible the harassment in July 2010, and the arrest, detention, and arbitrary expulsion on February 28, 2011, of journalists and human rights defenders Gómez Nadal and Chato Carral, violated Articles 22.6 and 13 of the American Convention on Human Rights, and Articles 13 and 19 of the International Covenant on Civil and Political Rights.